

**F. No 6/05/2023-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building,
5, Parliament Street, New Delhi – 110001**

Dated: 29th June, 2024

FINAL FINDINGS

Case No. – AD(OI) – 05/2023

Subject: Anti-dumping investigation concerning imports of “Isobutylene-Isoprene Rubber” (“IIR”) originating in or exported from China PR, Russia, Saudi Arabia, Singapore and the United States of America.

BACKGROUND OF THE CASE

Having regards to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter also referred to as the “Rules or AD Rules”), Reliance Sibur Elastomers Private Limited (hereinafter referred to as the “applicant”) has filed an application before the Designated Authority (hereinafter referred to as the “Authority”) for initiation of anti-dumping investigation concerning imports of “Isobutylene-Isoprene Rubber” (hereinafter referred to as the “subject goods” or the “product under consideration” or “PUC” or “IIR”) originating in or exported from China PR, Russia, Saudi Arabia, Singapore and the United States of America (hereinafter referred to as the “subject countries”).

The Authority, on the basis of prima facie evidence submitted by the applicant, issued a public notice vide Notification No. 6/05/2023-DGTR dated 30th June 2023, published in the Gazette of India, Extraordinary, initiating an anti-dumping investigation in accordance with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject countries, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

A. PROCEDURE

1. The procedure described below has been followed with regard to the subject investigation:
 - a. Pursuant to the initiation of the investigation, and after providing due opportunity to the interested parties to provide relevant information and defend their interests, and on the basis of information and evidence on record, having regard to the Anti-Dumping Act and the Rules, the Authority issued preliminary findings dated 16th April 2024, provisionally concluding that the product under consideration has been exported from the subject countries at a price below their normal value, thus, resulting in dumping of the subject goods, the domestic industry has suffered material injury due to such dumping and injury to the domestic industry has been caused by such dumped imports. The Authority recommended the imposition of provisional anti-dumping duty on imports of the subject goods from the subject countries.
 - b. The Authority notified the interested parties about the following procedure that was to be followed subsequent to issuance of preliminary findings.
 - i. Comments were invited by all interested parties on the preliminary findings within 30 days of publication of such findings.
 - ii. It was notified that an oral hearing will be conducted in terms of Rule 6(6) of the Anti-Dumping Rules.
 - iii. Further verification deemed necessary will be conducted.
 - iv. Essential facts would be disclosed prior to the issuance of the final findings.
 - c. A copy of the preliminary findings was sent to the Central Government for its consideration of the same for imposition of provisional anti-dumping duty.
 - d. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 24th May 2024. The parties, who presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any.
 - e. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in these final findings.
 - f. It is expressly clarified that the preliminary findings form an integral part of this final findings. These final findings should be read along with the preliminary findings issued earlier. The procedure followed, arguments raised by the interested parties, examined explicitly or implicitly dealt in the final findings and determination earlier made which have not been disputed by interested parties are not being repeated in these final findings. The preliminary findings should be

deemed to be incorporated in the present final findings to the extent the same is not inconsistent with the present final findings.

- g. The Authority satisfied itself with the accuracy of the information supplied by the interested parties which forms the basis of these final findings to the extent possible and verified the data/documents submitted by the interested parties to the extent considered relevant and necessary.
- h. The Authority sought further information from the other interested parties to the extent deemed necessary. The verification of the data provided by the other interested parties was conducted to the extent considered necessary for the purpose of the present investigation. The Authority has considered the verified data of the of the other interested parties in its analysis in the present case.
- i. On-the-spot verification was carried out at the premises of the domestic industry, both at the factory and office, where various claims made by the domestic industry were verified and supporting information, to the extent considered relevant, was collected. The verification included examination of the production process, manufacturing facilities, facilities of IIR and HIR, production of different products, etc.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 2. The Authority considered the following as the scope of the product under consideration in the preliminary findings.

“The product under consideration in the present investigation is Isobutylene-Isoprene Rubber (“IIR”) which is a synthetic rubber; commonly used to manufacture inner tubes for tyres and other high-pressure tubes. The scope of the product under consideration excludes food-grade IIR used as an ingredient in the production of chewing gum. IIR has applications in the tube and tyre inner liners, which form an integral part of the pneumatic tyre manufacturing process. It is also used in diaphragms, gaskets, wire and cable insulations, liners, O-rings, seals, weather stripping, and bottle closures.

The product under consideration is classified under Chapter 40, under tariff code 40023100 of the First Schedule to the Customs Tariff Act, 1975. The customs classification is only indicative and is not binding on the scope of the present investigation.”

B.1. Views of other interested parties

- 3. The submissions of the other interested parties with regard to the product under consideration and like article post the issuance of preliminary findings are as follows:
 - i. The regular grade of IIR for bladder application must be excluded as the applicant’s product has not been approved for manufacturing tyre curing bladder.
 - ii. The domestic industry is not able to supply the specialised grades for use in bladders. The imported grades can be used for manufacturing bladders, which allow curing of 330-340 tyres, while that made from domestic grades can produce

- about 260 tyres. The domestic industry has never offered the sale of such specialized grades to users and has only manufactured normal grades.
- iii. An end-use-based exemption can be provided for the specialized grades to be used for manufacturing bladders to allay any chances of circumvention.
 - iv. The applicant cannot produce speciality grade as it does not have the plant and equipment. Such grades are a combination of mooney viscosity and unsaturation level. Even if applicant can produce low mooney and unsaturation levels, it does not mean that it can produce combinations required. The specification sheets relied upon by the Authority has not been shared by any other interested party.
 - v. Imports of a product type is not a legal requirement for the exclusion of such product. The legal standard for inclusion is actual production and sales and not the ability.
 - vi. Even if there was no demand in the Indian market, there was demand in foreign markets, but the applicant has not given evidence that speciality product has been produced and supplied in the export market.
 - vii. The difference in usage of specialty grades and regular grades must be examined. Exxon's product has a higher mooney retention index. The RSEPL's regular grade has higher unsaturation content which impacts the processing safety and aging characteristics of the product. The Authority should seek third-party lab reports and analyse the said parameters.
 - viii. Claim of domestic industry that the scope of the product under consideration is already frozen and cannot be changed at such a subsequent stage is incorrect. As can be seen from the notification finalizing product scope in HIIR, the scope can be amended/ modified at a subsequent stage. A mere notice on scope and PCN methodology, which is not a gazetted document, and is not notified to all affected parties does not bind the Authority.
 - ix. As opposed to the contention of the applicant, the time limit to file in the initiation notification refers to questionnaire response and there is no legal bar for filing injury submissions post-filing of such response.

B.2. Views of the domestic industry

4. The submissions of the domestic industry with regard to the product under consideration and like articles post issuance of the preliminary findings are as below: -
 - i. No new facts have been put on record by the other interested parties and the product scope considered in the preliminary findings may be finalized.
 - ii. Submissions requesting the exclusion of tyre curing bladder were belated and must be rejected. The comments filed on product scope within the time period by ATMA did not include a request for exclusion. The domestic industry has produced and sold such products in both domestic and export market.
 - iii. Invoices issued for IIR does not show their usage in either tubes and or tyre-curing bladders and there is no way to ascertain if IIR is consumed for tubes or tyre-curing bladders.

- iv. The interested parties have not provided evidence that the product produced by the domestic industry are not of suitable quality. Such allegations are made with ill intent as the domestic industry has sold IIR for bladder manufacturing to the satisfaction of its customers.
- v. Request for exclusion of speciality grades on the presumption of future demand cannot be considered as a ground for exclusion. The domestic industry can also cater to such new demand in the future.
- vi. A product type can be excluded only if such product type is imported in India and the domestic industry has not supplied like article. This has been established by the Authority in a number of past investigations such as that on Seamless Tubes and Pipes, SDH Equipment and Coated / Plated Tin Mill Flat Rolled Steel Products. The CESTAT upheld the findings of the Authority in SDH Equipment.
- vii. As opposed to the contention of the other interested parties, the applicant's set-up is recent and there is no doubt that it is a new entrant which is facing dumping since its establishment.
- viii. There is no obligation on the domestic industry to demonstrate that it supplied the product in the export market.
- ix. In case demand for the product arises in future and the domestic industry is unable to supply the same, the other interested parties are free to approach the Authority for a mid-term review.

B.3. Examination by the Authority

- 5. The opportunity to explain and comment on the scope of the product under consideration and PCN was provided to all interested parties through notice of initiation. Thereafter, an opportunity was provided to all interested parties on 25th October 2023 to explain their submissions. The interested parties elaborated their submissions with regard to both the scope of the product under consideration and the PCN methodology. The interested parties were further afforded an opportunity to provide relevant supporting evidence. After taking into account the submissions made by various interested parties, and having regard to the legal position in this regard, the Authority decided the scope of the product under consideration and PCN methodology. The same was notified on the website of DGTR on 22nd November 2023.
- 6. The Authority notes that the Automotive Tyre Manufacturers' Association (ATMA) did not file any submission for the exclusion of any product type within the time period provided to the interested parties. However, post finalization of the scope of the product under consideration and PCN methodology, and much after the lapse of time limits, ATMA filed submissions requesting the exclusion of regular grade of IIR used for manufacturing of tyre curing bladders. The Authority notes that the submissions filed by ATMA were belated and post-finalizing the scope of the product under consideration and have not been accepted by the Authority in light of Rule 6(8) of the Anti-Dumping Rules.

*“(8) In a case where an interested party refuses access to, **or otherwise does not provide necessary information within a reasonable period**, or significantly impedes the investigation, **the designated Authority may record its findings on the basis of the facts available to it** and make such recommendations to the Central Government as it deems fit under such circumstances.”*

7. While the Authority concludes that submissions made by ATMA with regard to the exclusion of IIR for manufacturing tyre curing bladders are belated and not accepted by the Authority, the Authority has, in any case, examined the arguments raised in the interest of the investigation and determination.
8. The Authority notes that the other interested parties have not specified any technical details of the product being used for manufacturing tyre-curing bladders. All interested parties have submitted that the regular grade of IIR is being consumed for manufacturing tyre-curing bladders. The domestic industry has submitted that the same grade of IIR is used for manufacturing both tyre-curing bladders and regular tubes for tyres. The domestic industry has submitted that it has produced and supplied such grade for manufacturing tyre curing bladders.
9. The other interested parties have submitted that the quality of grade supplied by the domestic industry is not suitable for use in the production of tyre curing bladders. The interested parties have provided a communication from *** to *** to support its contention that the domestic industry’s product is not acceptable. The Authority notes that :
 - (a) the said communications are not with the domestic industry and are between two parties, apparently without any knowledge of the domestic industry,
 - (b) the said communication does not establish that the product of the domestic industry cannot be used. It merely expresses some operational difficulties in using the domestic industry product, (c) the domestic industry was given no opportunity to explain whether the problem was with the domestic industry product or some other factor,
 - (d) the domestic industry is a new producer, and some operational difficulties at the beginning of its production (the said communication pertains to the year 2021) does not mean that the domestic industry cannot manufacture like article,
 - (e) the domestic industry has sold substantial volumes in the domestic market as well as export market. It is, therefore, not admissible that the domestic industry is unable to offer like article. The domestic industry has also submitted that it has supplied the material to a consumer *** in *** in the international market. The domestic industry has shared a copy of the communication received from the said customer. While the positive feedback received is post period of investigation, it proves the capability of the applicant to produce the product for tyre curing bladders. The consumer has not only confirmed the usage of domestic industry material for tyre curing bladders but also has expressed its satisfaction with regard to the performance of domestic industry material for tyre curing bladders.

10. In light of significant submissions made by the interested parties contending that the material provided by the domestic industry does not perform very well for tyre curing bladders, the information and evidence filed by ATMA and Exel Rubber Private Limited was examined in detail. It is seen that Exel Rubber Private Limited has provided communication between two parties. The said communication is not with domestic industry. The domestic industry had repeatedly demanded a copy of the communication sent by the consumer to the domestic industry disputing quality of the material supplied by the domestic industry. The other interested parties, however, declined to share a copy of the said communication with the domestic industry. The Authority considers that if the said communication concerns the quality of the material supplied by the domestic industry, it cannot be expected from the domestic industry that it can respond to such complaints of the buyer when the domestic industry was not even informed. Since the communication submitted is between two parties other than the domestic industry, the Authority has allowed the confidentiality claim of the other interested parties. However, the Authority notes that when the said communication is not even shared with the domestic industry and is a communication between two parties, it cannot constitute sufficient evidence to establish that the material supplied by the domestic industry cannot be used for curing bladders. The Authority also notes that the domestic industry has supplied a cumulative volume of *** MT over the injury period, the majority of which has been consumed by the tyre industry. The table below shows supplies made by the domestic industry to various consumers over the injury period. The domestic industry has further claimed that it has regularly supplied to these consumers even in the post-POI period. It is seen that the domestic industry has indeed sold the product to a number of consumers and even to those consumers who have allegedly made complaints about the non-performance of the domestic industry product.

SN	Name of customer	Month/Year of starting regular purchase	Total volumes sold
			Till POI (KT)
1	***	***	***
2	***	***	***
3	***	***	***
4	***	***	***
5	***	***	***
6	***	***	***
7	***	***	***
8	***	***	***
9	***	***	***
10	***	***	***

11. Further, it is noted that the communications shared by the users are *inter-se* communications between them and dated prior to the period of investigation. The communications have not been sent to the applicant and thus, the Authority concludes based on the evidence on record that such communication cannot be construed as a complaint about the product by the applicant.

12. One of the users have submitted that the applicant is not a part of their vendor approval list. Such user has provided a “vendor approval list”, which only states source of procurement as “imports” and not domestic procurement. The Authority however, notes that the approval list of one user does not contradict the fact that the domestic industry has actually supplied the product to domestic and global users, that too when the volume of material sold by the domestic industry is so significant and ***% of the demand for the product in the country from September 2019 till March 2023 was met by the domestic industry.
13. The domestic industry submitted that the same grade is used for making tubes and tyre curing bladders. The claim made by the domestic industry on this account has remained unrefuted. It is also seen that the users have not imported any grade of the PUC different from that manufactured by the domestic industry for the purpose of making tubes and tyre curing bladders. Thus, in a situation where the consumers have used the same product interchangeably for making of tubes and tyre curing bladders, and in a situation where majority of the consumption of the product under consideration is in tubes, the Authority considers that it is not justified to exclude any particular application of the product under consideration from proposed measures. It would be impossible for the customs authorities to implement any such exclusion when the consumers are using the products interchangeably for making tubes and tyre curing bladders.
14. The domestic industry has contended that 94% of IIR is used for the production of tubes for tyres while only 6% is used for other applications. The Authority, thus, concludes that there is no justification for the exclusion of the product under consideration for tyre curing bladders application.
15. It is clarified that the interchangeable use mentioned in para 9 of the preliminary findings is with regard to the interchangeable use of production facilities for the production of different grades of the product. The same production facilities are used for manufacturing different types of products.
16. The Authority notes that the domestic industry has indeed produced a low mooney viscosity grade of the product. In fact, it was seen that the production range of the domestic industry included low mooney viscosity up to 35 MU whereas the grade produced by other interested parties has mooney viscosity of 32 MU (+/-4). Hence, the grade produced by the domestic industry has mooney viscosity within the tolerance limit of the specialty grade produced by other interested parties.
17. With regard to the contention that the specification sheets have not been shared, the Authority notes that the domestic industry has submitted extracts of its technology license agreement to show the specification of grades that can be produced. Since such information is confidential business proprietary in nature, it cannot be disclosed to the other interested parties. However, the Authority notes that the applicant has the ability to

produce low and high unsaturation content as well as low and high mooney viscosity. Post verification, the domestic industry also filed specification sheets for various grades which were subsequently circulated to all the interested parties.

18. With regard to the contention that the applicant cannot produce specialty grade due to its inability to achieve the desired combination of mooney viscosity and unsaturation levels, the Authority notes that the interested parties have submitted that the product supplied by the domestic industry cannot constitute like article to the imported product. It is also noted that none of the interested parties have provided any details of plant and equipment required to achieve such product specification, and how the applicant lacks technical capability. Further, as already noted in the preliminary findings, there is no demand for such product in India, and thus, there is neither domestic production of such product nor imports of the product into India. Thus, in the absence of imports of a product, it cannot be stated that like article is not being produced by the domestic industry. It is unreasonable to expect the applicant to produce a product which would have not been sold in the market, as there is no demand for such product in the market. The Authority notes that it is a settled legal position that only a product type, which has been imported into the country like article of which has not been supplied by the domestic industry can be excluded from the scope of the product under consideration. Hence, the Authority concludes that the exclusion of specialty grade is not justified.

C. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

C.1. Views of other interested parties

19. The submissions of the other interested parties with regard to the scope of domestic industry and standing post the issuance of preliminary findings are as follows:
- i. There is no relationship between the Russian exporters and domestic producer, which would be considered sufficient to hold them as ineligible producer.
 - ii. Major expenditure for the production of the subject goods has been made after approval of SIBUR as a number of related party transactions have been done with RIL.
 - iii. Reliance should not be placed on misstatement by NKNH regarding relationship with RSEPL. It did not report related parties in accordance with Trade Notice 9.
 - iv. Sibur Investment AG has control over NKNH as well as domestic producer. Despite knowing the common corporate structure, the Authority has solely relied upon response of NKNH and has declared the domestic producer as domestic industry.
 - v. Since exports were consigned directly from Russia, NKNH was aware of the same.
 - vi. The reliance on deadlock provisions was incomplete as the consequences of use of such provision was not evaluated as it could lead to exit of SIBUR from the JV and is not applicable to joint approval and related party transactions. There is no evidence of actual invocation of such provision.
 - vii. The conduct of the Russian producer should be evaluated as it is in concert with the applicant. It supported the argument regarding eligibility of domestic industry.

SIBUR and RSEPL are rearranging the market to keep sales between them as Russian imports were highest in India earlier and the applicant made significant imports from Russia at low prices. As the applicant started the production, imports from Russia declined and provided market to the applicant.

- viii. As per Rule 2(b), once a domestic producer is related to exporter, there is no scope of discretion envisaged in law upon the Authority to include such a producer within the scope of domestic industry.
- ix. Submission of the domestic industry that because NKNH is participating against them, it implies that SIBUR is not controlling the domestic industry is an unfounded assumption which is against WTO Anti-Dumping Agreement. Participation by SIBUR appears to be well-coordinated and orchestrated act, indicating its control over the domestic industry.

C.2. Views of the domestic industry

20. The submissions of the domestic industry with regard to the scope of domestic industry and standing post issuance of the preliminary findings are as below: -

- i. There must be sufficient ground justifying exclusion of related domestic producer. A mere fact of relationship is insufficient to consider the domestic producer as ineligible. There is no difference in RSEPL's behaviour in present situation, vis-a-vis a situation, were it not an alleged related party.
- ii. No evidence has been put on record to show that RSEPL and SIBUR have colluded. There is no evidence that the relationship between the two parties have led to applicant behaving in a manner different from an unrelated producer.
- iii. SIBUR does not exercise *de jure* control or *de facto* control over RSEPL.
- iv. Reserved matters do not show control by SIBUR on the operations of the applicant regarding purchase, production, sales, costs, pricing or any other factor relevant in an anti-dumping investigation.
- v. The deadlock provision in the Articles of Association prevent SIBUR to supersede the decision of RIL. Deadlock provision is not a formality and Exxon cannot place selective reliance on certain provisions of Articles of Association.
- vi. The Russian producer is opposing the present investigation. Russian producers have forced the applicant to offer lower prices and would not have reduced their price if its intention were to give market access to the applicant.
- vii. The deadlock provision has not been invoked simply because SIBUR has never exercised control in a manner detrimental to the interests of the applicant or RIL.
- viii. Approval of raw material purchases from RIL is received from SIBUR as per best practices.
- ix. Even in case it is found that SIBUR has exported directly to India, the inability of the applicant to prevent exports from SIBUR and SIBUR's inability to prevent the applicant in seeking duties establishes absence of control.
- x. It is immaterial whether imports in India are within the knowledge of Russian producers. The term exporter and producer cannot be used interchangeably under the Rule 2(b).

- xi. As opposed to the submissions of the other interested parties that SIBUR has colluded with the applicant since imports from Russia declined, the imports from other countries have also declined post commencement of domestic production in India which does not mean that all countries have colluded with the applicant. The imports from China were lowest during 2020-21 and 2021-22.

