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F. No. 6/18/2020-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 5 Parliament Street, New Delhi – 110001

Dated: 12th May, 2021

NOTIFICATION

FINAL FINDINGS

Case No. ADD-(OI)-15/2020

Subject: Anti-dumping Investigation concerning imports of “Acrylonitrile Butadiene Rubber (NBR)” into India originating in or exported from China PR, European Union (EU), Japan and Russia

F. No. 6/18/2020-DGTR: Having regard 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, as amended from time to time (hereinafter also referred to as “the Rules”) thereof.

A. BACKGROUND OF THE CASE

1. The Designated Authority (hereinafter referred to as “Authority”) received an application from M/s Apcotex Industries Limited (hereinafter also referred to as “Applicant”) requesting initiation of anti-dumping investigation under the Act and the Rules on imports of “Acrylonitrile Butadiene Rubber (NBR)”, (hereinafter also referred to as “subject goods” or “product under consideration” or “PUC”) originating in or exported from China PR, European Union (EU), Japan and Russia (“subject countries”). The Applicant namely, M/s Apcotex Industries Limited, has provided the prescribed information in the Application.
2. The Authority, on the basis of sufficient *prima facie* evidence submitted by the Applicant, issued a public notice vide Notification No. 6/18/2020-DGTR dated 26th May, 2020, published in the Gazette of India, initiating the subject investigation in accordance with Section 9A of the Act read 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 subject countries and to recommend the amount of anti-dumping duty (ADD), which if levied, would be adequate to remove the alleged injury to the Domestic Industry.

B. PROCEDURE

3. The procedure described below has been followed with regard to the subject investigation:

- a. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
- b. The Authority issued a public notice dated 26th May, 2020 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of subject goods from subject countries.
- c. The Authority sent a copy of the initiation notification dated 26th May, 2020, to the Embassies of the subject countries in India, the known producers and exporters from the subject countries, known importers, importer/user Associations and other interested parties, as per the addresses made available by the Applicant. The interested parties were advised to provide relevant information in the form and manner prescribed and to make their submissions known in writing within the prescribed time-limit.
- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of the subject countries in India in accordance with Rule 6(3) of the Rules.
- e. The Embassies of the subject countries in India were also requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to it along with the names and addresses of the known producers/exporters from the subject countries.
- f. The Authority, upon request made by the interested parties, granted extension of time to the interested parties to file their Questionnaire Responses. Vide communication dated 2nd July, 2020, the time was extended up to 31st July, 2020, and further vide communication dated 29th July, 2020, the time was extended up to 14th August, 2020.
- g. The following Governments provided written submissions:
 - i. Ministry of Economic Development and the Ministry of Industry and Trade of the Russia Federation;
 - ii. European Union.
- h. The Authority sent questionnaires to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the Rules:
 - i. M/s Arlanxeo Emulsion Rubber France S.A.S., France;
 - ii. M/s Arlanxeo Duetschland GmbH, Germany;
 - iii. M/s Arlanxeo Netherlands B.V., Netherlands;
 - iv. M/s Arlanxeo Branch Office Istanbul, Turkey;
 - v. M/s INSA GPRO, China;
 - vi. M/s JSR Corporation, Japan;
 - vii. M/s Nantex, Taiwan;
 - viii. M/s Sibur International GmbH, Austria;
 - ix. M/s Sibur International Trading (Shanghai) Co. Ltd. Beijing Branch, China;
 - x. M/s Sibur, Russia.
 - xi. M/s Synthos S.A., Poland;
 - xii. M/s Versalis S.P.A., Italy;
 - xiii. M/s Zeon Corporation, Japan.
- i. In response to the above notification, the following producers/exporters and their related exporters/traders have responded and submitted/filed exporters' questionnaire responses and/or legal submissions:
 - i. M/s Arlanxeo Emulsion Rubber France S.A.S., France;

- ii. M/s Goko Trading Co. Ltd., Japan;
- iii. M/s JSC Krasnoyarsk Synthetic Rubber Plant, Russia;
- iv. M/s JSR Corporation, Japan;
- v. M/s JSR Trading Co. Ltd., Japan;
- vi. M/s JTC Corporation, Japan;
- vii. M/s Kato Sansho Co. Ltd., Japan;
- viii. M/s PJSC Sibur Holding, Russia;
- ix. M/s Sibur International GmbH, Austria;
- x. M/s Tokyo Zairyo Co. Ltd., Japan;
- xi. M/s Zeon Asia Pte. Ltd., Singapore;
- xii. M/s Zeon Corporation, Japan.

j. The Authority sent questionnaires to the following known importers and users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.

- i. M/s Alaska Tyres Pvt. Ltd.;
- ii. M/s Andhra Polymers (P) Ltd.;
- iii. M/s Banco Products (India) Ltd.;
- iv. M/s Bharat Corrub Industries;
- v. M/s Bony Polymers Ltd.;
- vi. M/s Champion Jointings Ltd.;
- vii. M/s Elgi Ultra Industries Ltd.;
- viii. M/s Favorite Safety Products;
- ix. M/s Ferolite Jointings Ltd.;
- x. M/s Galaxy Rubber Products;
- xi. M/s Gates India Pvt. Ltd.;
- xii. M/s Godavari Petro Products (P) Ltd.;
- xiii. M/s Grindback;
- xiv. M/s Habasit Iakola Pvt. Ltd.;
- xv. M/s Hindustan Composites Ltd.;
- xvi. M/s Imperial Rubber Products;
- xvii. M/s Imperial Waterproofing Industries Ltd.;
- xviii. M/s Inarco Ltd.;
- xix. M/s Industrial Roller Corporation;
- xx. M/s Industrial Rubber Products;
- xxi. M/s Jayashree Polymer Pvt. Ltd.;
- xxii. M/s K.D. Joshi;
- xxiii. M/s Lakhani Rubber Udyog Ltd.;
- xxiv. M/s Lakshmi Machine Works Ltd.;
- xxv. M/s Lathia Indl Suppliers Co. Pvt. Ltd.;
- xxvi. M/s Layallpur Rubber Mills;
- xxvii. M/s MRF Ltd.;
- xxviii. M/s Nu-Cork Products Pvt. Ltd.;
- xxix. M/s Parker Markwel Inds. P. Ltd.;
- xxx. M/s Perfect Oil Seals & I.R.P.;
- xxxi. M/s Polyrub Extraction (India);
- xxxii. M/s Precitex Rubber Ind. P. Ltd.;
- xxxiii. M/s Rane Breaklining Ltd.;
- xxxiv. M/s Roop Rubber;
- xxxv. M/s Shaktiman Rub Rolls Pvt. Ltd.;
- xxxvi. M/s Suja Rubber Industries Pvt. Ltd.;

- xxxvii. M/s Sundaram Auto Components Ltd.;
- xxxviii. M/s Sundaram Breaklining Ltd.;
- xxxix. M/s Sundaram Industries Ltd.;
- xl. M/s Super Seals (India) Ltd.;
- xli. M/s Unique Rubber Udyog.
- k. In response to the above notification, the following importers or users have responded and submitted importer/user questionnaire responses/legal submissions and/or registered as interested parties:
 - i. M/s Imperial Waterproofing Industries Pvt. Ltd.;
 - ii. M/s JMF Synthetics India Pvt. Ltd.;
 - iii. M/s Olmec Inventures;
 - iv. M/s Tokyo Zairyo (India) Pvt. Ltd.;
 - v. M/s Vista Business Ventures LLP;
 - vi. M/s Aarchem Corporation;
 - vii. M/s Avneesha Polymers LLP;
 - viii. M/s Devashish Polymers Pvt Ltd.;
 - ix. M/s Hi-Tech Arai Pvt. Ltd.;
 - x. M/s J.K.Fenner (India) Limited;
 - xi. M/s Jayashree Polymers Pvt. Ltd.;
 - xii. M/s K.D.Sons;
 - xiii. M/s Nishigandha Polymers Pvt. Ltd.;
 - xiv. M/s Parkman Elastometers Pvt. Ltd.;
 - xv. M/s Precision Rubber Industries Pvt. Ltd.;
 - xvi. M/s Rishiroop Ltd.;
 - xvii. M/s Roop Rubber Mills Private Limited;
 - xviii. M/s Rubber Chemical Centre;
 - xix. M/s SRP Synthetic Rubber Products Pvt. Ltd.;
 - xx. M/s Technocraft Industries (India) Ltd.
- l. The Authority sent a copy of the initiation notification dated 26th May, 2020 to the following known Associations of the subject goods in India:
 - i. All India Rubber Industries Association;
 - ii. Indian Footwear Components Manufacturers Association (IFCOMA).
- m. In response to the above notification, the All India Rubber Industries Association has made legal submissions.
- n. 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 through video conferencing on 23rd December, 2020. Subsequently, in the light of the decision of the Hon'ble Supreme Court in the matter of *Automotive Tyres Manufacturer Association vs Designated Authority*, another public hearing was held on 15th February, 2021 in view of the change of the Designated Authority, which was attended by various parties through video conferencing. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions, if any. The parties shared their non-confidential submissions with other interested parties and were advised to offer their rebuttals.
- o. The Authority made available the non-confidential version of the submissions presented by various interested parties in the form of a public file kept open for inspection by the interested parties. A list of all interested parties was uploaded on DGTR's website along with the request therein to all of them to email the non-

confidential version of their submissions to all other interested parties since the public file was not accessible physically due to the ongoing global pandemic.

p. The period of investigation (POI) for the purpose of the present investigation is 1st July, 2019 to 31st March, 2020 (9 months). The injury examination period has been considered as the period from 1st April, 2016 - 31st March, 2017; 1st April, 2017- 31st March, 2018; 1st April, 2018 - 30th June, 2019 and the POI.

q. The Authority obtained transaction-wise import data from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems & Data Management (DGS) for the subject goods for the injury period, including the POI, and analysed the data after due examination of the transactions.

r. Further information was sought from the Applicant to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of present investigation.

s. The non-injurious price (hereinafter referred to as "NIP") based on the cost of production and reasonable profits of the subject goods in India, having regard to the information furnished by the domestic industry in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules, have been worked out so as to ascertain whether ADD lower than the dumping margin would be sufficient to remove injury to the domestic industry.

t. In accordance with the Rules, the Authority disclosed the essential facts of the case that would form the basis of its findings in the form of a disclosure statement on 22.03.2021 and the interested parties were allowed time upto 30.03.2021 to comment on the same. The comments of the interested parties, to the extent relevant, have been considered by the Authority and have been addressed in this finding.

u. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been considered in these findings.

v. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of these findings, to the extent possible, and verified the data/documents submitted by the domestic industry to the extent considered relevant and possible.

w. The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

x. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded these final findings on the basis of the facts available.

y. '***' in these findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

z. The exchange rate adopted by the Authority for the subject investigation is US \$1= Rs. 72.07.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. At the stage of initiation, the product under consideration was defined as-
“3. The product under consideration (PUC) is “Acrylonitrile Butadiene Rubber” or “NBR”, specifically excluding Latex NBR, Powder NBR and Carboxylated NBR. NBR is a synthetic rubber produced by the emulsion copolymerization of butadiene and acrylonitrile. NBR is used in the manufacture of various rubber articles where resistance to oil, abrasion and heat applications are involved, such as oil seals, hoses, automotive products, gaskets, rice dehusking rolls, printers, fabrics, oilfield products, etc. The major raw materials required for NBR are Acrylonitrile and Butadiene. Different grades of NBR are defined in terms of mooney viscosity and acrylonitrile content.
4. The product is classified under customs classification 40025900. The customs classification is indicative only and in no way binding on the scope of the present investigation.”

C.1. Submissions of the domestic industry

5. The submissions made by the domestic industry with regard to the PUC and like article are as follows:

- NBR is a synthetic rubber, a copolymer of acrylonitrile (ACN) and butadiene (BD). NBR is used in the manufacture of various rubber articles where resistance to oil, abrasion and heat applications are involved, such as oil seals, hoses, automotive products, gaskets, rice dehusking rolls, printers, fabrics, oilfield products, etc. NBR is produced in a number of different forms, differentiated in terms of mooney viscosity and acrylonitrile content.
- This product is classified under Customs Tariff heading no. 40025900.
- The Applicant has produced like article to the imported products.
- The Russian Federation has not established or listed any grades produced by Russian producers which are different from the products manufactured by the domestic industry.
- Different grades do not mean different products. The Authority had held in previous investigations on the subject goods that the products manufactured by the domestic industry are like article to those being imported.
- Consumers use the product manufactured by the domestic industry and the Russian producers interchangeably.
- The domestic industry has no objection to the exclusion of Liquid NBR from the product scope.

C.2. Submissions of other interested parties

6. The following submissions have been made by the exporter/ producer/ other interested parties with regard to the PUC and like article are as follows:

- The Russian products are completely different from the grades of the Indian products.
- The Russian imports cannot be said to be like product. Further, there are four criteria to assess “likeness” as elaborated in EU – Asbestos (WT/DS135/AB/R) which are physical properties, end-uses; consumers’ tastes and habits; and tariff classification. At least two of these criteria i.e. end uses, and consumers’ tastes and habits are not satisfied. In the absence of any relevant analysis of likeness

in the Application, the products produced by the Applicant and the ones destined for consumption in Russia cannot be regarded as like products.

- c. The Applicant has failed to find information on sales' prices of like product when destined for consumption in the exporting country i.e., Russia, since the products produced by the Applicant and the ones destined for consumption in Russia are not like products.
- d. The Applicant has applied for ADD on liquid NBR or any specialty grades even though they do not manufacture them.
- e. There is no relevant analysis of likeness in the application.
- f. It has been submitted by exporter from Russia that the Authority has called for PCN-wise information post-initiation in multiple cases, and therefore, PCNs should be proposed and finalized after providing sufficient time for providing information. The right to seek proper comparison as per para 6 of Annexure I of the Rules and Article 2.4 of the AD Agreement should not be denied.
- g. The Respondents have submitted PCN-wise information right from the beginning and the same should be analysed. Reference has been made to China broiler products where the Panel clarified that ensuring price comparability is an obligation of the investigating authority. Reference has also been made to Korea pneumatic valves (Japan) where the Panel imposed obligation on investigating authorities to ensure price comparability while comparing individual transaction prices with average prices of corresponding models. The Authority must ensure prices are "properly comparable" and also noted that average-to-average transactions do not enable price comparability. Therefore, PCNs should be based on acrylonitrile content and mooney viscosity of NBR as proposed in questionnaire response.

C.3 Examination by the Authority

7. The product under consideration in the present investigation is "Acrylonitrile Butadiene Rubber" or "NBR", specifically excluding Latex NBR, Powder NBR and Carboxylated NBR.
8. NBR is a synthetic rubber, a copolymer of ACN and BD. The product is used in the manufacture of various rubber articles where resistance to oil, abrasion and heat applications are involved, such as oil seals, hoses, automotive products, gaskets, rice dehusking rolls, printers, fabrics, oilfield products, etc. NBR is produced in a number of different forms, differentiated in terms of mooney viscosity and acrylonitrile content.
9. The product is classified under Customs Tariff heading no. 40025900. The Customs classification is, however, indicative only and in no way binding on the scope of the present investigation.
10. With regard to submissions made by producer/exporter from Russia that Authority should determine grade-wise dumping margin as the said producer/exporter has provided information based on their internal product grading in the questionnaire response, the Authority notes that Domestic industry has not proposed any PCN-wise analysis in its application. The responding exporter has also not suggested any PCN, and has instead suggested grade-wise dumping margin. While suggesting grade wise dumping margin determination, the exporter has not established why grade wise comparison is important, having regard to factual matrix of the case and the data filed by the exporter itself. The

Authority notes that a specific grade of an exporter cannot be treated as a PCN. The exporter has not suggested any PCN on the basis of scientific criteria which could be universally applied. The Authority has not prescribed PCN methodology in the notice of initiation or thereafter during the course of investigation. It is also noted that there are no universal known grades of the product. It is also noted that this product has been subject to anti-dumping investigations in the past and PCN methodology was not prescribed by the Authority in those investigations, and dumping margin was not determined based on PCN-wise analysis.

