

**To be published in Part-I Section I of the Gazette of India Extraordinary**

**F. No. 7/32/2020 - DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Trade Remedies  
Jeevan Tara Building, Parliament Street, New Delhi**

Dated: 23<sup>rd</sup> August, 2021

**NOTIFICATION**

**FINAL FINDINGS**

**Case No. AD-SSR 16/2020**

**Subject: Sunset review investigation concerning antidumping duty on imports of Melamine from China PR.**

F. No. – 7/32/2020-DGTR – Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the "Act") and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the "Rules") thereof:

**A. BACKGROUND OF THE CASE**

1. The Designated Authority (hereinafter referred to as the "Authority") initiated the original anti-dumping investigation in respect of the imports of Melamine (hereinafter referred to as the 'subject goods' or PUC or product under consideration) originating in or exported from China PR (hereinafter referred to as the subject country) vide Notification No. – 14/16/2003 – DGAD dated 10<sup>th</sup> September 2003. The Authority notified its final findings dated 3<sup>rd</sup> September 2004, recommending definitive antidumping duty on the imports of Melamine from the subject country. The definitive antidumping duty was imposed on the subject goods vide Notification No. 107/2004-Customs (ADD) dated 16<sup>th</sup> November, 2004.
2. Thereafter, M/s Gujarat State Fertilizers & Chemicals Limited filed an application for initiating 1<sup>st</sup> sunset review investigation. The sunset review was initiated vide Notification No.15/29/2008-DGAD dated 21st November 2008, which culminated into recommendation continuation of antidumping duty vide Final Findings Notification No. 15/29/2008-DGAD dated 20th November 2009. The Ministry of Finance accepted the recommendation and extended duty vide C.N. No. 10/2010-Customs dated 19th February 2010.

3. 2nd sunset review was initiated vide Notification No. 15/17/2014-DGAD dated 9th December 2014, which culminated into recommendation for extension of antidumping duty vide Final Findings Notification No. 15/17/2014-DGAD dated 5th December 2015. The Ministry of Finance accepted the recommendation and extended duty vide C.N. NO. 2/2016 - Customs (ADD) dated 28th January 2016. The existing duties have been extended by Ministry of Finance vide C.N. NO. 1/2021 - Customs (ADD) dated 6th January 2021 and C.N. NO. 19/2021 - Customs (ADD) dated 31.03.2021. The existing duty will exist till 30<sup>th</sup> September, 2021.
4. A new shipper review was conducted, and the final findings notification no. 7/11/2017-DGAD were issued on 19th June 2019. The Ministry of Finance accepted the recommendation and antidumping duty was imposed vide C.N. No. 34 /2019-Customs (ADD) dated 6th September 2019 on the imports from the concerned exporter.
5. In terms of Section 9A (5) of the Act, an anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition. The Authority is required to review, whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the same, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.
6. Rule 23(1B) of the Rules provides as follows:

*"...any definitive anti-dumping duty levied under the Act. shall be effective for a period not exceeding five years from the date of its imposition, unless the Designated Authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry"*
7. Gujarat State Fertilizers & Chemicals Limited (hereinafter referred to as the "Applicant" or "domestic industry") has filed an application dated 25<sup>th</sup> July, 2020 before the Designated Authority (hereinafter referred to as the "Authority"), in accordance with the Customs Tariff Act, 1975 (hereinafter referred as the "Act") as amended from time to time and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred as the Rules), as amended from time to time, for sunset review of anti-dumping investigation concerning antidumping duty on the imports of Melamine (hereinafter referred as the "subject goods" or "product under consideration"), originating in or exported from China PR (hereinafter referred to as the "subject country").

8. In view of the duly substantiated application filed by the Applicant, the Authority in accordance with Section 9A (5) of the Act, read with Rule 23 of the Antidumping Rules, initiated the 3<sup>rd</sup> sunset review investigation vide notification No.7/32/2020- DGTR (Case No. SSR 16/2020) dated 22<sup>nd</sup> September, 2020 to review the need for continued imposition of the antidumping duties in respect of the subject goods, originating in or exported from the subject country, and to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
9. The scope of the present review covers all aspects of the previous investigations concerning imports of the subject goods, originating in or exported from the subject country.

## **B. PROCEDURE**

10. The procedures described below have been followed with regard to the investigation:
  - a. The Authority issued a Notification 22<sup>nd</sup> September, 2020, published in the Gazette of India Extraordinary, initiating investigation concerning review of antidumping duty on imports of the subject goods from the subject country
  - b. The Authority sent copy of the initiation notification dated 22<sup>nd</sup> September, 2020, to the Embassy of the subject country in India, known producer and exporters from the subject country, known importers and other interested parties, as per the addresses made available by the applicant domestic industry and requested them to make their views known in writing within 30 days of the initiation notification in accordance with Rule 6(4) of the AD Rules.
  - c. Copy of letter and questionnaire sent to the exporters were also sent to Embassy of the subject country along with a list of known exporters/ producers, with a request to advise the exporters/producers from the subject country to respond within the prescribed time limit.
  - d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters, known importers and to the embassy of the subject country in India in accordance with Rule 6(3) of the AD Rules.
  - e. The Authority forwarded a copy of the public notice initiating the SSR to the following known producers/exporters in the subject country and provided them opportunity to make their views known in writing within thirty days from the date of the letter in accordance with the Rules 6(2) and 6(4) of the Rules.
    - i. M/s Kuitun Jinjiang Chemical Industry Co. Ltd.
    - ii. M/s Foshan Kaisino Building Material Co., Ltd.
    - iii. M/s Tianjin Kaiwei Chemical Co. Ltd
    - iv. M/s Inner Mongolia Ihjuchem Industrial Co., Ltd.
    - v. M/s Anhui Jinhe Industrial Co., Ltd.
    - vi. M/s Henan Hongye Chemical Co. Ltd.

- vii. M/s Golden Elephant Chemical Co. Ltd.
- viii. M/s Henen Harvest International Co. Ltd.
- ix. M/s. Urumqi Petrochemical Co. Ltd.
- x. M/s Yingkou Tianyuan Elaborate Chemical Industry Co., Ltd
- xi. M/s Holitech Technology Co., Ltd.
- xii. M/s Shandong Hualu Hengsheng Chemical Co. Ltd.
- xiii. M/s Chengdu Yulong Chemical Co., Ltd.
- xiv. M/s Henan Yuhua Specialty Chemicals
- xv. M/s Jianfeng Chemicals Co. Ltd.
- xvi. M/s Weifang Tainuo Chemical Co., Ltd.
- xvii. M/s China Huaya Group Co. Ltd.
- xviii. M/s Naier Chemical Co. Ltd.
- xix. M/s Sichuan Chemical Works Co. Ltd.
- xx. M/s Sichuan Meifeng Chemical Ind. Co. Ltd.
- xxi. M/s Luxi Chemical Group Co., Ltd.
- xxii. M/s Yangmei Fengxi Fertilizer Industry (Group) Co., Ltd
- xxiii. M/s Sichuan Golden-Elephant Sincerity Chemical Co., Ltd.
- xxiv. M/s Henan Xinlianxin International Trading Co. Ltd.

- f. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject 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 them along with the names and addresses of the known producers/exporters from the subject country.
- g. None of the producers/exporters from the subject country filed exporter's questionnaire response.
- h. Questionnaire was also sent to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Anti-dumping Rules:
  - i. M/s Meghdoot Laminart Private Limited
  - ii. M/s Sundek India Limited
  - iii. M/s Milton Laminates Limited
  - iv. M/s Bloom Dekor Limited
  - v. M/s GVK Petrochemicals Private Limited
  - vi. M/s Katyani Chemtech India Private Limited
  - vii. M/s Ecoboard Industries Limited
  - viii. M/s The Bombay Burmah Trading Corporation
  - ix. M/s. Greenply Industries Limited
  - x. M/s Merino Industries Limited
  - xi. M/s Hazel Mercantile Limited
  - xii. M/s Stylam Industries Private Limited
  - xiii. M/s Surya Vikas Plywood Private Limited
  - xiv. M/s Century Plyboards Limited
  - xv. M/s Kishore Organics Private Limited

- xvi. M/s Exim Corp
- xvii. M/s HEF India Private Limited
- xviii. M/s Managlam Timber Products Ltd
- xix. M/s Rushil Décor Limited
- xx. M/s Alfa Ica (I) Limited
- xxi. M/s Jay Décor Private Limited
- xxii. M/s PPG Asian Paints Private Limited
- xxiii. M/s Sandeep Organics Private Limited
- xxiv. M/s Virgo Industries
- xxv. M/s Agarwal Life Sciences Private Limited
- xxvi. M/s Balaji Action Buildwell Private Limited

- i. The submissions of importers or consumers of the product have been filed as under:
  - i. M/s Century Ply Limited
  - ii. Federation of Indian Plywood and Panel Industry and Indian Laminate Manufacturers Association (FIPPI).
- j. Exporters, foreign producers and other interested parties who have not responded to the Authority, or not supplied information relevant to this investigation have been treated as non-cooperating interested parties.
- k. Information provided by the interested parties on confidential basis was examined about the sufficiency of the confidentiality claim. 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 such information.
- l. The Authority non-confidential version of the evidence was made available presented by various interested parties.
- m. The period of investigation for the purpose of the present investigation has been considered April 2019 to March 2020 (12 Months) and injury period covers the periods April 2016 - March 2017, April 2017 - March 2018, April 2018, March 2019 and the period of investigation.
- n. Additional/supplementary information was sought from the applicant and other interested parties 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 the investigation.
- o. The domestic industry has provided information on the cost of production and cost to make and sell the subject goods based on Generally Accepted Accounting Principles. (GAAP). The Authority has determined the Non-injurious price (NIP) based on the data so provided by the domestic industry and the principles specified in Annexure III to the AD Rules.
- p. Information provided by the Directorate General of Commercial Intelligence and Statistics (DGCI&S) on transaction-wise basis for the past three years, and the

- period of investigation has been adopted for determination of volume and value of imports of product concerned in India.
- q. In accordance with Rule 6(6) of the Rules the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 16th November 2020 and 11.02.2021 . All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
  - r. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this final finding.
  - s. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded this final finding on the basis of facts available.
  - t. \*\*\* In this final finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
  - u. The exchange rate adopted by the Authority during the period of investigation for the subject investigations is 1 US\$= Rs. 71.65.

## **C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **C.1 Submissions of domestic industry**

11. As regards the product under consideration and like article, the domestic industry has submitted the following:
- a. The present application being an application for sunset review, the scope of the product under consideration remains the same as was defined by the Authority in its previous finding.
  - b. There has been no change in the scope of the product under consideration.
  - c. The goods produced by the domestic industry are like articles to the product imported from the subject country.

### **C.2 Submissions of other interested parties**

12. As regards the product under consideration and the like article, the other interested parties have submitted the following:
- a. Verification should be done by the Authority as to whether domestic industry manufactures two different quality (A & B Grade).
  - b. There is difference in the quality of imported goods due to usage of coal as primary raw material and the subject goods imported from China are of low-pressure whereas domestic industry's product is branded premium quality.
  - c. Product produced by the domestic industry is of high pressure. Usage & price differs between high pressure and low-pressure melamine.

- d. Applicants bear a cost of technology in the form of substantially high Capex and royalty whereas China has a pirated technology freely available throughout China. Capex in Chinese plants is less than half of the patented tech plants of Casale now. Even though both products are BIS standard, the consumer preference is in the favour of applicant.
- e. India cannot test the quality of Melamine, even SGS cannot test melamine in India.

### **C.3 Examination by the Authority**

- 13. The Authority notes that the Product Under Consideration (**herein after referred to as PUC**) as defined under Para 8 of the Initiation Notification dated 22<sup>nd</sup> September, 2020 is as under:

*“8. Product under consideration in the present investigation is Melamine, a tasteless, odourless, and non-toxic substance. Melamine is used for making melamine-formaldehyde, which in turn is used in producing downstream products. Melamine formaldehyde resin used for laminates offer good hardness, resistance to scratch, stain, water and heat.*

*Melamine has a dedicated Custom Sub Heading 29336100 of Chapter 29 of the Customs Tariff Act. The product falls under OGL category and is freely importable.”*

- 14. It has been alleged that there is a difference between the quality of the product produced by the domestic industry and that imported from China PR. An interested party has stated that the product of the domestic industry is of premium quality. A similar unsubstantiated claim was also raised in the previous Sunset Review investigation. Even in the present investigation, neither the importers nor any producer/exporter have demonstrated this difference in quality based on some empirical evidence. Similarly, no substantive evidence has been provided to highlight the difference between high-pressure and low-pressure Melamine. Therefore, in the absence of any verifiable evidence provided by any of the interested parties, the Authority could not consider this claim.
- 15. Since the present investigation is a sunset review, the Authority considers the scope of the product under consideration same as that in the original and subsequent review investigations.