C.3. Examination by the Authority

21. Rule 2(b) of the Anti-Dumping Rules defines domestic industry as under:

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”.

22. The Authority, in the preliminary findings, has provisionally concluded that the applicant constitutes domestic industry in terms of Rule 2(b). It has been provisionally concluded that there is a lack of *de jure* and *de facto* control of SIBUR over the operations of the applicant and it cannot be said that the applicant is controlled by SIBUR which also controls a producer of the subject goods in Russia.
23. The opposing interested parties have questioned the legal basis for the statement in the preliminary findings that requires the Authority to examine whether producers behaved differently from other producers for the product.
24. The Authority issued a disclosure statement on 21st June 2024 on which comments of all interested parties were invited. Upon considering the comments, the Authority re-examined the issue regarding the scope of the domestic industry.
25. An explanation to Rule 2(b) provides for situations where the domestic producer is related to the importer or exporter of the alleged dumped article. The provision is reproduced below:

Explanation. - For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if, -
(a) one of them directly or indirectly controls the other; or
(b) both of them are directly or indirectly controlled by a third person; or
(c) together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

26. The note to the aforesaid explanation provides the meaning of “control”.
- Note: For the purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.*
27. It can be said that one person can control another person in either of the following two situations:
- (i) the former is legally in a position to exercise restraint or direction over the latter, (*de jure control*) or
 - (ii) the former is operationally in a position to exercise restraint or direction over the latter. (*de facto control*)
28. The meaning of the terms “restraint” or “direction” is not defined in the AD Rules or the WTO Anti-Dumping Agreement. “Restraint” could be understood as an action inhibiting or limiting the actions of someone or a thing while “direction” denotes the way or the path in which a certain action has to be pursued. It is to be noted that the provision is disjunctive i.e., either restraint or direction has to be present.
29. The application has been filed by RSEPL, which is a JV between Reliance and Sibur Investments AG, wherein Reliance holds a 74.9% stake and Sibur Investments AG (a wholly owned subsidiary of SIBUR) owns a 25.1% stake. The authorized representative of Sibur Investments AG, Mr. Dimitry Khrichenko, is a whole-time director and Chief Operating Officer (COO) of the applicant as is clear from the audited financials of the Petitioner for the POI.
30. It noted that SIBUR exercises control over NKNH, a producer of the PUC in Russia.
31. Article 29 of the petitioner’s AoA provides that the petitioner’s business shall be managed by the Board of Directors consisting of 10 directors of which two shall be independent directors, six directors shall be nominated by Reliance shareholders, and the remaining two directors shall be nominated by SIBUR and its affiliates. The relevant extract from the AoA is as under:

29 (a) Company shall be managed by the Board of Directors. The Board shall consist of ten (10) Directors out of which two (2) shall be Independent Directors, the Reliance Shareholders shall be entitled to nominate six (6) Directors and the SIBUR Shareholders shall be entitled to nominate two (2) Directors.

32. Further, Article 38 of the AoA, relating to voting for the decision-making of the petitioner, states as below:

DECISIONS

38. (a) Subject to the Articles 39 and 41, voting at Board meetings shall be by way of a simple majority of the votes of the Directors who are attending and voting at the meeting. Each Director (or Alternate

Director present at a meeting in place of a Director) shall have one (1) vote.

(b) Subject to the Articles 39 and 41 and the Act, voting at Shareholders' Meetings shall be by way of a simple majority of the votes cast at the meeting. At any Shareholders' Meeting each Share shall carry one (1) vote.

33. From the above, it appears that the decisions in the board meetings and shareholders meetings shall be made by way of a simple majority. However, it is relevant to note that Article 38 is subject to Articles 39 and 41, which deal with “Reserved Matters” and “Related Party Transactions and Joint Approval Transaction”, respectively. Any decisions of the petitioner with respect to the “Reserved Matters” and “Related Party Transactions and Joint Approval Transaction” cannot be taken merely by way of a simple majority but are subject to the decision-making process/approvals as per Articles 39 and 41, respectively.
34. Article 39(a) of the AoA provides for the decision-making process/approvals required for transacting a Reserved Matter in a board and shareholders’ meeting. It states that so long as SIBUR shareholders hold the qualifying shares in the petitioner, the decisions in the board and shareholders’ meetings shall not be taken unless at least one director appointed by Reliance and SIBUR each has voted in favour of the matter (in case of board meeting) and an authorised representative of at least one shareholder from Reliance and SIBUR each has given its approval for such matter (in case of shareholders’ meeting). The relevant portions of Article 39 are extracted as under:

39. (a) For so long as the SIBUR Shareholders collectively hold the Qualifying Shareholding, then save and except for the situations expressly provided in Article 43 (e) and Article 44 (c), the Company shall not and the Shareholders shall procure that the Company shall not take any decision or action in relation to a Reserved Matter, unless:

(i) An authorised representative of at least one Shareholder from each Shareholder Group has given its approval for such Reserved Matter to the Company in writing, or, if such Reserved Matter falls solely within the competence of a Shareholders’ Meeting under the Act then an authorised representative of at least one Shareholder from each Shareholder Group has given its approval for such Reserved Matter at a Shareholders’ Meeting; and

(ii) at least one (1) Director appointed by each Shareholder Group has voted in favour of the matter at a duly convened and held Board meeting.

35. With respect to “Joint Approval Transactions”, similar to Reserved Matters, Article 41(b)(i) states that all such transactions require the approval of at least one director and

one shareholder from both Reliance and SIBUR (so long as SIBUR holds the qualifying shares).

36. In particular, the Articles of Association (AoA) defines certain “Reserved Matters”, “Related Party Transactions” and “Joint Approval Transactions” wherein the approval of SIBUR’s directors and shareholders in board and shareholders’ meetings, respectively, is necessary before any such business can be transacted. Thus, it is seen that despite the majority of shares being owned by Reliance, SIBUR can exercise restraint over the petitioner in terms of explanation to Rule 2(b).
37. While the applicant can exercise the deadlock provisions in the Articles of Association, the Authority notes that such provisions have never been invoked. In case of invocation of such provisions, the joint venture will cease to exist.
38. In light of the above, it is established that SIBUR, through Sibur Investments AG, has control over the petitioner and a relationship is established in terms of Rule 2(b) of the AD Rules.
39. The Authority notes that Rule 2(b) merely refers to a possible situation where a domestic producer may be treated as ineligible. Since no prescriptions or conditions have been laid down under the Rules, the Authority examines possible situations where the Authority may treat domestic producers as eligible or ineligible despite the relationship with the exporter in the subject country/ies.
40. The Authority considers that the mere fact of the existence of a relationship between a producer and a foreign exporter is insufficient to hold such a domestic producer ineligible under Rule 2(b).
41. Indeed, the Rules have been modified from ‘shall’ to ‘may’ only to grant a discretion to the Authority in a situation where a domestic producer is itself an importer or related to an importer or a foreign exporter.
42. The Authority recalls the objective of providing such a discretion to the Authority. The Anti-Dumping Rules when originally introduced did not provide any discretion to the Authority in this regard. The rules were amended in order to provide a discretion to the Authority to treat certain category of producers as eligible and certain category of producers as ineligible. Since nothing specific has been laid down under the law, the Authority has relied upon jurisprudence and past determinations in this regard, where the Authority has examined possible situations where a domestic producer will be treated as eligible or ineligible. Reference is drawn in particular to the investigations relating to viscose staple fibre from China and Indonesia and circular weaving machine from China, where the Authority has examined in detail the provisions of Rule 2(b) and situations where domestic producers may be treated as eligible or ineligible.

43. As regards the submissions that the Russian producer has colluded with the applicant, the Authority notes that the imports from Russia were priced in competition with other subject countries. It is also noted that the prices offered by the Russian producer was lower than some subject countries while higher than other subject countries. In case, Russian producer was trying to re-arrange the market and give market access to the applicant, it would have offered higher prices to not only allow the applicant to grab the market, but also obtain better prices to the extent of its sales. However, the Russian producer has offered prices competing with other subject countries, which shows that the Russian producer was attempting to maintain its presence in the market, and not give market access to the applicant. The Authority also notes that there was public information available that the applicant was setting up a plant in India for production of butyl rubber and it was also publicly available that the applicant had started producing and selling the product in the country. If the foreign producers continued their exports at dumped prices, it cannot be claimed that the same was a result of collusion between two other parties, that is, the Russian producer and the applicant. It is also noted that the other subject countries excluding Russia collectively had higher market share in the POI.
44. The Authority considers that the mere fact of the existence of a relationship between a domestic producer and a foreign producer is insufficient to hold such a domestic producer ineligible under Rule 2(b).
45. The Authority has dealt with this issue at length in the case of anti-dumping investigation concerning import of Soda Ash originating in or exported from China PR, European Union, Kenya, Iran, Pakistan, Ukraine and USA (NO. 14/17/2010-DGAD). Indeed, the Rules have been modified from 'shall' to 'may' only to grant discretion to the Authority in a situation where a domestic producer is itself an importer or related to an importer or a foreign exporter. The Authority considers in this regard that the facts and circumstances of the present case do not warrant that the petitioner should be treated as ineligible domestic industry within the meaning of Rule 2(b) even if the petitioner is treated as related to the foreign producer.
46. While the Authority notes that the petitioner is related to the foreign producer of the product under consideration, the Authority, nevertheless, considers that the petitioner is eligible to constitute domestic industry due to the following facts and circumstances of the present case.
 - a) The purpose of the anti-dumping law is to remedy a situation of dumping causing injury to Indian industry. The mere fact that a company that might be related to a foreign producer and such foreign producer is also exporting the product to India does not in itself imply that the dumping of the product should be permitted in the country.
 - b) The very purpose of granting discretion under the Rules and seeking amendment of the earlier Rule was to grant discretion to the Authority so that the domestic producers are not prevented from seeking remedy in a situation where foreign

producers are causing injury to the Indian industry. The law should be interpreted and applied in a manner that the objective of the law is met, and is not defeated.

- c) The petitioner is a new company that has made very significant investment to set up manufacturing facilities in the country for production of a product not produced in the country before.
- d) There are no other producers of the subject goods in the country and therefore, if the petitioner is treated as ineligible, there is no domestic industry that can seek redressal. Such a situation shall imply allowing injurious dumping to continue.
- e) The investigation has shown the existence of significant dumping margin, injury margin and injury suffered by the domestic industry.
- f) The Russian producer is engaged in the unfair trade practice of dumping in India and the applicant has sought a remedy even against the Russian producer in the similar manner as done for other producers in other subject countries.
The mere fact that the applicant has not been able to prevent the Russian producer from exporting the product in itself implies that the applicant has been unable to exercise any control or discretion in preventing the foreign producer from dumping in the Indian market.
- g) The domestic industry started producing significant volumes of the product in 2019-20 and declared commercial production only just prior to the period of investigation. The significant time gap between commencing production and declaring commercial production has been justified by the domestic industry on the grounds of dumping happening in the country. In other words, so significant has been dumping of the product in the country that it has prevented the domestic industry from declaring commercial production for a significantly long period even after fully establishing its technical capability to produce and sell.
- h) The Authority had recommended anti-dumping duty on exports by the allegedly related entity; and therefore, the recommendation shall not cause any prejudice to the interests of opposing interested parties on this ground that the petitioner and one of the foreign exporters are potentially related.
- i) The imports from Russia were priced in competition with other subject countries. There is no evidence on record showing the presence of any collusion or collective action. The Russian producer has participated and opposed the imposition of anti-dumping duty which shows conflicting business interests of the petitioner and Russian producer.

47. In view of very peculiar facts and circumstances, the Authority considers that there are no grounds for treating the petitioner as an ineligible domestic industry.

48. In view of the foregoing, the Authority concludes that the applicant constitutes domestic industry as defined under Rule 2(b) of the Anti-Dumping Rules and the application satisfies the requirement of standing in terms of Rule 5(3) of the Anti-Dumping Rules.

D. CONFIDENTIALITY

D.1. Views of other interested parties

49. The other interested parties have made the following submissions post preliminary determination with regard to the confidentiality claimed by the domestic industry:
- i. Entirety of figures relating to inventory is claimed as confidential, without giving indexed figures.
 - ii. The claim that the same exporter has supplied the same material at different prices cannot be accepted as the non-confidential data has not been provided to the other interested parties.

D.2. Views of the domestic industry

50. The domestic industry has made the following submissions with regard to the confidentiality post issuance of the preliminary findings.
- i. The data with regard to exports by various exporters and imports by various importers is confidential sensitive data. The Authority may rely upon the data submitted in the response filed by the participating exporters.
 - ii. As opposed to the submissions of the other interested parties, the indexed figures for inventories have been disclosed.

D.3. Examination by Authority

51. With regard to confidentiality claimed on the export data, the Authority notes that the data relating to exports made by different exporters at different prices was provided to the domestic industry on confidential basis and therefore was rightly claimed confidential. However, the Authority has not relied upon the information provided by the applicant. The Authority has relied upon data filed by the participating exporters and DG Systems data. Since the Authority has not relied upon applicant's data, no prejudice has been caused to the other interested parties by such claim of confidentiality.
52. The Authority notes that the domestic industry has provided indexed figures of average inventories in the injury period as per the requirement of Trade Notice 10/2018.

E. MISCELLANEOUS SUBMISSIONS

E.1. Views of other interested parties

53. The other interested parties have made the following miscellaneous submissions post issuance of the preliminary findings
- i. Methodology for determination of normal value, export price and calculation of anti-dumping duty has not been disclosed.
 - ii. In issuing the preliminary findings, the Authority has failed to satisfy the pre-requisites, which are determination of dumping, injury and causal link during the period of investigation, and a further determination that injury during the course of investigation subsequent to the period of investigation.

- iii. The Authority has failed to provide any explanation for preliminary determination, which is in complete violation of Rule 12.
- iv. Preliminary findings have been issued after 10 months of initiation, without any reason for delay. Therefore, the preliminary findings cannot be considered as having been issued expeditiously as envisaged under Section 9B of the Act.
- v. Failure to conduct a hearing prior to issuing the preliminary findings constitutes a gross violation of due process.

E.2. Views of the domestic industry

54. The domestic industry has made the following miscellaneous submissions post issuance of the preliminary findings.
- i. There is no obligation on the Authority to share calculation of dumping margin at the stage of preliminary findings even non-injurious price calculations have not been shared at this stage.
 - ii. As opposed to the contention of the other interested parties, the Authority has established significant dumping, injury and causal link in the preliminary findings.
 - iii. There is an urgent need for imposition of anti-dumping duty as the domestic industry is suffering significant injury due to imports from the subject countries.
 - iv. The delay in issuance of preliminary findings is due to multiple extension taken by the exporters and time barred comments filed by the other interested parties.
 - v. There is no mandate to conduct the oral hearing before issuance of the preliminary findings.

E.3. Examination by the Authority

55. The Authority notes that the normal value and net export price determined for the participating exporters were shared with the exporters post issuance of preliminary findings.
56. While issuing the preliminary findings, the Authority has examined dumping, extent of injury and causal link. The preliminary findings contained a detailed examination of these accounts. The Authority noted that the domestic industry suffered a significant injury during the period of investigation and being a new entrant in the market injury at such significant level may lead to unviability of the plant. Since there is only one producer of the subject goods in India, it is imperative that domestic production of the subject goods should be maintained in India and such producers should be provided a level playing field and remedy from unfair trade practice of dumping. It is noted that the applicant had requested interim duty in its application itself and had given reasons for the same. The contents of the preliminary findings in itself establish sufficient justification for invoking interim measures. Accordingly, the Authority recommended the imposition of provisional duties.

57. With regard to submissions regarding delayed issuance of preliminary findings and not conducting hearing prior to preliminary findings, the Authority notes that there is no mandate under the law to conduct hearing prior to issuance of the preliminary findings. Nor there are any time limits for issuance of preliminary findings. The Authority conducted detailed analysis and examination before concluding that there is a need for issuance of preliminary findings in the present investigation.

F. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

F.1. Views of other interested parties

58. The other interested parties have made the following submissions with regards normal value, export price and dumping margin post issuance of the preliminary findings.
- i. While determining the dumping margin, the Authority has not made an adjustment for level of trade, claimed by Russian producers.
 - ii. The Authority should consider the export price and normal price on the basis of prices offered by the Russian producers to intermediaries in both domestic and export sales.
 - iii. PJSC Sibur Holding, PJSC Nizhnekamskneftekhim and SIBUR International have offered price undertaking.
 - iv. Price undertaking offered by the Russian producers should not be accepted as the Russian producer has claimed excess confidentiality, status of the producer as cooperative must be decided prior to any decision on acceptance or rejection, price undertaking cannot be based on preliminary findings, the undertaking is not offered under Rule 15 and the same is impractical to monitor and will lead to circumvention.
 - v. There is a need to verify the port of loading of all transactions from Russia and agreements between NKNH and exporters. Since only Trigon has participated and has exported only 15% of imports, NKNH should not be considered cooperative.
 - vi. Addition of company-wide profits for EMAPPL and Kemya to determine normal value is against the law and past practice of the Authority. EMAPPL and Kemya are also engaged in products other than the product under consideration.

F.2. Views of the domestic industry

59. The submissions of the domestic industry with regard to the normal value, export price and dumping margin post issuance of the preliminary findings are as below: -
- i. As opposed to the submissions by the other interested parties, the submissions on level of trade have not been shared with the interested parties. Such adjustments without providing opportunity to the domestic industry for furnishing its comments would be violation of principles of natural justice.
 - ii. The Authority should consider export price and normal value based on the past practice of the Authority.

- iii. Margin of profits actually earned by the participating producers should be considered.
- iv. The price undertaking by the exporter may be accepted only after ensuring that there must not be any uncharacteristic price deterioration at different crude levels. This will require an adjuster (e.g. constant number x (\$95-crude) or any other suitable way) to be added to the price formula which could include a crude multiplier. There is also a need to account for the impact of differential energy pricing in the country of exporter and India.

F.3. Examination by the Authority

60. Under section 9A(1)(c), the normal value in relation to an article means:

“i) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or

ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:

(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or
(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.”

- 61. Since ExxonMobil Asia Pacific Pte Ltd., Singapore and Al-Jubail Petrochemical Company, Saudi Arabia do not have domestic sales, the Authority determined the normal value on the basis of the ex-factory cost of the production with reasonable addition towards selling, general and administrative expenses and profits. The profit margin for the purpose was considered on the basis of the profit of the company as a whole.
- 62. These exporters have contested the profit margin applied by the Authority and have contended that the Authority should consider profit consistent with the Authority’s

practice for determination of constructive normal value. The claim has been examined. It is noted that Para 4 of Annexure I to the Anti-Dumping Rules states as follows:

“4. The amounts for administrative, selling and general costs and for profits as referred to in sub-section (1) of section 9A of the Act, shall be based on actual data pertaining to production and sales in the ordinary course of trade, of the like article by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realised by the exporter or producer in question, in respect of production and sales in the domestic market of the country of origin of the same general category of article;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like article in the domestic market of the country of origin; or

***(iii) any other reasonable method**, provided that the amount for profit so established shall not exceed the profit normally realized by the exporters or producers on sales of products of the same general category in the domestic market of the country of origin.*

63. The Authority notes that there is no hierarchy in various provisions specified under the Rules. It is also noted that the said exporters have not even claimed profits on the basis of the actual amounts incurred and realised, in respect of the production and sales in the domestic market of the country of origin of the same general category of article, or weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of the production and sales of the like article in the domestic market of the country of origin.
64. However, considering the factual matrix of this case and the fact that sufficient information with regard to determination of profits in any of the provisions stated above are not completely on record and the exporter has contended that the Authority has included profit on trading activities also. The Authority considers it appropriate, in very peculiar facts and circumstances of the present case, to adopt reasonable profit as claimed for determination of normal value. Accordingly, the reasonable profit percentage for both the cooperating exporters – the exporter from Singapore and Saudi has been considered for the purpose of the disclosure statement.
65. The Authority has not accepted the cost of production as claimed by the three producers - Al-Jubail Petrochemical Company (“KEMYA”), ExxonMobil Asia Pacific Pte Ltd and ExxonMobil Product Solutions Company. The cost of production has now been calculated in line with the consistent practice of the Authority.
66. The revised normal value, export price and the dumping margin for Al-Jubail Petrochemical Company (“KEMYA”), ExxonMobil Asia Pacific Pte Ltd and ExxonMobil Product Solutions Company are mentioned in the dumping margin table below.