11. In the post disclosure comments, the JSC Krasnoyarsk Synthetic Rubber Plant has submitted that the product has different grades, based on the Acrylonitrile content and Mooney viscosity, and each of the grade sold in the home market and exports market including Indian is unique to the customer requirement and therefore, weighted average comparison will not reflect the correct position., and demanded grade wise analysis. No such requests for PCN wise analysis was received from other cooperating producers and exporters from other subject countries. The Authority thereafter sent a communication to all other responding exporters to provide grade wise information. The Authority also asked JSC Krasnoyarsk Synthetic Rubber Plant to provide details of their exports to third countries. None of the exporters apart from JSC Krasnoyarsk Synthetic Rubber Plant has provided grade wise information, and have in fact stated that the grade wise comparison is not necessary in the factual matrix of the present case.
12. It is noted that NBR is a synthetic rubber, a copolymer of ACN and BD. Depending on the content of ACN and BD, the product is produced and sold by the producers in India and subject countries in a number of grades. Different grades have different AN content and Mooney Viscosity. In market parlance, depending on ACN content and Mooney Viscosity, the product is categorised into low, medium and high NBR. The domestic industry contended that majority of production (in the region of 85-95%) in India and globally is in the category of medium NBR. In the previous investigations as well, the Authority recognised that the product under consideration is categorised into low, medium and high NBR. But, majority of the production and sales is in medium NBR. It is noted from the verified information of the domestic industry that overwhelming quantity (****%) of its sale is medium NBR with insignificant cost difference (of less than ***%,). High NBR has higher cost but its share is insignificant (***%), and Low NBR also has insignificant **cost** difference (less than ***%). Moreover, the Low NBR has higher costs. While examining the data of Sibur, it was noted most of exports made to India (more than 90%) are medium NBR only. Furthermore, though low NBR has lower costs, high NBR has costs which are lesser than medium NBR. In addition, it is also seen that the prices of inputs have changed significantly within the POI, and the exporter has not established whether and to what extent the difference in the cost of production of different grades is due to difference in the product characteristics and the extent to which the difference in the costs is due to time period. It is also noted that the other exporters from Japan, and EU did not provide grade wise costs, after an opportunity was provided to them.
13. In view of the same, the Authority has not considered it appropriate to undertake dumping margin determination on PCN/grade-wise analysis in the present investigation. It is further noticed that both the Domestic Industry and producer and exporter from Russia i.e. M/s Sibur have sold overwhelming quantity (more than ***%) of subject goods in Medium category in India and therefore, injury margin calculation also does not require any grade /category wise analysis.

14. In view of the above the Authority has determined dumping margin and injury margin by comparing normal value and export price on the basis of weighted average for the product under consideration for all cooperating producers and exporters from subject countries.
15. As regards argument of exclusion of liquid NBR, it is noted that since domestic industry is not manufacturing liquid NBR, liquid NBR is excluded from the scope of the PUC.
16. The Authority notes from the information available on record that the product produced by the domestic industry is like article to PUC imported from the subject countries. The product produced by the domestic industry is comparable to the goods imported from subject countries in terms of physical & chemical characteristics, manufacturing process & technology, functions and uses, product specifications, pricing, distribution & marketing, and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. While the Russian producer claimed that Russian products are completely different from the Indian products, it is noted that the Russian producer or importers or any other interested party has not identified the differences in the Russian and domestic industry product, distinguishing features & properties of the two, the functions & uses where Russian product is used and the domestic industry product cannot be used. It is noted that the product is being consumed in the country for past several years and no new function & use of the product has been identified where the Russian product is now being used. The Authority, therefore, holds that the subject goods produced by the domestic industry are like article to the product imported from subject countries in terms of Rule 2(d) of the AD Rules.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1 Submissions of the domestic industry

17. The domestic industry has made the following submissions with regard to the scope of domestic industry and standing:
 - a. The Applicant, namely Apcotex Industries Limited, constitutes 100% of the domestic production for the subject goods in India.
 - b. The Applicant has not imported the subject goods in the POI from the subject countries.
 - c. The Applicant is not related to any exporters in the subject countries or importers of the subject goods in India.

D.2 Submissions of other interested parties

18. No submissions have been made by the exporter/ producer/ other interested parties regarding scope and standing of domestic industry.

D.3 Examination by the Authority

19. 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”.

20. The Application has been filed by Apcotex Industries Limited. The Applicant accounts for 100% of the Indian production. The Applicant has certified that neither they have imported the PUC from the subject countries in the POI nor they are related to any exporter or producer of PUC in the subject countries or any importer of the PUC in India.
21. The Authority holds that the Applicant constitutes domestic industry under Rule 2(b) of the Rules and considers that the application satisfied the criteria of standing in terms of Rule 5(3) of the Rules.

E. CONFIDENTIALITY

E.1 Submissions of the domestic industry

22. The domestic industry has made the following submissions with regard to confidentiality:
 - a. The responding interested parties have claimed excessive confidentiality.
 - b. Responses to several questions in the questionnaire have been held confidential without any summarisation on the ground of business sensitivity. The same is with malafide intention to prevent the domestic industry from making meaningful submissions and assisting the Authority in identifying discrepancies in them. It also belittles the investigative process and procedure prescribed by the Authority.
 - c. The response filed by the Sibur Group has neither provided a non-confidential summary of the information claimed confidential nor explained why summarisation is not possible.
 - d. The other interested parties have claimed confidentiality in violation of Trade Notice 10/2018.
 - e. The confidentiality claims of the domestic industry adhere to the Trade Notice 1/2013.
 - f. The responding exporters have not publicly reported their normal value, export price and dumping margin.
 - g. The Authority is requested to reject responses where excessive confidentiality is resorted to by the parties. The Supreme Court decision in Sterlite Industries (India) Ltd. v. Designated Authority is relied on.
 - h. The methodology for horizontal indexation followed by the domestic industry is the same as followed by Arlanxeo Emulsion Rubber France S.A.S. The same has been done as per the established practice of the Authority. The responding exporter has also indexed vertically which is unheard of in terms of law and practice.
 - i. The domestic industry has considered the annualised indexed values for both the POI and POI (A).
 - j. The normal value is based on the cost of production of the domestic industry which is business sensitive information. The same has, however, been provided as range.
 - k. Costing information is a business proprietary information of the company and not amenable to summarisation. The responding exporters have themselves claimed their costing information confidential but argue for disclosure of the same information from the domestic industry. The CESTAT decisions in *Anwar Jute Spinning Mills Ltd.* case and *Nitro Chemical Industry Ltd. v. Designated Authority* are relied on.

- l. The capacity of the domestic industry is business proprietary information. However, trends of the same have been provided as per the trade notice.
- m. DGCI&S data is third-party information and the Applicant is not authorised to disclose the same. The data has been submitted to the Authority. It is for the Authority to decide whether to disclose the data or not.
- n. Sibur has primarily sold one grade, i.e., 3345, which is medium-NBR. The Authority is requested to direct Sibur to disclose the grades produced and sold by the exporter in the domestic market. The same cannot be confidential.

E.2. Submissions of other interested parties

23. The other interested parties have made the following submissions with regard to confidentiality:

- a. The Domestic Industry has not provided the reply to certain questions required to be filed by the Domestic Industry in its application. The application is excessively confidential and has failed to comply with Trade Notice No. 10/2018. The non-confidential version of the application does not allow for a reasonable understanding of the allegations and violates Rule 7 of the Rules and Trade Notice 1/2013. Excessive confidentiality has been claimed and no costing information has been furnished. The information is crucial to fully understand claims and summary of documents and indexed data should be provided for making comments.
- b. The Authority has not responded to the request for transaction-wise data relied on by the Applicant. CESTAT has recognized that the Authority should provide the import data in the same form and manner in which it was taken on record. Reference has been made to *Exotic Décor Pvt. Ltd. and Ors. v. Designated Authority*. The transaction-wise import data and detailed methodology relied upon, particularly the methodology adopted for excluding the Non-PUC products (i.e. Latex NBR, Powder NBR and Carboxylated NBR) by the Applicants to sort the transaction wise import data has not been provided.
- c. For data on Normal Value, no non-confidential version has been provided. No reasoning has been provided for why no summarization is possible.
- d. Normal Value for all subject countries is in the same range of 2000-3000 despite China being NME and rest of the data in the statement of dumping margin being treated as confidential, it is not understood how the estimates in the range are calculated and whether they were done correctly.
- e. The domestic industry has claimed excessive confidentiality and filed an incomplete petition. Neither an NCV nor justification for confidentiality claim has been provided for costing information. A summary of the information and indexed data in the non-confidential version should be provided.
- f. The NCV petition does not allow a reasonable understanding of the allegations and violates the requirements under Rule 7 of the Rules and Trade Notice 1/2013.
- g. Information related to Dumping Margin is inaccurate and misleading. Post-initiation submissions do not provide updated dumping margin for POI prescribed.
- h. The Respondents have submitted their responses as per the questionnaire format prescribed by the Authority for the producers/exporters and also completely adhered to the Trade Notice No 10/2018 dated 7th September, 2018. The interested parties have filed all the information with the Authority in its confidential version. However, certain information which are business sensitive and where disclosure of the information may result into pecuniary losses, has been kept confidential in accordance with guidelines issued by the Authority.

- i. The Applicant has averred that the responding producers have not publicly reported their normal value and export price. Zeon has submitted that it is not required under the Rules or relevant Trade Notices to disclose its normal value and export price.
- j. As per Article 6.5.1 of Anti-Dumping Agreement, interested parties are required to provide non-confidential summaries. In exceptional circumstance, reasoning is required to be provided why summarization is not possible. No confidential summary provided regarding normal value data nor any reasoning why summarisation was not possible. The Russian side is deprived of the opportunity to assess the accuracy of calculation of normal value and dumping margin.

E.3. Examination by the Authority

- 24. With regard to confidentiality of information, Rule 7 of the Rules provides as follows:

“Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”
- 25. The Authority examined the confidentiality claims of the interested parties and on being satisfied allowed the claim on confidentiality. The Authority considers that any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, should be treated as such by the authority. Such information cannot be disclosed without specific permission of the party submitting it.
- 26. The Authority has considered the claims of confidentiality made by the Applicants and the opposing interested parties and on being satisfied about the same, the Authority has allowed the claim on confidentiality. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).
- 27. As regards disclosure of DGCI&S data, the Authority's Trade Notice No. 7/2018 dated 15th March, 2018, prescribes the procedure for collecting DGCI&S data for domestic industry as well as for other interested parties. The interested parties, thus, had access to

procure DGCI&S data by following the procedure prescribed as per the Trade Notice and defend their interests. The Authority, thus, notes that the procedure now being applied is consistent, uniform across parties and investigations, equitable and provides adequate opportunity to the interested parties to defend their interests.

28. With regard to the submissions of interested parties regarding adequacy and accuracy of the application and questionnaire responses, the Authority notes that the application contained all information relevant for the purpose of initiation of investigation. The Authority, only after satisfaction that the application contained sufficient evidence to justify initiation of the investigation decided to initiate the present investigation.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions by the domestic industry

29. The following miscellaneous submissions have been made by the domestic industry:
 - a. The argument that the investigation is erroneous and violates the principles of natural justice is baseless and not supported with facts or evidence.
 - b. There is no explanation on why importers of the product sold by JSR Corporation paid full duty when concessional duty could have been claimed.
 - c. The raw materials are procured domestically by the producer, and the value addition is far more than prescribed.
 - d. The only plausible explanation for the same is a compensatory arrangement between JSR and its importers. The exporter is hence, required to establish that the export price is reliable.
 - e. The fact that full duty has been paid on imports is not disputed by the domestic industry. However, no justification has been given regarding why concessional duty was not availed.
 - f. The Russian imports constitute 4% of the total imports of the subject goods into India in the POI. Hence, the same is above the de-minimis threshold of 3%.
 - g. Article 5.2 of the ADA only requires the application to contain “such information as reasonably available to the applicant”. The Applicant has explained the inability to gather actual information for normal value in Russia.
 - h. The opposing interested parties have not provided any incident or details to support their claim that no adequate evidence has been submitted by the domestic industry in their Application. The allegation is a mere assumption.
 - i. The purpose of ADD is to prevent unfair trade practice which is in the interest of the Indian industry as a whole. Imposition of ADD would not restrict imports from the subject country/territory in any way and would not affect availability of the product to the consumers. The quantum of ADD is as per law and not excessive. It is imposed or extended only when the legal requirements are met. It is not for the domestic industry to justify how long it needs protection. It is for the exporter to justify how long they would resort to dumping. The recent finding by the Authority on imports of Acrylic Fibre is relied on.
 - j. There is no bar in law for considering 9 months as POI. The only requirement is a reasoning in writing which has been provided in the present case. The initiation notification has provided reasons for considering 9 months as POI. There are more than 70 investigations by the DGTR which have 9 months as POI.
 - k. Regarding the purchase of NBR from the Applicant, Imperial Waterproofing has not provided any instance where the same was of bad quality or any details to

support their claim. The product being manufactured by the Applicant is used interchangeably with those imported by the consumers.

F.2. Submissions of other interested parties

30. The following miscellaneous submission have been made by other interested parties:

- a. The investigation is erroneous, without jurisdiction and in violation of principles of natural justice. The Applicant has not provided “sufficient evidence” of dumping, material injury and causal link required for initiation. The application has no legal or factual basis and contrary to published information. The allegations are based on estimates and assumptions. The Applicant has also failed to draw logical conclusions from data submitted.
- b. Article 5.3 of the ADA requires the Authorities to examine the accuracy and adequacy of the evidence provided in the application. The WTO Panel in US-Softwood Lumber held that sufficient evidence means more than mere allegations or conjecture. As held in Guatemala-Cement II, an application satisfying Article 5.2 does not show there is sufficient evidence justifying initiation under Article 5.3. In Mexico-Steel pipes and tubes, Mexico’s argument that the mere fact that the investigation was initiated shows that the Authority has examined the sufficiency of evidence for initiation was rejected.
- c. The Applicant does not meet the requirements under Article 3.1 and Article 3.5 of the ADA.
- d. The domestic industry has submitted in the application that the Basic Customs Duty on imports of the subject goods from Japan, as stipulated by the India-Japan CEPA, is 1.80% in the POI against 10% for other countries. The import duty of 1.80% was used by the domestic industry for calculation of landed value and price undercutting. As per Article 29-30 of the India-Japan CEPA, the preferential rate can be claimed only when there is a 35% value addition on the product. For such sales, an EPA COO certificate is issued by the Japan Chamber of Commerce and Industry. A number of transactions of the subject goods exported to India by JSR Corporation through JTC Corporation and Kato Sansho Co., Ltd., did not meet the 35% value addition requirement and the importers paid 10% import duty on them. For the calculation of landed value and injury margin the actual Basic Customs Duty paid shall be used and not the nominal one used by the DI.
- e. There are no compensatory arrangements made between JSR Corporation and the importer or between the importer and their unrelated party. The importer filed the Questionnaire Response and sold all goods at a profitable margin. The argument of the domestic industry is baseless and made on hypothetical grounds.
- f. The selling price of JMF Synthetics for the subject goods is 24% higher than the domestic industry’s price list. It is safe to assume that the domestic industry also provides discounts to customers based on payment and quantity, further lowering prices. The higher premium price is paid for NBR produced by JSR for critical applications, export products and to replace imported components.
- g. For the calculation of landed value and injury margin the actual Basic Customs Duty paid shall be used and not the nominal one used by the domestic industry.
- h. No grounds to continue the present investigation regarding the Russian imports and must terminate immediately.
- i. The Authority has adopted non-comparable and non-equivalent periods (full financial years, 15 months and 9 months). As per Application 2, performance parameters of DI for the POI covering 6 months (July to Dec 2019) which are

annualised are compared with indicators for full financial years and with indicators for 15 months (April 2018-June 2019). It seems incorrect due to non-equivalence of periods. The enlargement of preceding financial year to 15 months is grossly illegal and devoid of any legal or logical basis. The injury period proposed by the Applicant for the purpose of injury assessment does not consist of complete three previous financial years. There exists gap between the injury period and POI (i.e. April to June 2019) which has been excluded for the POI without providing any reasons whatsoever. According to Trade Notice 2/2004, there should be no gap between the POI and previous financial years and the POI should start on 1st April. There is a provision for overlap of POI and previous financial year but that is not happening in the instant case.

