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**No. 14/9/2015-DGAD  
Government of India  
Department of Commerce  
Ministry of Commerce & Industry  
(Directorate General of Anti-Dumping & Allied Duties)  
4th Floor, Jeewan Tara Building, Parliament Street, New Delhi**

**Date: 20.10.2016**

**NOTIFICATION**

**(Final Findings)**

**Subject: Anti-dumping investigation concerning imports of “Low Ash Metallurgical Coke” originating in or exported from Australia and China PR-reg.**

No. 14/9/2015-DGAD: Whereas M/s Indian Metallurgical Coke Manufacturers Association (IMCOM), on behalf of the domestic producers of “Low Ash Metallurgical Coke” in India, namely, M/s Saurashtra Fuels Pvt. Ltd., M/s Gujarat NRE Coke Ltd., M/s Carbon Edge Industries Ltd., M/s Bhatia Coke and Energy Ltd. and M/s Basudha Udyog Pvt. Ltd. (hereinafter referred to as ‘the petitioners’ or “the applicants”), in accordance with the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of injury) Rules, 1995, as amended from time to time (hereinafter also referred to as the Rules) submitted an application to the Designated Authority (hereinafter also referred to as the Authority) for initiation of anti-dumping investigation and imposition of anti-dumping duty on the alleged dumped imports of Low Ash Metallurgical Coke (hereinafter referred to as the subject goods or Met Coke or the Product Under Consideration [PUC]), originating in or exported from Australia and China PR (hereinafter also referred to as the subject countries).

2. Whereas the Authority on the basis of sufficient *prima facie* evidence submitted by the applicants on behalf of the domestic industry, issued a Notification dated 30<sup>th</sup> December, 2015, published in the Gazette of India, Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods, originating in or exported from the subject countries, in accordance with the AD Rules, to determine the existence, degree and effect of alleged dumping and to consider recommendation of the anti-dumping duty.

**A. PROCEDURE**

3. The procedure described below has been followed:

- (i) The Authority notified the embassies of the subject countries in India about the receipt of an application before proceeding to initiate the investigation in accordance with the AD Rules.
- (ii) The Authority sent a copy of initiation notification to the embassies of subject countries in India, known producers/ exporters from the subject countries and

known importers/ users/ associations of the subject goods as per the addresses made available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification in accordance with the AD Rules.

(iii) The Authority forwarded a copy of the non-confidential version of application to embassies of the subject countries in India, known producers/exporters from the subject countries and known importers of the subject goods, in accordance with the AD Rules. A copy of the application was also provided to other interested parties, wherever requested.

(iv) The embassies of the subject countries in India were also requested to advise the producers/exporters from their countries to file their responses within the prescribed time limits.

(v) The Authority sent exporter's questionnaires to elicit relevant information to the following known exporters in the subject countries in accordance with the AD Rules:

- (i) BlueScope Steel Direct Locked, Australia
- (ii) One Steel Ltd., Australia
- (iii) Shanghai Pacific Chemical (Group) Co. Ltd.
- (iv) China National Coal Industry Imp & Exp Corp.
- (v) China National Mineral Import & Export Corp.
- (vi) China Iron & Steel Industry & Trade Group Corp.
- (vii) China National Import/ Exports Hebei Co.
- (viii) Shanxi Coal Import Export Group Co.
- (ix) Tianjin Kunshida International Trade Co., Ltd
- (x) China North Industries Corp.
- (xi) China MINMETALS Corporation
- (xii) Shanxi Minmetal Industrial & Trading Co., Ltd

(vi) In response to the initiation notification, the following exporters/producers/traders from the subject countries have filed their response to exporter's questionnaire:

- (i) M/s BlueScope Steel (AIS) Pty Ltd, Australia
- (ii) M/s Linhuan Coking & Chemical Co., Ltd., China
- (iii) M/s China National Minerals Co., Ltd, China
- (iv) M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore
- (v) M/s Guxian Jinhua Coking Co., Ltd., China
- (vi) M/s Tianjin Rongsen Investment Co., Ltd., China
- (vii) M/s Hangzhou CIEC Resource Co., Ltd., China
- (viii) M/s Hebei Risun Coking Limited, China
- (ix) M/s Hebei CNC Risun Coking Limited, China
- (x) M/s Beijing Risun Hongye Chemicals Company Limited, China
- (xi) M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd., China
- (xii) M/s Tianjin Taijin International Trade Co., Ltd., China
- (xiii) M/s Million Link (Tianjin) International Trade Co., Ltd., China
- (xiv) M/s Million Link (China) Investment Ltd., China
- (xv) M/s CNBM International Corporation, China

- (xvi) M/s Tianjin Litong Energy Development Co., Ltd., China
- (xvii) Tianjin Xinchuan Mineral Trading Co., Ltd., China
- (xviii) M/s Sinochem International Corporation, China
- (xix) M/s Sinochem International (Overseas) Pte, Ltd, Singapore
- (xx) M/s Steel Mont Trading Ltd, United Kingdom

(vii) None of the producers/exporters from China PR has claimed Market Economy Treatment (MET) rebutting the non-market treatment in the present investigation.

(viii) Questionnaires were sent to the following known importers/users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

- (i) M/s Electrosteel Castings Ltd.
- (ii) M/s Aparant Iron & Steel Pvt. Ltd.
- (iii) M/s Hindustan Zinc Ltd.
- (iv) M/s UshaBeltron Ltd.
- (v) M/s IspatMetallics India Ltd.
- (vi) M/s TISCO Ltd.
- (vii) M/s Kalyani Ferrous India Ltd.
- (viii) M/s Kirloskar Ferrous Industries Ltd.
- (ix) M/s JayaswalNeco Ltd.
- (x) M/s Ushalspat Ltd.
- (xi) M/s Indian Ferro Alloys Producers' Association
- (xii) M/s Association of Indian Mini-blast Furnaces

(ix) The following importers/users of the subject goods have responded in the form of questionnaire responses or provided comments to the initiation of the investigation:

- (i) Association of Indian Mini Blast Furnaces
- (ii) Mukand Limited
- (iii) Sona Alloys (P) Ltd.
- (iv) Kalyani Steel Ltd.
- (v) The Indian Ferro Alloy Producers' Association
- (vi) Tata Metaliks Ltd.
- (vii) Balasore Alloys Ltd.
- (viii) Indian Metals & Ferro Alloys Ltd.
- (ix) Sunflag Iron and Steel Company Ltd.
- (x) Essar Steel India Ltd.
- (xi) Tata Steel Ltd.
- (xii) Kirloskar Ferrous Industries Ltd.
- (xiii) Million Link (India) Smelting Pvt. Ltd.
- (xiv) Alloy Steel Producers Association of India
- (xv) Indian Steel Association
- (xvi) SLR metaliks
- (xvii) Steel Furnace Association of India

(x) The China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (CCCMC) has also filed its submission to the initiation notification.