## **D. DOMESTIC INDUSTRY AND STANDING**

### **D.1 Submissions of domestic industry**

- 16. The domestic industry has submitted as follows with regard to domestic industry and standing:

- a. Applicant has not imported the subject goods during the period of investigation from the subject country and is not related to either the exporter of subject goods from the subject country or the importers of the subject goods in India.
- b. Applicant is the sole producer of the subject goods in India and therefore, constitutes domestic industry under Rules.
- c. Domestic industry imported from Qatar in 2016-17, 2017-18 and 2018-19 but there have been no imports in the period of investigation.

## **D.2 Submissions of other interested parties**

17. The other interested parties have submitted as follows with regard to domestic industry and standing:
  - a. If applicant has made imports from other countries, which it has itself alleged are dumped, then it is disqualified from the scope of domestic industry.
  - b. Applicant, being a regular importer is a disqualified entity. The discretion with the Authority to form domestic industry 'with rest of the producers' even if the production in the class of 'rest of producers' fails to meet the criteria of majority of domestic production. Unless the Authority has application from any other producer, howsoever small, it is, therefore no domestic industry.

## **D.3 Examination by the Authority**

18. Rule 2(b) of the AD 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. "*

19. The application in the present investigation has been filed by *M/s. Gujarat State Fertilizers & Chemicals Limited*. In India, the applicant is the sole producer of subject goods. Considering the information on record, the Authority notes that the applicant accounts for the entire Indian production. The applicant has neither imported the subject goods from the subject country nor from any other country during the POI. The Authority has examined the DGCI&S transaction wise data and finds no import of the product by the applicant.
20. Submissions have also been made by interested parties regarding the discretion vested with the Authority for determining the scope of Domestic Industry in case of imports by an applicant. The Applicant in the present investigation has not indulged in any imports

of dumped goods during the POI, thus the Authority is not posed with the question of exercising its discretion in the present investigation.

21. Further, the Authority notes that the definition of Domestic Industry within the ambit of Rule 2(b) can be divided into two parts –
- i. *the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith;*
  - ii. *those whose collective output of the said article constitutes a major proportion of the total domestic production of that article.*

Both these parts of the definition are further qualified by two conditions, namely –

- a. *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.*
- b. *Provided that in exceptional circumstances referred to in sub-rule (3) of Rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry.*

The first exception deals with a situation where the producers have themselves imported the subject goods from the subject country. In such a situation by the deliberate use of the word ‘*may*’ the investigating authority has been vested with the discretion to analyse facts of an individual case and thereafter decide upon disqualification of a producer.

This definition is also in complete consonance with Article 4.1 of the Anti-Dumping Agreement which defines the term ‘*domestic industry*’ for the purposes of the Agreement. Article 4.1 reads as follows –

- “4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or,*
- to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:*
- (i) *when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" **may be** interpreted as referring to the rest of the producers; ... ..”*

22. The qualifier ‘*may*’ has also been provided for and used in respect of both parts of the definition in the Agreement. This view was also held by the WTO Panel in the China Automobiles Case. The relevant section of the report reads as follows –

*“7.206. Articles 4.1 and 16.1 define the domestic industry as either producers of the domestic like product "as a whole", or a subset of those producers, who collectively account for a "major proportion" of total domestic production. These*

*provisions do not specify a hierarchy between these different bases for defining the domestic industry, and thus an IA may define the domestic industry in an investigation on either basis.<sup>315</sup> Neither do Articles 4.1 or 16.1 establish any procedures or methodology for the IA in defining the domestic industry. However, it is clear that an IA may not exclude a category of domestic producers of the like product from the definition of the domestic industry. **Articles 4.1 and 16.1 specify only two situations in which producers of the like product may be excluded from the domestic industry definition, namely, where these producers are importers, or are "related" to exporters or importers of the like product, or where a market is fragmented or divided into a series of distinct competitive markets by the IA and producers in each market are regarded as a separate industry.**"*

23. The Anti-Dumping Rules were drafted for fulfilling India's obligation under the WTO Treaty Regime. Thus, such provisions are to be interpreted in the same sense to give effect to the corresponding treaty provisions. The Supreme Court while examining the relationship between the WTO Regime and the Indian Domestic Law in *G.M Exports vs Commissioner of Customs, Bangalore* made the following observation –  
*"the correct approach to the construction of a statute made in response to international treaty obligation is to give effect to the obligations in international law. If there be a difference in the language of the statutory provision and that of the corresponding provision of the convention, then the statutory language should be construed in the same sense as that of the convention if the words of the statute are reasonably capable of bearing that meaning."*
24. This position was further emphasised by the Supreme Court in *Union of India and Ors. Vs Agricas Llp and Others*. So, even if there is some deviation in the placement of the language of the AD rules the same is to be purposively interpreted with the Anti-Dumping Agreement in light of the guidance provided by the Hon'ble Supreme Court.
25. The applicant is an eligible domestic industry within the meaning of Rule 2(b) of the Rules. The application satisfies the criteria of standing in terms of Rule 5(3) of the Rules. The Authority holds that the applicant constitutes domestic industry within the meaning of the Rules.

## **E. CONFIDENTIALITY**

### **E.1 Submissions of domestic industry**

26. The domestic industry has submitted as follows with regard to confidentiality:
- a. None of the importers has served the non-confidential questionnaire filed by them and have failed to comply with the specific instructions of DGTR.

### **E.2 Submissions of other interested parties**

27. The other interested parties have submitted as follows with regard to confidentiality:

- a. Non-confidential application filed by the domestic industry has allegations and submissions without providing any supporting evidence or basis whatsoever.
- b. Purchase policy, sales policy, accounting policy, cost accounting policy, quality control procedure and tests have been treated as confidential but there is nothing confidential in giving the general policies adopted by the companies.
- c. Domestic industry has claimed excessive confidentiality with respect to information used for normal value calculation such as price of Urea adopted or the manner in which it was determined.
- d. Entitlement to full computation and basis of CNV notified as NV, Dumping Margins, NIP and other information such as analysis of import data and injury in each case without zeroing. The Authority's work cannot be a matter of confidentiality.
- e. The confidentiality in Article 6 of the WTO ADA can only apply to external content and since there are no overseas exporters in the present case, no confidentiality should be claimed or allowed by the Authority.
- f. Any information submitted before the Authority shall be treated as confidential only when 'good cause' is shown and the Authority is satisfied as to its confidentiality.
- g. If the petitioner has imported the subject goods, it has to disclose the volume and the value irrespective of the country from which it has been imported. However, the Domestic Industry has neither revealed the quantum of imports, nor the value.
- h. Domestic Industry has provided no indexed information on utilities consumption, cost of production, raw material and packing material consumption, that is required to be provided for POI as well as injury period.

### **E.3 Examination by the Authority**

28. On confidentiality of information, Rule 7 of the AD Rules provides as follows:

*"Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, 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 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."*

29. The Authority made available non-confidential versions of the information provided by various interested parties to all interested parties for inspection through the public file containing non-confidential version of evidence submitted by various interested parties.
30. The Authority examined the information provided by the domestic industry and other interested parties on a confidential basis for sufficiency of such claims in accordance with Rule 7 of the AD Rules. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential.
31. The Authority notes that certain interested parties have raised claims regarding confidentiality of the NIP and its computation. The Authority examines this claim in light of Rule 7 of the AD Rules. The non-obstante clause in Rule 7(1) makes it clear that the Designated Authority is obligated to maintain confidentiality while performing its functions under Rule 6(2) and it can make available only such evidence as is presented by the interested parties. The obligation of confidentiality permeates the entire anti-dumping rules and arises from India's treaty obligations under Article 6.5.1, 6.5.2 and 12.2.2 of the Agreement on the implementation of Article VI of General Agreement on Tariffs and Trade (WTO Anti-Dumping Agreement).
32. Rule 7 contemplates confidentiality only on information that has been claimed to be confidential by the interested parties. The Hon'ble Supreme Court in the case of *Reliance Industries vs the Designated Authority* held that the the NIP was not confidential for the parties that were supplying information for its computation i.e. the Domestic Industry. The reasons for the decision of the Authority have to be disclosed in the finding, but disclosure of confidential information is prohibited qua other interested parties.
33. The Hon'ble Supreme Court in *Reliance Industries* relied on its decision in *Sterlite Industries (India) Ltd. v. Designated Authority*. Sterlite Industries had emphasized upon the importance of confidentiality. In para 3 of said decision it was reaffirmed that:

*"3. ... confidentiality under Rule 7 is not something which must be automatically assumed. Of course in such cases there is need for confidentiality as otherwise trade competitors would obtain confidential information which they cannot*

*otherwise get. But whether information supplied is required to be kept confidential has to be considered on a case-to-case basis. It is for the Designated Authority to decide whether a particular material is required to be kept confidential.”*

34. The decision of a larger bench of the Apex Court in the case of *UOI vs Meghmani Organics* also protects disclosure of confidential information to other interested parties.

*“25. In the light of facts and submissions noted earlier as well as conclusions already recorded at various places, we are of the considered view that the question referred for our answer can be answered in a very straight forward manner by holding that Reliance Industries case did not go into the details of the relevant Rules including Rule 7 but the observations made therein in respect of rule of confidentiality as spelt out in Rule 7 of the Rules does not diminish the scope of Rule 7 as provided. The reasons or findings cannot be equated with the information supplied by a party claiming confidentiality in respect thereto. Hence, Rule 7 does not empower the DA to claim any confidentiality in respect of reasons for its finding given against a party. The law laid down in respect of rule of confidentiality in Sterlite Industries case also has our respectful concurrence. But at the same time, we reiterate that the Reliance Industries case does not adversely affect or run counter to the law spelt out in Sterlite Industries case. We may only explain here that while dealing with objections or the case of the concerned parties, the DA must not disclose the information which are already held by him to be confidential by duly accepting such a claim of any of the parties providing the information. While taking precautions not to disclose the sensitive confidential informations, the DA can, by adopting a sensible approach indicate reasons on major issues so that parties may in general terms have the knowledge as to why their case or objection has not been accepted in preference to a rival claim. But in the garb of unclaimed confidentiality, the DA cannot shirk from its responsibility to act fairly in its quasi-judicial role and refuse to indicate reasons for its findings. The DA will do well to remember not to treat any information as confidential unless a claim of confidentiality has been made by any of the parties supplying the information. In cases where it is not possible to accept a claim of confidentiality, Rule 7 hardly leaves any option with the DA but to ignore such confidential information if it is of the view that the information is really not confidential and still the concerned party does not agree to its being made public. In such a situation the information cannot be made public but has to be simply ignored and treated as non est.”*

35. The guidance of the Apex Court regarding confidentiality makes it abundantly clear that the role of the Adjudicating Authority while contemplating the issue of confidentiality is to determine *firstly*, whether confidentiality has been claimed on such information by the party supplying it and then *secondly*, whether there is a need for confidentiality on such information.

36. In the present case, the Domestic Industry has *firstly* claimed confidentiality on the data supplied by them for the computation of non-injurious price.
37. *Secondly*, the Authority is satisfied that such information is business sensitive in nature and discarding such claim of confidentiality would be detrimental to the business functioning of the Domestic Industry. This is also in lines with the standard practice adopted by the Authority.
38. Computation of NIP undertaken by the Authority is based on business sensitive data of the Domestic Industry that is imperative for their functioning. The Authority treats such information as confidential so as to not further compromise the interests of the party by disclosing such information.
39. 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 evidence submitted by various interested parties for inspection, upon request as per Rule 6(7).