- j. The Applicant has failed to justify any plausible reasons for proposing the POI to be 6 months or 9 months. The POI proposed and adopted, as well as the application/post initiation submissions and initiation notification is in contravention of Trade Notice 2/2004 which provides that there should be no gap in the POI and previous financial years and the injury period should consist of POI and previous three financial years. Para 5.10 of DGTR Manual provides that POI should be a complete financial year.
- k. As per Article 5.8 of ADA, investigation shall be terminated if imports account for less than 3% of imports of the like product in the importing member. As per the Applicant's data, Russian imports hardly exceed 3% (3.98%) in the POI period July to December 2019 (6 months).
- l. The domestic industry has been protected by trade remedies in the form of ADD on NBR for over two decades and still continues to claim injury on account of imports. Further extension of existing duty will be in violation of the spirit of Article 11.1 of the ADA and Rule 23(1) of the Rules. The domestic industry is placing over reliance on trade remedial measures to thwart competition from imports and shield inefficiencies. Almost 93% of the total imports into India in the POI are made from countries attracting ADD or are subject to the present investigation.
- m. The imposition of definitive measures would significantly hamper imports on the domestic market, allowing the Domestic Industry to raise its prices, and thus unduly penalising domestic users.
- n. The EU is not subject to the anti-dumping measures imposed by the China on the PUC.
- o. No grounds to continue the present investigation regarding the Russian imports and must terminate immediately.
- p. Analysis of performance of the DI for a short period does not reflect the real performance of the company.
- q. The domestic capacity does not even cover half of domestic demand for NBR. Even if operating at full capacity, the production is inadequate. Hence, ADD will monopolize the domestic market and adversely impact user industries.
- r. The NBR produced by the Applicant is of poor quality and hence prevents them from producing quality grade and specialty grade of NBR PVC. The Indian rubber industry is hence deprived of good quality NBR PVC. The consistency of the domestically produced NBR is also not suitable for many applications especially automotive components. The domestic industry has very limited range of grades.
- s. NBR is purchased from Apcotex by domestic NBR-PVC manufacturers only as a stop-gap. Those purchased by Imperial was not only expensive but also of poor quality and a large part of the consignment was rejected. If ADD is imposed on

NBR, Imperial's raw material cost will be affected while DI's NBR-PVC division enjoys low raw material costs due to captive raw material production. This will cripple MSME NBR-PVC manufactures.

- t. Increase in NBR prices will make automotive components expensive reducing competitiveness of domestic OEM suppliers. Since a large percentage of NBR is used in rice rollers, ADD would further harm the agricultural sector. Price hike in auto parts, rice rollers and LPG tubes affects government's schemes/plans to reduce inflation.

F.3. Examination by the Authority

31. The Authority has considered the views of interested parties. As regards the argument regarding different customs duty, the Authority has considered the actual customs duty paid on imports. The Authority sourced DGS data and has adopted the customs duty paid on the imports based on this data. Since the Authority has considered actual customs duty paid on imports, all other arguments in this regard are irrelevant.
32. As regards the argument of imports from Russia being de-minimus, it is noted that imports from Russia constitute 4.04% of the total imports into India.
33. With regard to the selection of 6 months POI in the petition and 9 months POI in the initiation notification, the Authority notes that it has been a consistent practice of the Authority to enhance the POI at the time of initiation to include the most recent data in those situations where it is found that the POI in the application is not the most recent period for which the data can be provided by the parties. This is consistent with law and practice. The Authority notes that the adoption of 9 months as POI is not inconsistent with the Rules, provided the Applicants substantiate the need for such a time period, and the same is accepted by the Authority. In this case, the Applicants substantiated the need for considering 6 months as the POI by providing reasons that the prices of the PUC has significantly declined after June 2019 and as a result of this decline in the prices, the performance of the domestic industry has declined significantly in the relevant period. The product was exported at a much higher price before July 2019. Thus, the inclusion of April-June 2019 would have implied inclusion of a period for which there is not an allegation of either dumping or injury. Considering the objective of the investigations and the fact that the initiation is based on an application, it would not be appropriate to fix an investigation period for which there is no allegation of dumping causing injury. It is further noted that the Rules have been amended vide Notification No. 9/2020-Customs(N.T.) dated 2nd February, 2020, wherein Rule 2(da) and Explanation to Rule 22 have been inserted incorporating the following provisions:

“the period of investigation shall,-

- (i) not be more than six months old as on the date of initiation of investigation.*
- (ii) be for a period of twelve months and for the reasons to be recorded in writing the designated authority may consider a minimum of six months or maximum of eighteen months.”*

After examining the facts of the case, the Authority considered it appropriate to select 9 months as POI.

34. With regard to the contention of the interested parties that comparison cannot be made with the 15-month period of previous year and 9 month POI, the Authority has considered the data separately for FY 2016-17, 2017-18, April, 2018-June 2019, and POI. Since the data for April, 2018-June, 2019 is for 15-month period and the data for POI is for a 9-month period, the Authority has considered the actual figures and appropriate annualised figures for the period. The Authority considered that once the data has been “annualised”, it adequately takes care of the fact that some periods are less than or more than 12 months. It is a consistent practice followed by the Authority.
35. With regard to the issue of continued duty raised by the interested parties, the Authority notes that there is no bar on the number of times a duty can be imposed or extended on a given product. If the legal requirement to extend ADD is met, only then the duty is extended to protect the interests of the domestic industry. However, the present investigation is an original investigation and there is no ADD on the product. The fact that there was a duty on some of the subject countries in the past and no duty now itself shows that the ADD is imposed only if the need for the same is established after an elaborate investigation.
36. It is noted that the purpose of an AD investigation is to examine whether the product has been dumped and whether such dumping has caused material injury to the Domestic Industry.
37. With regard to the submissions of interested parties regarding adequacy and accuracy of the application and questionnaire responses, the Authority notes that the application contained all information relevant for the purpose of initiation of investigation. The Authority, only after satisfaction that application contained sufficient evidence to justify initiation of the investigation decided to initiate the present investigation.
38. As regards the argument that the NBR produced by the petitioner is of poor quality, it is noted that the argument by the interested parties is unsubstantiated. The fact that qualities may be different, does not imply that the imported product and the domestic product are not like articles.
39. As regards the argument of impact of ADD on the user industry, it is noted that the interested parties have not demonstrated how these prices of NBR have impacted the consumers. Even though the Authority has prescribed formats for the users to quantify the impact of ADD and elaborate how imposition of ADD shall adversely impact them, it is noted that none of the users have provided relevant information. It is, thus, noted that the interested parties have not established impact of ADD on the user industry with verifiable information. Further, even if it is considered that the imposition of ADD might affect the price levels of the product manufactured using the subject goods, it is noted that fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the ADD is restricted to an amount necessary to redress the injury to the domestic industry. The objective of imposition of anti-dumping measure is to remove the unfair advantages gained by dumping practices, to prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

40. As regards PCN wise analysis, as stated above, the Authority does not consider it appropriate and necessary to undertake grade wise analysis in the facts and circumstances of the present case.
41. As regards the contention that the domestic industry cannot meet the demand for the product in the country, the Authority notes that the demand-supply gap in the country does not justify dumping of the product in the country, particularly when the same is causing injury to the domestic industry. The domestic industry has contended that they are suffering injury because of dumping in the country.
42. As regards the contention that imposition of ADD will adversely impact NBR-PVC manufacturers, the Authority notes that the two products are entirely different products. The mere fact that the domestic industry is making both NBR and the downstream product does not imply that imposition of duty shall grant any unfair advantage to the domestic industry, particularly when the measure is proposed to be restricted to injury margin.
43. As regards the contention that the increase in NBR prices will make automotive components expensive reducing competitiveness of domestic OEM suppliers, the Authority notes that no verifiable information and documents have been provided by interested parties. In fact, the Authority has prescribed questionnaires for the users where the Authority has prescribed pertinent information with regard to impact of the proposed measures on the downstream industry. It is seen that the no party has provided this information, nor any interested party has substantiated that the imposition of ADD shall not have significant adverse impact on auto components. Further, by their own admission, interested parties have contended that the large share of NBR is used in rice rollers. Thus, it is not established that the imposition of duty will not have any significant adverse impact on the consumers.

G. NORMAL VALUE, EXPORT PRICE AND DETERMINATION OF DUMPING MARGIN

G .1. Submissions of the domestic industry

44. The following submissions have been made by the Domestic Industry with regard to the normal value, export price and dumping margin:
 - a. Efforts were made to get evidence of the price of subject goods in subject countries. However, normal value could not be determined on the basis of price or constructed value in an appropriate third country for the reason that the relevant information is not publicly available and that the product is produced in different grades. Therefore, the Applicant has claimed consideration of normal value for subject countries on the basis of constructed cost of production with the addition of reasonable profit margins.
 - b. The Authority shall follow Para 1-6 of Annexure I for determination of normal value only if the responding Chinese companies establish that their costs and price information is such that individual normal value and dumping margin can be determined. If the responding Chinese companies are not able to demonstrate that

their costs and price information can be adopted, the Designated Authority shall reject the claim of individual dumping margin.

- c. Since the Chinese producers are not entitled to market economy treatment, Para 7 of Annexure I may be followed to determine the normal value.
- d. Since the normal value could not be determined on the price or constructed value in a market economy third country for the reason that the relevant information is not publicly available, the Applicant claims the determination of normal value for China on the basis of price payable in India duly adjusted.
- e. For the determination of Normal Value in China PR, the Applicant has taken the cost of production of the domestic industry, duly adjusted, and after adding selling, general, and administrative expenses and reasonable profit margin.
- f. The Applicants have taken the CIF price and adjusted the same for ocean freight, marine insurance, commission, port expenses and inland freight to determine the export price. An additional adjustment of VAT has been made in case of China PR.
- g. The dumping margin is positive and significant for each of the subject countries.
- h. None of the producers/exporters from China has responded to the questionnaire issued by the Authority. All Chinese producers should hence, be considered non-cooperative as per Rule 6(8). The Authority should proceed with the principles of non-cooperation.
- i. The Applicant could not get information on sale price when destined for consumption in Russia because no information is available in the public domain regarding the cost and price of the Russian companies manufacturing the PUC.
- j. Imports of NBR were subject to ADD previously from Japan in 1995, later extended in 2001. There were also preliminary duties imposed on imports from EU (except Germany), Mexico and Brazil in 2005. The Authority also recently recommended continuation of ADD on imports of the subject goods from Korea RP.
- k. The producers/exporters from the subject countries have been exporting the PUC to India for past some time. The producers from Japan and EU were earlier found to be dumping in India too.
- l. Following the imposition of ADD by China on exports from Korea and Japan, the imports from those sources have been aggressive in the Indian market and the prices of imports declined significantly, far beyond the decline in input costs. The same trend was seen from the other countries.
- m. The domestic industry has segregated the imports exporter-wise based on the description of the PUC and it is seen that each of the responding exporters are exporting the PUC to India at dumped and injurious prices.
- n. There is a huge difference in the dumping margin between Zeon and JSR. This difference is wholly unexplained and further establishes the unreliability of the export price.
- o. The responding producers/exporters have several related parties engaged in the PUC but has not cooperated with the present investigation. This results in grossly incomplete information with the Authority. The non-cooperative related parties include Arlanxeo-TSRC (Nan-tong) Chemical Industrial Co. Ltd. (related to Arlanxeo Emulsion Rubber France S.A.S.), Elastomix Co. Ltd. (related to JSR Group), and Zeon India Pvt. Ltd. (related to Zeon Group). Such producers/exporters should be treated non-cooperative and denied individual dumping margins.

- p. There is nothing in the questionnaire response filed by the JSR Group which establishes the reliability of their export price. The Authority is requested to investigate the possibility of compensatory arrangement and reject the export price of the company.
- q. The claim of Zeon Group that Zeon India Pvt. Ltd. is not involved in the sales transactions/channel of sales of the PUC in India is misleading. According to a press release of Zeon, Japan, Zeon India Pvt. Ltd. is involved in handling the entire range of Zeon Group's businesses in India. The business activity mentions "import, sales, and marketing of Zeon Group products, including synthetic rubber". Non-cooperation from Zeon India amounts to gross violation of the investigation process and the Authority is requested to find the responding producer/exporter non-cooperative and deny individual dumping margins.

G.2. Submissions of other interested parties

45. The following submissions have been made by the exporter/ producer/ other interested parties with regard to the normal value, export price and dumping margin:

- a. No explanation has been provided as to why the Applicant failed to collect information on normal value and what these "efforts" included. There is no justification in ADA for accepting the application which includes data on constructed value in India instead of constructed value in Russia. No information on how estimates in range for normal value for Russia was calculated and hence no comments can be made on correctness. Of the various methods for calculating normal value, there is no explanation provided on why certain methodologies were not possible.
- b. It appears that the Applicant used the same methodology to establish the constructed normal value in Russia and China. The Applicant found support in Article 15 of China's Accession Protocol and relevant Indian legislation. However, the Authority had no right to accept such calculations in case of Russia and Russia's WTO accession protocol includes no similar commitments.
- c. No evidence of dumping collected by the Applicant can be accepted unless it conforms to Article 2 of the ADA.
- d. Neither an NCV summary of the information regarding normal value calculation nor an explanation why summarization is not possible has been provided.
- e. The data placed on record by the Producer must be considered for the purposes of determining normal value, export price and dumping margin.
- f. The Applicant has not updated the margin of dumping for the updated POI in the updated information filed.
- g. The cost of major raw materials i.e. ACN and BD, differs significantly in different markets and the prevailing cost of ACN and BD in the EU ought to have been considered for the purpose of determining the normal value for respective subject countries. They are published by reputed publications and are available in public domain.
- h. The prevailing cost of raw materials, i.e. ACN and BD in Japan ought to be considered as they differ significantly in different markets and the prices are published in various publications such as ICIS and readily available in public domain.
- i. The dumping margin is inaccurate and misleading.
- j. Elastomix Co. Ltd, is an end user of subject goods in Japan. Elastomix Co. Ltd. has sourced the subject goods from JSR Corporation, Japan but has used the

same for manufacture of Master Batch (non-PUC). As per guidelines issued by DGTR there is no prescribed questionnaire format to be filed by related end-user in exporting country and hence no questionnaire is filed by Elastomix Co. Ltd.

k. The producer and ARLANXEO-TSRC Chemical Industrial Co. Ltd. China are two distinct legal entities and operate independently. Therefore, it is irrelevant whether ARLANXEO-TSRC Chemical Industrial Co. Ltd. has participated in the present investigation or not. The producer has fully participated in the present investigation and all facts regarding alleged dumping and injury must be determined basis the facts made available on record by the Producer.

l. Individual dumping margin should be given to Zeon Corporation and its exporters.

m. The data provided by the producer must be considered for determination of normal value, export price and dumping margin.

n. Dumping margin calculation and injury assessment to be based on PCN rather than average-to-average comparison as it is ill-suited to ensure price comparability. Reference is made to Article 3(1) of AD Agreement which requires determination based on positive evidence involving an objective examination.

o. The Applicant themselves has acknowledged different grades and specific usage for customers. However, the Authority has not called for PCN-wise information.

p. The domestic industry has not disclosed the methodology used to state that there is a huge difference in the dumping margin of Zeon and JSR. It is unsubstantiated since it does not appear to be based on reliable information on the producers' normal value and post-factory expenses.

q. Zeon India Pvt. Ltd. is not involved in the sales transactions/channel of sales of the PUC in India during the POI for the Zeon Group. All entities involved have filed responses. The claim of the domestic industry is baseless.

r. There is no reason/occasion for the foreign suppliers to resort to dumping to meet the Indian demand. The CESTAT decision in *DSM Idemitsu Limited v. Designated Authority* is relied on.