- (xi) Andhra Pradesh Lam Coke Manufacturers Association also submitted its response supporting for levy of anti-dumping duty.
- (xii) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- (xiii) Information provided by the interested parties on confidential basis was examined with regard to 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 the information filed on confidential basis.
- (xiv) Further information was sought from the applicant and other interested parties to the extent deemed necessary.
- (xv) 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 its views on the basis of the facts available.
- (xvi) The Non-Injurious Price (hereinafter referred to as 'NIP') based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-Dumping Rules has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- (xvii) Investigation was carried out for the period of investigation (POI) from 1<sup>st</sup> April, 2014- 30<sup>th</sup> June, 2015. The examination of trends, in the context of injury analysis covered the period from 2011-12, 2012-13, 2013-14 and the POI.
- (xviii) The request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide transaction wise details of the imports of the subject goods for the past three years, including the period of investigation. The Authority has relied upon the DGCI&S data in the investigation.
- (xix) The Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 09.08.2016. The parties, which presented their views in the public hearing were requested to file written submissions of the views expressed orally. The relevant arguments made in the written submissions/rejoinders received from the interested parties have been considered by the Authority.
- (xx) Verification of the information and data submitted by the domestic industry and the interested parties was carried out to the extent deemed necessary. In respect of

the cooperative producers/exporters, the verification of their records was done on the table-study basis.

- (xxi) The submissions made by the interested parties considered relevant by the Authority have been addressed in this investigation.
- (xxii) A Disclosure Statement containing the essential facts in this investigation which would have formed the basis of the Final Findings was issued to the all the interested parties on 03.10.2016. The post Disclosure Statement submissions have been considered, to the extent found relevant, in this Final Findings Notification.
- (xxiii) \*\*\* in this Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
- (xxiv) The exchange rate adopted for the POI is 1 US \$ =Rs 62.13.

## **B. Product Under Consideration and Like Article**

4. The product under consideration (PUC) in the present investigation is Low Ash Metallurgical Coke (Met Coke). The product under consideration does not include other Metallurgical Coke with high ash content which is in excess of 18%. Low Ash Met Coke is produced by destructive distillation of coking coal in the absence/regulated presence of oxygen at high temperatures (ranging between 1100 to 1350 degree centigrade) causing the coal to soften, liquefy and then re-solidify into hard but porous lumps. Met Coke is a form of carbon along with some mineral and residual volatile material. Met Coke is used as a primary fuel in industries where a uniform and high temperature is required in kilns or furnaces. Met Coke is used in various industries including pig iron, foundries, ferro alloys, chemical, integrated steel plants and others. Met Coke is normally produced and sold in terms of weight expressed in KG or MT. The subject goods are classified under Custom Headings 27040030. Although the subject goods are classified under the Chapter Heading 27040030, the subject goods are also being imported in other Customs Headings, i.e., 27040090, 27040010, 27040020, etc. The customs classification is indicative only and is in no way binding on the scope of the present investigation.

5. There is no known difference in the subject goods produced by the domestic industry and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from the subject countries are comparable in terms of their characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods. The dumped goods from the subject countries and the goods produced by the domestic industry are technically and commercially substitutable.

### Views of the domestic industry and the opposing interested parties

6. Views of the interested parties with regard to the product under consideration are as follows:

- (i) The PUC is incorrectly identified and, if at all, it should be amended to only cover low ash Met Coke with ash content less than 15%. There exists no reason to show why the PUC should extend to Met Coke with ash content up to 18% when on two earlier occasions the DGAD in the Final Findings concerning import of Metallurgical Coke restricted the scope of the examination to Met Coke with ash content up to 15% only. It was also noted that the input-out norms of DGFT suggest that ash content of 15% or less is the appropriate indicator for identifying low ash Met Coke.
- (ii) The PUC is incorrectly defined and Met Coke containing low ash (upto 12.5%), low phosphorous (up to 0.018%) and low sulphur (upto 0.65%) is to be excluded.
- (iii) The PUC is incorrectly defined and Met Coke containing low ash (upto 12%), low moisture (upto 5%), low phosphorous (up to 0.035%) and low sulphur (upto 0.65%) is to be excluded.
- (iv) The lump coke used by steel producing companies in their blast furnaces is to be excluded from the scope of the PUC as this is not produced by the domestic industry.
- (v) The PUC is incorrectly defined and Met Coke containing low ash (upto 12.5%) is to be excluded.

7. Views of the domestic industry with regard to the product under consideration are as follows:

- (i) The interested parties have failed to give the legal basis for exclusion of Met Coke having ash content in excess of 15%. It is not the case of the interested parties that the Met Coke with ash content of less than 15% is not substitutable with Met Coke of ash content with 15%-18% or vice versa. The interested parties have merely quoted from the investigation conducted for Met Coke in the past without advancing any justification for the exclusion of the same.
- (ii) The submissions of the interested parties are far from reality for the exclusion of Met Coke containing low ash (upto 12.5%), low phosphorous (up to 0.018%) and low sulphur (upto 0.65%) or with moisture content of upto 5% from the scope of the product under consideration. The domestic industry is fully capable of producing Met Coke of all the specifications including the specifications for exclusions alleged for exclusion. It may also be seen that yet again it is not the case of the interested parties that Met Coke produced by the domestic industry cannot be substitutable. The imported Met Coke and the domestically produced Met Coke are used interchangeably. It may also be seen that the domestic industry is capable of producing Met Coke of all specifications as the specification of Met Coke is directly dependent upon the quality and type of coal used. Therefore, there is no merit in the submissions of the interested parties for exclusion of this type of Met Coke from the scope of the PUC.
- (iii) The submissions of the exporters for the exclusion of the lump coke are unsupported by facts and are erroneous. The size required in blast furnace is in the range from 30-80mm to 40-100 mm. The domestic industry is making Coke of this size and supplying to steel plants. Their contention that Blast Furnace needs Met Coke with CSR higher than 70 and CRI lower than 19 is also not correct. The domestic industry is regularly supplying Met Coke to both the integrated steel plants as well as Pig iron producers.

(iv) With regard to the submission of the users / interested parties for exclusion of the Met Coke with ash content below 12.5%, the user industry is completely lost. Initially and in their written submissions, they were asking for the exclusion of the Met Coke with ash content above 15% and towards the finalisation of the investigation, they are making diagonally opposite submissions for exclusion of Met Coke with ash content below 12.5%. Therefore, in view of their contradictory submissions on the product scope, all their claims for exclusions from the scope of the product under consideration are required to be rejected. It is reiterated that ash content in Met Coke is purely a function of the ash content of coking coal used in making the Met coke. The domestic industry produces met coke of varying ash content such as less than 12.5%, between 12.5% to 15% and between 15% to 18% as demanded by the user industry. It may be seen that there is sufficient third party test reports which indicate that the domestic industry manufactures Met Coke with ash content below 12.5%. Therefore, there is no merit in the submissions of the user industry / interested parties for the exclusion of Met Coke below 12.5% and the same are not worthy of any consideration.

#### Examination of the Authority

8. The product under consideration (PUC) in the present investigation is Low Ash Metallurgical Coke (Met Coke). The product under consideration does not include other Metallurgical Coke with high ash content which is in excess of 18%.