## **F. MISCELLANEOUS SUBMISSIONS**

### **F.1 Submissions of domestic industry**

40. The domestic industry has made the following miscellaneous submissions:
- a. Federation of Indian Plywood & Panel Industry association has not provided any material to establish its credentials or show it has been authorised by the consumers of the product under consideration, any "information" relevant to present investigations, not followed the procedure prescribed by the Authority. The present case is not a fit case where association can claim status of an interested party.
  - b. Federation of Indian Plywood & Panel Industry has not complied with the requirements and obligation. It has not provided information prescribed by the Authority.
  - c. To be an interested party, only business associations, a majority of members of which are importers qualify under the definition in Rule 2(c) of the Rules. Association has furnished no such information regarding their eligibility to be considered as interested party.
  - d. On participation of user associations, provisions of Rule 2(c) cannot be read in a manner that makes provisions of Rule 6(5) redundant. It is a settled principle of interpretation of law that if a special provision is made on a certain matter that matter is excluded from the general provision. Therefore, when a special provision has been made under Rule 6(5) for the manner in which the users may participate, the issue shall not be covered under the broader definition of an "interested party" under Rule 2(c).

- e. As held by Tribunal in the case of Automotive Tyre Importers Association, a user association must establish itself as an interested party by demonstrating its credentials, which has not been done in the present case.
- f. Even when it is assumed that Rule 2(c) definition is an inclusive definition, those parties who have not been specified as interested party under Rule 2(c) need to seek the liberty from the Designated Authority for being treated as an interested party.
- g. A party cannot assume participation as a right and only parties listed under Rules can claim treatment as an interested party as a right. Any other party may be treated as an interested party only by the Designated Authority.
- h. Century Ply is an importer and consumer and therefore was required to fill User questionnaire response and not importer questionnaire response. Not filing User questionnaire response is part of a well-designed thought process and resultant action. Providing desired information could create very inconvenient position with them with regard to their contentions of unbearable burden of duty on them.
- i. Authority should not allow interested parties to advance any further argument until they file adequate and proper questionnaire response. Without providing information and making mere statements cannot establish the authenticity of the claims of the opposing interested parties.
- j. Had the user industry participated, it would have provided the Authority with the required information for the calculation of impact of anti-dumping duty.
- k. Period for which duty has been in force is no relevant consideration to determine whether antidumping duty is required to be extended or not. The only relevant consideration is whether the conditions specified under Act.
- l. Investigating Authorities across globe including DGTR has recommended continuation of anti-dumping duties for a period of 20 years in several investigation.
- m. Anti-dumping duty is not a protection to the industry, but rather a tool to bring fair market competition in the country. Objective of imposition of anti-dumping duty is to establish a level playing field, by removing any trade distortion.
- n. Demand of goods has shown a constant increase. Financial statements of consumers do not show any adverse impact of the anti-dumping duty. No consumer industry has closed down in India because of anti-dumping duty on the subject goods.

## **F.2 Submissions of other interested parties**

41. The other interested parties have submitted the following miscellaneous submissions:
  - a. The application in the present case is not duly substantiated and number of allegations and submissions have been made without providing any supporting evidence or basis.
  - b. As per Kesoram Rayon vs. Designated Authority, Authority is required to satisfy itself that review is required to be initiated. Bare perusal of the initiation notice does not reveal the basis on which the Authority came to the satisfaction that the review is required to be initiated.

- c. Appendix-10 requirements are in relation to filing of application for initiation of investigation by an Association. The same is not applicable insofar as user associations participating in the investigation as interested parties are concerned.
- d. FIPPI has also been recognized as an interested party by applicant in the application wherein it has provided the list of known user associations of the subject goods in India.
- e. Under Rule 2(c) and Rule 6(5), participation of importer/user associations is contemplated and both rules must be read harmoniously to give the intended effect to the statute. It envisages inclusion of all stakeholders in investigation process and views to be taken into consideration as well as a right to appeal.
- f. Data provided in journals cannot be considered as best information within meaning of Rule 6(8) of the AD Rules 1995 as it is forbidden by the Hon'ble CESTAT in Dye Stuff Manufacturers Association of India Versus Govt. of India.
- g. There is no acceptable rationale in the application as to why the duty should be continued even beyond the 16 years for which it has already been in force
- h. Domestic industry gave the name of Sandeep Organics Private Limited as interested party which was approved by Designated Authority. The domestic industry is contradicting its own submissions.
- i. As the domestic industry is the sole producer, anti-dumping is creating monopolistic situation.
- j. There is very high anti-dumping from the past 17 years. High anti-dumping should be reduced which is affecting the laminate industry.
- k. The members of association are MSME's barring a few. The testing facility is not available in India.
- l. The right of users to participate in an investigation is as per provisions of Rule 6(5), which provides for an opportunity of hearing to industrial users and to consumer associations, where the product is sold at retail level. In this case, the goods are not sold at retail level. Rule 2(c) and Rule 6(5) shall be read together and not in isolation.
- m. The Petitioner provided the list of known user associations of the subject goods in India and recognized FIPPI as an interested party.
- n. Definition of interested party subsumes exporters, importers, and user associations, not filing QR will disqualify the party from individual dumping margin. However, not providing such information does not extinguish the right of the interested party to participate.
- o. The association has also established itself as interested party by providing the registration under the Societies Act, 1860 and the Memorandum and rules and regulations.
- p. The Authority has not considered the information submitted by Sandeep Organics Private Limited and Century Ply as incomplete. The availability of the importer questionnaire response to the petitioner is concerned, once the same is provided to the Authority, it is the Authority's obligation to make the same available to the interested party.

- q. For the anti-dumping investigation initiated by Russia, no final determination or preliminary finding has been issued and the dumping margin mentioned in the initiation notice is only as per the claims of domestic industry in Russia.

### **F.3 Examination by the Authority**

42. The Authority has noted all the arguments of the interested parties and has examined all relevant aspects of the submissions as under.
43. Regarding the submissions of interested parties on adequacy and accuracy of the application, the Authority notes that the application contained all information relevant for the initiation of the investigation. The Authority, only after satisfaction that application contained sufficient evidence to justify initiation of the investigation initiated the present investigation. As per Rule 6, the Authority was required to disclose a summary of factors alleged to have caused injury to the domestic industry. The Authority has provided in the initiation notification on what basis it has satisfied itself the need for initiating the review investigation.
44. As regards the submission of opposing interested parties that data published in journals cannot be considered as best available information, the Authority notes that trade journals have been considered by the Authority in past several cases. The interested parties have not showed how the information provided by the domestic industry is not correct. As regards applicability of Rule 6(8), the Authority notes that the said rule is applicable in cases where an interested party refuses access to or does not provide necessary information within a reasonable period.
45. As regards the submission on duty being continued even beyond 16 years, the Authority notes that as per Rule 23 of Rules and Section (A) of the Act, there is no restriction on the period for which the duty can be imposed. The only condition necessary for extension of duties is whether cessation of such duty is likely to lead to continuation or recurrence of dumping and injury. The anti-dumping duty can be extended for a period as long as necessary to counteract dumping or likely dumping causing injury or likely to cause injury. The applicant in the present case has filed the petition highlighting continuance and recurrence of dumping and injury.
46. As regards the request for treating Sandeep Organics Private Limited as an interested party, the Authority has considered Sandeep Organics Private Limited as an interested party in the present investigation.
47. As regards the allegation made by other interested parties, that duties will create a monopolistic situation, it is noted that anti-dumping duties have been levied on dumped imports from China in past. Further, imports have also happened from other sources. There is no reason to believe that anti-dumping duty would have led to monopolistic situation.

48. As regards the submission of testing facility not being available in India other than with GSFC, it is noted that there are few testing facilities available in India to test the quality of melamine. Since the difference in quality between imported product and domestic industry's product has not been substantiated, there is no merit in the claim. Even otherwise, the importer has alleged that the domestic industry's product is of much better quality. It is also noted that none of the consumers of the product have raised any contention in this regard.

49. As regards the anti-dumping investigation initiated by Russia, the Authority notes that the case initiated by Russia does not have any bearing on the present case.

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

50. 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*

*b. the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6);*

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

##### **G.1 Submissions of domestic industry**

51. The domestic industry has submitted as follows with regard to normal value, export price and dumping margin:

a. As per the accession treaty filed by the Chinese Govt. before WTO, urea, whether or not in aqueous solution is listed as a product subject to State trading for imports, Import Licence, Import Quota and Import Tendering and Government Guidance Pricing.

- b. Prices of Melamine are influenced by the State they do not reflect fair market values. Since, China is a non-market economy, normal value needs to be determined in accordance with Para 7 of the Rules.
- c. Prices of imports from market economy country into India are at dumped prices and therefore, cannot be considered adequate for the purpose of determining normal value.
- d. The normal value thus needs to be determined based on the price actually payable in India, adjusted to include a reasonable profit margin.
- e. The dumping margin is significantly positive.
- f. Positive dumping consistently found in exports from China establishes likelihood of continued dumping from the subject country in the event of cessation of anti-dumping duty.
- g. Chinese producers have had a history of dumping the subject goods in the Indian domestic market since 2004.

## **G.2 Submissions of other interested parties**

52. As regards the determination of Normal value, export price and dumping margin, the other interested parties have submitted as follows:
- a. Applicant has not revealed the basis of price of Urea which has been adopted for constructed normal value.
  - b. Domestic industry has provided no basis or documentary evidence in respect of either ocean freight, port expenses, bank charges, handling charges or the unnaturally high commission of 3%.
  - c. Constructed price in India is not appropriate as conversion costs of domestic industry are inflated and do not reflect actual conversion costs due to high depreciation due to adding production capacity of 40,000 MT.
  - d. Applicant has admitted that imports from European Union, Qatar and United Arab Emirates are non-injurious and therefore it is appropriate to adopt the same for normal value.
  - e. China doesn't export raw material urea into India as its prices are high; therefore, finished product Melamine will not be exported cheaply into India. China is now not dumping Melamine into India.
  - f. Contention of domestic industry that third country prices to India can only be adopted when they are above the cost of production has no foundation in statute.
  - g. Although Chinese Melamine substitutes the domestic product for most applications, it fails for a few select applications like WHITE Laminate in terms of clarity and brightness. We request you to make the necessary adjustment in the CNV of the Chinese Melamine taking into consideration the price gap between the two as a fair adjustment in its value.
  - h. The calculation of CNV for EU, Qatar, UAE and Japan and the calculation of normal value is based on the same methodology adopted by the petitioner for CNV in China. However, the abovementioned countries are market economies.

Therefore, the methodology adopted by the petitioner for determining the normal value in the above-mentioned countries, which is based on its own cost of production, is wrong and cannot form the basis of normal value for the above-mentioned market economy countries.

- i. Petitioner has imported from Qatar and the same must be considered as an appropriate surrogate price for China PR. In the New Shippers review investigation, the Authority has considered the normal value from Qatar for determining the normal value of China PR.
- j. The normal value for the 1st SSR to the 2nd SSR have increased, the normal value in the 2nd SSR was based on cost of production of the Petitioner. The cost of production was determined as overinflated in the sunset review investigation on imports of subject the goods from EU, Indonesia, Iran and Japan due to the fact that the cost of ammonia had not been properly allocated.
- k. The basis of arriving at export prices for China PR is also incorrect as the export price has been deflated by the Petitioners. The domestic industry has adopted inflated and arbitrary adjustments to arrive at ex-factory export price. The domestic industry has provided absolutely no basis or documentary evidence in respect of either ocean freight, port expenses, bank charges, handling charges or the unnaturally high commission of 3%.

### **G.3. Examination by the Authority**

53. The Authority sent questionnaires to the known producers/exporters from the subject country, advising them to provide information in the prescribed form and manner. However, no producer/exporter has filed the prescribed questionnaire responses.
54. Article 15 of China's Accession Protocol in WTO provides as follows:

*"Article VI of the GAIT 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 GAIT 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.*

*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 non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector. "*

### **Normal Value determination for all producers/exporters from China PR**

55. At the stage of initiation, the Authority proceeded with the rebuttable presumption and treated China PR as a non-market economy country as it has been treated as a non-market economy in the three years preceding the investigation. Annexure I of the AD rules deals with the determination of Normal Value, Export Price and Margin of Dumping. Para 8 (2) stipulated that there shall be a presumption of non-market economy on a country that has been determined as one by the investigating authority in the three years preceding the investigation. This presumption is rebuttable based on the information and evidence provided to the Authority by such non-market economy or concerning producer/exporter firms establishing to the contrary.
56. None of the producers/exporters of Melamine have cooperated in the present investigation by filing the requisite information in the stipulated format. Consequently, no claim of Market Economy Treatment (MET) was made rebutting Authority's presumption.