G.3. Examination by the Authority

46. Under section 9A (1) (c), 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*
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);

(b) *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 trans shipped 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.

47. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters have co-operated in this investigation by filing the prescribed questionnaire responses:
 - i. M/s Arlanxeo Emulsion Rubber France S.A.S., France;(Arlanxeo)
 - ii. M/s Goko Trading Co. Ltd., Japan;
 - iii. M/s JSR Corporation, Japan;
 - iv. M/s JSR Trading Co. Ltd., Japan;
 - v. M/s JTC Corporation, Japan;
 - vi. M/s Kato Sansho Co. Ltd., Japan;
 - vii. M/s JSC Krasnoyarsk Synthetic Rubber Plant, Russia;
 - viii. M/s PJSC Sibur Holding, Russia
 - ix. M/s Sibur International GmbH, Austria;
 - x. M/s Tokyo Zairyō Co. Ltd., Japan;
 - xi. M/s Zeon Asia Pvt. Ltd., Singapore;
 - xii. M/s Zeon Corporation, Japan (ZC).
48. The normal value and export price for all producers/exporters from the subject countries have been determined as below.
49. As regards the contention that the Applicant has not provided information on actual domestic price, the Authority notes that interested parties have not shown existence of any publicly available information which could have been used to establish normal value. The Authority notes that the domestic industry is required to provide information as is reasonably and publicly available to the parties.
50. As regards normal value for Russia, it is clarified that the claim of the Applicant is based on its estimates of cost of production in Russia based on facts available to the domestic industry. However, in these final findings, the normal value has been determined based on the information submitted by cooperating producer and exporter.
51. The Authority has considered prevailing raw material prices in the respective countries, wherever the same was available, for the purpose of assessment of normal value in subject countries.

G.4 Determination of normal value

52. As regards the argument of interested parties concerning normal value determination, it is clarified that the normal value for the purposes of the present findings is determined on the basis of the response filed by the responding producers in the subject countries, wherever sufficient information has been made available by the foreign producers. As regards evidence adopted at the stage of initiation, the Authority considers that evidence of dumping in the application is based on facts available. The interested parties have not shown that evidence of normal value on the basis of actual selling price in subject countries was publicly available.

European Union

Arlanxeo Emulsion Rubber France S.A.S., France

Normal Value

53. Based on the data filed by Arlanxeo Emulsion Rubber France S.A.S. (Arlanxeo), the cooperating producer and exporter from European Union, it is noted that during the POI, domestic sales have been made to both unaffiliated customers and affiliated customer. The questionnaire response filed by Arlanxeo was examined and verified to the extent necessary and was considered for the purpose of determining the normal value. The Authority notes that Arlanxeo sold *** MT of the PUC in the domestic market. The domestic sales found to be in sufficient volumes when compared with exports to India.
54. To determine the normal value, the Authority conducted the ordinary course of trade test (OCT) to determine profit-making domestic sales transactions with reference to the cost of production of the subject goods. After conducting the OCT, the Authority has considered the profitable sales made in the domestic market for the determination of the normal value.
55. Arlanxeo has claimed adjustments on account of discounts, shipping expenses, commission, credit cost and bank charges. The Authority has accepted the adjustments claimed, after desk verification. The normal value at ex-factory level for Arlanxeo has been determined accordingly, and the same is shown in the Dumping Margin Table below.

Normal Value for Non-Cooperative exporters in the EU

56. The Authority notes that no other exporter/producer from the EU has responded to the Authority in present investigation. For all the non-cooperative exporters/producers in the EU, the Authority determines the normal value on the basis of facts available. The normal value so determined is given in the dumping margin table below.

Japan

M/s JSR Corporation (Producer/Exporter), M/s JTC Corporation (Exporter), M/s JSR Trading Co., Ltd., (Exporter) M/s Kato Sansho Co., Ltd., (Exporter) M/s Goko Trading Co., Ltd., (Domestic Seller) M/s JMF Synthetics India Pvt Ltd., (Importer) M/s Olmec Inventures (Importer) M/s Vista Business Ventures LLP(Importer)

57. It is noted that M/s JSR Corporation (“JSR”) is a Limited Liability Company and is registered under the Companies Act of Japan. JSR is a producer and exporter of subject goods from Japan.

JSR Corporation, Japan

Normal Value

58. During the POI, JSR sold (*** MT) of the subject goods having invoice value (*** JYP) in the domestic market to related and unrelated parties. Based on their response, it is noted that their domestic sales are in sufficient quantity in the domestic market. To

determine the normal value, the Authority conducted the ordinary course of trade test to determine profit-making domestic sales transactions with reference to cost of production of subject goods. In case profit-making transactions are more than 80% then the Authority considers all the transactions in the domestic market for the determination of the normal value and in cases, where profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value. In this case, based on the ordinary course of trade test, only profit-making domestic sales have been taken for determination of normal value, since the profitable sales were less than 80%.

59. JSR has claimed adjustments on account of inland transportation, credit cost, operational expense, freight insurance, miscellaneous expenses for sales and warehousing expenses, have been adjusted after desk verification for arriving at normal value. Accordingly, the normal value for JSR has been determined and is mentioned in the dumping margin table.

Zeon Corporation, (producer), Tokyo Zairyo Co., Ltd, Japan (“TZ”), Zeon Asia Pte Ltd, Singapore (“ZA”), Tokyo Zairyo India Pvt. Ltd (“TZIN”)

Normal value

60. Based on the data filed by the Zeon Corporation (“ZC”), the cooperating producer from Japan, it is noted that during the POI, domestic sales have been made to affiliated / unaffiliated customers directly or through affiliated trader i.e. Tokyo Zairyo Co., Ltd, Japan (“TZ”). The questionnaire response filed by ZC and its related trader were examined and verified to the extent necessary and ZC’s questionnaire response was considered for the purpose of determining the normal value. ZC has provided transaction wise details of sales made in home market in its Questionnaire Response. Detailed examination of the response was carried out on desk study basis.
61. The Authority notes that ZC sold ***MT of the PUC in the domestic market. The domestic sales are found to be in sufficient volumes when compared with exports to India.
62. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit-making domestic sales transactions with reference to the cost of production of the subject goods. Since the profit-making transactions were more than 80%, the Authority has considered all the transactions in the domestic market for the determination of the normal value.
63. ZC has claimed adjustments on account of inland freight, storage cost, packing cost, warehouse handling charges, credit cost and other expenses / adjustments, and the same have been allowed, after desk verification. The profitability of the related trader (TZ) was also examined with regard to domestic sales. The normal value at ex-factory level for ZC has been determined accordingly, and the same is shown in the Dumping Margin Table below.

Normal Value for Non-Cooperative exporters in Japan

64. The Authority notes that no other exporter/producer from Japan has responded to the Authority in present investigation. For all the non-cooperative exporters/producers in

Japan, the Authority determines the normal value on the basis of facts available. The normal value so determined is given in the dumping margin table below.

Russia

JSC Krasnoyarsk Synthetic Rubber Plant

Normal value

65. From the data filed by the M/s JSC Krasnoyarsk Synthetic Rubber Plant (JSC), the cooperating producer and exporter from Russia, it is noted that JSC has produced the subject goods and exported the subject goods to India through their related party, Sibur International GmbH. It is noted that JSC has sold *** MT of subject goods in the domestic market. The questionnaire response has been considered for the purpose of determining the normal value.
66. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit-making domestic sales transactions with reference to the cost of production of the subject goods. Since all the transactions are profit-making, the Authority has considered all the transactions in the domestic market for the determination of the normal value.
67. The producer has claimed adjustments on account of inland transportation, commission, and credit cost which have been considered. Accordingly, weighted average normal value for JSC has been determined. The Normal Value so determined is mentioned in the dumping margin Table below.

Normal Value for Non-Cooperative exporters in Russia

68. The Authority notes that no other exporter/producer from Russia has responded to the Authority in present investigation. For all the non-cooperative exporters/producers in Russia, the Authority determines the normal value on the basis of facts available. The normal value so determined is given in the dumping margin table below.

Determination of normal value in China PR

Market Economy Status for Chinese Producers

69. Article 15 of China's Accession Protocol in WTO provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

"(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture,

production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

70. It is noted that while the provision contained in Article 15 (a) (ii) have expired on 11th December, 2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession protocol require criterion stipulated in para 8 of the Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming the market economy status. It is noted that since the responding producers/ exporters from China PR have not submitted response to questionnaire in the form and manner prescribed, the normal value computation is required to be done as per provisions of para 7 of Annexure I of the Rules.
71. Accordingly, the normal value for all the producers/exporters from the subject country have been determined as below.

Normal Value for all Producers in China PR

72. As none of the producers from China PR have claimed determination of normal value on the basis of their own data/information, the normal value has been determined in accordance with para 7 of Annexure I of the Rules which reads as under:

In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a

reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.

73. The Authority notes that the prices or constructed value of the product in an appropriate market economy third country or the prices from such third country to other countries, including India, has neither been made available by the Applicant or an interested party, nor is available with the Authority from any public source. The Authority notes that the Authority is required to select an appropriate country on the basis of information and evidence brought on record by interested parties. It is also noted that the interested parties have not provided any verifiable information which could have been adopted by the Authority. Thus, the Authority is of the opinion that the only option available is to determine normal value considering price actually paid or payable in India for the like product, duly adjusted, to include a reasonable profit margin. The normal value so determined is given below in dumping margin table.

G.5. Determination of export price

EU

Arlanxeo Emulsion Rubber France S.A.S., France and ARL - Plastrub SA

74. The Authority notes that Arlanxeo has exported a quantity of ***MT, directly to Indian customers and through a trader namely M/s Plastrub SA, Switzerland. The Authority notes that M/s Plastrub SA has not filed a separate questionnaire response, and accounts for exports of *** MT out of the total exports listed above. The Authority notes that the cooperating entities account for ***% of the total sales made by Arlanxeo to India, whereby the quantity reported by Arlanxeo has been adopted by the Authority as exports to India by Arlanxeo for determining the dumping and injury margin.

75. The Authority, while calculating the export price for the producer has considered desk verified data of Arlanxeo. Arlanxeo claimed adjustment on account of discounts, shipping cost, commission, credit cost, bank charges and the same have been allowed.

76. Accordingly, the export price for Arlanxeo has been determined based on the weighted average export price to India price of the all channels of exports to India i.e. cooperative as well as non-cooperative, and the same is shown in the dumping margin table below.

Non-cooperative Exporters from the EU

77. Export price in respect of any other exporters from the EU has been determined, pending further investigation, as per facts available in terms of Rule 6(8) of the Rules. For the purpose, the Authority has considered imports as reported in the DGCI&S and the questionnaire response of the producer and exporters.

JSR Corporation, Japan, JSR Trading Co. Ltd., JTC Corporation, and Kato Sansho Co. Ltd.

78. JSR has exported subject goods to India through two traders namely M/s JTC Corporation, Japan (***)MT and M/s JSR Trading Co., Ltd., Japan (***)MT. It is noted that M/s JTC Corporation, Japan, has exported (***)MT to unrelated parties in India and (***)MT to related importer in India namely M/s JMF Synthetics India Pvt Ltd. M/s JTC Corporation, Japan, has also exported (***)MT of subject goods to India through an unrelated exporter namely M/s Kato Sansho Co., Ltd.
79. JSR has exported (***)MT to India through an unrelated trader namely M/s Bando Trading Co., Ltd. M/s JSR Corporation, Japan, has filed the questionnaire response. Separate Questionnaire responses have been filed by its unrelated/related trading companies, namely M/s JTC Corporation, Japan, M/s Kato Sansho Co., Ltd., and M/s JSR Trading Co., Ltd., Japan. It is further noted M/s Bando Trading Co., Ltd., has not filed its questionnaire response with the Authority, hence for the M/s Bando Trading Co., Ltd., exports, the Authority has considered the best available information to arrive at ex-factory export price.
80. Since, the volume of exports by producer through its unrelated cooperating traders who have filed response before the Authority are considered substantial and are more than **%, the information submitted by producer and cooperating traders have been taken into account for arriving at the export price. Accordingly, the export price has been determined based on the weighted average export price of all channels of exports to India i.e. cooperative as well as non-cooperative, and the same is shown in the dumping margin table below
81. Adjustments have been allowed on account of inland freight, credit cost, operational expense, freight insurance, miscellaneous expenses for sales and warehousing expenses. The net export price after these adjustments is given in the dumping margin table.

Zeon Corporation, Japan, Tokyo Zairyo Co. Ltd., Japan and Zeon Asia Pte. Ltd., Japan

82. The Authority notes that during the POI, ZC has exported a quantity of ***)MT through its related trader, TZ. TZ sold the PUC to India directly to its related importer, i.e., Tokyo Zairyo India Pvt. Ltd (“TZIN”) as well as through a related trader, Zeon Asia Pte Ltd, Singapore (“ZA”), who in turn sold the PUC to unaffiliated Indian customers and to the affiliated importer, TZIN. Additionally, ZA also sold the material to an unaffiliated trading entity INVICT (Singapore) Pte. Ltd, which has not filed its questionnaire response. The Authority notes that the cooperating entities account for over **%) of the total sales made by ZC to India, and dumping margin has been determined taking into account information submitted by the cooperating producer and exporters, and desk verified to the extent feasible. For the quantity of exports to India where the chain of producers and exporters of subject goods to Indian customers is not complete, the export price and landed value has been determined on the basis of facts available.
83. Adjustments on account of shipping cost, ocean insurance, port handling charges, inland freight, storage cost, packing cost, warehouse handling charges, bank charges and credit

cost have been claimed and the same have been allowed. The Authority also examined the responses of the exporters and adjustments have also been made to the export price to incorporate the losses incurred by trading entities (wherever applicable).

84. Accordingly, the export price for ZC has been determined based on the weighted average export price of the all channels of exports to India i.e. cooperative as well as non-cooperative , and the same is shown in the dumping margin table below.

Non-cooperative Exporters from Japan

85. The export price in respect of any other exporters from Japan has been determined, as per facts available in terms of Rule 6(8) of the Rules. For the purpose, the Authority has considered imports as reported in the DGCI&S and the questionnaire response of the producer and exporters.

JSC Krasnoyarsk Synthetic Rubber Plant, Russia and SIBUR International GmbH

86. In the exporters' questionnaire response, it is noted that during the POI, JSC has exported ***MT to Indian customers. Out of this quantity, they have shipped ***MT from their warehouse and remaining ***MT directly from India. The Authority has allowed the adjustment as claimed by the exporter on account of ocean freight, inland freight, auto transport, other transportation expenses, warehousing charges, credit cost, loading and custom clearance charges after due verification. Accordingly, the export price determined is provided in the dumping margin Table below.

Non-cooperative Exporters from Russia

87. The export price for the non-responding producers/exporters from Russia has been determined as per facts available in terms of Rule 6(8) of the Rules. For the purpose, the Authority has considered imports as reported in the DGCI&S and the questionnaire response of the producer and exporters.