67. During the course of verification of information and questionnaire response filed by the producer/exporters from Russia, it was found that the producer has given material to more than one exporter. Out of the volume supplied by the producer to exporters, some volume has been exported to India. It is, however, found that the goods have been eventually exported to India by two exporters, one of whom has not filed a response. The response was, therefore, examined in detail.
68. The Authority notes that NKNH has reported a sale of *** MT material to Sibur Holdings and Sibur International GmbH for exports to India. Both the entities have filed a response in the present investigation. Sibur Holdings has further reported a sales of *** MT to Sibur International GmbH for exports to India. Sibur International GmbH has reported a sale of *** MT to Trigon Gulf FZCO and *** MT to Trigon International S (Pte) Limited for exports to India. While Trigon Gulf FZCO has filed response, no questionnaire response has been filed by Trigon International S (Pte) Limited. It is thus, seen that questionnaire responses filed by the producer and exporters are incomplete in as much as *** MT constituting ***% of total exports has not filed response. The Authority thus concludes that the questionnaire response filed by the producer and exporters are grossly incomplete for the purpose of determination of individual dumping margin. The Authority notes that in a situation where full information with regard to exports to India is not on record and when the exporter concerned has not filed questionnaire response, the Authority is not in a position to precisely determine export price for the producer concerned. It is established practice of the Authority that the Authority determines export price only when the producer and the exporters concerned have filed questionnaire responses. Since the value chain is not complete, the authority is unable to determine individual dumping margin for the producer. Accordingly, the authority has not determined individual dumping margin for NKNH. It is also noted that there is only one known producer from Russia and therefore entirety of the imports in India constitutes exports of goods produced by NKNH. Accordingly, the dumping margin has been determined on the basis of the facts available.
69. The Authority notes that post issuance of the preliminary findings, NKNH has given a price undertaking to the Authority and has requested for the suspension of investigations in so far as it concerns NKNH. NKNH has given the said undertaking in the format prescribed by the Authority and agreed to provide information relevant from time to time to the fulfilment of the undertaking and to permit verification of relevant data. The exporter has also accepted that in case of a possible violation of the price undertaking, the Authority may recommend imposition of provisional duty. The exporter served NCV of this undertaking to the other interested parties. The domestic industry extended its conditional consent for acceptance of the price undertaking, while Exxon Mobil opposed acceptance of this price undertaking. The domestic industry commented that the undertaking should not be accepted unless it is appropriately indexed to raw material and energy prices, ExxonMobil objected to undertaking on the grounds that the offer of price undertaking is excessively confidential, does not permit a reasonable understanding of

the substance of information filled on a confidential basis, the questionnaire response filed itself is grossly incomplete, the Authority must first determine whether the questionnaire response filed by the company is complete and sufficient for determination of individual dumping margin, the exporter concerned has not extended price undertaking and producer's undertaking is not provided under Rule 15, the undertaking cannot be based on dumping margin determined in the preliminary findings, the methodology suggested by the Russian producer/exporters is incorrect, the Price Undertaking is impractical to monitor and hence must be rejected because it will lead to circumvention.

70. The Authority has examined the price undertaking offered by NKNH and submissions made by the interested parties. It is noted that since the company has not been given an individual dumping margin, it would not be appropriate to accept a price undertaking. Further, NKNH has not given sufficient disclosures in the public version of its undertaking thus preventing other interested parties from defending their interest. It is also noted that energy constitute a major element of cost as alleged by the domestic industry and therefore it would not be appropriate to accept undertaking unless it is indexed to energy cost. In view of the same, the Authority is inclined not to accept the price undertaking offered by the exporter.
71. The normal value, export price and dumping margin determined in the present investigation are as follows:

Dumping Margin Table

Producer	Normal Value (USD/MT)	Export Price (USD/MT)	Dumping Margin (USD/MT)	Dumping Margin (%)	Dumping Margin (Range)
Saudi Arabia					
Al-Jubail Petrochemical Company ("KEMYA")	***	***	***	***	30-40%
Any Other	***	***	***	***	35-45%
Singapore					
ExxonMobil Asia Pacific Pte Ltd/ ExxonMobil Chemical Asia Pacific	***	***	***	***	70-80%
Any Other	***	***	***	***	85-95%
United States of America					
ExxonMobil Product Solutions Company	***	***	***	***	35-45%
Any Other	***	***	***	***	40-50%
Russia					
Any Other	***	***	***	***	60-70%
China					
Any	***	***	***	***	10-20%

G. ASSESSMENT OF INJURY AND CAUSAL LINK**G.1. Views of other interested parties**

72. The following submissions have been made by the producers / exporters / other interested parties with regard to injury and causal link post issuance of the preliminary findings:
- i. Lack of significant increase in the volume of imports and that imports did not affect the price of the domestic product would provide insufficient basis to conduct causation analysis as held in China–GOES. The volume or price of subject imports did not impact the applicant. There is no basis of injury analysis as imports have declined and are at prices higher than selling price of the applicant.
 - ii. Material injury and material retardation cannot be combined. As applicant is an established industry, it cannot be referred to as new industry replacing imports.
 - iii. Imports from Russia should be de-cumulated for injury analysis as the conditions of competition between imports from Russia are different since the applicant is related to a major Russian producer/exporter, price charged by Russian exporters are distorted as it is a non-market economy, the import price of Russia has been the lowest amongst the subject countries.
 - iv. Users have increased domestic procurement of the product, and the imports constitute only 20-30% of the total procurement.
 - v. Submission that the domestic industry is a new entrant and has to invariably compete with volume of imports at lower prices is incorrect, as the domestic industry has gained volume.
 - vi. The volume of imports may be high because specialty grades are not available with the domestic industry. The decline in import volumes, compared to an increase in demand and the production shows absence of volume effect.
 - vii. Un-dumped and thereby non-injurious imports should be excluded in the injury analysis.
 - viii. The applicant was forced to match Russian prices as the product produced by it was technically and commercially substitutable, produced using the same technology and sold to the same customers.
 - ix. Since price undercutting is negative, the applicant could have increased its price to the level of imports and reduce losses. The transactions where price undercutting is negative cannot be disregarded as the obligation is to examine price undercutting on overall basis.
 - x. The claim that undercutting is negative only due to higher billed transactions with affiliated companies is incorrect. Undercutting is negative as the applicant had predatory pricing to undercut the imports and gain market share.
 - xi. The claim that the same exporter has supplied the same material at different prices cannot be accepted as the non-confidential data has not been provided to the other interested parties. Price differences may be due to the market price of crude at the time of placing the order/shipment, dynamics of the market and the

- demand-supply situation for crude oil which was impacted due to the Russia-Ukraine conflict or the country/plant from where the product has been shipped.
- xii. 2019-20 should be considered as the present case is of material injury, applicant undertook commercial production, and achieved optimum test runs in 2021 and declaration of commercial production was delayed only due to COVID-19.
- xiii. While the Authority has mentioned that comparison to the base year is inappropriate; it has examined parameters such as losses, shutdown, the volume of off-specification production, market share, and break-even point from the base year.
- xiv. There is no price suppression/depression. No evidence has been given regarding abnormal cost and price in the base year. Even if there was high production of non-prime material, cost cannot be high. Comparison with the base year is appropriate as 2020-21 was impacted due to COVID-19 and the crude oil prices crashed during this period.
- xv. Even if 2020-21 is considered, there is no price suppression/depression as the landed price has increased more than increase in the selling price and cost of sales in the period of investigation as compared to 2020-21.
- xvi. The cost of production of the domestic industry should be compared to the raw material cost, which accounts for 70% of the total costs, on a quarterly basis.
- xvii. Demand should be assessed, including and excluding captive consumption separately, which has been a common practice. Only a quantum of IIR sold in commercial quantity in the market and competing with imported products should be considered for injury analysis.
- xviii. RSEPL produced 75,900 MT for domestic sales and 22,260 MT for HIIR. The cost /expenses of captive consumption should be removed for injury analysis.
- xix. The utilization may have been low because, as a new entrant, the domestic industry faced a lengthy approval process.
- xx. Supply of off-specification product might have contributed to reduction in sales, due to absence of demand of off-spec products, and poor profits.
- xxi. The shutdown faced by the applicant was due to the integration of IIR and HIIR production. Potential technical issues, product approvals, demand-supply scenario and COVID impact in 2022-23 must be evaluated.
- xxii. The production for domestic sales is more than demand and thus, it is a self-inflicted injury.
- xxiii. Comparison of economic parameters with the trial run figures of previous years which is misleading as it is not an accurate representation of normative and sustained commercial operations of company. Discrepancies between trial and actual commercial production figures would arise in all circumstances in the absence of market dynamics, constrained production scales, and controlled conditions during trial runs. Contrary to the claim of the domestic industry, it commenced commercial operations on 1st April 2022.
- xxiv. Cost of sales was normal in 2019-20, but low thereafter due to the pandemic. The cost of sales normalized again during the period of investigation, in tandem with crude prices. The costs have not been impacted by dumping

- xxv. Comparison with the project report is incorrect as it is done only in material retardation cases, the project was planned in 2010 and global markets have changed since then.
- xxvi. The projections and profit expectations of the domestic industry based on project reports from 2010-2011 must be re-evaluated in the context of significant global business environment changes, especially in light of the unexpected COVID-19 pandemic.
- xxvii. The applicant has not shared the source of prices of IIR since 2013. The prices prove that the project report cannot be relied upon since the scenario has changed since 2011 due to the introduction of new capacities globally.
- xxviii. Both global and Indian prices have followed the same trend between 2010 and 2022. Hence, it cannot be said that due to the commencement of production by the applicant, the exporters started dumping in India.
- xxix. While the applicant has stated that it was forced to revise the project report due to subject imports owing to requirements raised by stakeholders, the Authority should verify the stakeholders and check the correspondence between them.
- xxx. The profitability of the applicant has improved. The Authority should consider that depreciation and interest costs are high in the initial phase leading to losses, especially with investments of around ₹ 50,000 million.
- xxxi. The losses to the applicant in export were due to the export of non-prime grade.
- xxxii. The domestic industry has acknowledged in its Annual General Meeting that losses till 2021-22 were due to the pandemic.
- xxxiii. The ability to raise capital investment was not impacted as production and sales of the applicant have increased and it is a JV of the two biggest shareholder groups in India and Russia.
- xxxiv. It is possible that the domestic industry was supplying trial production at a discount or free of cost, leading to losses.
- xxxv. Losses during a period wherein the domestic industry was not producing the product in commercial quantity is due to no availability of approved domestic source of supply.
- xxxvi. Since the capitalized interest is expensed off starting from March 2022, the same can be a reason for the losses.
- xxxvii. Startup costs are not limited to startup expenses but include high depreciation and interest costs which the domestic industry would have incurred, which is not the case for established exporters of the product under consideration.
- xxxviii. Optimization of raw materials, utilities and production capacities should be done on a quarter-to-quarter basis for the entire injury period during commercial operation of the domestic industry.
- xxxix. Injury to the applicant on captive consumption is due to non-approval of HIIR. Such injury should be segregated and distinguished under non-attribution factors.
- xl. Injury is due to limited product range and quality of product produced by the applicant, global over-capacities leading to a decline in global prices, intermittent production halts and sluggish demand due to COVID.

- xli. The injury to the domestic industry is due to closure of IIR plant owing to COVID as stated in the Care Ratings and the delay in declaration of commercial production was due to establishment of the production process of the product.
- xlii. The Authority must analyse impact of unprofitable exports as well as restrictions related to COVID on financial results of domestic industry.
- xliii. High fixed costs due to start-up operations must be normated for determination of non-injurious price 22% return will provide non-injurious price of \$ 3,400 – 3,500 per MT which are not the prices in any market and the Authority must verify the actual return earned by the participating producers.
- xliv. Computation of non-injurious price should adjust for start-up costs and related internal inefficiencies related to other costs.
- xlv. Consideration of 22% return on capital employed is unwarranted as the domestic industry has not provided any evidence to substantiate such a high return especially when the industry globally has recorded almost negligible returns over the years. The CESTAT in *Indian Spinners Association v. Designated Authority* and *M/s Bridge Stone Tyre Manufacturing v. Designated Authority* has held that returns should be industry-specific and in line with historical returns.
- xlvi. While the Authority has stated that the domestic industry has not been able to break even despite having been in operation for 43 months, the domestic industry has been in commercial operations only for 13 months.
- xlvii. The applicant purchases HPIB at a transfer price from RIL. In the production of HPIB, there is recovery of methanol which can be captively used by RIL for other products. If the transfer price does not factor in the recovery, RIL may be selling at inflated prices to the applicant due to which there may be losses.

G.2. Views of the domestic industry

73. The following submissions have been made by the domestic industry with regard to the injury and causal link post issuance of preliminary findings:
- i. None of the interested parties have provided any evidence to show that Russian imports are not competing with other imports and Indian product which could lead to the need for de-cumulation of imports. The status of Russia as a non-market economy is only relevant for normal value determination and not for cumulative assessment.
 - ii. While declaration of commercial production may take time due to factors such as internal policies, views and opinions of auditors, market situation etc; production in commercial quantities only depends upon stability of plant.
 - iii. Due to the prices available in the market as a result of dumping, the plant of the domestic industry was unviable and was forced to shut down.
 - iv. As opposed to the submissions by the other interested parties, IIR and HIIR plants have independent operations and there is no necessity to stop the IIR plant in order to operate the HIIR plant.

- v. None of the interested parties have justified the practice of exporters exporting at different prices for the same goods at the same time to the same exporter. Due to variation in such prices, the domestic industry was forced to compete with the lowest price of imports.
- vi. Price undercutting should be analyzed after adjusting post-sales invoice discounts. ExxonMobil has submitted that it has offered such discounts to the customers.
- vii. Related procurement entities in the subject countries are buying at low prices and transferring to the related importers in India at low prices.
- viii. Only transactions undercutting the prices of the domestic industry may be considered. There is no legal bar to do so.
- ix. There is a need to adjust related party expenses, profits and post-invoicing discounts for determining price undercutting and price suppression/depression.
- x. As opposed to the submissions of the other interested parties, the domestic industry was forced to match the lowest import prices in order to gain a foothold in the market.
- xi. Price suppression is clearly visible even without considering adjustments as the cost of sales increased by 56% in the period of investigation as compared to 2020-21 while selling price increased by 49%.
- xii. The other interested parties have not demonstrated any cause for comparison of costs on a quarterly basis.
- xiii. The other interested parties have submitted contradicting claims as they have stated that start-up costs should be adjusted and 2019-20 should not be ignored.
- xiv. The cost in 2019-20 was abnormal since the domestic industry commenced production in September 2019, and the cost in 2019-20 was impacted by start-up operations and the selling price was impacted by sales of off spec material.
- xv. In case, 2019-20 is considered, there is a need to make adjustments with regard to the high production of off-spec material.
- xvi. While the domestic industry is projected to achieve ***% capacity utilization within *** months of operations, it has achieved only ***% even after selling at losses.
- xvii. Capacity utilization on account of domestic sales is even lower.
- xviii. As opposed to the submissions of the other interested parties, the production of domestic industry for domestic sales is less than the demand in India.
- xix. The domestic industry has been able to gain market share only because it is selling at losses.
- xx. Even the sole producer in India is unable to break even when there is ample demand in India.
- xxi. The losses of the domestic industry have increased since 2020-21, even though the production and capacity utilization of the domestic industry has increased.
- xxii. As opposed to the submissions of the other interested parties, the Rules refer to the examination of profits and there is no bar to consider gross profits/losses.

- xxiii. Even the EBIDTA, which does not consider high depreciation, is negative. Since the domestic industry provides depreciation on a straight-line method, the depreciation costs are stable throughout the injury period.
- xxiv. As opposed to the submissions by other interested parties, injury to the domestic industry cannot be said to be due to it being a new industry. The company has cumulatively sold *** MT subject goods in India and export markets.
- xxv. As opposed to the contention of the other interested parties, the ability of the domestic industry to raise capital investment has been adversely impacted as the return of capital employed has deteriorated by 25% over the injury period.
- xxvi. The other interested parties have not highlighted the changes to the business environment which would lead to the project report becoming non-comparable. Even if the costs increased since 2011, it is expected the price will also increase. The domestic industry in any case had revised its project report multiple times.
- xxvii. The injury to the domestic industry is not due to pending customer approvals. This is evident from the fact that over the injury period, the domestic industry has sold significant volume to a number of customers.
- xxviii. None of the other interested parties have provided any evidence or quantified the impact of COVID in 2022-23. There was no sluggish demand in India which is evident from the fact that the demand has increased.
- xxix. As opposed to the contention of the other interested parties, there are no overcapacities in India and the domestic industry is producing a complete product range.
- xxx. The domestic industry has provided segregated information with respect to domestic operations, hence, losses in the export market are irrelevant.
- xxxi. As opposed to the submissions of the other interested parties, the prices of IIR were quite high earlier. The price has declined from USD 4,000 to USD 2,000 and is not justified by cost decline. Thus, IIR has been a reasonably profitable product.
- xxxii. The interested parties have not produced any evidence to justify the consideration of a return of less than 22%.
- xxxiii. The applicant would have earned a return on investment as considered reasonable by the Authority in the absence of dumping. The payback period projected was *** years.
- xxxiv. The high profitability of the product is also evident from the fact that the other producers have added significant capacities.
- xxxv. The low return to the industry currently is due to surplus capacities held by Exxon and the need for the producer to run the plant at higher capacity utilization.
- xxxvi. Since the present case is that of material injury, the actual cost of production of the domestic industry has to be considered for determination of non-injurious price.
- xxxvii. As opposed to the submissions of the other interested parties, the domestic industry would have suffered injury at optimum levels of production.

xxxviii. As opposed to the submissions of the other interested parties, the domestic industry was producing at commercially and technically sound level and except for strain caused by imports, there was no other reason for reduction in prices.

G.3. Examination by the Authority

74. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry, and made post-issuance of the preliminary findings. The analysis made by the Authority hereunder addresses the various submissions made by the interested parties. Further, the Authority had earlier examined injury to the domestic industry in the preliminary findings. The same has not been examined in the present disclosure statement to the extent it has already been examined in the preliminary findings.

75. With regard to the submissions that material injury and material retardation to the establishment of the domestic industry cannot co-exist, the Authority notes as follows:

a. There is no bar under the law to simultaneously examine the three forms of injury in a particular case. In fact, the issue of whether different forms of injury can coexist at the same time is already well-decided. The Authority has in the past several investigations, and in the context of material retardation to the establishment of domestic industry in India examined the material injury and threat of material injury to the domestic industry (the domestic industry referred to investigations relating to PHPG base, dane salt, etc.). Further, the Authority has examined material injury and material retardation to the establishment of domestic industry for different constituents of domestic industry in a single investigation (the domestic industry referred to investigations relating to SBR). In any case, a plain reading of the law makes it obvious that the rules do not specify that only one form of injury can exist at one point in time, nor it would be appropriate to consider such a proposition, particularly when different domestic producers may be faced with import competition while being in a different stage of their economic development.

b. The Authority notes that it is an established practice to examine the performance of the domestic industry to the extent of its existence in material retardation cases by considering various parameters that are considered for a material injury case. Thus, if parameters relevant to material injury examination can be examined in a material retardation case, it cannot be contended that parameters relevant to material retardation are totally irrelevant to a material injury case. The Authority examines the actual performance of the domestic industry during the injury period in a material retardation case and compares the same with projection in order to determine whether the performance of the domestic industry in the POI could be considered injurious. In the same manner, it would be appropriate to consider the performance of the new industry and compare the same with the projections drawn in order to ascertain whether the performance of the domestic industry was injurious having regard to the projection earlier drawn.