9. Low Ash Met Coke is produced by destructive distillation of coking coal in the absence/regulated presence of oxygen at high temperatures (ranging between 1100 to 1350 degree centigrade) causing the coal to soften, liquefy and then re-solidify into hard but porous lumps. Met Coke is a form of carbon along with some mineral and residual volatile material. Met Coke is used as a primary fuel in industries where a uniform and high temperature is required in kilns or furnaces.

10. Met Coke is used in various industries including pig iron, foundries, ferro alloys, chemical, integrated steel plants and others. Met Coke is normally produced and sold in terms of weight expressed in KG or MT. The Met Coke imported into India is also with Low Ash content and that the ash content does not exceed 18%. Low Ash Metallurgical Coke is classified under Chapter Heading 27040030 of the Customs Tariff Act, 1975. The customs classification, however, is only for indicative purposes and is not binding on the present investigation.

11. The interested parties have merely quoted from the investigation conducted for Met Coke in the past without advancing any justification for the exclusion as to how Met Coke with ash content of above 15% can be excluded from the purview of the current investigation. It is stated by the domestic industry that the Met Coke with Ash content between 15%-18% is technically and commercially substitutable with the Met Coke below 15%. The impact of using Met Coke between 15%-18% in place of Met Coke below 15% would be reduction in productivity and that it would be compensated with the cost savings on account of lower price of Met Coke with ash content between 15-18% as compared to Met Coke of ash content below 15%. Further, the input-output norms laid down by the DGFT are not binding on the product definition in the anti-dumping investigations as they are prescribed for different purpose. With regard to the exclusion of Met Coke containing low ash (upto 12.5%), low phosphorous (up to 0.018%) and low sulphur (upto 0.65%) or with moisture content of upto 5% from the

scope of the product under consideration, it is noted that the domestic industry has provided sufficient evidence to show that they have produced and supplied the subject goods of the above description. The Authority also notes that there is no case for exclusion of lump coke from the scope of the product under consideration. It is noted from the third party test reports supplied by the domestic industry that it manufactures Met Coke with ash content below 12.5%. The Authority also notes that it does not require any specific technology to manufacture Met Coke with low or high ash content. The production of Met Coke is dependent upon the ash contained in the coking coal. Lower the ash content of coking coal, the lower ash content would be there in Met Coke produced and vice versa. Therefore, there is no case of the interested parties for any exclusion from the product scope under the investigation.

12. With regard to like article, Rule 2(d) of the Rules provide as under:

*"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation."*

13. After considering the information on record, the Authority has determined that there is no known difference in the subject goods produced by the domestic industry and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from the subject countries are comparable in terms of their characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods. The users are using the dumped goods from the subject countries and the goods produced by the domestic industry interchangeably.

### **C. Domestic Industry and Standing**

#### Views of the opposing interested parties and the domestic industry

14. Views of the opposing interested parties with regard to the standing of the domestic industry are as follows:

- (i) The producers who are captive users of Met coke cannot be legally excluded from the scope of the domestic industry. An examination of only certain parts of a domestic industry does not ensure a proper evaluation of the domestic industry as a whole as this might lead to a biased analysis and will not give an accurate picture on demand in the Indian market or the total amount of sales. This understanding is also supported by the determination of the Appellate Body of the WTO in United States–Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan and United States–Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan.
- (ii) The producers who are captive users of Met Coke cannot be excluded / included by cherry picking to establish standing. No explanation has been provided as to why Jindal Stainless Ltd. has been included as a supporting producer when Jindal Stainless Ltd. is also a producer using PUC for captive use. It must also be noted that the companies such as Nilanchal Ispat Nigam Limited and Sathavahana Ispat

Ltd., which have substantial sales in the domestic market, have not been included in the analysis.

- (iii) The production of Bengal Energy and Visa SunCoke Ltd. cannot be excluded for assessing the standing of the domestic industry
- (iv) As per the data available in the public domain, the petitioner companies account for less than a major proportion of the domestic production and these petitioners are willfully trying to mislead the Authority into believing that they account for production of a major proportion of the PUC in India.

15. Views of the domestic industry with regard to the standing of the domestic industry are as follows:

- (i) The submissions of the interested parties on the standing of the applicant companies are unfounded and without appreciating the legal provisions and the jurisprudence. It may be seen that the Appellate Body in United States–Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan- has nowhere laid down its opinion on the standing of the domestic industry. The Appellate Body in this case laid down its opinion with regard to the form and manner of analysing injury to the domestic industry after determination of standing. Therefore, the facts in the Appellate Body Report in the said case and in the present case are totally different.
- (ii) The Cotton Yarn Case is also not relevant to the issue of standing in the present Investigation as the dispute pertained to the provisions of Agreement on Textiles and Clothing (“ATC”) and not with the AD Agreement and in any event, the Appellate Body did not rule on whether captive production must be considered for determining standing of an applicant. The plain and unambiguous answer is in the negative to the question whether the Appellate Body finding in Cotton Yarn Case could be considered as a precedent on the issue raised in the present Investigation.
- (iii) The ruling of Appellate Body is based on the definition of the ‘domestic industry’ under Article 6.2 of the ATC which is materially different from definition of the ‘domestic industry’ under the AD Agreement. The Appellate Body did not rule on the issue of standing of an applicant and, therefore, the reliance on Cotton Yarn Case is of no consequence and is irrelevant. The Indian law is settled on this aspect. The jurisprudence from CESTAT and the Authority’s own practice shows that producers who captively consume like products may be excluded from the scope of domestic industry for determining standing as well as injury analysis.
- (iv) It is emphasized that the Hon’ble CEGAT (presently called CESTAT) in Pig Iron Mfrs. Asscn. vs. Designated Authority 2000(116) ELT (Tribunal) has clearly held that the captive consumption producers and the merchant producers are different categories of producers and, therefore, these two categories of producers can be dealt with as separate domestic industries. Thus, the standing of the applicant companies has rightly been determined in accordance with the legal provisions and that it has also been upheld by the Hon’ble CEGAT in the above said case.
- (v) With regard to the inclusion of the Jindal Stainless Ltd., it is submitted that its substantial production is sold and only minor quantities are consumed captively as the thrust of the company is on the merchant activity but not the captive use. The inclusion of Jindal Stainless Steel is also in line with the decision of the Hon’ble CEGAT in the above said case.

(vi) With regard to Neelachal Ispat Nigam Ltd., it is submitted that the company uses its substantial production for captive use to the tune of 82.28% as per the available information for the year 2014-15. Therefore, it may be considered as captive producer and may be excluded from the purview of the domestic industry. With regard to Sathavahana Ispat Ltd., it is submitted that its substantial part of production is sold in the domestic market and only about 42% is captively consumed. It may be considered as merchant producer and may be included as part of the total domestic production for the determination of standing for the applicant producers. It may be seen that even after including the production of Sathavahana, the share of the domestic industry becomes 48.35% and with the supporting producers the share of the domestic industry becomes 62.98%. Thus, the applicants have the clear standing to be considered as eligible domestic industry even after including the production of Sathavahana.