Export Price for China PR

88. None of the exporter/producer from China PR has filed questionnaire response. Therefore, the Authority considers that the producers/exporters from China PR have preferred non-cooperation. Export price for all the exporters from China PR has been determined based on the imports reported in the DGCI&S, after due adjustments. Accordingly, the export price determined is provided in the dumping margin Table below.

G.6 Determination of dumping margin

89. It is noted that in the subject investigation many cooperating producers and exporters are related to each other and form a group of related companies. It has been the consistent practice of the Authority to consider related exporting producers and exporters as one single entity for the determination of a dumping margin and, thus, to establish one single dumping margin for them. This is, in particular, because calculating individual dumping margins might encourage circumvention of anti-dumping measures, thus, rendering them

ineffective, by enabling related exporting producers to channel their exports to India through the company with the lowest individual dumping margin.

90. In accordance with the above, related producers and exporters have been regarded as one single entity and attributed one single dumping margin which was calculated on the basis of the weighted average of the dumping margins of the cooperating related producers and exporters.
91. Considering the normal value and export price for subject goods, the dumping margins for the subject goods from subject countries have been determined as follows:

Producer	NV/ CNV (US\$/MT)	NEP (US\$/MT)	Dumping Margin (US\$/MT)	Dumping Margin (%)	Dumping Margin (Range
EU					
Arlanexo Emulsion Rubber France S.A.S.	***	***	***	***	110-120
Other producers/exporters from EU	***	***	***	***	160-170
Japan					
JSR Corporation	***	***	***	***	70-80
Zeon Corporation	***	***	***	***	110-120
Other producers/exporters from Japan	***	***	***	***	120-130
Russia					
JSC Krasnoyarsk Synthetic Rubber Plant	***	***	***	***	50-60
Other producers/exporters from Russia	***	***	***	***	60-70
China PR					
All producers/exporters from China PR	***	***	***	***	40-50

H. INJURY AND CAUSAL LINK

H.1. Submissions of the domestic industry

92. The following submissions have been made by the domestic industry with regard to the injury and causal link:

- a. Cumulative assessment of the effect of imports is appropriate in the instant case. According to Annexure-II para (iii) of the AD Rules, where more than one country is being simultaneously subjected to anti-dumping investigation, the Authority will cumulatively assess the effect of such imports. The conditions required for the same are met in the instant case. The Authority is requested to assess injury to the domestic industry cumulatively from the subject countries.
- b. Imports from Russia is required to be cumulatively assessed with other subject countries. The Russian imports are undercutting and underselling the prices of the domestic industry. The dumping margin for the Russian imports is also positive, which establishes injury to the domestic industry as a result of the Russian imports.
- c. Demand for the PUC increased till April 2018-June 2019 and declined in the POI due to slowdown in the auto industry. The demand has increased in the POI compared to the base year.
- d. The imports from the subject countries, in absolute terms as well as in relation to production and consumption, first declined and thereafter, increased significantly in the POI.
- e. Subject imports constitute 45% of the total imports in POI. The share declined in 2017-18 but increased in April 2018-June 2019 and further increased in the POI.
- f. Imports are undercutting the prices of the Domestic Industry and are depressing the prices of the Domestic Industry. The weighted average import price is lower than the selling price of the Domestic Industry.
- g. The steep decline in the import prices of the PUC during the POI resulted in significant decline in the selling price of the domestic industry.
- h. Production and capacity utilization of the Domestic Industry increased till April 2018-June 2019 but declined significantly in the POI. The fall in demand could not have contributed to the same since the capacity of the domestic industry in the POI stood at 12,500 MT while the established demand was 42,000 MT during the same period.
- i. The capacity of the domestic industry increased till 2017-18 and remained same thereafter but declined during POI.
- j. The domestic sales of the domestic industry increased till April 2018-June 2019 but declined significantly thereafter in the POI.
- k. The market share of the domestic industry increased till April 2018-June 2019 but declined in the POI while the market share of subject imports has increased.
- l. The inventories of the domestic industry are piling up.
- m. Profitability, cash profits, PBIT and return on capital employed were all increasing till April 2018-June 2019 but declined significantly in the POI.
- n. Growth of the domestic industry has been negative in the POI in almost all macro injury parameters.
- o. The Applicant was not suffering injury and was earning reasonable returns on investments till 2018-19 since imports were made at a fair price. However, there was a decline in price of imports from Korea and Japan after imposition of ADD on them by China.
- p. Annualization of data for intervals which do not constitute 12-months makes an objective assessment of injury parameters possible. The same is consistent with the

practice of the Authority. The findings of the Authority in “Digital Offset Printing Plates” from China PR, Japan, Korea RP, Taiwan and Vietnam are relied on where the same method was adopted.

- q. The imports from EU and China are competing in the Indian market and used by domestic customers interchangeably. Hence, it cannot be said that the conditions of competition are different.
- r. 61% of the imports from Japan are undercutting the prices of the domestic industry. Price undercutting should be determined only considering those import transactions whose landed price is below the selling price of the domestic industry. The concern of the domestic industry is against injurious imports and not against non-injurious imports. The CESTAT's reference to the decision in *Kothari Sugars & Chemicals Limited* case in *Honest Enterprises Ltd. v. Designated Authority* is relied on.
- s. The decline in demand has already made the domestic industry vulnerable and the dumped imports have aggravated the already adverse situation of the domestic industry.
- t. Due to the inevitability of imports, the domestic industry is forced to set its prices considering the prices offered by foreign suppliers and disregard cost considerations.
- u. The production related issues raised by the other interested parties are true for all production facilities around the globe and not specific to the Applicant. The fact that the Applicant was earning reasonable profits till 2018-19 shows that the arguments raised by the opposing parties are false and baseless.
- v. There is no inefficiency in the production of the domestic industry.
- w. The import price is below the cost of domestic industry and had nothing to do with the prices of the raw materials.
- x. Non-continuation of ADD on imports from Korea by the central government does not mean dumping from the subject countries should be allowed to be continued and domestic industry cannot seek imposition of ADD on the same.
- y. The Ministry of Finance has not provided any reasoning for non-imposition of duties and no assumption on the same should be made. The POI and the subject country(ies) in both the cases are different.
- z. The import prices from the present subject countries were lower than the import price from Korea in a large number of instances in the POI. The volumes have related more or less the same in case of Korea, whereas the same for the subject countries have increased both in absolute terms and in relation to production and consumption in India.
- aa. The ADD were in existence throughout the POI against imports from Korea when the domestic industry claimed injury. This shows the injury to the DI is due to dumped imports from the subject countries.
- bb. The exporters themselves have accepted that NBR prices were declining whereas butadiene prices were increasing. The reason why the domestic industry's NBR prices were not able to catch up with the butadiene prices is because of import prices of NBR.
- cc. The Applicant has no objection to a trend analysis of the domestic industry's cost of goods sold and butadiene prices in the POI as the same will show their inability to move NBR prices in tandem with raw material prices due to imports.
- dd. No company will incur losses to outlast its competitor.
- ee. The Annual Report of the Applicant talks about dumping also and the opposing interested parties have relied on selective reading of the document.
- ff. The commissioning of the power plant was to ensure continued power supply.

- gg. The NBR capacity expansion is put on hold by the Board due to dumping. The public statements in the Annual Report does not alter the conclusion that dumping of the product has contributed to the injury to the domestic industry.
- hh. Increase in fixed assets is due to increase in CPP (power plant).
- ii. The lockdown was in the last leg of the POI. In any case, the domestic industry is required to be seen as it is and not in ideal conditions.
- jj. The presumption of the opposing interested parties that dumping should be the sole factor causing injury to the domestic industry is legally incorrect.
- kk. The term “sources” in Article 9.2 of the ADA refers to individual exporters or producers and not a country as a whole. The Appellate Body report in EC – Fasteners (China) is relied on. Therefore, there is no discriminatory treatment against exporters in the subject countries.
- ll. The reliance of the opposing parties on US – Denial of MFN treatment is misplaced since it pertains to CVD investigations. Reliance is placed on Appellate Body report in EC – Fasteners.

H.2. Submissions of other interested parties

93. The following submissions have been made by the producer/ exporter/ other interested parties with regard to Injury and causal link are as follows

- a. The price decline is due to just a cyclical fluctuation and raw material decline. The upward trend of prices has begun from July-August 2020. Injury to the Applicant is due to a number of other factors, and not due to dumping. Other factors that have caused injury to the domestic industry includes butadiene price trends prices, imports from Korea, outdated technology, raw material storage issues, poor effluent treatment facilities, remote location of the plant, decline in demand for the product, increase in imports of other non-subject countries, recent crash of the oil prices, dependency on import sources for availability of major raw materials, slowdown in the auto sector, increase in latex production by the domestic industry, failure of the domestic industry to complete capacity expansion, lockdown and resultant logistical hurdles faced leading to increase in the inventories at the end of the POI, poor functioning of the NBR market and increase in captive consumption by the domestic industry.
- b. Change in product mix of the domestic industry has resulted in decline in net realizable value.
- c. Domestic industry has undergone restructuring by acquisition and its NBR business is unstable.
- d. The quality and consistency of NBR manufactured in India is not up to international standards.
- e. There is a significant improvement in performance of the domestic industry as evidenced by increase in sales, production, capacity utilization, market share, inventory (as no of days of production), capital employed and productivity, etc. Slight decreases in the performance of the Applicant (production, capacity utilisation, etc.) coincide with decrease in imports and share of Russian and EU products in Indian market. Export performance of the domestic industry has improved. There is no price suppression or depression. The decline in profitability is artificial based on short period of POI when the NBR price trend has not caught up with RM prices. A 12-month POI would show stable performance by the Applicant.
- f. There is no relative increase in import volumes from the subject countries. Market share of subject countries increased mainly due to increase in Chinese imports.

- g. The methodology proposed by the Applicant (i.e. considering only the positive price undercutting transactions) has been rejected by the Authority in the past investigations and should not be allowed.
- h. Imposition of ADD will affect prices of auto parts, rice rollers and LPG tubes. Further, it will hamper user's ability to produce quality goods for both domestic and international markets.
- i. The Applicant has limited capacity sufficient to meet only 30% domestic demand for NBR.
- j. Values reported in the application and post-initiation submissions have been incorrectly indexed for April 2018-June 2019, April 2018-June 2019, and POI. It is not plausible for indexed values of POI and POI (A) to be the same when the duration of the two periods is different. The approach adopted by the domestic industry is incorrect and gives a misleading picture and prevent parties from making effective comments.
- k. Injury due to Korean imports is unaddressed and cannot be attributed to subject countries and Russia in particular. Recommendation/imposition of duties is discriminatory and unsustainable under Rule 19 of Customs Tariff Act and Article 9.2 of the ADA. Therefore, investigation should be terminated and the same would be a violation of India's MFN obligation. The WTO Panel in US – Denial of MFN treatment as to non-rubber footwear from Brazil held in the context of CVD investigation that Article I:1 of the GATT prohibits parties from providing an advantage to a product originating from one country and denying the same to like products originating from other countries. In EU – Footwear (China), it was held that rules and formalities applied in ADD investigation falls within the scope of Article I:1 of the GATT. The Second Report of the Group of Experts on anti-dumping and countervailing duties in 1960 also emphasized on the non-discriminatory application of ADD. The reference of the domestic industry to the polypropylene case is misleading. The Authority should consider how Korean imports are not causing injury if the present imports are causing injury.
- l. The Domestic Industry intentionally concealed the fact that the Central Government did not consider it a fit case to continue ADD, despite Korea being the major exporter of the subject goods to India.
- m. Zeon has fully cooperated and submitted questionnaires along with its exporters within timelines, and therefore, individual margin should be calculated for Zeon and its corresponding exporters, and lesser duty rule is to be applied to determine duty rate, if any.
- n. Interim duties are not liable to be imposed in present investigation since imports from subject countries have decreased over injury period and the Applicant has to demonstrate a link between its poor performance and subject imports.
- o. The domestic industry has concealed information regarding the production capacity and the reason behind the same needs to be investigated.
- p. There is no causal link between dumping of the product and injury to the domestic industry.
- q. Russian products differ from the products from the countries in question due to the counter directional trends in its supplies and, therefore, cumulative assessment should not be made.
- r. There is no price undercutting from Japan.
- s. There is no increase in Russian and EU imports.
- t. The conditions of competition between the imported products are not comparable and EU imports should not be cumulated with other countries. There is a substantial difference between EU and China with regard to volume and price. Price of EU imports

is 13% higher than that of China and 10% higher than that of Russia. While volume of EU imports declined 18%, those of China increased 1153%. The Applicant has reported a significant difference in price undercutting by different countries. On a separate analysis, it is clear that EU imports could not have caused injury to the domestic industry.

- u. NBR prices in India moved with RM prices, namely butadiene. The price of Russian imports moved in accordance with butadiene price movement. Russian imports did not have any impact on the prices of the Applicant.
- v. The Applicants themselves have reported a positive performance in the media and admitted that losses incurred in the NBR segment are temporary (because of the arbitrage in the raw material prices in the European market and Indian market) and that the Company has done well in the last quarter of 2019. The Domestic Industry has also had plans to expand its capacity significantly. The company has launched a NBR carboxy latex plan in Q4 FY18. The company is now in the process of commissioning a captive power plant which is expected to save power cost at its NBR plant. The company is also working on a debottlenecking project which is expected to be completed in Q1 FY21 which will increase production capacity to about 20,000 metric tonne per annum and will further help reduce the operational costs.
- w. There exists anomaly in the data. There has been capacity addition in 2017-18. However, the net fixed assets declined in the same period, and depreciation and amortization expenses witnessed a significant increase of 60 indexed points. Further, during the POI, when there have been no capacity additions, the net fixed assets have more than doubled (i.e. from 97 indexed points in April 2018 to June 2019 (A) to 239 indexed points in the POI). Increase in fixed assets and capacity expansion has not resulted in increase in capacity, and must not be considered to allow ROCE while computing NIP.
- x. The Applicant also captively consumes the PUC for its downstream product portfolio. The Authority is requested to review and verify in detail the transfer price considered by the Applicant and appropriately allocate the costs and capital assets on a rational basis.
- y. Since multiple products are produced at Valia plant, the same is to be considered for determining NIP. The Applicant must not be allowed to excessively profit (at company level) while claiming injury on the PUC on account of imports from subject countries. The Authority must also examine: (i) whether the production line used by the Applicant is same for PUC and downstream products made by PVC; (ii) the volume of PUC and NPUC produced through the production line; and (iii) whether the Applicant is deliberately producing more non-PUC because of higher profitability.
- z. Domestic industry has been protected for 20 years. No injury can still be claimed due to imports.
- aa. The facts and circumstances in Digital Offset Printing Plates is completely different and the Authority had good reasons to ignore a specific quarter from the POI.

H.3. Examination by the Authority

- 94. The submissions made by the domestic industry with regard to the injury and causal link related issues have been examined. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.
- 95. As regards the argument of imposition of ADD against subject countries and non imposition of ADD against imports from Korea is violation of India's MFN obligation,

it is noted that the term "sources" in Article 9.2 of AD Agreement is referring to individual exporters or producers, and not to the country as a whole (Appellate body report in EC Fasteners). Therefore, there is no discriminating treatment against exporters in subject countries.

96. Annexure-II para (iii) 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 percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and
 - b. A cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic products
97. The Authority notes that:
 - a. The subject good are being dumped into India from subject countries. The margins of dumping from each of the subject countries are more than de minimis limits prescribed under the Rules.
 - b. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
 - c. Cumulative assessments of the effects of imports are appropriate as the exports 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. It is noted that the consumers who are buying from the domestic industry are also importing from amongst the subject countries.
98. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports of the subject goods from the subject countries on the domestic industry.
99. The Authority has taken note of the arguments and counter-arguments of all the interested parties with regard to injury to the Domestic Industry. The injury analysis so made by the Authority hereunder addresses the various submissions made by the interested parties.
100. The Authority notes that the decline in NBR price is far steeper than decline in cost of production and costs on account of raw materials. In fact, the argument of the interested parties themselves implies that the decline in price of the product was far steeper than the decline in raw material prices. The contention that the prices have started increasing from July-Aug 2020 is not relevant to decide the present investigation as the authority is required to consider the parameters prevailing during POI.
101. The interested parties have contended that there are a number of other factors which are responsible for causing injury to the domestic industry. A number of factors have been identified by the interested parties. The Authority has considered various factors identified by the interested parties and holds as follows.