- c. The present case is that of material injury caused by the dumped imports to a new industry in the country. The domestic industry is admittedly a new entrant in the domestic market and started production in September 2019 and commercial production in March 2022. While the applicant was producing and selling in commercial quantities since 2020-21, it declared commercial production only in March 2022. Thus, while the Authority has evaluated material injury to the domestic industry due to the dumping of subject imports into India, it is essential to note that the present case is that of material injury to a new industry in India where the domestic industry commenced production in base year started producing and selling in commercial quantities since 2019-20, but, declared commercial production only in March 2022. The period of investigation, i.e., 2022-23 is thus, the first full year of production after declaring commercial production by the domestic industry. The situation of the domestic industry in the present case is therefore incomparable to a situation where the domestic industry has been in production after declaring commercial production throughout the injury period and even before that. Accordingly, the Authority has analyzed material injury to the domestic industry as well as compared the projected performance of the domestic industry with the actual performance.
76. The interested parties contended that not only production of the domestic industry increased over the present injury period, but also, the same increased further in the post period of investigation. These interested parties contended that the domestic industry was able to fully utilise its production capacities in the post POI. The domestic industry on the other hand contended that it continued to suffer financial losses, in the POI and even when the company produced higher volumes in the POI as compared to the previous three years. The Authority notes that in a situation where the domestic industry was able to utilise its production capacity in the subsequent period and yet suffered financial losses, it should be concluded that the domestic industry is suffering injury because of commercial considerations, and not because of technical considerations. In so far as the plant and product of domestic industry is concerned, the same was fully operationalised and the domestic industry had no technical constraints which could have caused injury to the domestic industry. This further establishes that injury to the domestic industry was due to dumped imports.
77. With regard to repeated arguments of the parties in respect of trial production, off-specification production, and start-up costs, the production activities of the applicant were examined in detail. The following was noted.
- a. The applicant started production in commercial quantities in September 2019 and continued trial production till March 2022. The applicant produced a total of ***MT during this period. This production has been declared as trial production under the Companies Act. This production included significant off-specification production.

- b. The applicant declared commercial production in March 2022. The applicant produced *** MT till the end of the period of investigation. A significant part of the production in the POI was of good specification.

78. The table below shows different phases of sales, the volume of sales, the volume of off-specification sales, the volume of good specification sales, the volume and value of off-specification sales and good production sales over the relevant period.

Volume of Goods and Off-spec sales by applicant

SN	Particulars	Type	2019-20	2020-21	2021-22	2022-23	Cumulative
A	Domestic sale	Off specification	***	***	***	***	***
		Good specification	***	***	***	***	***
		Total	***	***	***	***	***
		% off specification	60-70%	20-30%	10-20%	10-20%	15-25%
B	Exports	Off specification	***	***	***	***	***
		Good specification	***	***	***	***	***
C	Total	Off specification	***	***	***	***	***
		Good specification	***	***	***	***	***
		Total	***	***	***	***	***
		% off specification	35-45%	10-20%	5-15%	5-15%	10-20%

79. The table below shows selling price of off-specification and goods-specification product sales

Market	Type	UoM	2019-20	2020-21	2021-22	2022-23
Domestic	Off specification	₹/MT	***	***	***	***
	Good specification	₹/MT	***	***	***	***
	Total	₹/MT	***	***	***	***
	Difference between good and off specification	₹/MT	***	***	***	***
	Difference between average price and good specification prices	₹/MT	***	***	***	***
Exports	Off specification	₹/MT	***	***	***	***
	Good specification	₹/MT	***	***	***	***
	Difference between good and off specification	₹/MT	***	***	***	***

80. The Authority notes the following
- a. The share of off-specification sales in total sales of the applicant also declined steeply post 2019-20. Whereas the share of off-specification sales in total sales in the domestic market was as high as 60-70% in the base year, the same declined to 10-20% in the investigation period.
 - b. There is a significant difference in the prices of off-specification material and good-specification material. The difference exists throughout the injury period. The price difference between the two differed to the extent of 15-30%.
 - c. Since the share of off-specification sales in the domestic market was quite high in 2019-20 (60-70%), the weighted average selling price of good and off-specification sales was materially lower than the selling price of good-specification material. The difference between the average selling price and good specification material selling price was as high as *** per MT in 2019-20 and the same declined to *** per MT in the period of investigation.
81. Since the price undercutting, price suppression, profits, cash profit and return on investments are determined considering the average selling price, it is seen that these parameters were adversely affected by sales of off-specification material in the domestic market. Further, since the ratio of such off-specification material sales was higher in 2019-20, it has distorted these parameters. In view of the same, the Authority has determined price suppression/depression, profits, cash profits and return on investments after excluding off-specification material sales made by the domestic industry. The Authority notes that this is additionally appropriate considering that the interested parties have also contended that the domestic industry has sold off-specification material and that is one of the causes of injury to the domestic industry. If injury to the domestic industry is determined after excluding these off-specification material sales, it is evident that the data would not be distorted by off-specification material sales.
82. The applicant has exported some volume of off-specification production. However, the applicant sold *** MT of off-specification material during the injury period, out of which only *** MT was sold in the international market. Thus, about 90-100% of off-specification sales were in the domestic market.
83. The Authority considers that the existence of significant off-specification production and sales from a new plant, and significant differences in the price of off-specification and good-specification material have led to distortion in the average selling price. Further, since the domestic industry has submitted that it suffered due to start-up operations in 2019-20, even the cost of production was impacted in this period. Further, the other interested parties have also submitted that the domestic industry had high start-up costs. For these reasons, the Authority considered it appropriate, for the purpose of this investigation, to ignore 2019-20 and make a comparison with 2020-21 for the purpose of price depression/suppression.

84. With regard to the submissions that a comparison of commercial production with trial production is not appropriate, the Authority notes that the domestic industry has been producing the subject goods in commercial quantities since 2019-20, and reported the same as trial balance in its books of accounts. Since the domestic industry started production w.e.f. September 2019, the plant initially generated a high volume of off-specification production. Since the plant produced significant volumes of off-specification product during the trial production stage, i.e., in 2019-20, and further since significant sales during 2019-20 (60-70%) were of off-specification material, it was considered appropriate to exclude 2019-20 for the purpose of determination of price suppression/depression. Both the selling price and cost of production in this period were impacted by start-up operations of a new production facility.
85. With regard to the submissions that raw material, utilities and production capacities should be optimized on a quarterly basis for injury assessment, the Authority notes that the NIP has been prepared by considering best-achieved capacity utilization during the injury period as the present case is that of material injury to the domestic industry. The consumption reported by the applicant was even compared with the consumption reported by the foreign producers and it was seen that the consumption factors of the domestic industry corroborate well with the consumption factors reported by the foreign producers.
86. With regard to reliance on the soft ferrite cores case, the Authority notes that it is not appropriate to rely upon some other investigation, particularly when the factual matrix of two investigations might be poles apart. In the soft ferrite case, for instance, the domestic industry is an established industry in operation for several years. In the present case, however, the domestic industry commenced production in commercial quantities in 2019-20 and declared commercial production in March 2022, that is, right before the period of investigation. Further, in the soft ferrite case, the Authority found that there were certain geometries of the product which have not been imported into the country nor being supplied from China or other countries, or being produced by the domestic industry. However, the possibility of those geometries being produced and supplied by other domestic producers is high. In the present case, however, there is no demand for these speciality grades. Further, each type of soft ferrite is meant for a unique application/end use. The transformer manufacturers cannot interchangeably use soft ferrite cores of different geometries. However, in the instant case, there can be overlap in the uses of different grades, particularly the grades meant for tube applications. Indeed, the parties have contended that the very same grade is used for making tube bladders as well as making tubes. It may also be noted that the investigation pertaining to soft ferrites cores is an ongoing investigation and the Authority is yet to make a final determination in the said investigation.
87. It is clarified that there is a typographical error at para 99 of the preliminary findings in so far as the sentence “the landed price of imports from Russia is higher than other subject

countries.” is concerned. The reference in para 99 of the preliminary findings is to the fact that landed price from Russia is higher than some of the subject countries while lower than some of the subject countries in the present POI.

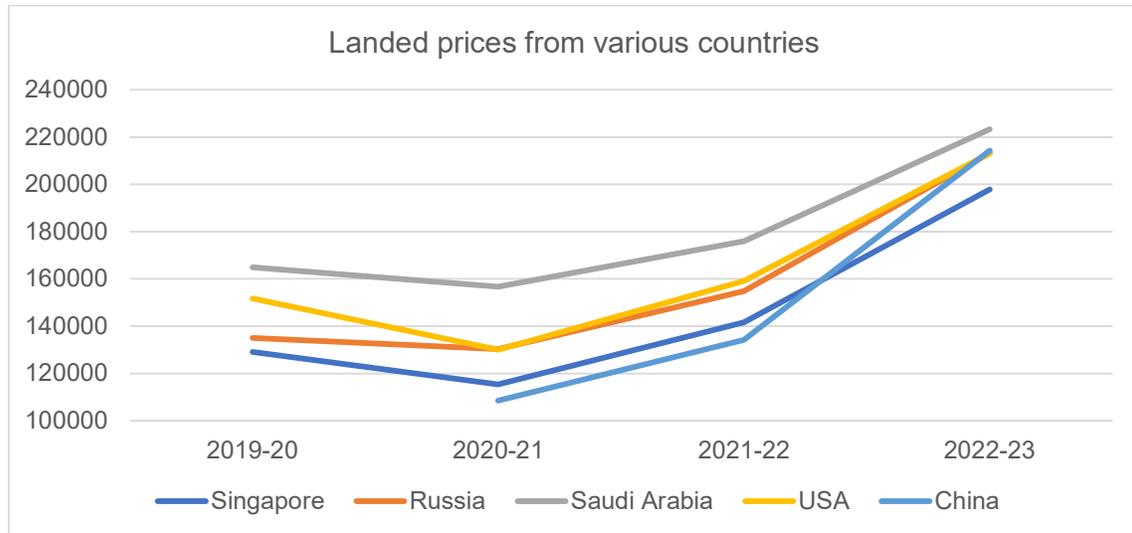
88. As regards the contention that the Authority should examine the raw material sourced by the applicant from RIL because of the relationship between the two parties, the Authority notes that the parties have heavily contended that the joint venture agreement between the two partners and AOA signed by them creates sufficient obligations on both applicant and RIL which ensures that such transactions are at arms’ length. Further, both the applicant and RIL are subjected to provisions of the Companies Act, including provisions concerning related party transactions, which require these parties to declare all transactions with the related parties and are at arms’ length.

G.3.1. Cumulative assessment of injury

89. Article 3.3 of the WTO agreement and para (iii) of Annexure II of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:
- a. The margin of dumping established in relation to the imports from each country is more than two per cent expressed as a percentage of export price and the volume of the imports from each country is three per cent (or more) of the import of like article or where the export of individual countries is less than three per cent, the imports collectively account for more than seven per cent of the import of like article, and
 - b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.
90. In the instant case, volume of imports and dumping margin from each of the subject countries is more than the *de-minimis*. As regards the appropriateness of cumulative assessment, the Authority notes that only one PCN (HM) has been imported into India and the same grade has been sold by the domestic industry in the merchant market. While the domestic industry has also produced another PCN (LM), the same has been used only for captive consumption. Only limited PCN are being supplied by producers in the subject countries and the domestic industry. None of the parties have shown the existence of a particular grade for which other suppliers in the market are not offering like article. Indeed, the domestic industry claimed that tubes constitute 94% of consumption while other segments constitute approximately 6% of consumption. It is evident that the product is produced and sold in limited types of forms and all the suppliers in the market are offering these limited types. Further, there are a limited number of consumers both in terms of the segment and within the segment. All these consumers are sourcing products from different markets and different point in time. It is seen that different suppliers are *inter-se* competing with each other in the same market.

91. It is also seen that in the present investigation there was no country which had lowest import price in all four years, rather different countries had lowest prices in different years. Thus, there is no country which consistently had lower or higher prices. In fact, Russian prices were lower than the rest of the subject countries in three out of four years. This clearly establishes that imports from different countries were competing *inter-se* and with the domestic industry in the same market.
92. Some of the interested parties have contended that imports from Russia should be de-cumulated for injury assessment in view of the relationship of the Russian entity with the applicant, the non-market economy status of Russia, and the volume and price of imports from Russia. The Authority notes that Russia has not been treated as a non-market economy for the purpose of the present investigation. The determinations made by either USA or Europe are not relevant to the Authority for the purpose of the present investigation. In any case, the Authority has not de-cumulated imports even in those situations where one of the subject countries is a non-market economy while others are market economy countries. The Authority has routinely investigated imports from China along with other countries, where Chinese producers have been treated as operating under a non-market economy. Thus, as per the past practice of the Authority, Russia is being treated as a market economy for the purpose of the present investigation. The Authority has already addressed the submissions raised by the other interested parties regarding the relationship between the Russian producer and the applicant in the relevant section.
93. With regard to the submissions that the Russian imports have declined to give market access to the applicant, the Authority notes that the imports from all the subject countries have declined post-commencement of production in India. The same is in any case a common consequence of the commencement of production in new production facilities as in the present case. Further, the Authority notes that had the Russian producer resorted to the reduction in exports to India to provide market access to the applicant, the same would not have been done by selling at prices lower than some of the subject countries. The Russian producers have maintained prices in competition with other subject countries. In such a case, the price of the imports should have been higher to provide a higher-priced market to the applicant.
94. The table below shows import prices from various subject and non-subject countries.

SN	Particulars	Unit	2019-20	2020-21	2021-22	2022-23
A	Landed price from subject countries	₹/MT	1,35,678	1,28,882	1,53,915	2,05,267
1	Singapore	₹/MT	1,29,089	1,15,377	1,41,623	1,97,909
2	Russia	₹/MT	1,35,080	1,30,359	1,54,850	2,13,309
3	Saudi Arab	₹/MT	1,64,976	1,56,690	1,75,929	2,23,423
4	U S A	₹/MT	1,51,666	1,30,016	1,59,113	2,13,134
5	China PR	₹/MT	-	1,08,514	1,34,133	2,14,308



95. The Authority thus concludes that it would be inappropriate to de-cumulate imports from Russia in the present investigation for the following summarized reasons.
- a. The subject goods are being dumped into India from the subject countries.
 - b. The margin of dumping from each of the subject countries is more than the *de minimis* limits prescribed under the Rules.
 - c. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
 - d. Cumulative assessment of the effects of import is appropriate as the imports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the domestic industry in the Indian market.

G.3.2. Volume effect of the dumped imports

a) Assessment of demand / apparent consumption

96. As noted in para 101-102 of the preliminary findings, demand or apparent consumption for the PUC increased over the injury period. It is seen that the product had significant and positive growth in the country. With regard to the submissions that demand should be evaluated based on both captive consumption and without captive consumption, the Authority notes that the Authority has considered demand with respect to imports into India and merchant sales of the domestic industry. This is due to the fact that only the merchant sales of the domestic industry are competing with the imports.

b) Import Volumes from the subject countries

97. The Authority found in the preliminary findings that the volume of imports cumulatively from the subject countries declined over the injury period. The interested parties have heavily contended that the legal requirement is that the import should have increased over the period. The interested parties have contended that a situation where volume of

imports has declined over the injury period, the Authority cannot conclude that the domestic industry has suffered material injury. The interested parties have also argued for the exclusion of imports from Russia and its de-cumulation.

98. The Authority notes that the WTO – Panel on United States – Anti Dumping and Countervailing duties on Ripe Olives from Spain (WT/DS577/R dated 19th November 2021) – has examined in detail the legal requirements with regard to volume of imports and injury to the domestic industry, and obligations of the investigating authorities with regard to the same. The Panel clearly held that these provisions instruct an investigating Authority to “consider whether” there has been a significant increase in **dumped or subsidized imports**. To “consider whether” indicates a requirement that an investigating Authority **should** take into account **the volume of imports** in reaching its decision. **It does not establish that the volume of imports should have necessarily increased before the Authority can come to a conclusion that the domestic industry has suffered injury**. An investigating Authority’s consideration of whether there has been a “significant increase” in volume **becomes** evidenced by an examination of the changes in volume, regardless of whether **such** volumes in fact increased, decreased, or remained stable.
99. The Authority thus notes that the obligation of the Authority is with regard to the examination of import volumes per se over the injury period and does not require the Authority to conclusively find an increase in imports as a condition precedent before concluding that the domestic industry has suffered material injury. Indeed, it is evident that even in a situation where the import volumes has declined over the injury period, the domestic industry could have still suffered significant material injury as a result of dumping in the country.
100. The Authority also notes that the decline in imports is a common phenomenon/ consequence of the fact that the domestic industry has production in commercial volumes in 2019-20, even though declared commercial production in March 2022. Since gross demand for the product was in the region of *** MT when the domestic industry started selling the product, the same rose to only *** MT, and further since the domestic industry holds a production capacity of 1.20 lacs MT, and produced a cumulative volume of over *** MT during the current injury period, valued at about Rs. *** crores, it was quite obvious that the domestic industry would make all-out efforts to sell its product and the consumers would also wish to develop a domestic source in a product hitherto totally dependent on imports. A consequence of production in commercial quantities by the domestic industry was, therefore, a decline in the volume of imports post-commencement of production in the country. The decline in subject imports therefore does not establish that the same could not have caused material injury to the domestic industry.
101. With regard to the submissions that imports have remained high due to the absence of production of speciality products in India, the Authority notes that the speciality products are not being imported into India. Almost the entirety of the imports are of regular-grade

products. Only one PCN has been imported into India and the same has been sold by the domestic industry in the merchant market. Thus, it could not be concluded that imports are high due to imports of speciality product in India. The Authority places reliance on the responses submitted by the participating exporters.

102. The Authority notes the contention of the domestic industry that as it increased its sales by offering competitive prices, imports declined; however, the domestic industry suffered significant price injury in the sales made and was not able to sell the material to the extent of production and capacities. The Authority also notes the contention of the domestic industry that it was not able to declare commercial production for such a long duration.
103. The Authority thus notes that while it has been argued that since the domestic industry was able to increase its sales, and as a consequence of the same, the volume of imports declined, that domestic industry has not suffered a material injury, this would not be a complete and proper appreciation of the prevailing market situation and performance of the domestic industry. It is also noted that while the domestic industry was able to sell the material and was even able to increase its domestic sales over the injury period, the increase in domestic sales was far less than the increase in production. The table below demonstrates.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23
Demand	MT	***	***	***	***
Trend	Indexed	100	125	122	124
Production	MT	***	***	***	***
Trend	Indexed	100	367	381	516
Capacity	MT	70,000	1,20,000	1,20,000	1,20,000
Captive consumption	MT	***	***	***	***
Trend	Indexed	-	100	646	1,316
Capacity excluding captive consumption	MT	***	***	***	***
Trend	Indexed	100	169	156	140
Production excluding captive consumption	MT	***	***	***	***
Trend	Indexed	100	355	307	365
Domestic sales	MT	***	***	***	***
Trend	Indexed	100	510	594	816

104. Evidently, the increase in sales was less than the increase in production, despite the fact that the domestic industry had a much higher production capacity. As against domestic demand of *** MT, the production capacities for the subject goods with the domestic industry in the period of investigation was 1,20,000 MT. Even if it is considered that the domestic industry consumed *** MT IIR for the production of HIIR, it is seen that the

domestic industry still had a production capacity of *** MT available to meet the domestic demand of IIR.

105. Even if production capacities are ignored and only production is counted, it is seen that the domestic industry had a production of *** MT, as against which the domestic sale was only *** MT. Evidently, the domestic industry was not able to sell the volumes to the extent of production owing to imports in the market. This clearly shows the adverse effects of imports on the domestic industry.

G.3.3. Price effect of the dumped imports

106. The Authority notes that not only there was adverse volume effects in the present investigation as the domestic industry was not able to sell its full production after excluding captive consumption, the domestic industry was able to sell the present volumes only after a significant compromise on the prices. It is seen that the domestic industry was selling the product during the entire period at a price material below the cost of production and fair price for the product.

Particulars	Unit	2019-20	2020-21	2021-22	POI
Subject Countries	MT	44,860	36,272	29,808	19,110
Singapore	MT	13,546	6,094	6,830	11,291
Russia	MT	25,847	18,642	14,014	3,104
Saudi Arabia	MT	1,299	1,577	1,790	1,903
U S A	MT	4,168	9,943	6,939	1,563
China PR	MT	0	17	234	1,249
Other Countries	MT	1,531	566	621	361
Total Imports	MT	46,391	36,838	30,428	19,470
Total Indian Production	MT	***	***	***	***
Subject import in relation to:					
Total imports	%	97%	98%	98%	98%
Indian consumption	%	***	***	***	***
Trend	Indexed	100	65	55	34
Indian production	%	***	***	***	***
Trend	Indexed	100	22	17	8

a) **Price undercutting**

107. Price undercutting has been determined by comparing the net sales realization of the domestic industry with the landed price of the imports for the period of investigation.