(vii) The exclusion of Bengal Energy and Visa SunCoke was made from the domestic industry as they have imported significant quantities of the subject goods during the POI and the domestic industry has also provided details in this connection.

(viii) The Petitioners submit that in any event the Petitioners qualify the test of standing as laid out in the AD Rules. The fundamental issue to be determined is whether the Petitioners account for 'a major proportion' of the total domestic production and based on the data submitted by Petitioners and in view of the established interpretation of the term "a major proportion", the Petitioners do qualify as the 'domestic industry'.

#### Examination by the Authority

16. The application has been filed by the Indian Metallurgical Coke Manufacturers Association (IMCOM) on behalf of the domestic producers of Low Ash Metallurgical Coke in India, namely, Saurashtra Fuels Pvt. Ltd., Gujarat NRE Coke Ltd., Carbon Edge Industries Ltd., Bhatia Coke and Energy Ltd. and Basudha Udyog Pvt. Ltd. Further, the applicant has stated the present application is filed by or on behalf of the manufacturers who are marketing / selling their production of Met Coke. It is stated that there are two different categories of producers of Met Coke in India, i.e., manufacture of Met Coke for captive use and manufacture of Met Coke for marketing / sales. The manufacturers who are producing Met Coke for their captive use are being excluded from the purview of the current investigation as their production is not in competition with the imported subject goods. Further, the economics of producers for captive consumption and of producers for sale are very different. The former saves on the costs of marketing sales, inventory etc. The applicant has stated that there are some steel manufacturers who produce Met Coke for their captive consumption. The applicant has provided the details of the names of the steel producers as available having production of Met Coke for captive consumption, namely, Steel Authority of India Limited, Tata Steel Ltd., JSW Steel Ltd., Jindal Steel & Power Ltd., Bhushan Steel Ltd., Jayaswal Neco Industries Ltd., Rashtriya Ispat Nigam Ltd., Bhushan Power and Steel Ltd., Jai Balaji Industries Ltd. and Usha Martin Ltd. The applicant has also provided the details from their respective annual reports for the above companies that there are either no sales of Met Coke by the major captive producers or the sales are negligible by some of the producers as compared to their total production of captive Coke. In this regard, the Authority has seen from the evidence on record that these companies are primarily using Met Coke for their captive consumption and in some cases, their domestic sales are negligible as compared to their total production of

captive Coke. In addition, it is noted that there is one more captive producer, namely, Neelachal Ispat Nigam Ltd. and it is seen that its sales are also not significant. Therefore, the captive producers are being treated as a separate category of producers and have been excluded from the purview of the current investigation while determining the domestic industry.

17. It is seen that Sathavahana Ispat Ltd. also has majority of its production sold in the market and even if it is considered as a merchant producer and included as part of the total domestic production for the determination of standing for the applicant producers, the applicant producers meet the standing in the current investigation. Thus, as per the information available on record, the production of the aforesaid five petitioners, i.e., Saurashtra Fuels Pvt. Ltd., Gujarat NRE Coke Ltd., Carbon Edge Industries Ltd., Bhatia Coke and Energy Ltd. and Basudha Udyog Pvt. Ltd. accounts for a major proportion of the total domestic production and is 48.35% of Indian production and their share along with the supporting three domestic producers, namely, Jindal Stainless Ltd., Shree Arihant Trade Links India Pvt. Ltd. and Ennore Coke Ltd. is 62.98% as can be seen from the table below.

Domestic Producers	April 11-Mar 12		April 12-Mar 13		April 13-Mar 14		POI-April 14-June 15	
	MT	Share	MT	Share	MT	Share	MT	Share
<b>Applicants/Producers (DI)</b>	***	***	***	***	***	***	***	***
Carbon Edge Industries Ltd.	***	***	***	***	***	***	***	***
Saurashtra Fuels Pvt. Ltd.	***	***	***	***	***	***	***	***
Gujarat NRE Coke Ltd	***	***	***	***	***	***	***	***
BasudhaUdyog Pvt. Ltd.	***	***	***	***	***	***	***	***
Bhatia Coke and Energy Ltd.	***	***	***	***	***	***	***	***
<b>TOTAL – APPLICANTS(DI)</b>	<b>1623436</b>	<b>53.31%</b>	<b>1724319</b>	<b>55.63%</b>	<b>1206650</b>	<b>50.76%</b>	<b>1302273</b>	<b>48.35%</b>
<b>Supporting Producers</b>								
Jindal Stainless Ltd.	***	***	***	***	***	***	***	***
Shree Arihant Trade Links India Pvt. Ltd.	***	***	***	***	***	***	***	***
Ennore Coke Ltd.	***	***	***	***	***	***	***	***
<b>TOTAL - SUPPORTING PRODUCERS</b>	<b>361138</b>	<b>11.86%</b>	<b>344866</b>	<b>11.13%</b>	<b>335893</b>	<b>14.13%</b>	<b>394074</b>	<b>14.63%</b>
<b>TOTAL - APPLICANTS &amp; SUPPORTING PRODUCERS</b>	<b>1984574</b>	<b>65.17%</b>	<b>2069185</b>	<b>66.76%</b>	<b>1542543</b>	<b>64.89%</b>	<b>1696347</b>	<b>62.98%</b>
Other Domestic Producers	810000	26.60%	690000	22.26%	510000	21.45%	580000	21.53%
Sathavahana Ispat Ltd.	***	***	***	***	***	***	***	***
<b>Total</b>	<b>3045198</b>	<b>100.00%</b>	<b>3099363</b>	<b>100.00%</b>	<b>2377075</b>	<b>100.00%</b>	<b>2693625</b>	<b>100.00%</b>

18. On the basis of the information on record and having regard to the Rules, the Authority determines that the application has been made by or on behalf of the domestic industry and the application satisfies the requirement of 'standing' under the AD Rules. Further, the production of the applicant companies constitutes a major proportion in Indian production and the petitioner companies are eligible domestic industry. The petitioners, therefore, constitutes the 'Domestic Industry' in terms of Rule 2(b) of the AD Rules.