- a. The Authority notes that the rule does not prescribe that the dumping of the product should be the sole cause of injury to the domestic industry. The domestic industry might be suffering injury even due to other factors. What is required to be examined is that if any other factors exist that could break the causal link between the dumped imports from subject countries and their contribution to injury to domestic industry.
- b. A number of factors identified by the Authority such as alleged outdated technology, raw material storage, poor effluent treatment facilities, remote location of the plant, dependency on import sources for availability of major raw materials, are those factors which were prevalent throughout the injury period. The Authority notes that none of the interested parties have quantified the impact of these factors, nor demonstrated that the domestic industry in fact suffers on these account. In any case, it is seen that the domestic industry was in a reasonably good profits situation over the injury period, with the sole exception of the POI. The domestic industry faced very significant decline in profits in POI, when the profitability of the domestic industry declined significantly. This decline in profits is not because of these other factors identified by the interested parties. The Authority considers that it is quite possible that the domestic industry is operating in a situation much different from foreign producers. However, as held by the CESTAT in the matter of M/s. Nippon Zeon Co. Ltd., Japan & Others v. Designated Authority relating to the very same product, the authority is required to consider the domestic industry as it exists and not in ideal condition. The Tribunal has taken the view that while imposing anti-dumping duty the position that has to be considered is not in the context of ideal conditions but in the specific circumstances of the domestic industry.
- c. Since the Authority has determined price suppression/depression and injury parameters considering actual butadiene price paid by the domestic industry, the Authority notes that the actual butadiene price trends of the domestic industry have been considered while determining injury to the domestic industry.
- d. As regards recent crash of oil prices, the Authority notes that the raw material involved in the production of PUC is acrylonitrile and butadiene and the costs on account of the same alone are relevant for the present purposes. These costs have been considered on the basis of records maintained by the domestic industry. While it is possible that the price of acrylonitrile and butadiene might be impacted due to oil prices, the Authority is required to consider the consumption price of acrylonitrile and butadiene and not the prevailing prices of crude oil. Thus, the crude oil price movements are not relevant to the present investigations.
- e. As regards slowdown in auto sector, the Authority notes that the performance of the domestic industry has shown significant decline in the POI when demand for PUC has shown a significant increase. While imports from subject countries increased by 67%, sale of the domestic industry declined 19% in a situation where demand has increased by 30%. Thus, the injury data considered for the POI is not impacted by possible decline in the demand for the product or possible recession in auto sector.
- f. As regards the failure of the domestic industry to complete capacity expansion, the Authority notes that the injury to the domestic industry has been determined on the basis of past injury period and therefore the same could not have been impacted by non-completion of future capacity expansion. In fact, the domestic industry contended that it has been forced to put its capacity expansion on hold because of dumping in the country. In any case, whereas the injury is based on past period, the expansion is based on future period.
- g. As regards possible poor functioning of the NBR market, it is noted that the performance of the domestic industry was largely improving till April 2018-June 2019

period and deteriorated significantly in the POI. However, demand for NBR in POI increased by 30%. It is thus not established how poor functioning of the NBR market is responsible for the present injury to the domestic industry.

- h. The Authority examined the captive consumption of the domestic industry. It is seen that captive consumption of the domestic industry has not shown so significant increase that the same leads to a conclusion that the sales of domestic industry declined because of increase in captive consumption. In fact, captive consumption of the domestic industry in the POI declined by 406 MT when compared to previous year. Further, captive consumption forms 10.45% of total sales of the domestic industry. Thus, in any case, this captive consumption could not have been responsible for the injury suffered by the domestic industry in the POI.
- i. As regards quality and consistency of NBR manufactured, it is noted that the domestic industry has been producing and selling same product over the injury period. However, whereas the volumes of the domestic industry were increasing till June, 2019 and its profitability was stable, while the ROI was increasing, sales and consequently production, capacity utilisation, declined significantly in POI with a very steep decline in profitability, cash profits and ROI. Thus, quality and consistency of NBR manufactured could not be a possible reason for the injury suffered by the domestic industry in the POI.
- j. Exports by the domestic industry constitutes only 1.97% of the total sales and therefore possible changes in export performance could not have been responsible for the injury found by the authority.

102. The interested parties have contended that change in product mix of the domestic industry has resulted in decline in net realizable value. The Authority, however, notes that change in product mix would equally impact cost and price of the product. It is seen that the selling price of the domestic industry declined far steeper than the decline in the costs in the POI as compared to preceding year. It is also noted that the interested parties have not established how the product mix of the domestic industry has changed over the period.

103. It is clarified that the Authority has not accepted the contention of the domestic industry with regard to determination of price undercutting by considering only transactions showing positive price undercutting. The price undercutting has been determined on the basis of weighted average prices.

104. The interested parties have contended that the price undercutting from Japan is negative. It is noted that while the average price undercutting in case of Japan is negative, the price undercutting in respect of exports made by JSR is significantly negative while price undercutting in case of Zeon is positive. The negative price undercutting in case of Japan is because of significantly higher prices at which JSR has exported the product to India. The domestic industry disputed the export price of JSR contending that there appears some compensatory arrangements, the company could not have sold the product at such high price and the imports would not have been made with full customs duties. The Authority has, however, considered it appropriate to accept the export price and determine the dumping margin and injury margin on the basis of export price claimed, and later desk verified by the Authority.

105. The Authority holds that once the Authority has decided to undertake cumulative assessment of injury, trends in import volumes from individual countries are of little relevance. Further, the requirement for undertaking cumulative assessment does not

mandate a requirement that the volume of imports should show the same trend in respect of each subject country. In fact, varying share of imports of different countries shows presence of competition between different suppliers in the market.

106. With regard to the issue of anomaly in data as raised by the other interested parties, the Authority notes that NIP for the domestic industry has been determined on the basis of principles laid down in the Rules read with Annexure III, as amended.
107. As regards a possible anomaly in capital employed figures, depreciation, etc., it is clarified that the Authority has adopted desk verified figures for the present purposes.
108. It is clarified that Authority has adopted the information after due verification. Therefore, the fact that the Applicant is producing different products in the same plant does not vitiate the conclusions drawn in the present final findings.
109. The Authority notes that the ADD was imposed on the product imported from a number of countries in the past. However, imports from Korea alone were subjected to ADD till 7th December, 2020. Further, the performance of the domestic industry did not show improvement in respect of volume and price parameters till June, 2019. However, the performance has shown significant deterioration in respect of a number of injury parameters in the POI. Thus, there seems to be no basis for the claim that if the product is attracting ADD on imports from some country, the domestic industry could not have been suffering injury in respect of import from other countries.
110. The Authority has made the present determination based on data relating to the PUC. The Authority has not based any determination on the basis of other investigations.
111. Rule 11 of the Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.
112. The Authority had earlier conducted a sunset review investigation in respect of imports from Korea. The Authority has recommended extension of ADD in respect of these imports. Therefore, imports from Korea have been reported separately in the injury analysis hereinbelow.
113. Since the POI is not of 12 months, in order to ensure that the actual/indexed figures are directly comparable with preceding years, the actual/indexed data has been "annualised" and mentioned in this final findings.

H.3.1 Volume effect of dumped imports on domestic industry

a. Assessment of demand / apparent consumption

114. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of Indian Producers and imports from all sources.

Demand in India	Unit	2016-17	2017-18	April 18- June 19		POI	
				Actual	Annualised	Actual	Annualised
Sales of Domestic Industry	MT	***	***	***	***	***	***
Trend	Index	100	129	159	159	128	128
Subject Countries	MT	12,950	10,917	10,912	8,729	10,952	14,603
Trend	Index	100	84	67	67	113	113
Korea	MT	15,288	18,427	12,997	10,398	12,153	16,204
Trend	Index	100	121	68	68	106	106
Imports from Other Countries	MT	3,266	5,450	2,553	2,042	1,742	2,322
Trend	Index	100	167	63	63	71	71
Total Indian Demand	MT	***	***	***	***	***	***
Trend	Index	100	114	84	84	109	109

115. It is seen that the demand for the subject goods increased from the base year to 2017-18 and then there was a decline in April, 2018-June, 2019 and an increase in the POI. Demand on overall basis has shown an increase of more than 9%.

b. Import Volumes from the subject countries

116. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the transaction wise import data procured from DGCI&S. The factual position is as follows:

Particulars	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Imports Volume							
Subject Countries	MT	12,950	10,917	10,912	8,729	10,952	14,603
Trend	Index	100	84	67	67	113	113

China P RP	MT	271	622	2,418	1,934	2,547	3,396
Trend	Index	100	230	714	714	1,253	1,253
Japan	MT	2,943	3,305	3,311	2,649	3,832	5,110
Trend	Index	100	112	90	90	174	174
RUSSIA	MT	3,188	3,438	1,580	1,264	1,004	1,339
Trend	Index	100	108	40	40	42	42
EU	MT	6,548	3,552	3,603	2,882	3,568	4,758
Trend	Index	100	54	44	44	73	73
Korea	MT	15,288	18,427	12,997	10,398	12,153	16,204
Trend	Index	100	121	68	68	106	106
Other Countries	MT	3,266	5,450	2,553	2,042	1,742	2,322
Trend	Index	100	167	63	63	71	71
Total Imports Volume	MT	31,504	34,794	26,462	21,169	24,847	33,129
Trend	Index	100	110	67	67	105	105
Subject Country Imports in relation to							
Total Imports	%	41	31	41	41	44	44
Trend	Index	100	76	100	100	107	107
Production	%	***	***	***	***	***	***
Trend	Index	100	63	40	40	81	81
Consumption	%	***	***	***	***	***	***
Trend	Index	100	76	82	82	103	103

117. The following is observed:

- The volume of imports from subject countries declined till April 18 – June, 2019 and then increased significantly in the POI. The volume of imports from subject countries has increased in the POI as compared to base year (by 13%) as well as previous year (by 66%).

- b. The imports from subject countries in relation to total imports has increased in the POI as compared to the base year.
- c. The imports from subject countries in relation to Indian production declined till April 2018-June 2019, but increased significantly in the POI.
- d. The imports from subject countries in relation to consumption in India declined till April 2018-June 2019 and increased significantly thereafter in the POI.

H.3.2 Price effect of the dumped imports

118. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the dumped imports from subject countries has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with the landed price of imports of the subject goods from the subject countries.

a. Price undercutting

119. For the purpose of price undercutting analysis, the selling price of the domestic industry has been compared with the weighted average import price from the subject countries. Accordingly, the undercutting effects of the dumped imports from the subject country work out as follows-

Price Undercutting - China PR	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Landed price	₹/MT	1,24,278	1,73,080	1,31,617	1,31,617	1,20,651	1,20,651
Trend	Index	100	139	106	106	97	97
Selling Price	₹/MT	***	***	***	***	***	***
Trend	Index	100	119	127	127	98	98
Price undercutting	₹/MT	***	***	***	***	***	***
Trend	Index	100	(22)	277	277	105	105
Price undercutting	%	***	***	***	***	***	***
Trend	Index	100	(15)	262	262	109	109

Price Undercutting - Japan	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Landed price	₹/MT	1,42,275	1,78,611	1,58,882	1,58,882	1,47,917	1,47,917
Trend	Index	100	126	112	112	104	104
Selling Price	₹/MT	***	***	***	***	***	***
Trend	Index	100	119	127	127	98	98
Price undercutting	₹/MT	***	***	***	***	***	***
Trend	Index	(100)	(11,544)	27,400	27,400	(10,308)	(10,308)
Price undercutting	%	***	***	***	***	***	***

Trend	Index	(100)	(8,850)	23,583	23,583	(9,533)	(9,533)
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Price Undercutting - Russia	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Landed price	₹/MT	95,753	1,54,957	1,39,129	1,39,129	1,22,633	1,22,633
Trend	Index	100	162	145	145	128	128
Selling Price	₹/MT	***	***	***	***	***	***
Trend	Index	100	119	127	127	98	98
Price undercutting	₹/MT	***	***	***	***	***	***
Trend	Index	100	31	91	91	36	36
Price undercutting	%	***	***	***	***	***	***
Trend	Index	100	19	62	62	28	28

Price Undercutting - EU	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Landed price	₹/MT	1,10,179	1,59,712	1,49,085	1,49,085	1,38,030	1,38,030
Trend	Index	100	145	135	135	125	125
Selling Price	₹/MT	***	***	***	***	***	***
Trend	Index	100	119	127	127	98	98
Price undercutting	₹/MT	***	***	***	***	***	***
Trend	Index	100	30	101	101	5	5
Price undercutting	%	***	***	***	***	***	***
Trend	Index	100	21	74	74	4	4

Price Undercutting - Subject Countries	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Landed price	₹/MT	1,14,217	1,64,698	1,46,746	1,46,746	1,36,035	1,36,035
Trend	Index	100	144	128	128	119	119
Selling Price	₹/MT	***	***	***	***	***	***
Trend	Index	100	119	127	127	98	98
Price undercutting	₹/MT	***	***	***	***	***	***
Trend	Index	100	16	123	123	13	13
Price undercutting	%	***	***	***	***	***	***
Trend	Index	100	11	96	96	11	11

120. It is seen that the imports from subject countries as a whole are entering at a price below the domestic selling price of the domestic industry, resulting in positive price undercutting. Further, it is seen that the imports from each of the subject countries except for Japan are entering at a price below the domestic selling price of the Domestic Industry, resulting in positive price undercutting. The price undercutting is negative in case of imports from Japan. For the other three subject countries price undercutting has reduced in the POI as compared to the base year.

b. Price suppression and depression

121. In order to determine whether the dumped imports are depressing or suppressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period is examined. Table below shows factual position:

Particulars	Unit	2016-17	2017-18	April 2018-June 2019	POI
Cost of sales	₹/MT	***	***	***	***
Trend	Index	100	120	130	121
Selling price	₹/MT	***	***	***	***
Trend	Index	100	119	127	98
Landed Price	₹/MT	1,14,217	1,64,698	1,46,746	1,36,035
Trend	Index	100	144	128	119

122. The following is observed:

- Whereas the cost of sales and selling price of the domestic industry increased till April, 2018-June, 2019, the same declined thereafter in the POI. However, whereas the landed price of imports increased till 2017-18, it declined thereafter.
- During the POI, the landed price of imports declined even below cost of sales in India. Resultantly, the decline in selling price of the domestic industry was far more than the decline in cost of sales.
- Whereas the domestic industry was able to increase its prices even more than the increase in cost of sales till April, 2018-June, 2019, the domestic industry was forced to reduce the prices far beyond the decline in the costs in the POI.
- The volume of subject imports declined till April, 2018-June, 2019, and the domestic industry was able to increase its prices in proportion to increase in the costs in this period, despite decline in the import prices. In the POI, the selling price reduced to less than the cost of sales and the landed price was even lower than the selling price.