Particular	Unit	POI
Selling price	USD/MT	***
Landed price	USD/MT	2,541

Price undercutting	USD/MT	(***)
Price undercutting	%	(***)
Trend	Range	Negative

108. The Authority notes that the price undercutting on an average basis is negative. The domestic industry has submitted that it has been forced to sell at lower prices in order to compete with imports and gain a foothold in the domestic market.
109. The other interested parties have contended that since the landed price of imports was higher than the selling price of the domestic industry, the domestic industry could have increased its prices up to the level of landed price of imports. The domestic industry submitted the following;
- a. The same exporter was selling the same product to the same importer at materially different prices at the same point in time. The domestic industry has identified a number of import transactions to substantiate this fact. The other interested parties have not responded to this contention of the domestic industry.
 - b. Since imports have occurred at materially varying prices at the same time, the domestic industry has been forced to compete with the lowest priced imports.
 - c. The domestic industry has been forced to sell at a lower price only because of dumping of the product in the country.
 - d. The negative price undercutting on the basis of CIF import price is inappropriate for the reason that the same reflects transactions between Indian importers and their affiliated traders. These transfer prices do not reflect the price at which the Indian consumers have negotiated the product and placed orders either with the domestic industry or with foreign suppliers. The domestic industry contended that since some of the Indian importers are buying from their affiliated foreign traders, the CIF import price is the price from affiliated foreign traders. The domestic industry therefore, demanded that the price undercutting should be determined by considering the selling price of the foreign producer and not the CIF import price from such affiliated trader.
 - e. The domestic industry contended that it is a matter of common knowledge that the foreign producers are giving significant post invoicing discounts, and the import price reflects the prices as reported in the commercial invoices presented to the Indian customs. The domestic industry further contended that post issuance of invoices, the foreign producers have given significant discounts to Indian importer or foreign trader, and these discounts are not reflected in the import prices. The Authority notes that some of the foreign producers have reported discounts as one of the price adjustments. The Authority notes that since exporters have given discounts on the invoice price, the CIF price reported into Indian customs does not represent the price actually paid by the importer and realized by the exporter.
 - f. The Authority determined dumping margin on the basis of the price at which foreign producer has sold the material. For the purpose, the Authority has determined ex-

factory prices, after deducting all expenses, including post invoicing discounts. The domestic industry contended that if the dumping margin is based on ex-factory export price at the producer level, it would be inappropriate to determine injury margin and price undercutting by considering CIF prices of some other entity, and particularly when the Indian importers are related to such exporter and the prices are negotiated between the Indian buyer and producer. The domestic industry further contended that the purpose of determination of price undercutting and injury margin is to assess the extent to which foreign producers sold the material at a price below selling price or NIP of the domestic industry. The domestic industry contended that since the dumping margin and injury margin are determined for the same foreign producer, it is inappropriate that the dumping margin and injury margin are based on prices to different entities, particularly when the prices have been negotiated by the users with the foreign producers and the users are affiliated to the exporters invoicing the goods.

- g. The Authority had in the past determined price undercutting for the responding producers by considering their prices. Reference was invited to illustrative cases such as investigations relating to Decor Paper, and Cathode Ray Colour Picture Tubes wherein price undercutting has been determined separately for the responding producers. Reference has also been invited to the determinations made by the European Commission, wherein price undercutting is determined for the responding foreign producers and not cumulatively for the subject countries alone.
 - h. Had the domestic industry charged remunerative prices considering its earlier projections (and after making changes in the input prices), the import volumes would have been much higher than the present volumes as the domestic industry would not have been able to get any orders from the market. It is seen that the landed price of imports was ***% below the optimum cost of production and ***% below non injurious prices. Thus, the volume of imports would have remained high and would have very likely catered to the entire demand in India. The Authority notes that loss making sales by the applicant has led to decline in imports into India in absolute and relative terms.
110. In view of the above, the domestic industry contended that the Authority determine price undercutting on the basis of questionnaire responses filed by the responding producers.
111. The Authority however considers that it is not necessary that price undercutting, price suppression and price depression must all be present at the same time before the Authority can conclude the existence of injury by the dumped imports. In fact, it is noted that most often price suppression and price depression are not present at the same time. Further, it is possible that the price undercutting alone is positive and without any suppressing/depressing effects on the domestic prices. Even the interested parties have not contented that the price undercutting must necessarily be positive before the Authority can conclude the existence of injury. Indeed, the Authority has found existence of material injury in several cases where the price undercutting was found negative. Even otherwise, existence of negative price undercutting merely implies price competition

between the domestic and imported product. It is quite possible that in a situation where a new industry is trying to establish itself in the market to the extent of its capacity and capability, the domestic industry would do so by competing with the dumped imports. However, if such negative price undercutting is because of dumped imports, this is evidence that the dumped imports have forced the domestic industry to offer unremunerative prices. The Authority therefore considers, it is not necessary that the price undercutting be determined separately for the participating exporters. The Authority in any case has based its preliminary findings on the existence of price suppression and the same has been further examined in the present disclosure statement.

112. With regard to the submissions that the applicant was forced to match Russian prices since it produced the subject goods based on technology acquired from Russia and was trading in products from Russia, the Authority notes that the landed price of imports from China was lower than the landed price of Russia in 2020-21 and 2021-22, while the landed price of Singapore was lower than the landed price of Russia during 2019-20, 2020-21 and 2021-22. The applicant was forced to price its product below the landed price from various countries in order to sell the product. Since the selling price of the domestic industry was below the landed price of various countries and not just Russia, it cannot be said that the applicant was forced to match the landed price of imports from Russia.

SN	Particulars	Unit	2019-20	2020-21	2021-22	2022-23
A	Landed price from subject countries	₹/MT	1,35,678	1,28,882	1,53,915	2,05,267
1	Singapore	₹/MT	1,29,089	1,15,377	1,41,623	1,97,909
2	Russia	₹/MT	1,35,080	1,30,359	1,54,850	2,13,309
3	Saudi Arab	₹/MT	1,64,976	1,56,690	1,75,929	2,23,423
4	U S A	₹/MT	1,51,666	1,30,016	1,59,113	2,13,134
5	China PR	₹/MT	-	1,08,514	1,34,133	2,14,308

b) Price suppression/depression

113. In the preliminary findings, the Authority had found that the imports were suppressing the domestic prices. The Authority had come to the conclusion by considering the changes in costs and prices between 2020-21 and the POI. The Authority notes that the petitioner started production only in September 2019 and faced shutdown of the plant post commencement of production due to the setting up of the production process. Thus, the data for less than 6 months is available for 2019-20. Since the domestic industry also faced high start-up costs, high production and sale of off-specification material and low-capacity utilisation in 2019-20, the Authority has considered it relevant to consider price suppression/depression from 2020-21. The mere fact that the applicant declared commercial production in 2022-23 does not imply that the applicant suffered start-up operations in 2022-23.

114. In view of the above, the Authority considered the situation of price-suppression by ignoring the year 2019-20, this being the first year of production and the period when the plant was suffering from start-up operations and significant off-specification material. The table below demonstrates the factual position.

Price suppression/depression ignoring the 2019-20 period

SN	Particulars	Unit	2020-21	2021-22	2022-23	Change in POI with base year
1	Cost of sales	₹/MT	***	***	***	***
2	Trend	Indexed	100	129	156	56%
3	Selling price	₹/MT	***	***	***	***
4	Trend	Indexed	100	119	149	49%

115. It is seen that:

- a. If 2019-20 is ignored, whereas the cost of sales of the domestic industry increased by ₹ *** per MT, the domestic industry increased its prices only by ₹ *** per MT.
- b. Whatever be the period, in the absence of dumped imports in the market, the domestic industry would have increased its prices for two reasons – (i) it was faced significant financial losses when it launched the product and was required to recover from such losses and earn reasonable profits, (b) cost of production had increased over the injury period. The Authority examined the reason for the increase in the cost of production. It is seen that the input prices have increased over the injury period. Thus, the domestic industry was required to increase its prices in order to fetch a price that would permit recovery of its costs, earn some profits on the investments and also make up for the increase in costs over the period.

116. It is thus seen that the domestic industry has not been able to increase its prices to come out of losses and to address increase in the cost of sales. Further, the increase in landed price of imports between 2020-21 and the POI cumulatively from the subject countries is lower than the increase in cost of sales of the domestic industry and increase in the prices required by the domestic industry to come out of its loss making sales. It is, thus, seen that the domestic industry has suffered suppressing effects on its prices as a result of dumped imports.

117. While the Authority considers it would be appropriate to exclude 2019-20 for the purpose of determining whether dumped imports led to price depression or suppression in view of the fact that the domestic industry started commercial production in 2019-20, in the alternative, the Authority undertook evaluation of performance of the domestic industry over the entire injury period. In this regard, it is noted that whereas the cost of production declined significantly between 2019-20 and 2020-21, the same increased thereafter. The selling price, however, increased throughout the investigation period. Thus, the domestic

industry suffered no price depression between 2019-20 and 2020-21. However, thereafter, while both the costs and prices increased, the increase in selling price was much less than the increase in cost of production. In other words, whereas the domestic industry suffered no price suppression or depression between 2019-20 and 2020-21, the domestic industry suffered price suppression thereafter. The imports of subject goods from the subject countries prevented the domestic industry from increasing the prices that would have occurred in the absence of dumped imports in the country.

118. The Authority examined whether the domestic industry would have increased its prices in the absence of dumped imports in the market. It is noted in this regard that since the domestic industry and foreign producers are the only sources of supply for the product, the domestic industry would have charged a price considering the cost of production and fair price for the product. The domestic industry offered a lower price when it launched the product, as these were sales by a new producer. However, as the domestic industry gained its acceptance in the market, the domestic industry was required to increase its prices in order to come out of the significant financial losses suffered by the domestic industry. The domestic industry was, however, forced to charge a price materially below the cost of production when it started selling the product. In the absence of dumped imports, the domestic industry would have indeed increased its prices by the quantum of cost increases, financial losses and reasonable profits required on the investments. It is, thus, noted that the dumped imports have prevented the domestic industry from increasing its prices.
119. With regard to the submissions that 2020-21 was impacted due to COVID, the Authority notes that there is no evidence on record which shows the possible adverse impact of COVID on the performance of the industry manufacturing the product under consideration. The imports of the product under consideration declined in 2020-21 at the same rate as that in 2021-22. Further, only a part of 2020-21 was impacted due to COVID and not the whole period. Thus, it cannot be concluded that 2020-21 as a whole was impacted due to COVID and thus, cannot be compared with the period of investigation.
120. With regard to the submissions that 2020-21 was impacted due to crude price crash, the Authority notes that a change in the prices of crude has impacted both the domestic industry as well as exporters. Since the said event impacted both domestic industry and exporters, a comparison of cost of sales, selling price and landed price in 2020-21 and the period of investigation is appropriate for the present investigation.

G.3.4. Economic parameters of the domestic industry

a) Production, capacity, capacity utilization and sales volumes

121. Capacity, production, sales and capacity utilization of the domestic industry over the injury period were as below:

Particular	Unit	2019-20	2020-21	2021-22	POI
Installed Capacity	MT	70,000	1,20,000	1,20,000	1,20,000
Trend	Indexed	100	171	171	171
Production	MT	***	***	***	***
Trend	Indexed	100	367	381	516
Capacity Utilization	%	***	***	***	***
Trend	Indexed	100	214	222	301
Domestic Sales	MT	***	***	***	***
Trend	Indexed	100	510	594	816
Export Sales	MT	***	***	***	***
Trend	Indexed	100	611	357	212
Captive Consumption	MT	***	***	***	***
Trend	Indexed	-	100	646	1,315
Number of days production was shutdown	Days	***	***	***	***

122. The domestic industry contended that even though the total production in the period of investigation as a whole was highest over the injury period, even the production in the period of investigation suffered owing to the dumping of the product in the country. The applicant relied upon its application containing monthly production, capacity utilization, stocks, captive consumption, and domestic and export sales data. It was seen that the production of the applicant was *** MT in ***. Thereafter, it declined and was lowest in *** at *** MT. The applicant faced a plant shutdown from *** to *** due to the accumulation of inventories. The production increased thereafter in *** and was *** MT. The Authority notes that the production of the applicant in some part of the period of investigation was significantly lower than the production achieved in some other parts of the period of investigation. Had the applicant not suffered a loss of production in the *** period, the applicant would have produced an approximate additional *** MT subject goods in the period of investigation.
123. The interested parties contended that the domestic industry suspended its production not because of dumping of the product in the country, but because of technical constraints. According to the interested parties, the company started production of other product (HIIR) and therefore had to suspend its production in order to start the HIIR plant. The domestic industry contended that there was no reason why it was required to stop the production for IIR to start the production of HIIR, the two plants are two totally different streams and operate independently.
124. It is also noted that the applicant domestic industry had suspended its production in *** when it was faced with an inventory of *** MT. This was the highest level of inventory held by the domestic industry. The Authority, therefore finds force in the submission of the domestic industry that it was high stock with the domestic industry that forced it to suspend the production, and not a technical requirement to start the HIIR plant.

125. In any case, even if it is assumed that the domestic industry was required to suspend production in order to start production of HIIR, the Authority notes that the domestic industry was faced with a stock of *** MT when it suspended production. Thus, the domestic industry was in a position to supply the material even when its production was suspended. The sales of the domestic industry could not have suffered for this reason.
126. As regards sales, the domestic industry had submitted that it was able to sell only *** MT volume in POI as against *** MT projected for the third year of operations.
127. The other interested parties have stated that the domestic industry has produced more than the domestic demand in India; and accordingly, has suffered self-inflicted injury. The Authority notes that the production of the domestic industry during the period of investigation was *** MT which includes production meant for captive consumption also. If production meant for captive consumption is excluded, the production of the domestic industry during the POI was *** MT while the demand during the period of investigation was *** MT. Thus, the production of the domestic industry meant for merchant market was less than the demand in India.
128. With regard to the submissions that captive consumption should be removed for injury analysis, the Authority notes that inclusion and exclusion of captive consumption from injury analysis does not vitiate the facts established in the present investigation. The Authority has examined the parameters both by including and excluding captive consumption.

b) Market share

129. The domestic industry contended that even though its market share improved over the injury period, the same was still substantially lower than the market share that the domestic industry would have achieved in the absence of dumped imports. The domestic industry submitted that had it sold the volume to the extent it had produced (after excluding captive consumption), it would have still achieved a market share of *** %. However, the domestic industry was forced to export *** MT production only because of absence of demand for its product in the country as the consumers sourced from the subject countries.
130. The domestic industry had projected a market share of *** % by third year of its production. However, the applicant achieved only *** % market share in the current period which was achieved by selling at losses. The domestic industry thus submitted that dumping of the product has adversely impacted the market share of the domestic industry.

c) Inventories

131. At the time of spot verification, the domestic industry specifically highlighted that the level of inventories with the domestic industry had increased so significantly that applicant had to undertake production shutdown. The applicant referred to its application containing month wise inventories. The table below shows the trend of inventories over the injury period and month wise for the investigation period. It is seen that the level of inventories with the domestic industry had increased to *** MT. This was the time when applicant was forced to undertake shut down. Thereafter the level of inventory had declined. However, the closing level of stock was still significantly high.

Period	Inventories (MT)
2019-20	***
2020-21	***
2021-22	***
POI	***
Apr-22	***
May-22	***
Jun-22	***
Jul-22	***
Aug-22	***
Sep-22	***
Oct-22	***
Nov-22	***
Dec-22	***
Jan-23	***
Feb-23	***
Mar-23	***

d) Profitability, cash profits and return on capital employed

132. Profitability, return on investment and cash profits of the domestic industry over the injury period are given in the table below:

Particulars	Units	2019-20	2020-21	2021-22	POI
Profit/ (loss)	₹ Lacs	(***)	(***)	(***)	(***)
Trend	Indexed	-100	-114	-236	-349
Cash Profit	₹ Lacs	(***)	(***)	(***)	(***)
Trend	Indexed	-100	-114	-236	-263
Return of investment	%	(***)	(***)	(***)	(***)

Trend	Indexed	-100	-25	-92	-125
Profit/loss per unit	₹/MT	(***)	(***)	(***)	(***)
Trend	Indexed	-100	-22	-40	-43

133. It is seen that (a) the domestic industry has suffered financial losses throughout the injury period, and (b) the extent of losses on total domestic sales was so significant that the losses suffered on total domestic sales kept increasing over the injury period. In other words, the domestic industry sold more material but suffered more losses.
134. The interested parties contended that per-unit losses suffered by the domestic industry declined over the injury period. It is seen that as compared to the base year, the losses per unit have increased in the POI as compared to 2020-21. However, if the selling price is determined only for good-specification production and costs are adjusted for start-up operations, it is seen that the per-unit losses have also increased in the POI as compared to the base year. Further, total losses suffered on domestic sales have increased. Even when production and domestic sales increased over the injury period, the losses suffered by the domestic industry increased. The domestic industry incurred higher losses with higher sales. Further, the per unit losses over the injury period shows a decline only because costs and prices in the base year were impacted by start-up operations and off-specification product sales.
135. The other interested parties have submitted that the losses to the applicant in the export market were due to the export of off-specification goods. The Authority notes that the exports made by the domestic industry even of good specification products were at losses. However, the injury examination has been conducted for the performance of the domestic industry in the domestic market; and hence, performance in export market is not relevant.
136. The opposing interested parties have submitted that a comparison with the project report is not appropriate in a material injury case. The Authority however notes that since the domestic industry is a new domestic producer and commenced production only in 2019-20 and declared commercial production in POI, it is appropriate to evaluate the performance of the domestic industry both by considering actual performance over the injury period and comparing the same with the projections drawn for the product. There is no bar under the rules on the comparison of profitability of the domestic industry with projection in a material injury investigation.
137. With regard to the submissions that comparison with the project report made in 2011 is not appropriate due to changes in business scenario, raw material prices and demand-supply situation, the Authority notes that the original project report of the applicant was made in 2011. However, with the change in business scenario and raw material prices, the applicant had revised the project report twice. Even in comparison with the revised projections which was made right before the injury period, the performance of the domestic industry is adverse. While the domestic industry had projected profit, cash

profit and positive return on capital employed in the second revised projections, it has actually incurred financial losses and recorded a negative return on capital employed in the period of investigation. The Authority also notes the argument of the domestic industry that the revisions in the projections were itself a result of the dumping of the product that had started in the market due to global overcapacity and resultant competition between foreign producers. Further, with new capacities coming up, foreign producers started resorting to unfair competition and dumping in order to retain their volumes and prevent entry of new producers.

138. With regard to the submissions that the Authority should verify the stakeholders which required revision of the project report and check for correspondences, the Authority notes that the revision of the project report was much before the filing of the application for an anti-dumping investigation. Thus, the revision in the project report based on requirements of the stakeholders was only due to business purposes and cannot be said to be made for the purpose of the present investigation. Even if it is assumed that there were other factors causing injury to the domestic industry, it must be demonstrated that the effect of such other factors is so significant as to lead to a conclusion that dumped imports are not one of the major causes of injury to the domestic industry.

139. The Authority notes the contention of the domestic industry that it had set up the plant with projections to earn profits in the very first year of operations and a payback period of *** years. Even when projections were revised from time to time, even the most recent projection drawn by the domestic industry shows that the domestic industry would have earned profits in the very first year of production and the same would have increased by the third year of operations. In the instant case, however, the domestic industry is facing financial losses even in the fourth year after commencing production of the subject goods.

140. As noted in the Para above, imports have prevented the price increases that would have occurred in the market in the absence of dumped imports. In the absence of dumped imports, the domestic industry would have aligned its prices to a fair price for the product. The domestic industry has however been forced to sell the material at a price materially below fair price. Thereafter, the domestic industry was prevented from increasing its prices to the extent of an increase in the cost of sales.

e) Employment, productivity and wages

141. Since no further submissions have been received by interested parties on preliminary determination relating to the performance of the domestic industry concerning employment, productivity and wages, the Authority confirms Para 134-135 of the preliminary findings.

f) Growth

142. Since no new submissions have been received by any interested parties on the growth of the domestic industry, the Authority confirms Para 136 of the preliminary findings.

g) Impact on the ability to raise capital investments

143. The opposing interested parties have submitted that the ability to raise capital investment by the domestic industry has not been impacted as the production and sales of the domestic industry has increased and the applicant is a joint venture of the two largest shareholder groups in Russia and India. The Authority notes that even though the production and sales of the domestic industry have increased, the domestic industry has suffered cumulative losses of Rs. *** crores since the commencement of production in 2019-20. The domestic industry has recorded cash losses and negative return on capital employed. The losses have increased over the injury period.