19. The Authority examined the submissions of the interested parties and the domestic industry and finds that the Appellate Body Reports in United States –Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan and United States-Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan cited by the interested parties and the facts in the current investigation are totally different. There was no determination made with regard to the standing of the domestic industry. It is also seen that the Hon'ble CEGAT in Pig Iron Mfrs. Asscn. vs. Designated Authority 2000(116) E.L.T. 67 (Tribunal) held as follows:

*“5.2 Exclusion of RINL was justified on account of its produce being used captively also. It is admitted position that its manufacture of metcoke is not for marketing, but is for use by itself in further manufacture. Therefore, its production is not in competition with the imported goods. The economics of producers for captive consumption and of producers for sale are very different. The former saves on the costs of marketing sales, inventory etc. Therefore, these producers are, justifiably, treated as a separate market while computing domestic industry. This is the practice in European Union also. That RINL had sold a part of their produce during the period of investigation does not change their position from that of a producer for captive use. Rule 2(b) defines domestic industry as the domestic producers as a whole of the like article. However, proviso to this definition states that in exceptional circumstances, the domestic industry shall be deemed to comprise two or more competitive markets and the producers within each of such markets be deemed as a separate industry. As the captive consumption producers and producers for marketing constitute different categories of producers, under the proviso, they could be dealt with as separate domestic industries. Thus, RINL's exclusion is legally correct in the light of the proviso to Rule 2(d) also. In the circumstances, we are not able to find merit in the submissions on standing made by the PR exporters.”*

20. It is amply clear from the above decision of the Hon'ble Tribunal that the producers having captive consumption and the merchant producers are different categories of producers and, therefore, these two categories of producers can be dealt with as separate domestic industries. Thus, considering the legal provisions with regard to the determination of the standing and the decision of the Hon'ble Tribunal, the applicant companies meet the criteria of standing and are eligible to be considered as the domestic industry in this investigation.

21. With regard to the inclusion of Jindal Stainless Ltd., it is seen that its substantial production is sold and only minor quantities are consumed captively as the thrust of the company is on the merchant activity but not the captive use. The inclusion of Jindal Stainless Ltd. is also in line with the decision of the Hon'ble CEGAT in the above said case.

22. With regard to Neelachal Ispat Nigam Ltd., it is seen that the company uses its substantial production for captive use to the tune of 82.28% as per the available information for the year 2014-15. Therefore, it is considered as captive producer and excluded from the purview of the domestic industry. With regard to Sathavahana Ispat Ltd., it is seen that its substantial part of production is sold in the market and even if it is considered as merchant producer and included as part of the total domestic production for the determination of standing for the applicant producers, the share of the domestic industry becomes 48.35% and with the supporting producers the share of the domestic industry becomes 62.98%. Thus, the applicants have the clear standing to be considered as eligible domestic industry.

23. The exclusion of Bengal Energy and Visa SunCoke from the domestic industry is justified as on the basis of the evidence available on record they have imported significant quantities of subject goods. Thus, in view of the above, the Authority concludes that the applicant producers have the standing in the investigation.

#### **D. MISCELLANEOUS SUBMISSIONS**

##### View of the exporters/importers/consumers and other opposing interested parties

24. The exporters/importers/consumers/opposing interested parties have made the following submissions:

- i. The petitioners have claimed excessive confidentiality on a number of details in the petition which has significantly impaired the ability of the respondent to defend their interests. The domestic industry kept confidential the raw material costs and consumption norms used for the normal value, sales volume and value of exports, investments, net worth, capital investment for expansion, interest cost and depreciation cost, annual reports, capital employed, non-injurious price, details of capacity, production and sales of supporting producers, sales volume. Further, it is stated that there is no clarity as to how the IBIS transaction-wise raw import data provided by the petitioners is being used. The petitioners should provide the IBIS transaction-wise raw import data as well as sorted import data.
- ii. Market intelligence suggests that all the Petitioning companies use non-recovery technology of coke manufacture which means that they cannot get the benefit of other by-products like ammonia, tar, etc.
- iii. There is a cost advantage specific to BlueScope in terms of location advantage and advantage of proceeds from the by-products sale.
- iv. The Authority is requested to give exemption to the manufacturers of pig iron or steel using a blast furnace, the manufacturers of steel using COREX technology, the manufacturers of pig iron using COREX technology and the manufacturers of ferro alloys as allowed to them in the anti-dumping investigation concerning import of Metallurgical Coke from China PR vide Notification No. 5/2003-Customs dated 3rd January, 2003.
- v. The import data furnished by the Domestic Industry in the Petition is unreliable and misleading and hence ought to be rejected.

##### Views of the domestic industry

25. The domestic industry has made the following submissions:

- (i). The exporters participating in the investigation from Australia and China have claimed excessive confidentiality on various information submitted by them in their questionnaire responses in violation of the provisions of anti-dumping law. They have even kept confidential the basic information such as names of the shareholders, names of the related companies, names of the suppliers/traders, etc.

(ii). The domestic industry while claiming confidentiality on the information has provided reasons for the same as required to be given under the Rules and the Trade Notices issued by the Authority from time to time and the domestic industry has not claimed excessive confidentiality. The details relating to export sales volume and sales value, capital employed etc. in indexed numbers have been provided as part of proforma IVA. The details of the interest cost and the depreciation cost separately are not required to be disclosed. The details of profit before interest for return on capital employed and cash profit have been provided in the application. The annual reports of M/s Gujarat NRE have been provided as part of the application. With regard to the annual reports of other companies, it is submitted that the annual accounts of privately held companies and closely held companies are meant for circulation to its members only and are not available in public domain. Hence, the confidentiality is being claimed on this information.

(iii). The IBIS raw import data and original import data has been provided as part of the application. The import data for the subject goods has been collated on the basis of the description of the transactions indicating for the subject goods as can be seen from the details provided in the application. The ash content of imported goods is up to 18% only and no import transaction in the IBIS import data indicated that the imported goods are with ash content of more than 18%.

(iv). The Petitioners use non-recovery technology for producing Met Coke and as such no by-products are produced during the production of Met Coke. Therefore, the question of considering use of any by-products does not arise. With respect to utilization of heat, all relevant data on cost of production of the Petitioners have been submitted for the determination of NIP in line with Annexure III to the anti-dumping Rules. Therefore, the question of the domestic industry being affected due to its inefficiency in terms of use of non-recovery technology of producing Met Coke does not arise.

(v). There is no legal basis in the Indian Anti-dumping law to exempt any user from the imposition of the anti-dumping duty. There are also no legal provisions in the Indian anti-dumping law which provide for consideration of interest of the user industry. It may be seen that the anti-dumping duty is levied to redress the injurious effect of dumping to establish a situation of open and fair competition in the Indian market. The purpose of anti-dumping duty is to arrest the practice of unfair advantages gained due to dumping of goods and prevent injury to the domestic industry. Therefore, the user industry cannot allege that their cost etc. would increase due to levy of anti-dumping duty as the purpose of anti-dumping duty is to eliminate undue advantage gained due to dumping which otherwise would not have occurred in case of fair trade. It is also submitted that the effect of levy of anti-dumping duty on the relative competitiveness of any other industry is outside the purview of the anti-dumping investigation. It may also be seen that in the final findings concerning the Met Coke issued in 1998, there was no exemption granted to any user by the Hon'ble Authority. The exemption was granted to the above users by the central government. It is submitted that the exemptions were granted by the Central Government to the above users in view of the fact that at that time, the merchant met coke industry did not have the capacity to meet the demand of the blast furnace steel producers and the exclusion was done with the consent of merchant met coke producers. It may be seen that the exclusion had

nothing to do with quality and capability of production of low ash metallurgical coke by merchant met coke producers. It is submitted that today the merchant met coke producers have the capacity to meet the demand of blast furnace steel producers. Therefore, on this account also, there is no reason for the Central Government for granting any exemptions to the aforesaid users. Therefore, the exemptions to the aforesaid users is a non-issue in the current investigation.