H.3.3 Economic parameters of the domestic industry

123. Annexure II to the Rules provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization 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 various injury parameters relating to the domestic industry are discussed below

124. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties.

i. Production, capacity, capacity utilization and sales

125. The capacity, production, sales and capacity utilization of the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-	2017-	April 18- June 19		POI	
		17	18	Actual	Annualised	Actual	Annualised
Capacity	MT	***	***	***	***	***	***
Trend	Index	100	114	114	114	114	114
Production of PUC	MT	***	***	***	***	***	***
Trend	Index	100	134	167	167	138	138
Production of NPUC	MT	***	***	***	***	***	***
Trend	Index	100	107	138	138	92	92
Capacity Utilization	%	***	***	***	***	***	***
Trend	Index	100	118	146	146	121	121
Sales including Captive	MT	***	***	***	***	***	***
Trend	Index	100	129	159	159	128	128

126. It is seen that:

- The installed capacity of the domestic industry increased in 2017-18 and remained the same thereafter.
- The production increased till April 2018-June 2019 but declined during the POI.
- The capacity utilization and domestic sales increased till April 2018-June 2019 and declined thereafter during the POI.

ii. Market share in Demand

127. Market share of the domestic industry is shown in table below:

Particulars	Unit	2016-	2017-	April 18-June 19		POI	
		17	18	Actual	Annualised	Actual	Annualised
Share of Applicants	%	***	***	***	***	***	***
Trend	Index	100	113	188	188	117	117
Share of Subject Countries	%	***	***	***	***	***	***
Trend	Index	100	74	80	80	103	103
Korea	%	***	***	***	***	***	***
Trend	Index	100	106	81	81	97	97

Share of Other Countries	%	***	***	***	***	***	***	***
Trend	Index	100	147	74	74	65	65	65
Total	%	100	100	100	100	100	100	100
Trend	Index	100	100	100	100	100	100	100

128. It is seen that the market share of the domestic industry increased till April 18-June 19 and declined thereafter during POI. The market share of the subject countries declined in 2017-18 and increased thereafter, with significant increase in the POI.

iii. Inventories

129. Inventory position with the domestic industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Opening	MT	***	***	***	***	***	***
Trend	Index	100	56	58	58	85	85
Closing	MT	***	***	***	***	***	***
Trend	Index	100	104	152	152	218	218
Average	MT	***	***	***	***	***	***
Trend	Index	100	73	92	92	133	133

130. It is seen that the inventories with the domestic industry have increased since April 2018-June 2019.

iv. Profitability, cash profits and return on capital employed

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

Particulars	Unit	2016-17	2017-18	April 18-June 19		POI	
				Actual	Annualised	Actual	Annualised
Profit/(Loss) per unit	₹/MT	***	***	***	***	***	***
Trend	Index	100	112	107	107	(124)	(124)
Profit/Loss	₹ Lacs	***	***	***	***	***	***
Trend	Index	100	149	176	176	(167)	(167)
Cash Profit	₹ Lacs	***	***	***	***	***	***
Trend	Index	100	151	177	177	(112)	(112)
Return on Capital Employed	%	***	***	***	***	***	***

Trend	Index	100	141	176	176	(82)	(82)
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132. The following is observed:

- a. The domestic industry had almost similar level of profitability between 2016-17 and April 2018–June 2019 period. The domestic industry however faced significant decline in profits in the POI to such an extent that the domestic industry suffered financial losses in the POI.
- b. Cash profits, PBIT and return on capital employed followed the same trend as that of profits. Cash profits, PBIT and return of investment increased till April 2018–June 2019 and declined to negative levels in the POI. The domestic industry suffered cash losses and negative ROI in the POI.

v. Employment, wages and productivity

133. Employment, wages and productivity of the domestic industry over the injury period is given in the table below-

Particulars	Unit	2016-17	2017-18	April 18-June 19		POI	
		Actual	Annualised	Actual	Annualised	Actual	Annualised
Wages	₹ Lacs	***	***	***	***	***	***
Trend	Index	100	186	243	243	179	179
Employment	Nos.	***	***	***	***	***	***
Trend	Index	100	96	98	98	98	98
Productivity per Employee	per MT	***	***	***	***	***	***
Trend	Index	100	139	171	171	141	141
Productivity per day	MT	***	***	***	***	***	***
Trend	Index	100	135	165	165	135	135

134. It is seen that:

- a. The wages paid has increased till April, 2018-June, 2019, after which there was a decline.
- b. The number of employees have declined from the base year to 2017-18 and then increased in April, 2018-June, 2019 and the POI;
- c. The productivity increased till April, 2018-June, 2019. There was a decline in the POI.

135. The domestic industry has submitted that these parameters are not reflective of the impact of dumped imports on the domestic industry.

vi. Growth

136. The growth of the domestic industry in terms of production, capacity utilization, domestic sales volume, inventories, profits, cash profits and return on investment is as per given in the table below-

Growth Y to Y	Unit	2017-18	Apr 18 June19 (Annualised)	POI (Annualized)
Capacity	%	13.64	-	-

Production	%	34.45	24.06	-16.99
Domestic sales	%	32.61	23.57	-17.97
Profit/(loss) per unit	%	12.17	-4.26	-215.65
Cash profits	%	50.86	17.06	-163.68
Return on capital employed	%	40.88	25.16	-146.72

137. It is seen that the growth of the domestic industry was negative in all macro injury parameters in the POI.

vii. Magnitude of Dumping Margin

138. Magnitude of dumping is an indicator of the extent to which the imports are being dumped in India. The investigation has shown that dumping margin is positive and significant in the investigation period.

viii. Ability to raise capital investment

139. The domestic industry is suffering financial losses in the POI. With the competition being faced by the domestic industry because of the dumped imports, the operations of the industry have been impacted which has affected its ability to raise capital investment. The domestic industry submitted that it has planned further capacity addition, and the same was underway. However, the company has put the expansion plan on hold due to dumping of the product in the Country.

viii. Factors affecting domestic prices

140. It is seen that the import prices are directly affecting the prices of the domestic industry in the market. The landed value of the subject goods from the subject countries are below the cost and selling price of the domestic industry. Further, the domestic industry is unable to retain its prices in the market due to presence of dumped imports in the country. The prices of imports have depressed the prices of the domestic industry to a significant degree. The dumped imports are impacting the prices of the domestic industry. Hence, it is concluded that the principal factor affecting the domestic prices is the dumped imports of subject goods.

ix. Magnitude of price underselling/injury margin

141. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the PUC has been determined by adopting the information/data relating to the cost of production provided by the domestic industry and duly certified by the practicing accountant for the POI. The NIP has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials and utilities has been considered over the injury period. Best utilisation of production capacity over the injury period has been considered. Extraordinary or non-recurring expenses have been excluded from the cost of production. A reasonable return (pre-tax @ 22%) on 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 being followed.

142. Landed price for the cooperating exporters has been determined from the CIF export price determined for the purpose of dumping margin determination. Applicable customs duties have been added to determine landed price of imports. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on facts available.

143. Based on the landed price and NIP determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below.

Producer	NIP	Landed price	Injury margin	Injury margin	Injury margin
	(US\$/MT)	(US\$/MT)	(US\$/MT)	(%)	(Range)
EU					
Arlanxeo Emulsion Rubber France S.A.S.	***	***	***	***	0-10
Other producers/exporters from EU	***	***	***	***	10-20
Japan					
JSR Corporation	***	***	***	***	Negative
Zeon Corporation	***	***	***	***	0-10
Other producers/exporters from Japan	***	***	***	***	10-20
Russia					
JSC Krasnoyarsk Synthetic Rubber Plant	***	***	***	***	20-30
Other producers/exporters from Russia	***	***	***	***	30-40
China					
All producers/exporters from China PR	***	***	***	***	20-30

x. Examination on injury

144. The examination of the imports of the subject product and the performance of the domestic industry clearly shows that the volume of dumped imports from subject countries has increased in both absolute and relative terms. The imports from the subject countries are undercutting the prices of the domestic industry and the price underselling/injury margin is positive from the subject countries. The imports from the subject countries are depressing the prices of the domestic industry. The production, sales, capacity utilization and market share of the domestic industry has declined in the POI. The performance of the domestic industry has significantly deteriorated in respect of profits, cash profits and return on capital employed. The domestic industry has suffered financial losses, cash losses and negative return on investments in the POI.

I. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS

145. The Authority examined any known factors other than the dumped imports which at the same time might have been injuring the domestic industry, so that the injury caused by these other factors, if any, is not attributed to the dumped imports. Factors which are relevant in this respect include, *inter alia*, the volume and prices of imports not sold at

dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. The Authority examined whether factors other than dumped imports could have contributed to the injury to the domestic industry.

146. The submissions have been raised by the interested parties that injury due to Korean imports are unaddressed and cannot be attributed to subject countries and Russia in particular, and recommendation/imposition of duties is discriminatory and unsustainable under Rule 19 of Customs Tariff Act and Article 9.2 of the ADA, and therefore, investigation should be terminated. In this regard, it is held that that there is no discriminatory approach that has been adopted in the present investigation.

147. Rule 19 clearly states that there should be no discrimination between various producers/exporters in a country while imposing duties. The Authority notes the Appellate Body Report in European Communities – Definitive Anti-dumping Measures on certain Iron or Steel Fasteners from China which interpreted Article 9.2 as under:

“338. We note that Article 9.2 of the Anti-Dumping Agreement requires that anti-dumping duties be collected on a non-discriminatory basis from "all sources" found to be dumped and causing injury, except from "those sources" from which price undertakings have been accepted. We agree with the Panel that the term "sources", which appears twice in the first sentence of Article 9.2, has the same meaning and refers to individual exporters or producers and not to the country as a whole. This is indicated by the fact that price undertakings mentioned in the first sentence of Article 9.2 are accepted, according to Article 8 of the Anti-Dumping Agreement, from individual exporters and not from countries. Therefore, the requirement under Article 9.2 that anti-dumping duties be collected in appropriate amounts in each case and from all sources relates to the individual exporters or producers subject to the investigation”.

148. The Appellate Body interpreted that the non-discriminatory basis from all sources under Article 9.2 of Anti-Dumping Agreement refers to individual exporters or producers and not to the country as a whole. Therefore, the contention of the interested parties is not correct.

149. As regard to contention that injury due to Korean imports is unaddressed and cannot be attributed to subject countries, the Authority notes that Paragraph v of Annexure II provides that the Authority is required to examine any known factors other than the dumped imports which at the same time might have been injuring the domestic industry, so that the injury caused by these other factors, if any, is not attributed to the dumped imports. The Authority notes that imports from Korea RP are found to be dumped in the sunset review investigation concerning same product during the period January, 2019 to December 2019. The Authority also held in the SSR investigation that there is also likelihood of dumping of subject goods from Korea RP. In the present investigation, POI is July 2019 to March 2020 and 6 months are overlapping in both the investigation, and likelihood of dumping was also established in SSR investigation. In this background, the Authority notes from the previous findings that imports from Korea RP are largely dumped imports, and for the purpose of non-attribution analysis, injury on account of factors other than dumped import only are required to be segregated.

150. Imports beyond de-minims limits have been reported from subject countries and Korea. Further, imports below de-minimis limits individually and collectively below 7% have been reported from Malaysia, Poland, Singapore, Switzerland, Thailand, UAE and USA. As far as imports from Korea are concerned, the Authority had earlier found the same as dumped and had recommended the extension of ADD. As regards imports from Malaysia and Singapore, the import price is much higher than import price from subject countries. As regards imports from Poland, Switzerland, Thailand, UAE and USA, even though import price is comparable or below the import price from subject countries, the volume of imports is below de-minimis limits both individually and collectively. The Authority, therefore, holds that imports from non-subject countries could not be responsible for the injury found by the authority in the present POI.

a) Volume and value of Imports not sold at dumped prices

151. As mentioned above, imports from other countries are either dumped imports or are at negligible levels. Thus, undumped imports have not caused injury to the domestic industry.

b) Contraction in demand

152. While overall demand has increased, the demand had declined in April 2018–June 2019 period. However, the volume of imports from subject countries declined in that period and the domestic industry was largely able to maintain its profitability. In the POI, while the demand increased, the subject imports increased far beyond the increase in demand and the domestic industry was faced with significant price depression in view of rising imports. Thus, possible contraction in demand has not caused the injury.

c) Changes in Pattern of consumption

153. There have been no material changes in the pattern of consumption of the PUC. Possible changes in the pattern of consumption are not the cause of injury considered by the Authority.

d) Conditions of competition and trade restrictive practices

154. The Authority notes that the investigation has not shown that conditions of competition or trade restrictive practices are responsible for injury considered by the Authority.

e) Developments in technology

155. No evidence has been brought by any interested parties about existence of significant changes in the technology that could have caused injury to the domestic industry.

f) Export performance of the domestic industry

156. Exports made by the domestic industry constitutes small portion of its production. The Authority has considered data for the domestic operations only for the injury analysis. Therefore, export performance is not the cause for the injury to the domestic industry.

g) Performance of other products

157. The domestic industry has provided the injury data of PUC performance and the same has been adopted by the Authority for the purpose of injury analysis. Performance of other products produced and sold by the Applicant is not a possible cause of the injury to the domestic industry.

Conclusion on Causal Link

158. The Authority concludes that the domestic industry has not suffered injury in the POI due to other factors. Further, the following factors show that the injury to the domestic industry is due to dumped subject imports:

- The volume of subject imports has increased significantly in absolute as well as relative terms.
- The imports are undercutting the prices of the domestic industry.
- The imports have forced the Domestic Industry to sell the product at a price below its cost of production. The dumped subject imports have a price depressing effect on the selling price of the Domestic Industry.
- The price depression due to the subject imports have led the domestic industry into financial losses, cash losses and negative return on investments in the POI.

159. The Authority, thus, concludes that there exists a causal link between the dumping of the subject goods from the subject countries and injury to the domestic industry.

J. POST DISCLOSURE COMMENTS

160. Post disclosure submissions have been received from the interested parties. These are examined as follows.

J.1. Submissions by the domestic industry

161. The submissions made by the domestic industry is as follows:

- Right to fair comparison is not absolute and there exists an obligation to demonstrate a factor affecting price comparability. No such contention was made in the instant case.
- 94% of the exports of the Russian exporter are only one grade. Hence, PCN analysis wouldn't show a different result. AN content and mooney viscosity are used to distinguish grades. Since there is no universal nomenclature for grade, treatment of grade as PCN would defeat the purpose of PCN.
- 70% of the production of the DI were of N 745 and N 746 grades which have only a difference of Rs. 370/MT in the per unit cost of production.
- Even if PCN is to be adopted, the Authority should take low, medium, and high AN content NBR. Since price difference between medium grades is only 4% no further breakdown is justified. They constitute 95% of total exports to India.
- The price difference between the grade constituting 94% of Russian exports is 36%. The bigger price difference is due to time difference and not due to PCN difference.
- All previous investigations on the subject goods except two used weighted average basis for calculating dumping margin and injury margin. An exception cannot be used as precedence.

- k. The Authority should ensure that the responses filed by the producers account for whole quantity of exports to India. The obligation to ensure the same lies on the producer. If not 100% and no adequate reasoning present, the response should be rejected. The response should also be rejected if the share of exports of non-cooperative unrelated exporter of a producer is more than 30%.
- l. Export price of sales channel involving the non-cooperative unrelated exporter should be calculated based on sale price of producer to first exporter adjusted for ex-factory expenses.
- m. Price undercutting and injury margin should be determined only considering those import transactions whose landed price below selling price of the DI since concern of the DI is against injurious imports. WTO Report in EC – Anti-dumping duties on malleable cast iron tube or pipe fittings from Brazil is relied on which states there is no requirement under Article 3.2 of the ADA to establish one single margin of undercutting taking every transaction involving the PUC and the like article. Considering “overcutting” prices have the effect of concluding no price undercutting when, in fact, there might be considerable number of sales at undercutting prices. The number of sales at undercutting prices is important as it shows number of sales lost by the DI. The same principle applies to the calculation of injury margin. EU, which also follows the lesser duty rule, follows this methodology. The same has not been challenged in the WTO. The CESTAT order in Kothari Sugars & Chemicals Limited v. Designated Authority is relied on. The same was also referred by the tribunal in Honest Enterprises Ltd. v. Designated Authority.
- n. There is high participation from exporters even with their unrelated exporters while there is absence of significant participation from the importers/users.
- o. The imposition of ADD is in the interest of the domestic manufacturer, consumers, and public at large. Since a demand-supply gap exists, the imports of the PUC will not cease. The impact of the ADD on the consumer industry is minuscule. Analysis of the impact of potential anti-dumping duty on the consumers shall show that the impact of imposition of anti-dumping duty on the consumer industry shall be minuscule. Further the fact that only one user has opposed imposition of anti-dumping duty proves that the consumer industry is not concerned about imposition of anti-dumping duty.