144. Even if the applicant is a joint venture of two large companies, the applicant is a stand-alone company and the cumulative losses suffered are too significant. Thus, the ability of the domestic industry to raise capital investment has been adversely impacted.

h) Factors affecting domestic prices

145. The interested parties have contended that there are other parameters in the global market which have impacted the prices. The Authority however notes that the dumping margin is quite significant, which shows that the subject foreign producers were selling the price at a price below normal value. Thus, the alleged global factors could not have forced the domestic industry to sell at unremunerative prices. The domestic industry would have fetched reasonably profitable prices in the absence of dumping. It is also noted that these global factors could have selectively impacted the Indian market and the foreign producers' own market could not have remained insulated by such factors.

i) The magnitude of dumping

146. The Authority confirms the preliminary findings that there is significant dumping of subject goods from the subject countries which has destroyed the conditions of fair competition in the market.

Non-attribution analysis and casual link

147. Having examined the existence of injury, volume and price effects of dumped imports on the prices of the domestic industry, the Authority has examined whether injury to the domestic industry can be attributed to any factor, other than the dumped imports, as listed under the Rules.

a) Volume and value of imports from third countries

148. It is noted that there are negligible imports from any other country. The imports from the subject countries constitute 97% of the imports in India. Therefore, the injury is not attributable to imports from third countries.

b) Contraction in demand

149. The demand for the product under consideration has steadily increased and was the highest during in the period of investigation. The demand for the subject goods is expected to continue to grow. The domestic industry has not suffered injury due to possible contraction in demand.

c) Pattern of consumption

150. It is noted that there has been no material change in the pattern of consumption of the product under consideration, which could have caused injury to the domestic industry.

d) Conditions of competition and trade restrictive practices

151. The Authority notes that there is no evidence of conditions of competition or trade restrictive practices that are responsible for the claimed injury to the domestic industry.

e) Developments in technology

152. There has been no change in technology for production of the subject goods. The domestic industry has set up a new plant for the production of the subject goods.

f) Productivity

153. The Authority notes that the productivity of the domestic industry has increased over the injury period. Therefore, the domestic industry has not suffered injury on this account.

g) Export performance of the domestic industry

154. The injury information examined hereinabove relates only to the performance of the domestic industry in terms of its domestic market. Thus, the injury suffered cannot be attributed to the export performance of the domestic industry.

155. The opposing interested parties have submitted that unprofitable exports of the domestic industry must be examined. The Authority notes that injury to the domestic industry is based on verified information regarding the performance of the domestic industry in the domestic market for sales of IIR. Hence, the impact of unprofitable exports is not relevant to the present investigation.

h) Performance of other products

156. The Authority has only considered data relating to the performance of the subject goods. Therefore, performance of other products produced and sold is not a possible cause of the injury to the domestic industry.

157. With regard to the submissions that the domestic industry is supplying trial production at discounts or free of cost, the Authority notes that the quantities supplied by the domestic industry during the initial years were not trial sales and were not given free of cost. The Authority has verified the data submitted by the domestic industry and notes that the sales of the domestic industry were in commercial quantities and were not sample sales. The domestic industry did give some material as trial samples. The same however does not form part of the data adopted by the Authority.

i) Non-approval of product and product range

158. With regard to submissions that the injury to the domestic industry is due to non-approval of HIIR, the Authority notes that the present investigation concerns the import and performance of domestic industry with respect to IIR. The injury analysis has been conducted considering the performance of the domestic industry in the domestic market. However, in view of the arguments of the interested parties, the Authority examined sales volumes of the domestic industry to major customers and the period since when the domestic industry started selling the product.
159. With regard to the submissions that the injury to the domestic industry is due to non-approval of the product by the customers, the Authority notes that customer-wise repeated sales of the applicant show a significant volume of sales to various parties over the injury period.

SN	Name of customer	Month/Year of starting regular purchase	Total volumes sold
			Till POI (KT)
1	[JK Tyres	March 2020	19.541
2	MRF Ltd.	January 2021	12.970
3	CEAT Ltd.	June 2020	12.942
4	Classic Industries	August 2020	9.176
5	TVS	June 2020	5.587
6	Rubber King	October 2020	4.838
7	Agarwal Rubber	April 2019	4.156
8	Jayam Industries	April 2019	4.000
9	Ralson	May 2019	2.881
10	Exel Rubber	May 2020	2.116

160. With regard to the injury due to the product range produced by the domestic industry, the Authority undertook an examination of the product range of the domestic industry and foreign producers. It is seen that almost all the foreign producers have reported most of the sales relating to one grade only. The domestic industry produces like article to the imported into India. The product not produced by the domestic industry has already been excluded from the scope of the product under consideration. Thus, the injury cannot be due to the limited product portfolio of the domestic industry.

j) Impact of COVID-19

161. With regard to the contention that the injury to the domestic industry is due to COVID, the Authority notes that there were no effects of COVID-19 in the period of investigation and no evidence has been placed on record with respect to the impact of COVID in the COVID-19 in the period of investigation.

k) Global overcapacities

162. With regard to the submissions that injury is due to overcapacities globally, the Authority notes that (a) the applicant is the sole producer of the subject goods in India, (b) there is no overcapacity

in India which could have caused injury to the domestic industry, (c) overcapacity in the global market cannot be considered as a justification for the producers in the subject countries to dump the subject goods in India which has caused injury to the domestic industry.

l) Procurement of raw material from a related party

163. With regard to the transfer of raw materials by RIL at inflated prices and not factoring the recovery from methanol, the Authority has verified the consumption price reported by the domestic industry. Further, it is noted that both parties have reported the said transactions at arms' length prices. Further, the interested parties have themselves contended that the provisions of AOA prevent RIL from charging any price and domestic industry from paying any price; and the JV partner holds enough powers to prevent transactions that are not at arm's length.

m) Start-up costs and high off-specification production

164. The Authority notes that the capacity utilization of the domestic industry was low and the significant production was off-spec material in 2019-20 due to a new plant start-up operation in 2019-20, as the plant had started producing and selling the product in sizeable volumes. Indeed, the plant had produced a cumulative volume of 1,24,683 MT by March 2022. There would have not been any injury to the domestic industry in the POI. Thus, the Authority considers that the start-up cost was suffered by the domestic industry in 2019-20 and not in 2022-23.

165. It is noted that the losses per unit of the domestic industry have increased in the period of investigation as compared to previous years and the base year. The Authority notes that while the losses of any new producer reduce with an increase in capacity utilization, the same was not the case in the present domestic industry. Rather the losses of the domestic industry were increasing in absolute terms (as well as per unit basis). Thus, with increase in production by the domestic industry, the losses have increased.

166. The cash losses have also increased over the injury period and the domestic industry has recorded a negative return on capital employed. The cash losses have been the highest in the period of investigation and the return on capital employed has been the lowest in this period.

Conclusions on causal link

167. While other known factors listed under the Rules and identified by other interested parties have not caused injury to the domestic industry, the Authority notes that the following parameters show that injury to the domestic industry is caused by the dumped imports.

- i. There is dumping of the subject goods from the subject countries.
- ii. Since the domestic industry commenced production during the injury period, the capacity production, sales and capacity utilization increased. The dumping has, however, prevented optimum utilization of production capacities.
- iii. Even when the volume of imports has declined, as a consequence of new production, the volume is quite significant and prevented the domestic industry from selling up to the extent of its production and installed capacities.

- iv. The market share of imports has remained significant, despite the domestic industry having the capacity to meet Indian demand, even after supplying to export markets and providing for its captive consumption.
 - v. The capacity utilized for domestic sales is only 37% during the period of investigation. The domestic industry has been able to utilize a higher share of its capacities only on account of captive consumption and export sales.
 - vi. The domestic industry was forced to export at losses, in order to dispose of its inventories.
 - vii. The imports have prevented price increases, which otherwise would have occurred.
 - viii. The domestic industry has incurred heavy losses throughout the injury period, and its losses have increased during the period of investigation.
 - ix. The cash flows and return on capital employed by the domestic industry have deteriorated over the period, and are negative.
 - x. While the volume parameters of the domestic industry showed positive growth, the profitability parameters deteriorated.
 - xi. The imports have adversely impacted the ability of the domestic industry to raise further capital investments.
168. The Authority, thus, concludes that there exists a causal link between the dumping of the subject goods and injury to the domestic industry.
169. With regard to the injury due to product range produced by the domestic industry, the Authority undertook examination of the product range of the domestic industry and foreign producers. It is seen that almost all the foreign producers have reported most of the sales relating to one grade only. The domestic industry produces like article to the products imported into India. The product not produced by the domestic industry has already been excluded from the scope of the product under consideration. Thus, the injury cannot be due to the limited product portfolio of the domestic industry.
170. With regard to the transfer of raw materials by RIL at inflated prices and not factoring the recovery from methanol, the Authority has verified the consumption price reported by the domestic industry. Further, it is noted that both parties have reported the said transactions at arms' length prices. Further, the interested parties have themselves contended that the provisions of AOA prevent RIL from charging any price and domestic industry from paying any price; and the JV partner holds enough powers to prevent transactions that are not at arm's length.

H. MAGNITUDE OF INJURY MARGIN

171. The Authority has determined the non-injurious price for the domestic industry on the basis of the principles laid down in the Rules read with Annexure III, as amended. The non-injurious price of the subject goods has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The

non-injurious price has been considered for comparing the landed price from the subject countries for calculating the injury margin. For determining the non-injurious price, the best utilization of the raw materials, the utilities and the production capacity by the domestic industry over the injury period have been considered. It is ensured that no extraordinary or non-recurring expenses are charged to the cost of production. A reasonable return (pre-tax @ 22%) on the average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and is being followed.

172. The landed price for the cooperative exporters has been determined on the basis of the data furnished by the exporters. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on the facts available.
173. With regard to the contention that high costs due to start-up operations must be normated, the Authority notes that since the present case is that of material injury, the actual cost of production of the domestic industry during the period of investigation has been considered. The non-injurious price has been determined based on Annexure-III to the Anti-Dumping Rules.
174. As regards the contention that a 22% return on capital employed is unwarranted, the Authority notes that it is a consistent practice of the Authority to determine the non-injurious price of the domestic industry based on reasonable return on capital employed, which is 22%, barring when there is evidence on record that 22% should not be considered and some other figure is more appropriate. The Authority notes that the domestic industry had envisaged a payback period of *** years which means an average return on capital employed of ***. The return on capital employed considered by the Authority is less than that envisaged by the applicant and as per the consistent practice of the Authority.
175. Based on the landed price and non-injurious price determined above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below: -

Producer	Non-injurious price	Landed price	Injury margin	Injury margin	Injury margin
	(US\$/MT)	(US\$/MT)	(US\$/MT)	(%)	(Range)
Saudi Arabia					
Al-Jubail Petrochemical Company (“KEMYA”)	***	***	***	***	15-25%
Any Other	***	***	***	***	20-30%
Singapore					

ExxonMobil Asia Pacific Pte Ltd/ ExxonMobil Chemical Asia Pacific	***	***	***	***	40-50%
Any Other	***	***	***	***	45-55%
United States of America					
ExxonMobil Product Solutions Company	***	***	***	***	25-35%
Any Other	***	***	***	***	30-40%
Russia					
Any	***	***	***	***	75-85%
China					
Any	***	***	***	***	25-35%

I. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

I.1. Submissions by other interested parties

176. The other interested parties have made the following submissions with regard to the Indian industry's interest post-issuance of the preliminary findings:

- i. Imposition of anti-dumping duty will restrict competition, create a monopoly and lead to higher prices for users.
- ii. The reliance on limited user response as justification for disregarding potential harm to users is incorrect.
- iii. Impact has to be evaluated on tubes and tyre curing bladders instead of tyres as the product is not used directly in tyres. If a 30% duty is imposed, the cost of the tyre innertube would be increased by 15%. If \$500 is the average per MT price increase, the impact on SRTC alone is approx. ₹1 crore per year.
- iv. Imposition of anti-dumping duty will increase the cost of production of tubes and tyre curing bladders which will lead to an increase in the imports of tyre inner tubes and bladders from ASEAN and Korea at zero customs duty.
- v. Tube manufacturing is outsourced to the MSME sector, and such sector will be adversely impacted as it works on less than 5% profit margins. This will lead to large-scale unemployment and the closure of factories.
- vi. Use of IIR produced by the applicant for bladder application leads to a 40% loss in the life of bladder. Since it is a safety-critical application, it could lead to potential accidents while making tyres leading to loss of human life.
- vii. Since the domestic industry has highlighted that application in bladders constitutes only 10% of the volume, the impact on any exclusion will also be miniscule, and thus not injurious to the domestic industry.
- viii. Users have increased domestic procurement of the product under consideration from the domestic industry and the imports constitute only 20-30% of the total procurement. However, the users have certain business concerns regarding the domestic product.

- ix. The domestic industry prioritizes its captive needs over domestic supply, which depicts the monopolising tendencies of the domestic industry and indicates that users may face high costs, due to the limited availability of the product.
- x. There are high chance that the users might suffer in the event of any disruptions in the production of the domestic industry. The producers in the subject countries would have redirected their supplies to other global markets. Imports from non-subject countries are also not an option as Japan has ceased the exportation of IIR to India due to limited capacity, whereas Australia and Belgium have shut down manufacturing facilities.
- xi. As opposed to the contention of the domestic industry that huge investment has been made with regard to setting up of feedstock plant, RIL already had an Methyl Tertiary Butyl Ether (MTBE) facility and the only investment was limited to conversion of Methyl Tertiary Butyl Ether (MTBE) to High Purity Isobutylene (HPIB).

I.2. Submissions by the domestic industry

177. The domestic industry has made the following submissions with regard to the Indian industry's interest post-issuance of the preliminary findings:
- i. The applicant is the first producer to start production of IIR in India. The technology for production of IIR was not available freely and substantial hurdles have been faced by the applicant to bring the said technology to India.
 - ii. While the project was profitable when the project report was formed, the producers globally started dumping the product in India leading to crash in prices of IIR and HIIR. The project set up after making huge investments has turned unviable due to intensive dumping in India.
 - iii. The consumers are not bothered by the imposition of anti-dumping duty as only limited consumers have filed a response. While ATMA has participated, the consumers were well aware of the investigation but have not filed a response to EIQ in order to show any adverse impact of the imposition of anti-dumping duty.
 - iv. While there was no supply of SBR in India and the anti-dumping duty was imposed on imports of SBR after capacities being set up. This led to India becoming self-sufficient in the product. Similar measures are required in the present case, especially as the technology to manufacture IIR is closely guarded.
 - v. The tyre industry has a CAGR of 5.54% reaching a volume of 256.24 million units by 2029. Imposition of duty on one minor raw materials of tyre would not have damaging effect.
 - vi. The capacities set up by the applicant are keeping in view the long-term demand in India. The capacities in India are enough to cater to the entire demand in India.
 - vii. There are only 10 producers of the subject goods globally. It is essential to ensure domestic production in India. In case the domestic industry shuts down, the users will be completely dependent upon imports.

- viii. With contrast to the Indian producers, producers in countries such as Singapore are holding production facilities with *de-facto* no domestic consumption and such capacities are meant only for exports.
- ix. At the time of conception of the project, the delta over principal raw material for IIR was much more. Due to the establishment of domestic production, such delta has declined.
- x. In case domestic product is favoured over imported products, the outgoing foreign exchange would be conserved and would be a step towards a favourable balance of payment.
- xi. Imposition of anti-dumping duties will allow the domestic industry to recover its cost, sell at remunerative prices and sustain in the market.
- xii. The vision and mission of the country in promoting Atma Nirbhar Bharat, can only be achieved by remedying dumping happening in the country.
- xiii. Procuring from the domestic industry will result in stability of fair prices in the market, uninterrupted supply, growth of the downstream industry and a reliable business partner for the users.
- xiv. As opposed to the contention of the other interested parties, the impact must be based on the end product as tube manufacturers will not bear the cost increase, but would pass on the price increases to their consumers. The users have submitted that prices of the product vary in line with the prices of crude and hence, such users are habituated of price fluctuations.
- xv. As opposed to the submissions of the other interested parties, the producer's tubes have revenues exceeding hundreds of crores and are not MSMEs.
- xvi. Even if captive consumption is considered, the domestic industry has enough capacity to cater to the entire demand in India.
- xvii. The producers in the subject countries are engaged in unfair pricing behaviour as per their own response. Therefore, the duty would only serve the limited purpose of offsetting any unfair pricing in the market.
- xviii. Imposition of anti-dumping duty will not lead to monopolising of the market as it does not ban imports into India. Even in case, the domestic industry engages in such behaviour, the users are free to approach the Competition Commission of India.

I.3. Examination by the Authority

178. With regard to the contention that the imposition of anti-dumping duty will lead to monopoly and higher prices for users, the Authority notes that the imposition of anti-dumping duty only ensures fair prices in India and does not restrict or ban imports. Further, there are a limited number of producers globally and majorly all the producers in the subject countries have participated in the present investigation. The Authority has determined the dumping margin and injury margin based on the responses filed by the exporters and not as per the facts available. In such a case, imposition of anti-dumping duty will ensure fair market prices in India.

179. The prices of the product under consideration were higher in India prior to commencement of domestic production. Imposition of anti-dumping duty will remedy the unfair practice of dumping in India and ensure level playing fields for all the producers.
180. Economic interest questionnaire (EIQ) responses were filed by MRF Limited and CEAT Limited. The Authority considers that these responses were filed much belated after the expiry of time limits allowed by the Authority. The Authority notes in this regard that ATMA has been participating in various investigations being conducted by the Authority and has itself been an applicant seeking recourse under dumping and subsidy laws. Therefore, EIQ's response filed at such a belated stage of the proceedings cannot be accepted. It is also noted that no justifiable reasons have been given for such a belated response. Therefore, the Authority has not accepted the EIQ filed by MRF Limited and CEAT Limited. It is however noted that EIQ in no way establishes anything which shall warrant any change in the facts established in the present case.
181. As regards reference to imports from Belgium and Austria are concerned, the Authority notes that the import data shows imports from these countries. It is appropriate to consider that these countries have supplied the material. However, the Authority has taken note of submissions made by the parties that these countries are not having any production facilities. The Authority however notes that this does not vitiate essential facts established in the present disclosure statement.
182. The Authority notes that the domestic industry has quantified the impact of anti-dumping duty on the price of tubes used as a set of tyres. The opposing interested parties have quantified the impact of duty on the cost and price of tubes. The Authority notes that the PUC is largely used in the production of Tubes. The information provided by the consumers shows that the cost on account of IIR is high in tubes. The Authority, however, notes that tubes are invariably used along with tyres, while tyres may be used without tubes. Further, the majority of the tubes are sold along with tyres. It is noted that the cost on account of tubes is quite low in relation to the price of the set of tyre, tube and flap. Thus, in so far as consumption of IIR in the eventual end product is concerned, cost on account of IIR forms a small portion of the overall cost of the tyre set: though, cost on account of the PUC forms a significant portion in tube price.
183. There is no evidence on record to show that the imposition of anti-dumping duty will lead to creation of a monopoly in India. The Authority notes that there have been several investigations where anti-dumping duty has been levied even though there was a single producer in the country and a single supplying country outside India. There were no complaints of monopolization of the market in such a case. In any case, the users are free to approach the Competition Commission in case the domestic industry engages in anti-competitive behaviour, or seek interim review in case the interested parties find that the prices are irrational.