#### Examination by the Authority

26. The examination by the Authority of the miscellaneous issues raised by the interested parties is as follows:

- i. With regard to the claim of the interested parties that the excessive confidentiality has been claimed by the domestic industry and the opposing interested parties, the Authority notes that the allegation by made by these interested parties on the inadequacy and insufficiency of information provided are baseless. Only such information that is not amenable to summarisation has been kept confidential in consonance with the practice of the Authority. This information is adequate as well as sufficient to enable a reasonable understanding.
- ii. With regard to the granting of exemption from anti-dumping duty to manufacturers of pig iron or steel using blast furnace, manufacturer of pig iron or steel using COREX technology and Manufacturer of ferro alloys, the Authority notes that there is no legal basis in the Indian Anti-dumping law to exempt any user from the imposition of the anti-dumping duty. The analysis of the effect of levy of anti-dumping duty on the relative competitiveness of any other industry is outside the purview of the anti-dumping investigation. Further, the circumstances of each investigation may differ. The present investigation is independent of the past investigations. At present, the merchant met coke producers have the capacity to meet the demand of the manufacturers of pig iron or steel using blast furnace, the manufacturers of pig iron or steel using COREX technology and the manufacturers of ferro alloys.
- iii. The Authority notes that the applicant producers use non-recovery technology for producing Met Coke and no by-products are produced by them during the production of Met Coke. Therefore, the Authority does not consider use of income of by-products as the same does not exist and the domestic industry is not being affected due to non-use of recovery technology of producing Met Coke.

### **E. ASSESSMENT OF DUMPING—METHODOLOGY AND PARAMETERS**

#### **Normal Value, Export Price and Dumping Margin**

##### View of the producers/exporters and other opposing interested parties

27. The producers/exporters and other opposing interested parties have made the following submissions:

- i. The procedural requirement of providing complete value chain of sales data to work out an individual margin for an interested party must be relaxed in case of BlueScope for its exports through Noble Resources International Pte Ltd. (NRIPL) in view of the

Appellate Body of the WTO observations in United States – Anti-Dumping measures on certain hot-rolled steel products from Japan.

ii. The practice of putting onus on the producer/manufacturer to complete the value chain by filling exporter/trader responses is wrong. Whether the producer/manufacturer has exported the subject goods through one exporter/trader or through several, and if one of them denies to cooperate with DGAD, then the whole responses filed by the producer/manufacturer and its exporters/traders are penalized by rejected the data on the ground of value chain, which is again against DGAD law and practice because there is no such written law globally which speaks so and here it is being used as one of the anti-dumping mechanism tools to reject the exporters/traders filed data/Information.

iii. The exporters' questionnaire format prescribed by the DGAD belongs to the exporter/trader but not producer/manufacturer. The petitioners have failed to provide any evidence that there is dumping and that the domestic industry is suffering injury. The application does not contain evidence in relation to the normal value, the export price and the injury. In the absence of such evidence, the present investigation should not have been initiated.

iv. The normal value for market economy country cannot be constructed based on the cost of the petitioners. The legal provisions at best provide for construction of the normal value based on the cost of production in the domestic market of the exporting country only. Therefore, the normal value as constructed for Australia must be rejected.

v. Japan cannot be taken as surrogate country as it is not the appropriate market economy third country pursuant to Annexure I of the AD Rules as the normal value calculated based on the domestic prices of the like product in Japan are likely to be much higher than that of China due to devaluation of Yen. Coal imported by Japan from Australia like India results in higher purchase cost due to freight cost and high labour cost. It is further stated that the GDP per person in Japan is much higher as compared to China and the plants in China are more advanced than the plants in Japan.

vi. The normal value determined for China PR is inconsistent with Annexure I (7) of AD Rules. The petitioners' computation based on the last option was accepted for initiation without exhausting the first two options effectively purely for the reason that the relevant information is not available with the petitioners. The proposal to consider Japan as third party surrogate country appears to be only a superficial attempt of the petitioners.

vii. No basis has been provided for calculation of the normal value. The constructed normal value for Australia is much higher than the international prevailing prices of the PUC.

viii. The petition does not contain any evidence with regard to adjustments claimed from the export price to arrive at the net export price.

ix. The petitioners have calculated the net export price and the dumping margin for Australia on the basis of assessable value which has been derived by the petitioners and no basis has been provided for deriving the aforesaid assessable value.

x. Normal value must be calculated after taking into account the utilisation of coke oven gas and recovery of by-products.

#### Views of the domestic industry

28. The domestic industry made the following submissions:

(i). The exporter from Australia M/s BlueScope has mentioned in its response that the export sales to India have been undertaken through some other marketing entity. Therefore, the individual dumping margin may not be determined for the exporter from Australia as it has failed to submit the essential information for exports to India for its exporter.

(ii). From the questionnaire responses submitted by M/s Linhuan Coking & Chemical Co., Ltd., China, M/s China National Minerals Co., Ltd, China and M/s Minmetals South-East Asia Corporation Pte Ltd., Singapore, it is seen that Linhuan is a producer and the other two companies are the traders/exporters. It is seen from the response of the two traders/exporters that besides purchasing the subject goods from Linhuan, they also purchased the subject goods from other suppliers. However, names of such other suppliers have not been disclosed. It appears that there is no response submitted for the producers whose names have been kept hidden. Under the circumstances, the response of all the three companies is required to be rejected as they have not given the essential information for the complete trail of exports to India.

(iii). From the questionnaire responses submitted by M/s Guxian Jinhua Coking Co., Ltd., China, and M/s Tianjin Rongsen Investment Co., Ltd., China and M/s Hangzhou CIEC Resource Co., Ltd., China, it is seen that Guxian is a producer and the other two companies are the traders/exporters. It is seen from the response of the trader/exporter Hangzhou CIEC that the subject goods have been exported to India through a Hong Kong based trader. However, the name of such trader has not been disclosed. It appears that there is no response submitted for such trader from Hong Kong. Under the circumstances, the response of all the three companies is required to be rejected as they have not given the essential information for the complete trail of exports to India.

(iv). The producer M/s Hebei Risun Coking Limited, China in answer to question No. B. 2 of the exporter's questionnaire has mentioned in its response that the subject goods have been exported to India through an unrelated trader and but has not disclosed its name. However, in reply to question No.B.3, the producer stated the names of two traders/exporters, namely, M/s Beijing Risun Hongye Chemicals Company Limited, China and M/s Million Link (Tian Jin) International Trade Co., Ltd. There is one more producer M/s Hebei CNC Risun Coking Limited, China who has also stated in its response that the subject good produced by it have been exported through M/s Beijing Risun Hongye Chemicals Company Limited, China and M/s Million Link (Tian Jin) International Trade Co., Ltd. From the questionnaire response of M/s Million Link (Tian Jin) International Trade Co., Ltd., it is further noted that the sales to India have been made through Million Link (China) investment Ltd and that the subject

goods exported to India are procured from various suppliers from China. However, the names of such suppliers have not been disclosed. Under the circumstance, the domestic industry is handicapped to make effective comments and requests the Authority for the rejection of response of all the companies in the absence of all the essential information submitted by them.