SN	Sector	Impact of ADD		
		Minimum	Average	High
1	Automotive components	a. O ring	1.3%	1.0%
		b. Dust seal	2.9%	2.7%
		c. Air hose	3.3%	3.0%
2	Rice Rolls		3.8%	3.3%
3	Hoses		1.5%	0.9%
4	LPG Tubing		2.7%	2.4%
5	Insulation Foam		1.4%	1.0%
5	Jointing sheet		2.0%	1.2%
6	Cork sheet		0.8%	0.7%
7	Cooker Gasket		2.5%	2.3%
				2.1%

- p. The fact that only one user has opposed the imposition of ADD shows consumer industry is not concerned about the same. In light of widening trade deficit and declining foreign reserves, it is important to reduce import dependence.

J.2. Submissions by other interested parties

- 162. The submissions made by other interested parties are as follows:
 - q. The finding in the Disclosure Statement that the exporters did not propose a PCN-wise analysis is wrong.
 - r. EU imports should be decumulated as EU import volumes decreased in the POI and EU import prices increased significantly.
 - s. Even if not proposed by the DI, the same cannot be a justification for the same. “Fair comparison” is a legation obligation of the Designated Authority. Irrespective of the stage at which it is proposed by the Authority, the Authority is mandated to apply it. Not to apply the same since it was not prescribed at the initial stage is not appropriate. The Authority has called for PCN-wise data post-initiation in many cases.
 - t. Once the exporter has provided PCN-wise information, the DA is obliged to carry out grade wise analysis. Once a claim for PCN-wise/grade-wise injury margin is made, grade-wise dumping margin should be presumed. Normal value and export price should be re-examined on PCN-wise/grade-wise data. Injury margin and dumping margin without PCN-wise analysis will lead to incorrect and misleading conclusions.
 - u. DGTR erred in observing that imposition of duties would not have significant adverse impact on consumers. It would adversely impact competition in domestic market and would be detrimental to the user/downstream industries.
 - v. The non-discriminatory obligation arises from MFN obligation under Article I:1 of the GATT. Rules and formalities applied in AD investigations fall within the scope of the article as per Panel report in EU – Footwear (China). The Panel also established that differently treating WTO members in AD investigations covering same product violates MFN obligation.
 - w. The Disclosure Statement does not provide analysis of other factors like increase in costs, increase in wages, increase in number of employees and decrease in productivity per employee. Under Article 3.5 of the ADA the obligation to analyze other known factors is on the authority and not on any interested parties as stated in the Disclosure Statement.
 - x. The claim that the petitioner is overstating its production capacity has not been addressed.
 - y. Contrary to the observations of DGTR, crude oil price movements are relevant to the present investigation. Furthermore, the import of raw materials by the Petitioner may have contributed to the poor performance of the Petitioner.
 - z. DGTR has erroneously observed that the possible decline in the demand for the product or possible recession in auto sector does not impact the injury data considered for the POI. However, the Petitioner has itself admitted that the slowdown in auto sector has had a detrimental effect on the NBR volume sales. This may also be a contributing factor of injury to DI.
 - aa. The reasons for the inability of the Petitioner to expand capacities must also be examined to assess whether it is due to the dumped imports or due to environmental clearances and other government approvals.
 - bb. It must be examined whether the production line used by the Petitioner is same for PUC and PVC, the volume of PUC and NPUC produced through the production line,

and if the Petitioner is deliberately producing more NPUC because of higher profitability.

- cc. Petitioner is commissioning a captive power plant to save power cost, is working on a debottlenecking project to increase production capacity and reduce operational costs, and has also made significant investments in and launched an NBR carboxy which has a high demand in Malaysia and Indonesia with an increasing demand in India due to the COVID-19 pandemic. DI is only creating a perception of injury and has not faced any actual injury from the subject imports.
- dd. DGTR failed to segregate the effects of dumping by Korea from the subject countries and erroneously included the same within the “dumped imports” in the present investigation.
- ee. NIP to be disclosed in narrow ranges (within 5% gap at maximum between the lower and higher range) in non-confidential form.

J.3. Examination by the Authority

163. The Authority has examined the post disclosure submissions made by 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 considered relevant by the Authority are examined below.

164. With regard to submissions made by producer/exporter from Russia that Authority should determine grade-wise dumping margin as the said producer/exporter has provided information based on their internal product grading in the questionnaire response, the Authority notes that Domestic industry has not proposed any PCN-wise analysis in its application. The responding exporter has also not suggested any PCN, and has instead suggested grade-wise dumping margin. While suggesting grade wise dumping margin determination, the exporter has not established why grade wise comparison is important, having regard to factual matrix of the case and the data filed by the exporter itself. The Authority notes that a specific grade of an exporter cannot be treated as a PCN. The exporter has not suggested any PCN on the basis of scientific criteria which could be universally applied. The Authority has not prescribed PCN methodology in the notice of initiation or thereafter during the course of investigation. It is also noted that there are no universal known grades of the product. It is also noted that this product has been subject to anti-dumping investigations in the past and PCN methodology was not prescribed by the Authority in those investigations, and dumping margin was not determined based on PCN-wise analysis.

165. In the post disclosure comments, the JSC Krasnoyarsk Synthetic Rubber Plant has submitted that the product has different grades, based on the Acrylonitrile content and Mooney viscosity, and each of the grade sold in the home market and exports market including Indian is unique to the customer requirement and therefore, weighted average comparison will not reflect the correct position., and demanded grade wise analysis. No such requests for PCN wise analysis was received from other cooperating producers and exporters from other subject countries. The Authority thereafter sent a communication to all other responding exporters to provide grade wise information. The Authority also asked JSC Krasnoyarsk Synthetic Rubber Plant to provide details of their exports to third countries. None of the exporters apart from JSC Krasnoyarsk Synthetic Rubber Plant has provided grade wise information, and have in fact stated that the grade wise comparison is not necessary in the factual matrix of the present case.

166. It is noted that NBR is a synthetic rubber, a copolymer of ACN and BD. Depending on the content of ACN and BD, the product is produced and sold by the producers in India and subject countries in a number of grades. Different grades have different AN content and Mooney Viscosity. In market parlance, depending on ACN content and Mooney Viscosity, the product is categorised into low, medium and high NBR. The domestic industry contended that majority of production (in the region of 85-95%) in India and globally is in the category of medium NBR. In the previous investigations as well, the Authority recognised that the product under consideration is categorised into low, medium and high NBR. But, majority of the production and sales is in medium NBR. It is noted from the verified information of the domestic industry that overwhelming quantity (****%) of its sale is medium NBR with insignificant cost difference (of less than ***%,). High NBR has higher cost but its share is insignificant (***%), and Low NBR also has insignificant **cost** difference (less than ***%). Moreover, the Low NBR has higher costs. While examining the data of Sibur, it was noted most of exports made to India (more than 90%) are medium NBR only. Furthermore, though low NBR has lower costs, high NBR has costs which are lesser than medium NBR. In addition, it is also seen that the prices of inputs have changed significantly within the POI, and the exporter has not established whether and to what extent the difference in the cost of production of different grades is due to difference in the product characteristics and the extent to which the difference in the costs is due to time period. It is also noted that the other exporters from Japan, and EU did not provide grade wise costs, after an opportunity was provided to them.

167. In view of the same, the Authority has not considered it appropriate to undertake dumping margin determination on PCN/grade-wise analysis in the present investigation. It is further noticed that both the Domestic Industry and producer and exporter from Russia i.e. M/s Sibur have sold overwhelming quantity (more than ***%) of subject goods in Medium category in India and therefore, injury margin calculation also does not require any grade /category wise analysis.

168. In view of the above the Authority has determined dumping margin and injury margin by comparing normal value and export price on the basis of weighted average for the product under consideration for all cooperating producers and exporters from subject countries.

169. The Authority has verified the information provided by the responding producers in their questionnaire responses and ensured that the data accounts for the whole exports of the producer of the subject goods into India. It is also noted that the share of the non-cooperative unrelated exporter in the total exports of the subject goods by the producer to India is less than 30%. As noted previously in this finding, in case of sales channels involving a non-cooperative unrelated exporter, the export price has been determined on the basis of the best information available.

170. As regards argument of non-examination of employees, productivity and wages, the same is examined in the relevant paragraphs of the findings. The Authority finds that factors like increase in costs, increase in wages, increase in number of employees and decrease in productivity per employee does not break the causal link between the dumping of the subject goods from the subject countries and the injury suffered by the DI.

171. The Authority has verified the data provided by the domestic industry and finds that the claim of the interested parties regarding the overstatement of capacity of the DI is incorrect. It is noted that the Authority has considered verified information of the domestic industry for the purposes of the present investigation.
172. The disclosure of the NIP in the Disclosure Statement is consistent with the practice of the Authority.

K. INDIAN INDUSTRY'S INTEREST

173. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.
174. The Authority considered whether imposition of proposed ADD shall have adverse public interest. For the same, the Authority examined whether the extension of the existing duty on imports of the product under investigation would be against the large public interest. This determination is based on consideration of information on record and interests of various parties, including domestic industry, importers and consumers of the product.
175. The Authority issued gazette notification inviting views from all interested parties, including importers, consumers and other interested parties. Authority also prescribed a questionnaire for the consumers to provide relevant information with regard to present investigations, including possible effect of ADD on their operations. The Authority sought information on, inter-alia, interchange ability of the product supplied by various suppliers from different countries, ability of the domestic industry to switch sources, effect of ADD on the consumers, factors that are likely to accelerate or delay the adjustment to the new situation caused by imposition of ADD, impact of repealing or maintaining the present duty. Barring one user that is Imperial Waterproofing Industries Pvt. Ltd, none of the users have filed prescribed questionnaire response. The user associations have filed submissions but have not provided any information on impact of proposed anti-dumping duty on the user industry. Further the said user has not provided sufficient information regarding impact of anti-dumping duty on its product. The interested parties have not demonstrated how these prices of NBR have impacted the consumers. Even though the Authority has prescribed formats for the users to quantify the impact of ADD and elaborate how imposition of ADD shall adversely impact them, it is noted that none of the users have provided relevant information. It is, thus, noted that the interested parties have not established impact of ADD on the user industry with verifiable information. Further the domestic industry has quantified the impact of the

recommended anti-dumping duty on the consumer industry and submitted that the impact is minuscule on different segments of the consumer. The fact that there is only one Indian producer of the product under consideration and non-imposition of anti-dumping duty will adversely impact the indigenous production of the product concern and the fact that the impact of anti-dumping duty is minuscule to the consumers of the product under consideration, the Authority is of the view that the imposition of anti-dumping duty will be in public interest.

L. CONCLUSION & RECOMMENDATIONS

176. After examining various submissions of the interested parties with regard to product under consideration, confidentiality, adequacy and accuracy of the application, questionnaire responses, selection of period of investigation, dumping margin determination, injury to the domestic industry, other factors allegedly causing injury to the domestic industry, the Authority notes that it has appropriately dealt with the issues raised in the relevant paragraphs of these findings. After examining the submissions made by the interested parties and issues raised therein and considering the facts available on record, the Authority concludes that:

- i. The Applicant constitutes domestic industry under Rule 2(b) of the Rules and considers that the application satisfied the criteria of standing in terms of Rule 5(3) of the Rules.
- ii. Since domestic industry is not manufacturing liquid NBR, liquid NBR is excluded from the scope of the PUC.
- iii. the product produced by the domestic industry is like article to PUC imported from the subject countries.
- iv. The Authority has calculated dumping margin on weighted average basis for all the responding exporters.
- v. The claims of confidentiality made by the Applicants and the opposing interested parties have been examined, and on being satisfied about the same, the Authority has allowed the claim on confidentiality.
- vi. the application contained all information relevant for the purpose of initiation of investigation and the application contained sufficient evidence to justify initiation of the investigation decided to initiate the present investigation.
- vii. The adoption of 9 months as POI is not inconsistent with the Rules.
- viii. Considering the normal value and export price for subject goods, the dumping margins for the subject goods from subject countries have been determined, and the margins are significant.
- ix. The Domestic Industry has suffered material injury. The examination of the imports of the subject product and the performance of the domestic industry clearly shows that the volume of dumped imports from subject countries has increased in both absolute and relative terms. The imports from the subject countries are undercutting the prices of the domestic industry. The imports from the subject countries are depressing the prices of the domestic industry. The production, sales, capacity utilization and market share of the domestic industry has declined in the POI. The performance of the domestic industry has significantly deteriorated in respect of profits, cash profits and return on capital employed. The domestic industry has suffered financial losses, cash losses and negative return on investments in the POI.

177. 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 considers it necessary and recommends the imposition of anti-dumping duty on imports of subject goods from the subject countries.

178. In terms of provision contained in Rule 4(d) of the Rules, the Authority recommends imposition of ADD equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the Domestic Industry. Taking into account the factual matrix of the case, and having regard to information provided, and submissions made by interested parties, it is considered appropriate to recommend benchmark/reference form of anti-dumping duties. The Authority recommends imposition of definitive anti-dumping duties on import of subject goods originating in or exported from subject countries from the date of notification to be issued in this regard by the Central government, as the difference between the landed value of subject goods and the reference price indicated in column 7 of the table below, provided the landed value is less than the value indicated in column 7. No benchmark/reference price has been recommended for JSR Corporation, as injury margin for this producer is negative.

179. The landed value of imports for this purpose shall be assessable value as determined by the Customs under Customs Act, 1962 and applicable level of custom duties except duties levied under Section 3, 8B, 9, 9A of the Customs Tariff Act, 1975.

Duty Table

SN	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	40025900	Acrylonitrile Butadiene Rubber*	EU	EU	Arlanxeo Emulsion Rubber France S.A.S.	2,086.78	Per MT	US\$
2	-do-	-do-	EU	Any country including EU	Any other than provided in SN (1)	2,086.78	Per MT	US\$
3	-do-	-do-	Any country other than country attracting	EU	Any	2,086.78	Per MT	US\$

			anti-dumping duty					
4	-do-	-do-	Japan	Japan	JSR Corporation	Not Applicable.	Per MT	US\$
5	-do-	-do-	Japan	Japan	Zeon Corporation	2,086.78	Per MT	US\$
6	-do-	-do-	Japan	Any country including Japan	Any other than provided in SN (4) and (5)	2,086.78	Per MT	US\$
7	-do-	-do-	Any country other than country attracting anti-dumping duty	Japan	Any	2,086.78	Per MT	US\$
8	-do-	-do-	Russia	Russia	JSC Krasnoyarsk Synthetic Rubber Plant	2,086.78	Per MT	US\$
9	-do-	-do-	Russia	Any country including Russia	Any other than provided in row (8)	2,086.78	Per MT	US\$
10	-do-	-do-	Any country other than country attracting anti-dumping duty	Russia	Any	2,086.78	Per MT	US\$
11	-do-	-do-	China PR	Any country including China PR	Any	2,086.78	Per MT	US\$
12	-do-	-do-	Any country	China PR	Any	2,086.78	Per MT	US\$

			other than country attracting anti-dumping duty					
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* The product under consideration (PUC) is “Acrylonitrile Butadiene Rubber” or “NBR”, specifically excluding liquid NBR, Latex NBR, Powder NBR and Carboxylated NBR.

M. FURTHER PROCEDURE

180. An appeal against these findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

(Anant Swarup)
Joint Secretary and Designated Authority