57. Under these circumstances of non-cooperation and consequently no claim of MET, for computation of NV the Authority has to proceed in terms of procedure stipulated under Para 7 of Annexure I.
58. Para 7 stipulates the following three options in a hierarchical order for consideration of the Authority -
- i. *the price or constructed value in a market economy third country.*
  - ii. *the price from such a third country to other countries, including India*
  - iii. *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.*
59. The Authority has considered submissions of all the interested for adopting an appropriate methodology for computation of NV. No information was either furnished or available before the Authority about the prices or constructed value prevalent in an appropriate market economy third country.
60. Domestic Industry constructing the normal value based on the price actually payable in India. Before considering such a request the Authority has to explore the possibility of adopting an option higher up the hierarchy in para 7 of Annexure I.
61. None of the interested parties suggested an appropriate surrogate market economy third country for China including the adoption of import prices from such a third country to India. An interested party FIPPI during their written submissions post the first oral hearing suggested that Qatar maybe an appropriate third country market economy and import prices from it to India could be used for determining NV in lines with the order of CESTAT in *Kuitun Jinjiang Chemical Industry Co. Ltd. vs Union of India*. The relevant extract of the judgment is reproduced below –

*“48. There is also no error in the determination of the normal value by the Designated Authority by resorting to the second method mentioned in paragraph 7 of Annexure-I to the 1995 Rules as none of the parties had suggested applying the first criteria set out in paragraph 7. The Designated Authority noted that exports from Qatar are next to China in terms of quantum as China accounted for 30303 metric tons and Qatar accounted for 16479 metric tons. Details have been stated in the disclosure statement of the Designated Authority which has been reproduced above in paragraph 39. No anti-dumping duty was imposed on goods from Qatar nor any anti-dumping investigation was in process and, therefore, the normal value of subject goods was correctly constructed by the Designated Authority after making the necessary adjustments.”*

62. CESTAT had affirmed the choice of Qatar as a surrogate country since such imports were undumped and their share in the total Indian imports was highest after the subject country. The Authority recently vide notification dated 26.02.2021 has initiated an investigation on imports of subject goods from Qatar, the European Union, Japan and UAE. Thus, prices

from such countries cannot be deemed to be undumped and thus appropriate for construction of NV.

63. Thus, after judiciously examining the options available under the hierarchy of Para 7, the Authority proposed to consider Russia as an appropriate third country market economy and determine NV by examining the export price from Russia to other countries including India. This was conveyed to all the interested parties and their suggestions were invited on the Authority's view.
64. *Sandeep Organic*, an interested party, accepted Authority's proposal and stated that either Russia or Qatar could be appropriate surrogate countries for China. Another interested party, *Century Plyboards*, stated that there exists an inherent difference between the production process in China and the Russian Federation because of '*pirated technology and fabricated equipment*' employed by the Chinese manufacturers, although no evidence has been supplied for this assertion. They further assert without supplying any substantial evidence that even though the product from both the countries meets the same standard and specifications the Chinese product is considered inferior by the consumer and accordingly has a lower price point. FIPPI, an association of user industries stated that it had no objection to exports from Russia to India being considered for the determination of normal value of China. The domestic industry has requested that keeping in view the peculiar facts of the present case price actually payable in India be considered for determination of Normal Value. They further claim that the Russian exports are priced lower than the prices in the importing country.
65. After examining all the views put forward by the interested parties and the hierarchy of Para 7, the Authority considers the choice of Russia as an appropriate market economy third country because of the following reasons –
- a. Both Russia and China are quite comparable in terms of their per capita income as per data published by the World Bank.
  - b. Melamine is a commodity and is categorised under a dedicated HS Code. All imports under this HS Code are that of the subject goods. In India, Melamine has been imported from both Russia and China. Both of these products have competed in the same market which establishes their interchangeability. Thus, the product development criterion has also been satisfied.  
However, the domestic selling price or constructed value prevalent in Russia is not available before the Authority, the export prices from Russia to other countries including India during POI are considered appropriate for NV computation
  - c. While the imports from China to India are at 14,934 MT, total exports from Russia to all countries including India amount to 22,533 MT during the POI. These two volumes of trade are reasonably comparable. All data points regarding Russian exports and their prices are publicly accessible through the Trade Map data, portal maintained by ITC and is thus credible. Also, neither an anti-dumping duty has been imposed nor an investigation underway against the Russian exports of Melamine in

any of the importing countries and thus such imports cannot be considered to be dumped.

d. Hence, all the criterions of product development, country development and level of trade between global Russian exports and that from China to India are established and therefore the second option of the Para 7 hierarchy is appropriate for NV computation for China considering Russia as a surrogate country.

66. The Authority has accordingly compared the third countries ex-factory export price from Russia with the ex-factory export price from China to India to evaluate the dumping margin.
67. The NV is considered at Ex-Factory price of global Russian exports. NV is arrived at after making appropriate adjustments for commission, bank charges, port expenses and handling charges to the available Russian FOB prices as per the consistent practice of the Authority.
68. Accordingly, the Normal Value computed at ex-factory level has been determined as US\$ 944 per MT (Rs. 67610 per MT).

#### **Export Price determination for all producers/exporters from China PR**

69. As none of the producers/ exporters of the subject country has provided information that can be used for the determination of the export price, the Authority has determined the export price on the basis of the CIF price of imports using DGCI&S transaction wise data. The export price has been adjusted for Ocean freight, Marine insurance, Port expenses, Commission, Inland transportation and Bank Charges. The net export price so determined is provided in the table below.

#### **Determination of dumping margin for producers and exporters in the subject country**

70. Considering the normal value and net export price as determined above, dumping margins are determined as follows:

Particulars	Units	China PR
Constructed Normal Value	US\$/MT	944
Net Export Price	US\$/MT	783
Dumping Margin	US\$/MT	161
Dumping Margin	%	21
Dumping Margin	% Range	20-30

#### **H. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK**

## H.1 Submissions of domestic industry

71. The domestic industry has submitted as follows with regard to injury and causal link:
- a. Despite anti-dumping duties in force, the volume of Chinese imports continued to be significant both in actual and relative terms.
  - b. Positive price undercutting over the injury period.
  - c. Imports are depressing the prices of the domestic industry in the market
  - d. Domestic industry has capacity to meet 60% of the demand, its share was below \*\*\*% during the period of investigation.
  - e. Capacity utilization of the existing two plants shows decline due to deliberate curtailment of production in view of inability of the domestic industry to dispose of inventories.
  - f. Production has increased over the injury period. However, domestic sales have not increased in same proportion as the production.
  - g. Market share of the domestic industry could have been in the region of 60%, the same was below 30%.
  - h. Domestic industry was earning profits in 2016-17 which deteriorated and domestic industry suffered financial losses thereafter.
  - i. Domestic industry is suffering cash losses and negative return on investment.
  - j. Inventories increased considerably in the proposed period of investigation to 9 times as compared to the level in the year 2018-19.
  - k. Growth of the domestic industry in the price parameters has been negative across the injury period.
  - l. Domestic industry has made investment worth Rs \*\*\* Cr and has set up third plant with the capacity of 40,000 MT. It has negligible exports and is not consuming subject goods captively. Entire capacity of the domestic industry is meant for domestic demand in the country.
  - m. Imports above di-minimis limit in the period of investigation were made from European Union, Japan, Qatar and United Arab Emirates as well
  - n. Chinese prices are lowest in the market and has pulled down the prices of imports from other countries as well. The imports from other countries too are a factor which is causing injury to the domestic industry
  - o. Since present investigation is sunset review investigation, therefore applicant was unable to add other countries to the scope of subject country. Domestic industry is working on filing application seeking antidumping duty on these fresh sources.
  - p. Once it has been established that cessation of duties is likely to cause continuation or recurrence of dumping and injury to the domestic industry, there is no requirement to establish the existence of a causal link between the likely dumping and likely injury.
  - q. Causal link, as established in the original investigation continues and is not required to be established afresh.
  - r. Producers in China PR enjoy significant unfair advantage, and operate under non-market economy conditions, which allows access to raw materials and other key

- inputs at artificially lower costs allowing them to export the subject goods to India at unfairly low prices, which the Indian industry is not able to compete.
- s. Chinese producers have been exporting the product at a price materially lower than rest of the world.
  - t. It is estimated that requirement under advance license is around 15,000 MT and net demand available to the domestic industry in any case is only 74,500 MT.

## H.2 Submissions of other interested parties

72. The other interested parties have submitted as follows regarding injury and causal link:
- a. Treatment of cost of Ammonia which is produced as a by-product while producing the subject goods is unclear in calculation of non-injurious price.
  - b. Conversion cost does not reflect actual conversion cost due to high depreciation incurred in new plant.
  - c. Details of country wise volume and value of imports during the last two years and current year are required as it would have an impact on injury determination.
  - d. As per Bridge Stone Tyre Manufacturing & others vs. Designated Authority [2011 (270) E.L.T. 696 (Tri. - Del.)], practice of 22% ROCE adopted by Designated Authority was not correct as calculating NIP by assuming such a high rate of return gave an inflated picture of price underselling.
  - e. Authority has applied benchmark of 22% return on capital employed without having regard to its context which was recorded 2 decades earlier when the bank rate of interest (PLR) was 18%. In the present case, funds are borrowed overseas at about 2.5% on LIBOR, bank borrowings in India are arranged at 7% to 10%. Currency fluctuation is capitalized, and depreciation is claimed thereon.
  - f. Due to technology deployed in the new plant, there is recovery of 39.37 kg of Melamine out of 112.5 kg of Urea and the rest results in off gases viz. CO<sub>2</sub> and Ammonia, besides little by way of moisture evaporation at 600 degrees C temperature in which the moisture in Urea evaporates and the off-gases are reclaimed for further processing. Both are recycled to produce Urea and processed further into Melamine as target product and Ammonia & Carbon dioxide as off-gas recycled again in the same ratio continuously. Both the off gases are used by the domestic industry as recycled gases in its plant and have marketable commercial value.
  - g. Urea is freely imported from Middle Eastern countries to India for industrial applications in the range of USD 240-250/MT. In case the applicant is claiming a higher value then, its claim should be restricted to the level of price of imported Urea.
  - h. Mere decline of the economic parameters in Para (iv) without the conditions of Para (ii) being present cannot result in a finding of injury.
  - i. Domestic Industry has projected that it has suffered losses, but it is due to a thirty-fold increase in depreciation and interest cost towards setting up of a new 40,000 MT capacity plant.

- j. Loss of production and sales due to trading operations adopted by the domestic industry cannot be attributed to imports.
- k. Decision of the Appellate Body in case of Oil Country Tubular Goods from Mexico relied on by the applicant is clearly distinguishable and inapplicable in the Indian context in view of Rule 23 of the AD Rules 1995 which provides that procedure provided for original investigations in Rules 6 to 11 and 16 to 20 shall be applicable 'mutatis mutandis. Rule 11 requires a causal link to be established between dumping and injury.
- l. It has been claimed that the import prices from EU, Qatar and UAE are higher and is therefore not causing injury. However, price of imports from China PR after addition of ADD was higher than prices of imports from other countries.
- m. Decline of capacity utilization as a result of lockdown imposed has been admitted by the applicant in its Annual Report 2019-20.
- n. Designated Authority is requested to examine whether the applicant has shut down its old plants to achieve the better cost efficiencies of the new plant.
- o. Volumes of imports from other countries which cumulatively constituted 67% of imports into India were at prices substantially below the import prices from China PR.
- p. Landed cost from China are not viable during the period of investigation and post period of investigation. In fact, landed cost was viable from Europe, Russia, Japan, Qatar & Iran.
- q. Source of domestic industry's urea import should be examined. Imports of UREA is very restrictive & selective as it is an agricultural & fertilizer product.
- r. Exports by domestic industry needs to be evaluated.
- s. Import of raw material by domestic industry needs to be evaluated.
- t. The applicant has shut down its old plants as can be verified with the plant production logbooks and the same is done to achieve better efficiencies. Therefore, it can be said that the applicant GSFC is unable to sell its product because of the dumping and injury. The fact of the matter, on the other hand is that they are unable to meet the demands.
- u. Coal is also used as raw material, which is cheaper. Domestic industry is silent on it.
- v. Technology agreement of GSFC with Casale is for a period of 10 years during which there are certain trade restrictive restrictions controlling the market access of the products made by the applicant. One of the conditions is that the applicant cannot sell without the prior consent of Casale, Switzerland, this is a disqualification in the nature of a related party. The denial of global market access has potentials of serious injury, which is different than the injury attributable to dumping. On this count also, the applicant should not be allowed the protection of AD Measure.
- w. The input/output norms between the old and new plant are not same and therefore, this requires a new determination of the I/O norm by the Authority.
- x. The applicant is known to have either concealed and suppressed or distorted the facts on real numbers on the cost in the past used by DGTR to compute NIP. We