(v). The producer M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd., China mentioned in its response that the subject goods have been exported through the related trader / exporter M/s Tianjin Taijin International Trade Co., Ltd., China. It is seen from the response of the trader that the subject goods to India have been exported through another trader/exporter in Switzerland. However, the name of such trader from Switzerland has not been disclosed. It appears that there is no response submitted for such trader from Switzerland. Under the circumstances, the responses for the above companies are required to be rejected as they have not given the essential information for the complete trail of exports to India.

(vi). The producer M/s Tianjin Litong Energy Development Co. Ltd, China has claimed excessive and unwarranted confidentiality as it has not disclosed the details of channel of distribution and negotiation process for domestic sales as well as exports to India. In the absence of disclosure of such a vital information by the company, its whole response may be rejected.

(vii). The producer M/s CNBM International Corporation, China has claimed excessive and unwarranted confidentiality as it has not disclosed the details of names of supplier, channel of distribution and negotiation process for domestic sales as well as exports to India. In the absence of disclosure of such a vital information by the company, its whole response may be rejected.

(viii). The traders/exporters M/s Tianjin Xinchuan Minerals Trading Co. Ltd, M/s Steel Mont Trading Ltd, Sinochem International Corporation and Sinochem International (Overseas) Pte Ltd. have claimed excessive and unwarranted confidentiality as they have not disclosed the details of channel of distribution and negotiation process for domestic sales as well as exports to India. In the absence of disclosure of such a vital information by the companies, their whole response may be rejected.

(ix). The domestic industry has provided sufficient details of normal value, export price and dumping margin in the application and the normal value determined by the domestic industry was a good indicator of the domestic prices of the subject goods in the subject countries. On the contrary, the interested parties have not provided any information which indicates that the normal value determined by the domestic industry was not correct.

(x). There was no inconsistency for determination of normal value for the subject countries as it has been determined as per Rules and the domestic industry provided sufficient evidence for the normal value in subject countries.

(xi). For consideration of Japan as surrogate Country, the cost factor or GDP in the surrogate country is not the criteria to be adopted for selection or rejection of the surrogate country. The factor to be considered while selecting a surrogate country is to 'keeping in view the level of development of the country concerned and the product in question' but not the cost of the product and the associated factors as submitted by

the interested parties. The level of development in China and Japan are similar and comparable manufacturing facilities are there in Japan. Thus, Japan can be considered as surrogate country for China.

(xii). With regard to the adjustments to export price, the interested parties have not produced any contrary evidence that the information supplied by the domestic industry was not right. In any case, it is submitted that the determination with regard to export price will be made on the basis of the actual information supplied by the exporters participating in the investigation.

(xiii). With regard to the submissions of the users / importers or association of users/importers or exporters that the determination of the normal value is to be made after taking into account the utilisation of coke oven gas and recovery of by-products, the aforesaid interested parties have no locus to raise any submissions on the determination of normal value as only the exporters can make submission on the determination of normal value. None of the exporters from China has claimed market economy status nor any of them claimed adjustment for income from utilization of coke oven gas and recovery of by-products. The exporter from Australia has merely mentioned for the advantages it is having for the by-products generated but it has also not claimed any adjustment on account of income from utilization of coke oven gas and recovery of by-products. Therefore, there is no case of making any adjustment with regard to income from utilization of coke oven gas and recovery of by products for any exporter in the current investigation.

#### Examination by the Authority

29. Examination of the Authority is as under:

- i. With regard to the determination of the normal value and export price for China PR and Australia, the same has been determined as per the Rules, as explained hereunder in the relevant paras.
- ii. With regard to the suggestion of the domestic industry that Japan be taken as surrogate country, the Authority notes that the domestic industry has not supported its claim with any substantial data/information of the producers in Japan and, therefore, the Authority determines the normal value for China PR in terms of the provisions of para 7 of Annexure-I of the Rules.
- iii. For the adjustment of recovery income of by-products to the normal value, the Authority notes that none of the exporters has claimed any adjustment on this account and, therefore, the Authority does not make any adjustment for byproduct income from the normal value.

#### Market Economy Treatment (MET) for all producers/exporters from China PR

30. The Authority notes that in the past three years, China PR has been treated as a non-market economy country in the anti-dumping investigations by other WTO Members. Therefore, in terms of Para 8 (2) of the annexure 1 of AD rules, China PR is to be treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules for the purposes of the current investigation.

31. As per Paragraph 8 of the Annexure I to the Anti-dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The cooperating exporters/producers of the subject goods from China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph(3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-

- i. The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- ii. The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- iii. Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and
- iv. The exchange rate conversions are carried out at the market rate.

32. The Authority sent questionnaires to the known exporters from the subject countries, advising them to provide information in the form and manner prescribed. However, barring below mentioned producers and exporters from China PR, none of the producers/exporters from China PR has co-operated in this investigation by filing their Questionnaire responses. The questionnaire response has been filed by the following companies:

- (i) Producer M/s Linhuan Coking & Chemical Co., Ltd., China, and traders / exporters M/s China National Minerals Co., Ltd, China PR and M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore
- (ii) Producer M/s Guxian Jinhua Coking Co., Ltd., China, and traders / exporters M/s Tianjin Rongsen Investment Co., Ltd., China and M/s Hangzhou CIEC Resource Co., Ltd., China
- (iii) Producers M/s Hebei Risun Coking Limited, China & M/s Hebei CNC Risun Coking Limited, China and trader / exporter M/s Beijing Risun Hongye Chemicals Company Limited, China
- (iv) Producer M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd., China and trader / exporter M/s Tianjin Taijin International Trade Co., Ltd., China
- (v) Traders/exporters M/s Million Link (Tianjin) International Trade Co., Ltd., China and M/s Million Link (China) Investment Ltd., China
- (vi) Trader/exporter M/s CNBM International Corporation, China
- (vii) Producer & Trader/exporter M/s Tianjin Litong Energy Development Co., Ltd., China

(viii) Traders / exporters Tianjin Xinchuan Mineral Trading Co., Ltd., M/s Sinochem International Corporation, China, M/s Sinochem International (Overseas) Pte, Ltd, Singapore and M/s Steel Mont Trading Ltd, United Kingdom

33. It is noted that neither of the above mentioned producers has claimed market economy treatment nor has sought to rebut the non-market economy presumption. Since none of the Chinese companies has claimed market economy treatment, the Authority has not determined whether any of the Chinese producers could be granted market economy treatment.

### **Normal Value for China PR**

34. As none of the Chinese producers and exporters has submitted the questionnaire responses for market economy treatment, the Authority has constructed the Normal Value for China PR on the basis of Para-7 to Annexure-I to the AD Rules.