184. With regard to the contention that reliance placed on the lack of user response is incorrect. The Authority notes that the present investigation was initiated and notified to all interested parties including the users of the product. Since the Association of users (ATMA) has participated in the present investigation, it is reasonably expected that the users of the product were aware of the investigation. The users were given ample opportunity to represent their interests and place on record any adverse impact of imposition of anti-dumping duty. However, a limited number of users have filed responses to the economic interest questionnaire in the present investigation, and these responses do not establish the major impact of the imposition of anti-dumping duty on the users of the product.
185. The other interested parties have contended that the impact has to be evaluated on tubes and not tyres. The Authority notes that the product is used for manufacturing tubes which is further used along with tyres. Further, the tube itself constitutes a small portion of the price of tyres.
186. The users have stated that the price of the product under consideration is based on the price of crude; and since the price of crude is fluctuating, the price of IIR also fluctuates regularly and such fluctuation does not adversely impact the users in India. Import prices of the product under consideration have increased by about 50%. The price increase in the case of domestic industry (for good-specification material) was about 45%. This was significant enough to show any plausible adverse effect of the price increases on the downstream industry. It is however seen that neither consumption has declined nor the domestic industry has shown any adverse impact of increase in the prices of IIR. The Authority therefore considers that the possible adverse effect of ADD on downstream industry has not been established. Accordingly, the Authority confirms Para 161 in the preliminary findings.
187. With regard to the contention that the downstream industry is a part of MSME and will suffer due to the imposition of anti-dumping duty, the Authority notes that as per the evidence on record, the manufacturers are large-scale companies and do not form part of the MEMS sector. Annual reports filed by the responding user industry show that they are much bigger companies than the domestic industry, with much higher investments and turnover. Annual reports of these companies show consistent profits earned by the user industry. In any case, imposition of anti-dumping duty will only ensure fair prices in India and will not impact the interest of any industry adversely whether MSME or otherwise.
188. With regard to the contention that the imposition of anti-dumping duty will lead to increase in cost of tubes and lead to imports of such products, the Authority notes that there is no evidence on record regarding the same. Despite 50% increase in the import prices of IIR over the injury period, the user industry has not shown adverse effects either on the downstream industry or on the public at large. On the other hand, imposition of

anti-dumping duty is likely to remedy the injury to the domestic industry due to unfair trade practices.

189. With regard to the use of the product for safety-critical applications, the Authority notes that the domestic industry has already supplied the product under consideration in India as well as the export market; that too in significant volumes and for such a longer period. The interested parties have not placed on record any evidence to show that safety aspects got compromised because of the use of the domestic industry product. At the time of verification, the domestic industry stated that the cumulative production sold by them since the beginning would have produced millions of tubes, and there were safety hazards reported by the user industry.
190. Regarding the contention that the domestic industry prioritizes its own needs over the merchant market, the Authority notes that the domestic industry has a total capacity of 1,20,000 MT for catering to the domestic market as well as captive consumption. The capacity set up for HIIR by the domestic industry is to the tune of [60,000 MT. While there is a parallel ongoing anti-dumping investigation into imports of HIIR, even if the projected performance is considered, the Authority notes that the projected capacity utilization of the domestic industry for HIIR is ***%. Since the conversion factor between IIR and HIIR is 1:1, the domestic industry has spare capacities to the tune of *** MT which is enough to cater to 97% of demand in India. Thus, the imposition of anti-dumping duty will not lead to the non-availability of the subject goods in India.
191. As regards the contention that RIL already had a Methyl Tertiary Butyl Ether (MTBE) facility and limited investment has been made for conversion to High Purity Isobutylene (HPIB), the Authority notes the submission of the domestic industry at the time of spot verification that RIL has made an investment of Rs. *** crores in the upstream product. This amount is not insignificant. In any case, the Authority considers that the present investigation is only with regard to the dumping of IIR and the performance of the domestic industry with regard to IIR and not the feedstock. Hence, investment in feedstock is not relevant to the present investigation.
192. The other interested parties have submitted that the other sources of imports are non-viable. The Authority notes that 20% of imports in 2019-20 were from non-subject sources. Further, the domestic industry has the capacity to cater to the entirety of demand in India.
193. The Authority further notes that it is essential to protect the domestic manufacturing of the subject goods in India. The prices of the product under consideration were higher prior to the commencement of domestic production. The domestic industry has submitted that it has incurred huge losses and recorded a negative return on capital employed, and the plant might turn unviable in such a situation. The Authority notes in case of cessation of operations by the domestic industry, the users will be totally dependent upon imports.

J. POST DISCLOSURE COMMENTS

The Authority circulated the disclosure statement containing all essential facts under consideration for making the final recommendations to the Central Government to all interested parties on 21st June 2024. The Authority has examined all the post-disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority has not been repeated for the sake of brevity.

J.1. Submissions by other interested parties

194. The following post disclosure submissions have been made by the other interested parties.

- i. The Authority did not give sufficient time to submit comments to disclosure statement which is violation of natural justice.
- ii. Since preliminary findings have not been accepted by the Ministry of Finance, no reliance should be placed on the same.
- iii. The comments filed by ATMA on product exclusion cannot be considered belated as they were filed prior to issuance of the preliminary findings and oral hearing. The scope of product under consideration cannot be finalized PUC/PCN notification since the same is not a gazette document and even in the preliminary findings, the Authority has provisionally determined the scope of product under consideration. No prejudice has been caused to interests to any interested party as they were provided ample time to respond to request for product exclusion.
- iv. The request for exclusion and technical details of IIR for bladder application was provided in the EQR filed by the Exxon Group.
- v. Specialized grade of product under consideration is imported by the members of ATMA owing to quality consideration and unsuitability of regular grade of subject goods supplied by the domestic industry for manufacturing tyre curing bladders.
- vi. The Authority has relied upon sales to one customer and its satisfactory feedback for bladder application. The applicant has not approached the major OEMs in India that use IIR for bladders which shows non-suitability of the product. The applicant may have supplied low quantities of IIR for bladder manufacturing for non-critical applications to defeat the exclusion requests. The Authority must examine the quantity bought by the buyer; the size of the buyer and its activities of bladder manufacturing; actual usage of quantity bought; the consistency of such purchases over the injury period and the period of investigation; the types and sizes of bladders manufactured by the buyer.
- vii. Since speciality grades cannot be interchangeably used, the Authority must examine if regular and special grades are “like articles”. ExxonMobil has given details of difference in production facilities required and the reasons why applicant is not capable of manufacturing the same.
- viii. The ExxonMobil Group submits that the Petitioner did not have any locus standi to file the petition for the imposition of anti-dumping duty due to its intertwined relationship with the Russian producer/exporters of the dumped article, and therefore, the investigation should have been terminated from the outset.

- ix. The contention has always been about SIBUR's power to veto any related party purchases of HPIB and energy by the Petitioner from Reliance and not whether SIBUR can force Petitioner to buy HPIB from a source identified by it. The Isobutylene supply contract with Reliance cannot be enforced unless SIBUR gives its approval in terms of the AoA of the Petitioner which governs the conduct of its business and management of its internal affairs. This shows control of SIBUR over the Petitioner's purchases of major inputs and energy.
- x. Specification sheets, monthly production and inventory data shared at a belated stage with the other interested parties must be discarded.
- xi. The meaning of interchangeably used by the Authority is unclear. There is a need to clarify whether plant and machinery of the applicant is being used for producing different grades interchangeably or whether the users are using the same grade interchangeably to produce tubes and bladders.
- xii. Isobutylene Supply Contract cannot be enforced without approval from SIBUR. This shows control over purchase of major inputs and energy.
- xiii. The Authority has not considered the decline volume of imports from Russia in examining the corroborative efforts of the applicant and the Russian producer. There were no imports from Russia in last two quarters of the period of investigation.
- xiv. Non-confidential version of the import data showing different prices of exporters at the same time should be shared with the other interested parties.
- xv. Analysis of project report contradicts the examination of the Authority in the preliminary findings that there is no material retardation in the present investigation. Since the claim has been re-introduced at disclosure stage, other interested parties should be provided adequate opportunity to rebut the same.
- xvi. The domestic industry has sold 10-20% of off-spec material in the period of investigation shows that the production process of the applicant is still unstable, thus, injury owing to off-spec should be segregated and considered in non-attribution analysis.
- xvii. Injury due to factors such as COVID, start-up issues, global overcapacities, changes in prices of feedstock, delayed products approvals and limited range of product grades, and integration of IIR and HIIR plants should be segregated.
- xviii. The Authority has followed a pick and choose approach as the Authority has not considered optimization of raw material, utilities and capacities on quarterly basis considering the present case as that of material injury but has compared project report to actual performance. The Authority in investigation related to PU Leather considered optimization of raw material, utilities and capacities on quarterly basis even though the domestic industry started production 2 years prior to the period of investigation.
- xix. While the Authority has concludes that there is adverse volume effect, the counsel for the domestic industry during the oral hearing submitted that the domestic industry is suffering only price injury.
- xx. The conclusion that increase in domestic sales was less than increase in production is incorrect in light of the fact that the volume of imports have declined. There is no volume injury in the present case.
- xxi. The conclusion that the domestic industry was forced to sell at lower prices in order to compete with imports is incorrect as price undercutting is negative. Injury to the domestic industry is due to its own decision to sell at prices below the landed price.

- xxii. The Authority has to maintain a single stance regarding the period of analysis for determination of injury. While the Authority has excluded 2019-20 for determination of price suppression/depression, it has been included in determination of injury.
- xxiii. The Authority should also remove 2020-21 for suppression / depression as cost and price was abnormal in this year due to COVID-19 and high production of off-spec material. Even if 2020-21 is considered, there is no suppression as the landed price has increased more than the increase in cost of sales of the domestic industry.
- xxiv. While the volume of subject imports was highest in 2019-20 and there was no suppression in this period, it cannot be concluded that a lower volume of imports in the period of investigation can prevent domestic industry from increasing its prices.
- xxv. The domestic industry exported at losses despite there being no price-suppressing effect in the export markets and thus, the examination that the prices of the domestic industry were suppressed in the domestic market is incorrect.
- xxvi. The adverse impact of COVID has been admitted by the domestic industry in the 10th Annual general meeting dated 30th September 2022.
- xxvii. The statement that HIR and IIR plants are totally different is incorrect.
- xxviii. Russian price trends relied upon by the Authority are incorrect and should be re-examined.
- xxix. The domestic industry has claimed excessive confidentiality as years of revision of project report and non-confidential version of monthly production have not been shared.
- xxx. 22% return on investment should not be considered as it must be based on recent returns of the industry and not based on projected returns.
- xxxi. A number of consumers purchase tubes for low-end passenger vehicles. The product is used in commercial vehicles and generally the tyres for trucks or buses are rethreaded almost 7 times in the life of the tyres and the tubes are replaced. Imposition of anti-dumping duty will raise the cost of these tubes, which will adversely impact the direct consumers.
- xxxii. The Authority ignored the responses to the EIQ filed by the users of IIR for impact analysis.
- xxxiii. The findings that the prices of the PUC were higher prior to the commencement of domestic production is an erroneous and contrary to evidence on record.
- xxxiv. The applicant belongs to RIL group, which historically has intentionally under-priced its products to monopolize the market and gain major market share. Hence, the losses could have been avoided had the product under consideration been priced at a level closer to the prices of the imports from the subject countries.
- xxxv. Since no fact has change post issuance of preliminary findings, there is no basis to reject the response filed by NKNH. In case, there were concerns with regard to adequacy of data, the same could have been raised in the preliminary findings. The Authority has complete information of total quantities shipped to India and final price to the importers even if the intermediaries have not filed a response. Cooperative exporters cannot be penalized for things not in their control. The Authority in the past has accepted responses even when related parties have not participated.
- xxxvi. The information filed by NKNH with respect to normal value is complete and should be considered. The Authority had accepted the export price of one of the exporters in Gypsum Board / Tiles with Lamination even though the normal value information was rejected.

- xxxvii. The Authority has rejected the price undertaking based on the fact that non-confidential version was inadequate, however, the exporter had fully disclosed the operative part to all interested parties and other interested parties have furnished their comments on the same.
- xxxviii. NKNH has filed a revised undertaking and requests the Authority to accept the same.
- xxxix. The Authority should confirm that 5% has been considered as reasonable profit margin. Adjustment claimed in cost of production for EMAPPL, EMPSC and Kemya should be considered.
- xl. The Authority has determined a lower dumping margin to non-participating Chinese producers despite the landed price being lower than that of Saudi Arabia. The Authority has opted for best facts available as opposed to adverse facts available.
- xli. Since all costs and profits remained the same in the disclosure statement as compared to the preliminary findings, there is no reason for increase in non-injurious price leading to increase in injury margin.

J.2. Submissions by domestic industry

- 195. The following post disclosure submissions have been made by the domestic industry.
 - i. Post invoicing discounts offered by the exporters, material differences in landed price of product supplied by the same exporter to the same consumer at the same time, and credit costs which is not included in selling price of the domestic industry but included in the landed price must be considered for determination of price undercutting.
 - ii. The domestic industry is forced to compete with the lowest prevailing prices in the Indian market. Due to variation in prices by the same exporter, the examination of price undercutting on average basis is misleading.
 - iii. The exporters have not reported all post invoicing discounts and the same must be verified. Due to such discounts the purchase price of the customers is lower than the landed price of subject goods. Further, payment proofs have not been given by the exporters to support the invoice values.
 - iv. A number of consumers in India have affiliated procurement entities in the subject countries which purchase from producers of the product at lower prices and export to India at higher prices. The landed price should be based on price charged by the producers and not exporters.
 - v. The imports at higher prices are not relevant to the domestic industry in selling the product in the market. Price undercutting should be determined based on only those transactions where landed price of imports is below the selling price of the domestic industry.
 - vi. Price suppression/ depression should also be determined considering 2019-20 after adjusting for start-up costs and inefficiencies in this period.
 - vii. The applicant has provided the cost of production after adjustments for start-up operations. In order to determine the same, the applicant has considered the verified information and calculated the cost at highest capacity utilization in the injury period. The cost has been calculated after excluding the shutdown days. The cost of raw material and utilities has been determined based on best utilisation in the injury period and considering the cost in the relevant period.

- viii. Based on the adjusted costs, the selling price has increased less than the increase in cost of sales of the domestic industry over the injury period and the landed price was below the cost of sales of the domestic industry. Thus, the subject imports have prevented the domestic industry from increasing its price to the extent the prices would have increased in the absence of imports.
- ix. Injury to the domestic industry should be examined after adjusting for start-up costs. Post adjusting for start-up costs, it will be seen that the per unit losses of the domestic industry have increased over the injury period. Thus, with the increase in production, the domestic industry has incurred higher losses. The return on investment is the lowest and cash losses are the highest in the period of investigation. In case the situation does not change, it will render the plant of the domestic industry unviable.
- x. The Rules refer to profits and not profit per unit. The gross loss of the domestic industry may be considered for injury analysis.
- xi. It is not necessary that all parameters of the domestic industry must show injury. The Authority may conclude injury even in case of a single economic parameter showing decline due to dumping of subject imports. Even if it is considered that losses per unit have declined, cash losses and negative return on investment show injury to the domestic industry.
- xii. Since injury to the domestic industry in the base year was due to start-up cost as well as imports from the subject countries, it is important to adjust start-up cost to establish causal link. The Appellate Body in US-Hot Rolled Steel held that if injurious effect of dumped imports is not segregated from injurious effects of other factors, then the Authority will not be able to conclude that the injury is attributable to dumped imports.
- xiii. The domestic industry has provided information of the start-up costs and adjustments required. The same must be considered in order to assess material injury to the domestic industry due to dumping.
- xiv. The comparison of base year and period of investigation for price suppression/depression is not mandated under the Rules and would be inappropriate as held by EC in ferro molybdenum originating in the People's Republic of China and urea and ammonium nitrate originating in Algeria, Belarus, Lithuania, Russia and Ukraine. There is a need to evaluate price suppression / depression based on intermediate period as well.
- xv. Even without start-up cost adjustments, the domestic industry has been prevented from increasing its prices to the level of increase in its cost of sales post 2020-21.
- xvi. The applicant revised the project report multiple times. While the plant was viable even after revision in projections in 2019 prior to commencement of production, the domestic industry is unable to earn return on investment due to intensified dumping in the Indian market.
- xvii. There is no bar in examination of all three forms of injury in a single investigation. Thus, the Authority may compare the projected performance with the actual performance of the domestic industry in addition to the parameters already examined.
- xviii. There is no bar on the parameters examined by the Authority under the Rules. The inability of the domestic industry to achieve its target performance is a parameter identified by the domestic industry. However, the Authority has neither rejected the information stating it as inadmissible nor analysed the information in this regard.
- xix. The domestic industry is unable to achieve its projected performance. While the domestic industry projected profits, cash profits and positive return on investment, it has incurred losses, cash losses and a negative return on investment. Even the domestic

sales and capacity utilization of the domestic industry are below its targeted performance.

J.3. Examination by the Authority

196. The Authority has examined the post-disclosure submissions made by the domestic industry and the other interested parties and notes that some of the comments are reiterations which have already been examined suitably and addressed adequately in the relevant paras of the final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and the domestic industry and considered relevant by the Authority are examined below.
197. As regards the time given for filing comments, the Authority notes that neither the Indian Rules nor the WTO Agreement provides for any minimum time that should be allowed to the parties for offering comments. Further, some interested parties had sought additional time which was allowed by the Authority. ATMA did not seek additional time for filing of response. In any case, ATMA has filed elaborate submissions, and the same is being considered for the present determination. ATMA has not shown any prejudice caused to them in this regard.
198. With regard to the submissions that reliance should not be placed on preliminary findings, the Authority notes that the claim is without legal basis. Preliminary findings are a stage in the investigations and if the Authority has already established some facts at the stage of preliminary findings, the interested parties must show a reason for reconsideration or review of those facts. The fact that no decision has been taken by the Ministry of Finance on these preliminary findings as yet is entirely immaterial. Further, since the Authority has undertaken some examination in the preliminary findings, the same was proposed to be confirmed in the disclosure statement and has been definitely concluded in this final findings. Principles of judicial economy and brevity also demand that the statement of facts and reasons recorded in the preliminary findings are not repeated once again in the disclosure or final findings.
199. With regard to the comments on product exclusion, the Authority notes that a fair opportunity was provided to all the interested parties to submit their comments and the investigation has been conducted after considering such comments. The scope of product under consideration was finalized by the Authority and no comments were filed by ATMA till the stage the Authority notified the scope of the PUC and PCN. Anti-dumping investigation is time bound in nature and even after providing adequate opportunity, no comments were received from ATMA requesting exclusion of a product type from the scope of product under consideration.. The Authority notes in this regard that it is also not the case of ATMA or legal consultants that anyone was novice about the process or requirements under the law. Thus, the comments filed post finalizing the scope are considered belated. In any case, the Authority has examined the claim made by ATMA and examined the same in the relevant part of this final findings.
200. With regard to the submission that specialized grade is imported for manufacturing of tyre curing bladder, the Authority notes that the other interested parties have not provided any specifications of such specialized grade. Further, as examined in the relevant portion of this final findings, the domestic industry has supplied the product for manufacturing tyre curing bladders in the domestic

market as well as export market and has received positive feedback for the same. Thus, there is no need for exclusion of such product from the scope of the product under consideration.

201. It is clarified that the authority has not examined the present case on the grounds of material retardation to the establishment of domestic industry. Further, in a situation where the domestic industry has operations for four years, the authority has consistently applied provisions of Annexure-III which requires the authority to consider consumption factors in the investigation period and compare the same with the preceding years. The same has been adopted in the present case. Such being the case, there is no infirmity in quantification of non-injurious price. The interested parties have not shown why the optimisation of raw materials, utilities or production capacities should have been done on quarterly basis particularly when Annexure-III clearly provides for consideration of data for POI and comparison with the preceding three years. In fact, consideration of quarterly consumption factors in the present case would have been directly inconsistent with the provisions of Annexure-III. As regards the reference to the PU leather case, the Authority considers that every case is required to be considered in the peculiar facts and circumstances prevalent to that case., The interested parties have not established how the two cases are comparable and how their application in a particular case is relevant, appropriate and necessary. The Authority notes that while there was an elaborate PCN involved in PU Leather case which needed micro-analysis, the same is not relevant for the present investigation.
202. With regard to communication between two parties on acceptance or otherwise of domestic industry product, the Authority notes that the said communication is between two parties and is not a communication with the domestic industry. Unless a communication is addressed to the domestic industry, it cannot be expected that the domestic industry would respond to such a communication about quality of its product or its performance. It is noted that the producer of the product was not even given an opportunity to clarify the factual position and the reasons for the alleged variations found in the domestic product. It could even be a cover of any other difficulties that might have been faced by one of the parties. The Authority thus notes that the communication allegedly written between two parties without knowledge of the domestic industry does not establish that the domestic industry was not in a position to produce and supply IIR for bladder application.
203. With regard to the submissions that the sales to only one customer has been relied upon, the Authority notes that the domestic industry has demonstrated sale of product under consideration to various customers in the domestic market and in large quantities. The Authority notes that the same grade has been supplied by the domestic industry for bladder application and tubes manufacturing. The customer has provided positive feedback to the domestic industry specifically for use of its product for bladder application. Hence, since the domestic industry has demonstrated its ability to produce and sell quality product for use in bladder application, there is no need for exclusion of the said product from the scope of product under consideration.
204. As regards the contention that the specialty grades cannot be interchangeably used, the Authority has already noted in the relevant part that the regular grade is used for bladder applications as well as in the manufacturing of tubes. With regard to specialty products identified by Exxon Group, there is no demand for the product in India and hence, there are no imports of such product in India. In case of no imports in India, there is no need for determination of like article

manufactured by the domestic industry. In any case, the Authority has noted that the range of mooney viscosity and unsaturation level that can be produced by the domestic industry is similar to the specialty grades identified by the Exxon Group.