- suspect the NIP claim is distorted. The real numbers are already on the published financial accounts. The actual numbers for the whole year should be analysed rather than the DGTR format in which numbers are tweaked without any validation. Per unit cost of the inputs and energy is reported in the Balance Sheet.
- y. The value of the closing stock of its entire product is lumped but if summary sheet is obtained the value of Melamine with quantity can be derived. The authority should satisfy that the summary sheet of closing stock with the Auditors who finalise the accounts is also made available together with segment wise profitability reports including a forensic audit. A forensic audit in AD measure is desirable given the several instances of superlative profiteering.
  - z. The word appropriate means what is suitable in the facts of each case and thus, there cannot be any fixed duty or any variable duty without limits of dumping margin, in any case.
  - aa. Past history shows the price volatility of almost 50% during the tenor of 5 years. What is dumped and injurious today may not be the same after certain time with the changes in market forces during the 5-year tenor. The obligation of downstream consumers is not to incur any cost by way of duty on non-injurious imports or in excess of injury. The same very Treaty of GATT that gives right to the domestic applicant to seek protection in ADA in accordance with the discipline of ADA in tune with policies of Central Govt. also gives a corresponding right to the consumer industries who have made investments in industries that consume such domestic inputs produced in India would not be arbitrarily priced, in imports as well as domestic, at cost of the consumer industries in excess of what is appropriate free from administrative expediencies of the DGTR.
  - bb. Authority is required to ask applicant to report on a monthly basis, the statement of sales of each of the sales with selling price vis-à-vis NIP during a month and each month during the tenor of the measure so that the unjust enrichment is taken away by UOI. The restitution and unjust enrichment are sub-set of same common law regardless of whether there is any AD Rules to enforce this. If the applicant has a right to NIP enjoying the protection of AD Measure, the surpluses amount to unjust enrichment. It is a different story, if the applicants achieve any price without AD Measure. But, when there is a price fixation using AD Measure as a tool, the excess collection or realizations are unjust and must vest in UOI.
  - cc. Mechanical formula of 22% return on capital employed shall not be applied.
  - dd. The SC in the case of UOI & others vs. Meghmani Organics Ltd in CIVIL APPEAL NO. 1679 of 2010 established the law of the land on confidentiality that cannot be denuded by DGTR through trade notices. Therefore, full computation and basis of CNV notified as NV, Dumping Margins, NIP and other information such as analysis of import data and injury in each case without zeroing. Article VI cannot be applied as there are no overseas exporters.
  - ee. There is a demand supply gap of Melamine.
  - ff. Domestic industry is claiming for ADD to earn superlative margins in the business.
  - gg. The Petitioner has imported Melamine from Qatar in 2016-17, 2017-18 and 2018-19 and the same shall be verified by the Authority. The petitioner was itself

- responsible for injury as a result of price suppression and depression caused by its own low-priced imports.
- hh. The conversion cost is extremely high due to exorbitant apportionment of depreciation and interest costs incurred because of adding production capacity of 40,000MT. Depreciation and interest have both increased more than thirty-fold, the same has resulted in an unnaturally conversion cost.
  - ii. The loan borrowed for the new plant is a long-term loan and the same shall not be classified as a current liability and the same shall also not be used to compute reasonable return.
  - jj. It is unclear how the petitioner has treated the cost of Ammonia which is a by-product of the subject goods.
  - kk. The claim of the Petitioner that production and capacity utilization was low has to be seen in the backdrop of substantial imports from other countries at lower prices than China PR. Therefore, the Authority must first determine the quantity of imports from other countries at prices lower than the selling price of the Petitioner.
  - ll. Economic parameters that do not have adverse effect due to imports from China PR are volume, price, sales, capacity production and capacity utilization, market share in demand and inventory, employment, wages and productivity, profitability, cash flow and return of investment, ability to raise capital investment, growth, NIP and price underselling.
  - mm. The govt. of India has cut the price of locally produced natural gas from October 2020 to March 2021 by about a quarter to a multiyear low. as melamine is produced by routing natural gas through various processes like Synthesis Gas – Ammonia – Sulphuric Acid – Urea, the cost of sales of the Petitioner is set to lower considerably which will improve its profitability.
  - nn. The prices from China are much higher than the prices from other countries and the same shall be considered as other factors of causing injury.
  - oo. If duties have been continued for a very long time and the domestic industry still continues to suffer from material injury despite the protection afforded, it is an indication that the injury being caused domestic industry is due to other reasons and it cannot be claimed that injury has continued as a result of dumping against which protection already exists.
  - pp. The fact that the Petitioner has incurred huge capital expenditure in adding further capacity cannot be a factor for determining whether antidumping duties are liable to be continued or not.
  - qq. The allegation regarding price support received by the Chinese exporters and producers of melamine is concerned, the same is an implicit admission on the part of the petitioner that it is the injurious effect of subsidies granted by the government of China to the Chinese exporters and producers which has resulted in injury to the petitioner and not dumping.
  - rr. As per the accession treaty signed by the Chinese Govt. before WTO, urea is addressed as a product subject to state trading for imports, products subject to import license, quota and tendering and products subject to Government guidance pricing, no document has been cited on the basis of which the same is established.

- ss. The continued imposition of anti-dumping duty on the subject goods has resulted in users which incorporate melamine as raw material in downstream products becoming uncompetitive against similar products made by producers in other countries which are unencumbered by anti-dumping duties imposed on melamine by their governments.
- tt. The Authority has accepted the assertions of the Domestic Industry regarding normal value, export price and the dumping margin in China PR while initiating the present sunset review as the petition does not meet the evidentiary requirements of Article VI of GATT and Customs Tariff Rules, 1995.
- uu. Based on the limited information presented in the petition filed by the domestic industry, it appears that there exist evidentiary shortcomings in support of its claim for dumping, injury, causal link as well as likelihood of recurrence of dumping and injury, because construction of normal value is not appropriate, and the adjustments made with respect to the Export Price are abnormally high and unsubstantiated.
- vv. The Petitioner was not facing any price undercutting from Chinese imports of Melamine. Rather, import prices from other countries were significantly lower than that of China.
- ww. It is submitted that if the Petitioner is itself responsible for low priced imports, in the absence of price undercutting from China PR after addition of ADD, price suppression and depression claimed by the Domestic Industry is 'self-inflicted'.

### **H.3 Examination by Authority**

- 73. Rule 11 read with Annexure II of the Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. As regards the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree or prevent price increases, which would have otherwise occurred to a significant degree.
- 74. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. As regards the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. As regards the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India,

or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree

75. As regards the consequent impact of dumped imports on the domestic industry, Para (iv) of Annexure II of the Rules states as under:
- "(iv) The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or 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."*
76. For analysing the current injury, the Authority has examined the volume and price effects of dumped imports of the subject goods on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Authority has taken note of the various submissions made by domestic industry and other interested parties on injury and causal link during the course of the investigations and has examined the same in accordance with the Rules.
77. It is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration, while some may not. The Authority has considered all injury parameters to conclude whether the domestic industry has suffered injury or not.
78. According to Section 9(A)(5) of the Customs Tariff Act, 1975, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time-to-time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of the order of such extension.
79. As regards the effect of impact of imports made by the domestic industry on the economic parameters, it is noted that the domestic industry has not made any imports in the period of investigation and the imports in the earlier period were also negligible in volume. It is noted that imports made by the applicant are not included in production and sales reported in the investigation and therefore injury claimed has no effect of imports made in the previous years.
80. On the submission that the claimed injury is due to significant increase in depreciation and interest cost, domestic industry has suffered cash losses and as well as loss before

interest and tax. Therefore, there is no reason to attribute the losses suffered due to dumped imports to the additional capacity investment by the domestic industry.

81. On the submission that the Authority may examine whether the applicant has shut down its old plants to achieve the better cost efficiencies of the new plant, domestic industry has submitted segregated data for Plant 1 and Plant 2 and Plant 3 which shows that all the three plants were under operation in the period of investigation.
82. It has been alleged that the import price from other countries is below the price of imports from China after considering anti-dumping duty and imports from other countries too are a cause of injury. The Authority notes that the applicant has itself admitted that imports from other countries too are at dumped and injurious prices and it was working on filing an application. Further, the present case is a review investigation, wherein likelihood of dumping and recurrence of injury is more relevant. Import prices are required to be considered without the impact of duty in force so that the likely injury can be demonstrated if the duty were to be allowed to expire.
83. As regards the imports of Urea by domestic industry, it is seen from the cost records of the domestic industry that it has not imported Urea for industrial product which includes Melamine, but it is produced captively. The domestic industry has imported Urea for fertilizers. As regards the price, it is noted that the same is taken from the books of accounts maintained by the domestic industry. There is no reason to disregard the value as per cost records only because it could be imported at a different price range. It is well settled that the domestic industry is required to be seen as it exists and not as operating under ideal conditions. It is also noted that the price of urea for the purpose of fertiliser production in any case cannot be considered for production of melamine.
84. On consideration of a return at the rate of 22% on capital employed, it is noted that it is as per in the consistent practice of the Authority. The Authority has been regularly considering 22% as return on capital employed for the purpose of determination on non-injurious price.
85. On the issue of impact of lockdown on the economic parameters, it is noted that the country wide lockdown was imposed from 25th March 2020. The effect of lockdown is only for 7 days in the period of investigation. Closure of the plant for such a small number of days could not have impacted the capacity utilisation adversely in the period of investigation for a year.
86. Submission on the production technology of high pressure and low-pressure Melamine, use of coal as raw material and other submissions by interested parties have been advanced by an importer in India, while the Chinese producers have preferred non-cooperation. Not only the costs and price in China cannot be considered for determination of normal value, but also, the Authority cannot consider any factor without verifiable evidence and quantified impact. The interested parties have made claims without

substantiating the same with evidence. In the absence of such information, the claims have not been considered.

87. The Authority has taken note of various submissions of the domestic industry and interested parties. The same have been analysed considering the facts available on record and applicable laws. The injury analysis made by the Authority hereunder ipso facto addresses the various submissions made by the interested parties.
88. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry, before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the subject country.

**a. Assessment of Demand and Market Share**

89. Demand or apparent consumption of the product in India is taken as the sum of domestic sales of the Indian producer and imports from all sources derived from DGCI&S data. Share of imports from the subject country in demand/consumption in India determined by the Authority is as under.

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Domestic industry	MT	***	***	***	***
2	Trend	Index	100	100	91	171
3	Imports from China PR	MT	23,305	30,288	34,016	14,934
4	Other imports	MT	25,409	32,384	40,915	48,371
5	Total Demand	MT	***	***	***	***
6	Trend	Index	100	122	139	140

90. The Authority notes that the demand of the subject goods in India has increased consistently over the injury period.

**b. Volume Effect of the dumped imports on the Domestic industry**

**i. Import Volume and market share of subject country**

91. Regarding the volume of 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. The volume of imports of the subject goods from the subject country have been analysed as under: -

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
----	-------------	-----	---------	---------	---------	-----

1	Imports from China	MT	23,305	30,288	34,016	14,934
2	Other imports	MT	25,409	32,384	40,915	48,371
3	Total imports	MT	48,714	62,672	74,930	63,305
4	Market Share in Imports					
a	Imports from China	%	48%	48%	45%	24%
b	Other imports	%	52%	52%	55%	76%
5	Imports from China in relation to					
a	Indian production	%	***	***	***	***
	Trend	Index	100	127	153	33
b	Indian demand	%	***	***	***	***
	Trend	Index	100	107	105	46

92. The Authority notes that the dumped imports from the subject country increased till 2018-19 but declined in the period of investigation. This decline in imports from the subject country can be attributed to the capacity expansion undertaken by the domestic industry as well as the increase in imports from the other countries. Though the dumped imports from the subject country have declined in the period of investigation, they continue to remain significant in relation to demand both in absolute terms as well as relative terms.

**c. PRICE EFFECT**

**Price effect of dumped imports and impact on the domestic industry**

93. Regarding the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like products 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. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For this analysis, the cost of production, net sales realization and non-injurious price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject country.

**i. Price undercutting and underselling**

94. To determine whether the imports are undercutting the prices, the Authority has undertaken comparison between the landed price of the product and the average selling price of the domestic industry. The landed price of imports, domestic prices and margin of undercutting are shown as per the table below:

S N	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Landed price of imports	₹/MT	68,968	75,470	86,868	66,675
2	Net selling price	₹/MT	***	***	***	***
3	Price undercutting	₹/MT	***	***	***	***
4	Price undercutting	%	***	***	***	***
5	Price undercutting	Range	30-40	20-30	10-20	10-20

95. From the above, Authority notes that the landed price of imports of subject goods from subject country is below the net selling price of the domestic industry. Thus, imports from subject country are undercutting the selling prices of domestic industry. There is positive and significant price undercutting over the injury period. However, the degree of price undercutting has declined.

#### **Price underselling**

96. The price underselling is an important indicator of assessment of injury; thus, the Authority has worked out non-injurious price of the subject goods and compared the same with the landed values of the imported goods to arrive at the extent of price underselling. For examining the underselling effects of the dumped imports the landed value of imports as per para 93 above, without taking into account the antidumping duty in force, has been compared with the Non Injurious Price determined.

Particulars	Unit	POI
<b>Price Under Selling without ADD</b>		
Non-Injury Price	USD/MT	***
Landed Value without ADD (China PR)	USD/MT	932
Price underselling (without ADD)	USD/MT	***
Price underselling (without ADD)	%	***
Trend (without ADD)	% Range	40-50
<b>Price Under Selling with ADD</b>		
Non-Injury Price	USD/MT	***
Landed Value with ADD (China PR)	USD/MT	1262
Price Underselling (with ADD)	USD/MT	***
Price underselling (with ADD)	%	***
Trend (with ADD)	% Range	0-10

From the above table, it can be seen that although the imports presently undercutting the Domestic Industry their impact would have been significant had the anti-dumping duty not been in place.

**ii. Price Suppression or depression**

97. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority has examined the changes in the landed price of imports, and costs & prices of the domestic industry over the injury period, when ADD was in force.

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Cost of Sales	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	100	112	127	134
2	Selling Price	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	100	102	111	85
3	Landed Price	₹/MT	68,968	75,470	86,868	66,675
	<i>Trend</i>	<i>Indexed</i>	100	109	126	97

98. It is seen that the landed price of imports is lower than the cost of sales of the domestic industry throughout the injury period. Cost of production, selling price and import price increased till 2018-19. While the cost of domestic production further increased in the period of investigation, selling price has declined due to decline in the import price. The domestic industry has not been able to charge reasonable price to earn adequate return. The Authority notes that the prices of domestic industry were suppressed and depressed in the POI.

**IMPACT ON ECONOMIC PARAMETERS OF DOMESTIC INDUSTRY**

99. Annexure - II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. The Anti-Dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective 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 herein below.

**a. Capacity, production, capacity utilization and sales**

100. The performance of the domestic industry regarding production, domestic sales, capacity and capacity utilization is given in the Table below:

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Capacity	MT	15,000	15,000	15,000	55,000
	Trend	Indexed	100	100	100	367
2	Production	MT	14,885	15,184	14,164	29,210
	Trend	Indexed	100	102	95	196
3	Capacity Utilisation	%	99.23%	101.23%	94.43%	53.11%
	Trend	Indexed	100	102	95	54
4	Domestic Sales	MT	***	***	***	***
	Trend	Indexed	100	100	91	171

101. It is seen that the domestic industry has significantly expanded its capacity in the period of investigation. While domestic industry's production and sales declined till 2018-19, they have increased in the period of investigation with the capacity expansion undertaken by the domestic industry. It is also seen that the capacity utilization of the domestic industry has declined significantly in the period of investigation but the same is due to commencement of new plant as well as presence of dumped imports in the Country. The applicant has claimed that its domestic sales have not increased in same proportion as the production even though there was significant demand for the product in the country and the domestic industry had low market share earlier.

**b. Market share in demand**

102. The effects of the dumped imports on the market share of the domestic industry have been examined as below: -

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Domestic industry	%	***	***	***	***
	Trend	Indexed	100	82	65	122
2	Subject country - China PR	%	***	***	***	***
	Trend	Indexed	100	107	105	46
3	Other Countries	%	***	***	***	***
	Trend	Indexed	100	105	116	136

103. It is seen that the market share of the domestic industry declined till the year 2018-19. With the commencement of production in the new plant in the period of investigation, the market share of the domestic industry has increased in the period of investigation. However, considering the capacity of the domestic industry, it could have catered to a higher share. The domestic industry could have achieved a market share of 61% considering its installed capacity. However, the domestic industry could achieve a market share of only 29% in the POI.

**c. Inventories**

104. The data relating to inventory of the subject goods are shown in the following table:

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Average Inventory	MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	100	33	47	421

105. It is seen that the average inventory level with the domestic industry declined in 2017-18, increased marginally in 2018-19 and then has increased significantly in the period of investigation. The domestic industry claimed that it has not been able to increase its sales in relation to increase in production.

**d. Profit or loss, cash profits and return on investment**

106. Profit/loss, cash profits and return on investment of the domestic industry are as follows:

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	Cost of Sales	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	100	112	127	134
2	Selling Price	₹/MT	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	100	102	111	85
3	Profit / Loss	₹/MT	***	(***)	(***)	(***)
	<i>Trend</i>	<i>Indexed</i>	100	(17)	(66)	(467)
4	Profit / Loss	₹ Lacs	***	(***)	(***)	(***)
	<i>Trend</i>	<i>Indexed</i>	100	(17)	(60)	(799)
5	Cash Profit	₹ Lacs	***	(***)	(***)	(***)
	<i>Trend</i>	<i>Indexed</i>	100	(7)	(48)	(501)
6	PBIT	₹ Lacs	***	(***)	(***)	(***)
	<i>Trend</i>	<i>Indexed</i>	100	(15)	(53)	(679)
7	ROCE	%	***	(***)	(***)	(***)
	<i>Trend</i>	<i>Indexed</i>	100	(13)	(19)	(73)

107. It is seen that the domestic industry was earning profits in the base year. However, the profits of the domestic industry turned into losses in the subsequent year. Domestic industry suffered financial losses in 2017-18, which increased in 2018-19 and which have increased significantly in the period of investigation. The Authority also notes that the domestic industry has incurred significant cash losses and loss before interest in the period of investigation.

**e. Employment, wages, and productivity**

108. The situation of the domestic industry regarding employment, wages and productivity was as below -

SN	Particulars	UOM	2016-17	2017-18	2018-19	POI
1	No of employees	Nos	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>96</i>	<i>99</i>	<i>143</i>
2	Productivity per day	MT/Day	43	43	40	83
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>95</i>	<i>196</i>
3	Productivity per employee	MT/Nos	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>107</i>	<i>96</i>	<i>137</i>
4	Salary & wages	₹ Lacs	***	***	***	***
	<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>118</i>	<i>105</i>	<i>216</i>

109. It is seen that the employment levels and wages of the domestic industry have fluctuated over the injury period. The employment and wages of the domestic industry have increased over the injury period. The productivity per day and employee has increased with the increase in production in the period of investigation. The domestic industry has, however, submitted that these parameters are dependent on several other parameters and are not truly reflective of the impact of dumping on the domestic industry.

#### f. Growth

110. Examination of growth parameters of the domestic industry during the injury period is shown below-

SN	Particulars	UOM	2017-18	2018-19	POI
1	Production	Y/Y	2.01%	-6.72%	106.22%
2	Sales	Y/Y	-0.38%	-8.80%	88.09%
3	Inventory	Y/Y	-66.58%	39.65%	802.86%
4	Market Share	Y/Y	-18.14%	-20.00%	86.72%
5	Profit/(Loss) per unit	Y/Y	-116.93%	-291.51%	-605.22%
6	Profit before Tax	Y/Y	-116.87%	-257.07%	-1226.42%
7	Cash Profit	Y/Y	-106.58%	-629.73%	-943.90%
8	PBIT	Y/Y	-114.56%	-260.68%	-1193.48%
9	ROI	Y/Y	-113.10%	-45.59%	-283.48%

111. It is noted that the with the commencement of production in the third plant, the domestic industry has seen a growth in production, sales, capacity utilization and market share in the period of investigation but the growth is negative in respect of profits, cash profits and ROI.

#### g. Level of dumping and margin of dumping

112. It is found that the margin of dumping is positive from the subject country. The Authority holds that there is continued dumping of subject goods from the subject country.

**h. Ability to raise capital investments**

113. The domestic industry has recently set up a third plant to produce the subject goods. With the competition being faced by the domestic industry due to the dumped imports, the operations of the domestic industry have been impacted and it has suffered financial losses. The domestic industry has claimed that it is necessary that adequate protection is provided to the industry.

**i. Factors affecting domestic prices**

114. Landed price of imports is below the cost of the domestic industry and therefore the domestic industry is not able to charge prices to cover its cost. The landed prices of subject imports are undercutting and underselling the prices of the domestic industry and the domestic industry is suffering financial losses. The applicant has claimed that since the Chinese prices are the lowest in the market, it has pulled down the prices of imports from other countries as well. Authority holds that the principal factor affecting the prices in the domestic market is the dumped imports of subject goods from the subject country.

**j. Magnitude of injury margin**

115. The non-injurious price of the subject goods produced by the domestic industry when compared with the landed value of the exports from the subject country shows positive and significant injury margin during the period of investigation.

SN	Particulars	Rs./MT	USDS/MT
1	Non-injurious price of the domestic industry	***	***
2	Landed price of imports from subject country	66,799	932
3	Injury Margin	***	***
4	Injury Margin	***	***
5	Injury Margin (Range)	40-60%	40-60%

**CAUSAL LINK**

116. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. The present investigation being a sunset review investigation, the causal link has already been examined in the original investigation. The Authority further examined whether other known listed factors have caused injury to the domestic industry. It was

examined whether the following other factors listed under the AD Rules could have contributed to the injury suffered by the domestic industry.

**a. Volume and price of imports from third country:**

117. The Authority notes that the imports of the subject goods are above de-minimis limits from European Union, Japan, Qatar, and United Arab Emirates. The prices at which the imports from these countries have taken place is also significantly below the cost and selling price of the domestic industry. Further, an anti-dumping investigation has also been initiated by the Authority on imports of Melamine from the aforesaid countries. The Authority notes that the injury to the domestic industry may also be attributed to the imports from other countries. However, since the present investigation is a sunset review investigation, they cannot be added to the scope of the present investigation.

**b. Contraction in demand and change in the pattern of consumption**

118. The demand for subject goods has increased over the injury period and there has been no material change in the pattern of consumption. Therefore, the above factor could not have caused injury to the domestic industry.

**c. Export performance**

119. The domestic industry has undertaken negligible exports in the period of investigation. Therefore, possible deterioration in the export performance of the domestic industry is not a cause of injury to the domestic industry. The Authority has considered segregated data for the domestic and export performance. Therefore, injury on account of domestic sales cannot be attributed to exports.

**d. Development of technology:**

120. The Authority notes that even the technology possessed by the Domestic Industry has also become more efficient. Therefore, possible development in technology is not a cause of injury to the domestic industry.

**e. Performance of other products of the company.**

121. The information relating to the subject goods which is the relevant for the present purpose has been considered in all the injury parameters. Therefore, the performance of other products being produced and sold by the applicant is not a possible cause of injury to the domestic industry.

**f. Trade restrictive practices and competition between foreign and domestic producer**

122. There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

**g. Productivity of the domestic industry**

123. The production of the domestic industry has increased with the commencement of the production in the third plant.

**I. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY**

124. Consistent with the guidance provided through the Agreement On Implementation Of Article VI of The General Agreement On Tariffs And Trade, Customs and Tariff Act, 1975 and the AD Rules, in a review investigation, the Authority makes its determination on the likelihood or continuation of recurrence of dumping of the subject goods into the Indian market and whether injury to the domestic industry is likely to continue or recur due to these dumped imports if the duty is removed. The likelihood determination is a prospective determination. In other words, the Authority undertakes a forward-looking analysis and seeks to resolve the issue of what would be likely to occur if the duty were terminated.