205. With regard to the submissions that specification sheets, monthly production and inventory data should not be accepted as they were filed at a belated stage, the Authority notes that the specification sheets shared by the domestic industry show similar specifications as that in the technology license agreement which was shared by the domestic industry prior to issuance of the preliminary findings. Monthly production and inventory data was shared by the domestic industry at the stage of petition, thus, such submissions cannot be considered belated. In any case, the non-confidential version of the submissions has been shared with the other interested parties and the other interested parties have been provided an opportunity to comment on the same. Thus, no prejudice has been caused to the interest of any interested party by considering such information.
206. With regard to the submissions on the relationship of the applicant with the Russian producer, the authority has reexamined the relationship issue under the section – **Scope of Domestic Industry & Standing**.
207. With regard to the submission that use of word “interchangeable” is not clear, the Authority clarifies that the domestic industry can manufacture various grades of the subject goods interchangeably on the same plant and machinery. Further, the users and consumers of the product have used the same grade of IIR produced and supplied by the domestic industry interchangeably for manufacturing of tubes and tyre curing bladders.
208. As regard submissions that the decline in volume of imports from Russia should be considered, the Authority notes that the imports from all the subject countries have declined which is a common consequence of commencement of domestic production. Since the Russian imports have also followed the same trend, it cannot be said that there was any type of corroborative efforts between the applicant and Russian producer.
209. With regard to confidentiality claimed by the applicant, the Authority notes that the data relied upon by the domestic industry is third party information which it is not authorized to disclose. Further, the Authority has not relied upon such data and thus, no prejudice has been caused to the interest of any interested party. Further, the domestic industry has revised its project report multiple times since inception of the project. The years of revision is business proprietary information and hence, not shared with the other interested parties.
210. The Authority clarifies that the present case has been considered that of material injury and not material retardation to establishment of domestic industry. Comparing the project report / projected performance with the actual performance of the domestic industry does not establish that the present case is that of material retardation. Para 4 of Annexure II to the Anti-Dumping Rules states as follows:

*(iv) The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, **including** natural and potential decline in sales, profits, output, market share, productivity, return on investments or*

utilisation of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

The Rules require the Authority to examine any parameter of injury to the domestic industry brought on record. The injury parameters listed in the provision above are not exhaustive but are only illustrative and minimum that the Authority must necessarily examine. Since the applicant is the first producer of the product in India, comparison of actual performance with the projected performance showing material injury has been identified as an injury parameter and therefore the Authority has examined the same.

211. With regard to the contention that sales of off-grade product should be segregated, it is clarified that the same has been in fact excluded. Further, it was seen that the sale of off-grade product have reduced over the injury period. While the sales of off-grade product were higher in the base year, the same has reduced over the injury period. The Authority notes that the nature of the product is such that there is some production of off-specification material. However, off-specification production was higher in the beginning because the plant itself was new. Therefore, it was necessary to adjust the same. However, production and sale of off-spec material was not high in the period of investigation. It was not need to segregate off-specs and good-specs in the period of investigation to analyse injury to the domestic industry.
212. As regards the submission that effect of other factors should be segregated, the Authority notes that such parameters have been identified and the Authority has undertaken detailed examination of the same in the relevant parts of this final findings.
213. The contention that the domestic industry did not claim volume injury is in fact incorrect. It is clarified that, in fact, the domestic industry right from petition stage has pleaded volume injury as a factor showing injury due to dumped imports. The domestic industry in particular has highlighted low-capacity utilisation, rising inventories, exports despite significant demand in the country, unutilised production capacities and plant shut down for significantly long period as parameters showing volume injury. The domestic industry in its post hearing written submissions also reiterated existence of volume injury in the present case.
214. The interested parties have contended that the Authority's examination that domestic industry has been forced to sell at low prices is incorrect. Negative price undercutting has been cited as the reason for the same. The Authority notes that the domestic industry has pointed out at several factors why the price undercutting is negative. Further, the domestic industry being a new player in the market, is trying to gain market share by even selling at a price lower than import prices. However, landed price of imports were below the cost of sales of the domestic industry. Further, as examined in the relevant section of this final findings, the domestic industry is not competing with the higher priced transactions but has been forced to compete with the lowest prices of imports in the domestic market. Thus, price undercutting on average basis is not a determinant of the effect of imports on the prices in the market. Further, the domestic industry was a new industry in the country which commenced production in significant quantities only in 2019-20. Further, despite allegedly selling at prices lower than the import price, the domestic industry was forced to export significant volumes, was faced with piling up of inventories, and was having significant underutilization of production capacities and production suspension for a significant

period. The fact that the domestic industry was forced to declare commercial production as late as towards the beginning of the investigation period also shows that the domestic industry suffered injury due to dumped imports.

215. As regards the contention that the Authority should consider only one consistent period for injury analysis, it is clarified that indeed the Authority has considered the entirety of the injury period for injury analysis. However, the prescription of four years as the injury period does not imply that the Authority should undertake the comparison of the period of investigation with the base year. Intervening period are also required to be examined and are equally important. Further, the situation where interested parties have contended that the operations of the domestic industry were adversely impacted due to startup operations in 2019-20, it was considered appropriate to exclude the same for the purpose of ascertaining whether the domestic industry suffered suppressing/ depressing effects by dumped imports. The Authority notes in this regard that the effect of start-up operations was on higher costs during that period. Such being the case, it would be grossly inappropriate to consider the cost in that period for the purpose of assessment of price suppression/depression. The Authority notes in this regard that interested parties in general and ATMA, in particular, pleaded that start-up operations should be appropriately addressed.
216. The volume of subject imports was highest in 2019-20 as there was no domestic production in the country for the first six months. Even in the subsequent six months, the domestic industry started production in significant volumes and therefore the volume of imports was higher. The Authority notes that there was no price suppression between 2019-20 and 2020-21 due to consideration of data which is impacted by startup costs and a high share of sales of off-spec material. The table below shows the factual position when the data for the base year is adjusted for startup costs and high production and sales of off-specification material.

Particulars	Unit	2019-20	2020-21	2021-22	POI	Change in POI compared to 2019-20
Cost of sales after excluding for start-up costs	₹/MT	1,53,364	1,28,670	1,64,805	2,18,927	65,563
Cost of sales	Index	100	84	107	143	-
Selling Price	₹/MT	1,13,654	1,16,592	1,38,996	1,74,084	60,429
Selling price	Index	100	103	122	153	-
Price excluding off specs	₹/MT	1,31,665	1,29,979	1,51,334	1,87,022	55,357
Price excluding off specs	Index	100	99	115	142	-
Landed Price	₹/MT	1,35,678	1,28,882	1,53,915	2,05,267	69,589
Landed price	Index	100	95	113	151	-

217. As is seen from the table above, the selling price of the domestic industry has increased much less than the increase in the cost of sales of the domestic industry over the injury period. Further, the landed price of imports was below the cost of sales of the domestic industry in this period.
218. The other interested parties have submitted that the domestic industry has exported at losses despite there being no price-suppressing effect in the export market. The Authority notes that the performance of the domestic industry has been evaluated only with regard to operations in the domestic market, and thus, export sales at losses do not vitiate any fact established or findings issued by the Authority.
219. With regard to the submissions that the adverse impact of COVID has been admitted by the domestic industry, the Authority notes that the domestic industry has not referred to COVID in the POI. The domestic industry has referred to Covid in the injury period. Further, there is no evidence on record with respect to the adverse impact of COVID in the period of investigation. Even if the submissions of the other interested parties are considered that there was impact of COVID in the previous years, the domestic industry has suffered losses, cash losses and negative return on capital employed in the period of investigation. On consideration of the submissions in this regard, the trend of losses, cash losses and return on investment will show an even further adverse impact of imports.
220. The domestic industry has provided data as well as demonstrated that the HIIR and IIR plants are two different plants and there is no need to shut down the production in IIR plant to integrate it to HIIR plant.
221. As regards the inappropriateness of 22% return on investment, the Authority notes that it is consistent practice of the authority to grant 22% return on capital employed. In this particular case, since the domestic industry has been suffering financial losses, it follows that the past return earned by the domestic industry is not even available for quantifying reasonable return on investment.
222. With regard to the submissions that the applicant is a part of the RIL group which intentionally prices its product lower than the competition to monopolize the market, the Authority notes that there is no evidence of the same. While the domestic industry has submitted that it was forced to compete with the lowest-priced imports in the market, even if it is considered that it could have sold to the level of import price, the Authority notes that the applicant would have still incurred losses even in such a situation as the landed price is below the cost of sales of the domestic industry.
223. With regard to the submissions that there are consumers that purchase tubes directly for low-end vehicles, the Authority notes that ATMA has provided no information with regard to the size of such consumers vis-à-vis the total market for the product. It has not been shown that share of such consumers is significant as compared to the share of consumers which purchase tubes along with tyre. Similarly, Exxon Group has not provided any information with regard to the size of consumers of commercial vehicles and how such consumers constitute major consumption of IIR. The Authority has analyzed the impact based on majority of consumers in India.

224. The Authority notes the price undertaking of NKNH has been rejected based on the fact that it was not appropriately linked to energy costs which is a major cost for the production of the product under consideration and no individual margins were determined for the said producer due to incomplete value chain.
225. The Authority confirms that in light of the peculiar facts and circumstances in this investigation, a reasonable profit margin has been considered for construction of normal value.
226. As regards the contention that there is no change in the factual position after preliminary findings, and therefore the response of NKNH cannot be rejected, the Authority holds that the questionnaire response was accepted without any verification for the purpose of preliminary findings. However, post issuance of the preliminary findings, the Authority undertook detailed verification of the questionnaire response. It is at the time of this verification that the Authority became aware of significant deficiencies in the response filed by the exporter. In fact, the exporter has not disputed the fact that the questionnaire response was deficient. The responding producer/exporter was given multiple opportunities to file the complete response. Further on 11th June 2024, a meeting was held in person with the representative of the producer/exporter to discuss the deficiencies in the questionnaire response. During the meeting, it was admitted by the NKNH that their EQR was incomplete and lacked the necessary information. The fact that the final import price was available to the authority by virtue of customs data does not undermine the relevance and importance of the questionnaire response from the exporters concerned. The Authority is required to work out not only the landed price of imports but also the ex-factory export price in order to determine the dumping margin and injury margin. Further, questionnaire response from the exporter is vital in order to precisely determine export price. If the CIF price reported to Indian customs is sufficient to determine the export price, questionnaire responses from exporters would have been entirely unnecessary in so far as dumping margin and injury margin is concerned. It is however, well understood that the Authority should have complete information in order to precisely determine the dumping and injury margin. Further, the exporter has not shown that sufficient efforts were made to bring relevant information on record. While the exporter has contended that the questionnaire response from the exporter concerned was beyond its control, the exporter has shown no material whatsoever to establish the efforts that were made to seek relevant information and how getting relevant information was beyond its control, particularly when the producer has been selling significant volumes to the exporter concerned on a consistent and regular basis.
227. With regard to the submissions that the Authority has not disclosed the actual figures for rejection of the responses filed by NKNH and SIBUR, the Authority notes that it has already provided the names of the traders which have exported the subject goods to India. Further, the Authority has also disclosed that major volume of exports is by Trigon International S (Pte) Limited. The numbers have been taken directly from the responses filed by NKNH and Sibur and the same are confidential from the other interested parties and hence, not disclosed in the disclosure statement which is shared with all the interested parties. Hence, the interested party is already aware of the information used by the Authority. Therefore, the Authority notes that since the same figures as reported by the exporter has been considered, no prejudice has been caused to the interest of NKNH or Sibur by non-disclosure of actual figures considered by the Authority.
228. The authority considers that the revised price undertaking given by the exporter could also not be considered for the reason that the authority has denied individual dumping margin to the

exporter. Indeed, the exporter has not addressed the concerns of the authority that the price undertaking cannot be accepted in a situation where the questionnaire response has not been accepted.

229. As regards the difference in dumping margin between non-participating Chinese producers and participating Saudi producers, the Authority notes that the dumping margin methodology for the two has been adequately explained in the determination hereinabove. The Authority has determined the dumping margin for the Chinese producers based on facts available with the Authority. Merely because a party has preferred non-cooperation does not imply that the Authority shall ignore provisions of Rule 6(8), which requires the Authority to apply available facts.

CONCLUSION & RECOMMENDATIONS

230. After examining the submissions made by all the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:
- i. The application for initiation of the anti-dumping investigation against imports of Isobutylene-Isoprene Rubber (“IIR”) originating in or exported from China PR, Russia, Saudi Arabia, Singapore and the United States of America was filed by Reliance Sibur Elastomers Private Limited.
 - ii. The product under consideration is Isobutylene-Isoprene Rubber (IIR) which is a synthetic rubber, commonly used to manufacture inner tubes for tyres and other high-pressure tubes. Food-grade IIR used in the production of chewing gum is excluded from the scope of the product under consideration.
 - iii. The Authority has adopted a PCN methodology and notified the same. The methodology has been applied to ensure that the imported and domestic product comparison is fair, the dumping margin and injury margin are determined by undertaking such fair comparison. The PCN methodology was developed after due opportunity to all interested parties and taking into account submissions and comments offered by various interested parties.
 - iv. The demand for the subject goods has increased over the injury period and was the highest during the period of investigation.
 - v. The imports have declined over the injury period. The Authority considers that such a decline in imports was a result of lower prices offered by the domestic industry in order to sell its product from new production facilities. Since the petitioner is a new company and began production in significant quantities only in Sept., 2019, and further since the volume of material offered by the petitioner was much higher than the growth in demand, the petitioner displaced some volume of imports by offering lower prices. Thus, the decline in imports was a reflection of the supplies by the domestic industry with the commencement of production in new production facilities, and efforts by the domestic industry to sell its material in the market. It is however noted that the domestic industry was forced to offer highly loss making prices. It was also noted that even if the domestic industry had sold the product at

a price matching the import prices, the domestic industry would have still suffered financial losses from such sales.

- vi. As regards the effect of such dumped on the economic parameters of the domestic industry, the Authority concludes that the domestic industry is a new industry and it has suffered material injury. The following conclusions are reached in this regard:
- a. The domestic industry was forced to shut down its operations due to the dumping, cumulatively for 256 days during the injury period, out of a total of 1280 days (without excluding maintenance shutdown). This shows that the domestic industry faced shutdown in about 20% of its operating days during the injury period.
 - b. The domestic industry has suffered from significant underutilization of production capacities throughout the injury period. Further, production, domestic sales volumes and capacity utilization are materially below what the domestic industry could have achieved in the absence of dumped imports.
 - c. Since the domestic industry has commenced production during the injury period, its market share has increased over the injury period. However, the same is not in line with the capacities of the domestic industry, after excluding the captive consumption and export sales.
 - d. The average inventories of the domestic industry have increased over the injury period. The increase in inventories is despite the significant demand for the product in the Country and highly loss-making prices at which the domestic industry has been selling the material.
 - e. The domestic industry has suffered from losses, cash losses and negative return. With losses suffered by the domestic industry increased with increasing sales volumes. Thus, the domestic industry sold more material to suffer higher losses. Further, the quantum of financial losses, cash losses increased over the injury period. The domestic industry was earning negative return on investment since base year, and it deteriorated over the injury period.
 - f. The earnings before interest, and depreciation of the domestic industry has been negative throughout the injury period. The Authority thus concludes that so adverse has been the pricing of the product that the domestic industry has not been able to recover even its interest and depreciation costs, leave aside reasonable return on investments.
 - g. The volume parameters of the domestic industry have improved but the profitability parameters have declined. Domestic industry has been able to increase its production, capacity utilization and domestic sales volumes. However, the level of production, capacity utilization and domestic sales volumes achieved by the domestic industry are far lower than what was envisaged by the domestic industry and what could have been achieved but for dumping in the Country.
 - h. The imports have adversely impacted the ability of the domestic industry to raise further investments. The domestic industry has suffered cumulative financial losses of over Rs. 500 crores by March 2023, as against a gross investment of around Rs.3000 crores in the PUC.

- vii. The Authority concludes that the domestic industry has suffered material injury as a result of the dumped goods from the subject countries.
 - viii. Comparison of the landed price of imports with the non-injurious price determined by the Authority shows that the injury margin is quite significant and positive with respect to various responding exporters from subject countries.
 - ix. The investigation has not shown that any other factor could have caused injury to the domestic industry.
 - x. The Authority notes that the parameters such as the import prices materially below costs and NIP, underutilization of production capacities, and domestic sales below production, collectively and cumulatively establish that domestic industry has suffered material injury as a result of the dumped imports.
 - xi. The anti-dumping duty is in the larger public interest as is evident from the following:
 - a. The domestic industry has heavily invested in the plant to manufacture the subject goods and make India self-reliant.
 - b. The subject goods are not a major cost to the downstream industry.
 - c. The major application for the subject goods is in the tyre industry. However, the tyre industry has not shown significant adverse impact of the duties on the product basket. The Authority notes that mere possible adverse impact on tubes is insufficient, when the tubes are invariably consumed alongwith tyres and tubes forms a small portion of the eventual product consumed by their downstream industry.
 - d. The imposition of duty would not affect the availability of the product. The domestic industry has the capacity to substantially cater to the Indian demand. In any case, the imports are not proposed to be banned and the proposed remedy merely implies the possibility of imports at a fair price.
 - e. The prices of the product under consideration were higher in India prior to the commencement of domestic production.
 - f. Capacities of the domestic industry excluding captive demand are enough to cater to a substantial portion (about 97%) of the demand in India.
231. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that imposition of anti-dumping duty is required to offset dumping and injury. Therefore, the Authority recommends imposition of anti-dumping duty on imports of subject goods from the subject countries.
232. The Authority, thus, considers it appropriate and necessary to recommend continuation of definitive duty equal to the figure indicated in Col. 7 of the duty table below for a period of five (5) years on all imports of the subject goods from the subject country. Therefore, considering the facts and circumstances of the case, as established

hereinabove, countervailing duty equal to the amount indicated in Col 7 of the duty table given below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of the subject goods, originating in or exported from China PR.

Duty Table

S. no.	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	40023100	Isobutylene-Isoprene Rubber	China	Any country, including China	Any	325	MT	USD
2	-do-	-do-	Any country other than China, Russia, Saudi Arabia, Singapore and the United States of America	China	Any	325	MT	USD
3	-do-	-do-	Russia	Any country, including Russia	Any	931	MT	USD
4	-do-	-do-	Any country other than China, Russia, Saudi Arabia, Singapore and the United States of America	Russia	Any	931	MT	USD
5	-do-	-do-	Saudi Arabia	Saudi Arabia	Al-Jubail Petrochemical Company	594	MT	USD
6	-do-	-do-	Saudi Arabia	Any country, including Saudi Arabia	Any producer other than (5)	653	MT	USD
7	-do-	-do-	Any country other than China, Russia, Saudi Arabia, Singapore and the United States of America	Saudi Arabia	Any	653	MT	USD

8	-do-	-do-	Singapore	Singapore	ExxonMobil Asia Pacific Pte Ltd	1047	MT	USD
9	-do-	-do-	Singapore	Any country, including Singapore	Any producer other than (8)	1152	MT	USD
10	-do-	-do-	Any country other than China, Russia, Saudi Arabia, Singapore and the United States of America	Singapore	Any	1152	MT	USD
11	-do-	-do-	United States of America	United States of America	ExxonMobil Product Solutions Company	781	MT	USD
12	-do-	-do-	United States of America	Any country, including the United States of America	Any producer other than (11)	859	MT	USD
13	-do-	-do-	Any country other than China, Russia, Saudi Arabia, Singapore and the United States of America	United States of America	Any	859	MT	USD

L. FURTHER PROCEDURE

233. An appeal against the determination of the Designated Authority in these final findings shall lie before the Custom, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act/Rules.



Anant Swarup

(Designated Authority)