**I.1. Submissions by the domestic industry**

125. As regards likelihood of continuation or recurrence of injury, the domestic industry has submitted the following:
- a. There is continued dumping from the subject country despite anti-dumping duties are in place.
  - b. Share of subject country imports in demand has increased considerably over the years which shows the rate of increase in imports is more than the rate of increase in the demand.
  - c. Landed price has reduced drastically over the years and is significantly below the cost of sales and selling price of the domestic industry during the recent years
  - d. Capacities of the subject goods in China are around 2 million ton/year with average operating rate fluctuating in region of 50-70% in the most recent period.
  - e. Demand of in China in 2019 was only around 0.894 million ton against the installed capacities of around 2 million ton.
  - f. There have been capacity expansions in China to the tune of 2 lakh ton in the past 2 years without any commensurate increase in domestic demand. This has pushed down the prices of subject goods of Chinese producers.
  - g. Over the past 5 years, more than 20% of the output in China has been utilized for exports.

- h. European Union has extended anti-dumping duties on Chinese melamine and United States of America has imposed anti-dumping as well as anti-subsidy duties on imports of Melamine from China.
- i. 98% of exports to other countries are lower than the domestic industry's prices in India.
- j. Exports to India hold a significant share in Chinese global exports.
- k. Injury margin in respect of exports to other countries is 122%.
- l. Government of China provides subsidies for urea production to produce fertilizers. However, producers are effectively using the subsidized urea to produce low-cost melamine which is then exported to various countries.
- m. The importers were found to have avoided payment of antidumping duty as found by the Authority in the second sunset review investigation. Since the duties in the original and first sunset review investigation were imposed based on benchmark form of duty, the imports were reported to be over invoiced in order to evade payment of antidumping duty.
- n. Chinese producers are not only dumping their goods in the Indian market, but all over the globe. It is also noted that almost the entire exports from China to third countries are at dumped prices.
- o. Eurasian Economic Commission has recently initiated an anti-dumping investigation against the imports of Melamine from China PR and has calculated a dumping margin of 51.3%.

## **I.2. Submissions by the other interested parties**

126. As regards the likelihood of continuation or recurrence of injury, the other interested parties have submitted the following:
- a. Claims made by the domestic industry with respect to likelihood parameters are vague and unsubstantiated.
  - b. Applicant has not provided any evidence whatsoever with respect to inventories held by the producers and exporters of the article being investigated.
  - c. There is unnecessary confusion on the capacity of the applicant on old and new plants. The public knowledge including the credible and reliable information suggests that the applicant has shut down its old plants, to achieve better cost efficiencies of the new plant. Therefore, it can be said that the applicant GSFC is unable to sell its product because of the dumping and injury. The fact of the matter, on the other hand is that they are unable to meet the demands.
  - d. Therefore, the cost of production needs a careful examination by the Authority by physical verification on spot rather than paper verification to verify our submission which we believe is authentic and scientific. The input/output norms between the old and new plant are not same and therefore, this requires a new determination of the I/O norm by the Authority.

## **I.3. Examination by the Authority**

127. The present investigation is a sunset review of duties imposed on the imports of subject goods from China PR. Under the Rules, the Authority is required to determine whether continued imposition of antidumping duty is warranted. This also requires an examination of whether the duty imposed is serving the intended purpose. Further, the Authority has also examined other relevant factors having a bearing on the likelihood of continuation or recurrence of dumping and consequent injury to the domestic industry.

128. Although, no guidance is provided through the Anti-dumping Agreement into the factors to be analysed while undertaking a Review the Authority has a consistent practice to analyse factors like the history of dumping, share of subject imports in demand, behaviour and conditions of exporters viz-a-viz India and other countries, etc. amongst others. The examination of the parameters of likelihood relevant in this case is as follows:

**a. Imports over the years**

129. Information with respect to volume of imports is given below

SN	Particulars	Imports in MT	Demand in MT	Share in demand (%)	Share in demand (trend)
1	2004-05	1,321	21,342	6.19%	100
2	2005-06	281	21,048	1.33%	21
3	2006-07	1,747	23,003	7.59%	123
4	2006-07	1,612	21,817	7.39%	119
5	2007-08	5,104	31,266	16.32%	264
6	2008-09	8,867	27,036	32.80%	530
7	Apr'09-Jun'10 (A)	7,115	35,729	19.91%	322
8	2010-11	17,580	43,606	40.32%	651
9	2011-12	16,718	46,021	36.33%	587
10	2012-13	19,095	54,421	35.09%	567
11	2013-14	22,582	56,208	40.18%	649
12	2014-15	24,262	64,834	37.42%	605
13	2015-16	18,284	67,747	26.99%	436
14	2016-17	23,305	***	30-40	***
15	2017-18	30,288	***	30-40	***
16	2018-19	34,016	***	30-40	***
17	2019-20	14,934	***	10-40	***

130. It is seen that volume of dumped imports of subject goods from China is significant and way above the *de minimis* level even after the levy of the AD duty. These imports have

increased significantly over the years and this increment is over and above the increase in demand for the subject goods. This increase in imports even when anti-dumping duty has been in place is indicative that there may be a greater likelihood of a further increase in imports in case duties are withdrawn. If there has been an increase in imports at dumped prices with an existing anti-dumping duty it is indicative of the fact that the exporters are able to have continued their trade-restrictive practices of dumping.

**b. Production capacities in the subject country.**

131. The applicant has relied on the ICIS published reports for information on capacities and demand in the subject country. The claims of the applicant are undisputed. It is noted that capacities of the subject goods in China are around 20 lakh ton/year with average operating rate fluctuating in region of 50-70% in most recent period. Against this, the demand in China in year 2019 was merely around 8.94 lacs MT. This shows that there are significant idle capacities in the subject country. It is noted that there is abundant spare capacity in China that could be directed to the Indian market in event of the measures against China be allowed to lapse.

**c. Capacity expansion in China**

132. The domestic industry has claimed that despite having surplus capacities, the Chinese producers are aggressively expanding their capacities. As per the information provided by the domestic industry there have been multiple capacity expansions to the tune of around 1.5 lakh/tonne. Since the Chinese producers have not participated in the present investigation, the Authority adopts the information on record for this aspect.

**d. Export orientation of the producers in the subject country**

133. The domestic industry has stated that the producers in China are export oriented as is established by the fact that more than 20% of the output has been utilized for exports over the past 5 years. Further, Chinese producers were exporting the goods to as high as 70 countries.

**e. India as a major market for producers in the subject country**

134. It has been claimed that India has been a lucrative market for the Chinese producers as exports to India held significant share in the total exports from China. It is seen that over the injury period, exports to India held a share of around 8% in total exports except in the period of investigation where Chinese imports to India have declined. It is also seen that the Chinese producers are exporting the product to over 70 countries globally.

**f. Trade Remedial investigation by other countries**

135. Anti-dumping duty has been extended by European Union in 2017 on the imports of subject goods from China. Anti-dumping and anti-subsidy duties were also imposed by U.S. on the imports of subject goods from the subject country in 2015. Even, Eurasian Economic Commission has initiated an anti-dumping investigation against the imports of subject goods from China. Authority notes that such investigations show the general tendencies and practices of the producers/exporters from the subject country to dump goods in third countries and there exists likelihood of diversion of such exports leading to further dumping of subject goods to India if the existing duties were to be allowed to expire.

**g. Exports to third countries are at lower prices compared to Indian prices**

136. The data provided by the domestic industry shows that a significant share of exports from subject country to other countries are at prices lower than the prices prevailing in Indian market. It is thus seen that the expiry of anti-dumping duties will provide Chinese producers an opportunity to divert their third countries exports to India. Table below shows the exports from China which are below the Indian prices.

SN	Particulars	UOM	Amount
1	Exports at prices lower than DI Prices	MT	2,89,610
2	Total Exports by China	MT	2,95,234
3	Share	%	98%

**h. Level of current and past dumping margin.**

137. The level of dumping margin in the original as well as in the subsequent review investigations is significant and also increasing.

SN	Investigation	Original	1 <sup>st</sup> SSR	2 <sup>nd</sup> SSR	NSR	3 <sup>rd</sup> SSR
1	Dumping margin	6.5% - 31.6%	32.48%	40-50%	30-35%	15%

138. The existence of dumping margins while the duty has been in place is highly probative of the likelihood or continuation of dumping. If companies continue to dump with an existing duty, it is reasonable to assume that dumping would continue if the duty was to be removed. The Authority normally determines that revocation of an existing duty would be likely to lead to continuation or recurrence of dumping when dumping continued at any level above de minimis after the issuance of its finding. In this case it can be observed that the dumping since the original investigation has continued as has been determined in subsequent Reviews undertaken by the Authority.

**J. Post Disclosure statement submissions**

**J.1. Submission of Domestic Industry**

139. Other interested parties have made blatant statements without showing difference in product under consideration and like article. Authority is requested to conclude that product produced by domestic industry a like article.
140. Selection of Russia as appropriate market economy third country is contrary to Section 9A(1)(c) of the Act, Annexure-I, Hon'ble CESTAT judgement in matter of Kuitun Jinjiang Chemical Industry Co. Ltd. vs Union of India and final finding dated in the NSR investigation.
141. Level of development with respect to product in China and Russia are not comparable. Level of development affects the cost and price. China is a net exporter Russia is a net importer.
142. There is significant difference between the two countries in the other relevant parameter for economic development of the country Gross Domestic Product, Gross National Income and Population.
143. Exports from Russia can be considered only if volume of exports is significant and price is not dumped price during the period of investigation.
144. Domestic industry has not been disclosed the complete working of the non-injurious price including Format B, D, expenses allowed/disallowed, net fixed assets considered and capital employed details. Domestic industry is unable to fully comprehend the workings in the absence of linked files and is not able to offers comments.
145. Return allowed for Plant 1 and Plant 2 is significantly lower as compared to Plant 3. While the other interested party have argued that a return of 22% is significantly high, fact return of 22% on the old plants is significantly low.
146. Imports from China were earlier priced above the selling price of the domestic industry. Landed price is now also significantly below the cost of sales of the domestic industry.
147. Performance in post period of investigation is likely to be representative of country wide lockdown in India. Authority is requested to not entertain any comments with respect to the analysis of post period of investigation.
148. Century Ply Limited was required to file user questionnaire response. It was clear that providing desired information could create very inconvenient position with them with regard to their contentions of unbearable burden of duty on them.
149. Absence of participation of users shows that the duties do not have any significant impact on them.

150. Expression public interest does not limit itself to the consumer industry alone and is in fact a much wider term which covers in its ambit the domestic industry.
151. If injury to domestic industry continues for a long, it may lead to sickness and the Indian industry may have to shut down. The users may become wholly dependent on imports.
152. Sickening will lead to the domestic industry left with only two options (a) look for alternate market for subject goods (b) look to utilise its production capacities for other use.
153. As can be seen below, impact of duties on the end product is negligible.

SN	Particulars	Rate of final product	Impact on end product
1	Fluorescent Pigments	Rs 450 per KG	0.95%
2	Commercial Plywood	Rs 377 per SQM	0.39%
3	MDF Board	Rs 646 per SQM	0.50%
4	Melamine Faced Board	Rs 452 per SQM	1.42%

154. Importer has admitted that product produced by the domestic industry is of better quality. Imported product is of poor quality therefore, there is no harm in discouraging its import. Instances in past such as 2007 Pet Food Recalls and 2008 Chinese Milk Scandal highlight poor quality of melamine produced in China.
155. Users had evaded anti-dumping duty in past. One party is taking lawful means to ensure fair trade and other practicing unlawful means definitely needs to be considered in public interest analysis.
156. Producers in China PR have used the incentives given to them for urea and are effectively using the subsidized urea for the production of low-cost melamine which is then exported to various countries.
157. It was found in the 2nd sunset review that the benchmark form of duties did not serve the purpose. The only appropriate form of measure is fixed quantum.
158. Same duties should be extended since imports have continued at existing duty, lowering the quantum of duties will open the flood gates for dumped imports.

### **J.2. Submissions of other interested Parties**

159. Conversion costs are inflated and do not reflect actual conversion costs due to high depreciation which has increased thirty-fold as a result of adding capacity of 40,000 MT.

160. As Annexure III Para 4 (iv) provides that "Propriety of all expenses, grouped and charged to the cost of production may be examined and any extraordinary or non-recurring expenses shall not be charged to the cost of production", non-recurring start-up costs incurred for setting up and commissioning the new 40,000MT Plant-III must be excluded while calculating NIP.
161. Mechanical formula of 22% ROCE must not be applied as it is not reasonable as per para 4 (viii) Annexure -III to AD Rules 1995. Original basis of determining 22% ROCE was price control order of 1976-77 which mandated such high return as reasonable. Rate of return defined in Price control order was for different purposes and in an entirely different context to fix prices of Drugs and pharmaceutical in India.
162. ADA mandates actual cost and not notional. DA was to assess actual cost of finance incurred and assess reasonable rate of interest vis-à-vis ROCE. Funds are borrowed overseas at about 2.5% on LIBOR, bank borrowings in India are arranged at 7% to 10%. Currency fluctuation is capitalized and depreciation is claimed thereon. Actual Depreciation computed on service life of 20 years of the plant on SL method and interest as actually incurred should be considered.
163. Petitioner suppressed and distorted data on cost of production to compute NIP. Actual numbers for whole year should be analysed rather than of the DGTR format which is amenable to manipulation. Cost of inputs and energy is reported in Balance Sheet. Applicant computes closing stock for all its products. Owing to changes and simplification in recent times, value of closing stock of its entire product range is lumped. Summary sheet to be examined to determine actual quantity of Melamine.
164. Plant III of GSFC developed by Casale who provided the license, delivery of basic engineering package, supply of proprietary items, review of detailed engineering and assistance during commissioning and start-up. The Plant is for melamine capacity of 40000 tons per year and Urea section producing required quantity of urea to feed melamine plant and small additional urea export and therefore, is an integrated plant with 40,000MT capacity for Melamine.
165. Additional investment incurred towards setting up Urea capacity of 50,000MT in integrated plant must be segregated and discarded from consideration while determining capital employed for Melamine and consequent NIP. There was no compulsion on Domestic Industry to set up integrated plant producing both Melamine and Urea when same could be acquired from other sources as demonstrated by Domestic Industry's own Urea imports. Consequently, interest incurred towards setting up additional Urea capacity of 50,000MT must also be discarded along with depreciation and amortization expense thereon. In any case, investment incurred towards setting up of additional production capacity of 10,000 MT of Urea which is exported from Plant-III should be discarded.

166. No reason why Domestic Industry could not use cheaper imported Urea for producing PUC. Users should not be penalized for inefficiencies of Petitioner while manufacturing Urea.
167. Data in journals cannot be used as best information available in view of the explicit diktat of the Hon'ble CESTAT laid down in the case of Dye Stuff Manufacturers Association Of India Versus Govt. Of India. The fact that information in trade journals has been used in past cases cannot override law laid down by Appellate Forum. The fact that interested parties have not provided any information demonstrating said information is wrong cannot result in such information being considered within ambit of evidence.
168. Export price constructed by DA corresponds with that calculated by Petitioner which has been deflated by adopting inflated and arbitrary adjustments without providing any basis or documentary evidence with respect to either ocean freight, port expenses, bank charges, handling charges or the unnaturally high commission of 3%.
169. No reason why capacity expansions undertaken by Domestic Industry would naturally increase in reduction of imports, especially if they were dumped and undercutting prices of Domestic Industry.
170. Furthermore, imports from China PRR remaining "significant" cannot be taken as criterion which demonstrates volume effect as relevant parameter under Annexure II Para (ii) is "increase". Imports from China PR have declined in absolute terms as well as in relation to production and consumption.
171. Price underselling cannot be considered as a factor for assessing material injury in a sunset review as per the law laid down in *Nirma v. UOI*.
172. For price suppression and depression analysis, final cost of Melamine to consumer including anti-dumping duty must be considered which would be the effective price against which Domestic Industry competes against. From information derived from investigation of Melamine from EU, Qatar, Japan and UAE, selling price of Domestic Industry was less than Rs.74,000 whereas that for China PR is Rs.90,400 and could have caused price suppression or depression.
173. Domestic Industry has registered improvement across all parameters. While capacity of domestic market has increased substantially, production, capacity utilization and sales of the Domestic Industry have all increased. As production of Plant III only commenced in POI, capacity utilization and consequent production would be low due to start up inefficiencies. Plant 1 and 2 are not operating now and may be verified for post-POI period as per established practice of DA of examining post-POI data in sunset review.

174. As capacity utilization and consequent production in Plant III is low due to start up inefficiencies and lockdown affecting 7 days of production, Domestic Industry was not able to use its entire capacity.
175. Domestic Industry's claim that increase in wages as a result of other parameters such as legislative requirements is without any basis without substantive evidence on resulting from alleged legislative requirements. DI has been able to pay handsome wages.
176. Domestic Industry has projected that it has suffered losses due to thirty-fold increase in depreciation and interest cost coupled additional investments made towards setting up 40,000MT capacity plant.
177. Plant setup by Petitioner is integrated plant with 40,000MT capacity for Melamine and 50,000MT capacity for Urea where additional urea produced is exported to other activities. Additional investment incurred towards setting up of Urea capacity of 50,000MT in integrated plant must be segregated and discarded from consideration while calculating and determining capital employed towards production of Melamine. Consequently, interest incurred as well as depreciation and amortization towards setting up Urea capacity of 50,000MT must also be discarded and profitability and return on investment of Domestic Industry must be recalculated.
178. Without prejudice, investment incurred towards setting up of additional production capacity of 10,000 MT of Urea which is exported from Plant-III should be discarded.
179. Profits earned due to exports must be added and not segregated because overall situation of Domestic Industry is relevant for purposes of determining injury under Annexure II para iv and not its performance solely in relation to Domestic Market.
180. Investment incurred towards such plants which have been discontinued must also be discarded from consideration.
181. Final cost of Melamine to the consumer must be considered as that would be effective price against which Domestic Industry competes against. Since consumers have to pay anti-dumping duty which brings cost up to Rs.90,400, that was the price against which the Domestic Industry was competing and not Rs. 66,675 as considered by DA to arrive at the conclusion of price suppression and depression.
182. Observation of DA that the prices at which the imports from EU, Qatar, Japan and UAE have taken place is also significantly below the cost and selling price of domestic industry is wrong as information filed by Petitioner in investigation initiated against EU, Qatar, Japan and UAE clearly discloses that price undercutting was negative for EU, Japan and UAE. DA is requested to analyze whether any causal link exists considering prices from other countries from including that from China PR after inclusion of ADD, were above selling price of Domestic Industry.

183. Decline of capacity utilization and curtailment of production must be gauged after excluding shut downs as result of lockdown due to COVID 20 even if said lockdown encroached upon only 7 days of POI.
184. Imports from China PR could not have caused injury to Petitioner in any case applying the very same rationale through which it sought to justify its claim that imports from other countries are not causing injury to the Domestic Industry i.e. prices from such countries are higher than import prices from China PR.
185. Data provided with respect to production capacities, capacity expansions etc. in China are based on ICIS published reports which is a trade journals and not evidence or within the realm of judicially cognizable facts as per the law laid down in the case of Dye Stuff Manufacturers Association of India Versus Govt. Of India wherein that it was held that only "official publications in the country of exportation can be accepted as a source of "best information" in anti-dumping investigations" and that information contained in journals and market research reports "could not have provided judicially noticeable facts."
186. Furthermore, data provided in journals cannot be considered even under the ambit of best information within the meaning of Rule 6(8) of the AD Rules 1995 which was categorically forbidden by the Hon'ble CESTAT in the abovesaid case as "best information available" is a rule of reasonable adverse inference against non-cooperating exporters and the journal data in question do not constitute 'Facts' and are irrelevant to the subject investigation. Such data can be no reasonable basis for adverse inference in the present case..."
187. The present anti-dumping duty on Melamine from China PR has been in force for a period of 16 years and the present sunset review seeks to extend the same for a further period of 5 years. Some respite should be provided to user industry. If duties are continued on one pretext or other with no substantive reason, it will amount to evergreening of antidumping measures for Melamine.

### **J.3. Examination by the Authority**

188. The Authority has examined the post disclosure submissions made by all the interested parties and notes that some of them are reiterations and have already been examined suitably in the relevant paras of the final findings. Some pertinent issues raised in the post-disclosure comments/submissions by the interested parties are examined below.
- i.* Export price has been calculated as per the consistent practice of the department. Further, no evidence has been submitted by the respondent to substantiate its claims that such adjustments are arbitrary.

- ii. The Authority notes that the level of development between Russia and China is quite similar when analysed by comparing their per capita income as per the data of the World Bank.
- iii. The Authority notes that irrespective of the period for which an anti-dumping duty has been in place as per Rule 23, a duty is to be further extended where it is found that such cessation is likely to lead to continuation or recurrence of dumping and injury.
- iv. Certain submissions have again been received regarding the difference in quality between the imported product from the subject country, imported from other countries, and produced by the Domestic Industry. The interested parties have been unable to highlight any objective or subjective characteristic of the PUC on which such differentiation is based. Further, no material evidence has been brought before the Authority to substantiate such an allegation.
- v. On the submission made by the domestic industry with regard to disclosure of incomplete working of the non-injurious price (NIP), it is noted that the Authority has disclosed the detailed computation of NIP to the domestic industry as per the consistent practice adopted by the Authority as given in the SOP manual.
- vi. Certain interested parties have also raised issues on inclusion of certain cost elements in the NIP. The Authority notes that these concerns have been examined by the Authority during the course of this investigation and the Authority while computation of the NIP has computed it in complete with Annexure III of the AD Rules and in such computation, it has not deviated from its consistent practice.
- vii. Further the following is clarified;

The concern of interested parties with respect to the plant shutdown has been duly taken care of by applying the principle of capacity optimisation as per Annexure-III to the AD Rules.

As regards the by-product in question on ammonia, GSFC consumed Natural Gas (NG) as raw material and by routing through various processes like Synthesis Gas - Ammonia – Sulphuric Acid – Urea produced Melamine in their two plants in Baroda Unit. The NG requirement for IP products (including melamine) are based on Natural Gas purchased at market price which is non-subsidized and therefore valuation of Ammonia recovered as by-product from Melamine was valued at the charging/market (non-subsidized) rate of Ammonia. Thus, the ammonia charged to production and recovered as by-product has been valued at the same rate of Rs. 30,826\* per MT and considered for NIP determination accordingly during the POI.

The Authority consistently considers the actual consumption norms for NIP determination in terms of clause 4(i) instead of notional/ideal/standard input-output consumption norms. Such actual

norms for the four periods of the injury period have been compared and the best norm of the four years has been considered for NIP determination in terms of Annexure-III to the AD Rules.

The Authority, as per its consistent practice has considered the principle of 22% return on capital employed for NIP determination in terms of clause 4(viii) of Annexure-III to the AD Rules.

#### **K. Conclusion and Recommendation**

189. After examining submissions of all 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. Imports from the subject country in relation to total imports, demand and production continued to be significant despite the anti-dumping duty being in existence and the dumping and injury margins determined in the POI are positive.
  - ii. Inventories of the Domestic Industry remain high during the POI. It has also suffered financial losses during the POI
  - iii. The capacities in China are in far excess of their total domestic consumption. There has also been addition in such capacities. There would be significant price undercutting by the imports of subject goods, if the anti-dumping duties were to cease. The dumping margin in the present investigation are not only above the *de minimis* level but also quite significant. Other countries including U.S and European Union have also undertaken trade remedial investigations against imports of subject goods from China PR.
  - iv. The Authority, therefore, concludes that there is likelihood of continuation and recurrence of dumping of subject goods from the subject country and consequent injury to the Domestic Industry in the event of cessation of the current anti-dumping duty that is in force.
190. 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 antidumping duty on imports of subject goods from the subject countries.

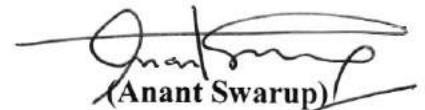
191. In terms of provision contained in Rule 4(d) & Rule 17(1) (b) of the Rules, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duty equal to the amount mentioned in Column 7 of the duty table below is recommended to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on all imports of subject goods as mentioned in Column 3 of the duty table originating in or exported from subject country.

**DUTY-TABLE**

SN	HS Code	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	2933 61 00	Melamine	People's Republic of China	People's Republic of China	Any	Any	161	MT	US Dollar
2.	2933 61 00	Melamine	Any Country other than those subject to anti-dumping duty	People's Republic of China	Any	Any	161	MT	US Dollar
3.	2933 61 00	Melamine	People's Republic of China	Any Country other than those subject to anti-dumping duty	Any	Any	161	MT	US Dollar

**L. Further Procedure**

192. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

  
(Anant Swarup)

**Joint Secretary and Designated Authority**