35. Para 7 of Annexure I of the AD Rules provides that:

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

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

36. According to these Rules, the normal value in China PR can be determined on the following basis:

- (i) On the basis of the price in a market economy third country, or
- (ii) The constructed value in a market economy third country, or
- (iii) The price from such a third country to other countries, including India.
- (iv) If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.

37. The Authority notes that for the determination of the normal value based on the third country cost and prices, complete and exhaustive transaction-wise data on the domestic sales of third country export sales, as well as the cost of production and cooperation of such producers in third country is required, which is not available with

the Authority in the present investigation. With regard to the suggestion of the domestic industry that Japan be taken as surrogate country, the Authority notes that the domestic industry has not supported its claim with any substantial data/information of the producers in Japan and, therefore, the Authority determines the normal value for China PR in terms of the provisions of para 7 of Annexure-I of the Rules.

38. Considering that there has been no MET response from any exporter/producer of the subject goods from China PR and further noting that information/data regarding appropriate market economy third country for determination of the normal value in China PR is not available on record; the Authority has considered the normal value in China PR on available 'reasonable facts basis', in terms of para 7 of Annexure 1 to the AD Rules. Accordingly, the Authority has constructed the normal value for China PR on the basis of the cost of production in India, duly adjusted, including selling, general and administrative expenses. The constructed normal value so determined for China PR is shown in the dumping margin table below.

### **Normal Value for Australia**

#### **Normal Value for M/s BlueScope Steel (AIS) Pty Ltd, Australia**

39. The Authority sent questionnaires to the known producers/exporters from Australia. The Authority has received response only from the producer M/s BlueScope Steel (AIS) Pty Ltd.

40. It is seen from questionnaire response submitted by M/s BlueScope Steel (AIS) Pty Ltd, Australia, that all the export sales to India (\*\*\* MT) have been made through the trader M/s Noble Resources International Pte Ltd, Singapore. However, it is noted that neither any response has been submitted by M/s BlueScope on behalf of this trader Noble Resources International Pte Ltd, Singapore nor this trader has filed any response directly. The Authority afforded reasonable opportunity to the producer for furnishing the details of the exporter but did not receive the information for the exporter. Since the essential information for the complete value chain up to the Indian customers, the adjustments claimed by Noble Resources while exporting to Indian customers, the terms and conditions of such sales, etc. are not available for examination, the Authority is not in a position to determine the individual dumping margin in respect of producer M/s BlueScope Steel (AIS) Pty Ltd., Australia on the basis of their data. The Authority has, therefore, constructed the normal value for Australia on the basis of the cost of production in India, duly adjusted, including selling, general and administrative expenses under Rules 6(8). The constructed normal value so determined for M/s BlueScope Steel (AIS) Pty Ltd, Australia is shown in the dumping margin table below.

#### **Non-cooperative producers/exporters from Australia**

41. The Authority has constructed the normal value for Australia on the basis of the facts available. Accordingly, the constructed normal value determined for non-cooperative producers/exporters from Australia is shown in the dumping margin table below.

## Export Price for China PR

### **Export Price for M/s Linhuan Coking & Chemical Co., Ltd., China PR (Producer); M/s China National Minerals Co., Ltd, China and M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore (Traders / Exporters)**

42. The questionnaire responses have been submitted by the producer M/s Linhuan Coking & Chemical Co., Ltd., China (producer); M/s China National Minerals Co., Ltd, China and M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore (Traders / Exporters).

- (i) Linhuan Coking & Chemical Co., Ltd. has mentioned in its questionnaire that the subject goods (\*\*MT) have been exported to India through its related trader/exporter M/s China National Minerals Co. Ltd.
- (ii) M/s China National Minerals Co., Ltd, in its questionnaire response has mentioned that it purchases the product concerned from the suppliers and exports the same to India through its related reseller M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore.
- (iii) M/s China National Minerals has further mentioned in the questionnaire response that during the POI, it had purchased the product concerned from two suppliers and one of the suppliers is the producer Linhuan Coking & Chemical Co., Ltd.
- (iv) M/s China National Minerals has also mentioned in the questionnaire response that during the POI, it has exported \*\*\*MT of the subject goods to India.
- (v) M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore, in its questionnaire response has mentioned that during the POI it has exported \*\*\*MT of the subject goods to India.
- (vi) From the combined responses, it is seen that out of the total export sales to India during the POI, the export chain of Linhuan Coking & Chemical Co., Ltd., China (producer) to M/s China National Minerals Co., Ltd, China (related trader) to M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore (related re-seller) accounts for only \*\*\*%. This \*\*\*% cannot be taken as the complete information because China National Minerals has clearly stated in the questionnaire response that it had purchased the product concerned from two suppliers, Linhuan Coking & Chemical Co., Ltd., being one of them. There is no information of this second supplier, not even the name. Since China National Minerals has exported \*\*\*% of the total export volume of the product concerned purchased from this unknown producer/supplier without even disclosing the name, the behaviour of the trader China National Minerals cannot be treated as reliable. The second producer has not submitted any response to the Authority.

43. Since complete information for the entire exports chain to India is not on record, the Authority rejects the response of the three related companies comprising producer M/s Linhuan Coking & Chemical Co., Ltd., China PR, and traders / exporters M/s China

National Minerals Co., Ltd, China PR and M/s Minmetals South-East Asia Corporation Pte Ltd, Singapore. The Authority is, therefore, not in a position to give them the individual margin.

**Export Price for M/s Guxian Jinhua Coking Co., Ltd., China PR (Producer); M/s Tianjin Rongsen Investment Co., Ltd., China PR and M/s Hangzhou CIEC Resource Co., Ltd., China PR (Traders/Exporters)**

44. The questionnaire responses have been submitted by M/s Guxian Jinhua Coking Co., Ltd., China PR (Producer); M/s Tianjin Rongsen Investment Co., Ltd., China PR and M/s Hangzhou CIEC Resource Co., Ltd., China PR (Traders/Exporters).

- (i) It is seen from the questionnaire response submitted by the producer M/s Guxian Jinhua Coking Co., Ltd., China PR that the subject goods produced by it are supplied to an unrelated trader / exporter, namely, M/s Tianjin Rongsen Investment Co., Ltd., China, who in turn has supplied the subject goods to M/s Hangzhou CIEC Resource Co., Ltd., China.
- (ii) M/s Hangzhou CIEC Resource Co., Ltd. has disclosed in its questionnaire response that the subject goods have not been exported to India by them directly but through two other traders/exporters, namely, M/s Kailuan (Hong Kong) International Co., Ltd., Hong Kong and M/s Jidong Development (HK) International Limited, Hong Kong. It is noted that the said traders/exporters from Hong Kong have not submitted their responses. From the Appendix-2 submitted by M/s Hangzhou CIEC Resource Co., Ltd. it is seen that \*\*\*MT of the subject goods have been exported to India during the POI.
- (iii) Since the producer M/s Guxian Jinhua Coking Co., Ltd., China has not submitted any information in Appendix 2, it is also not clear whether this producer has exported the subject goods to India through any other trader / exporter apart from M/s Tianjin Rongsen Investment Co., Ltd., China and M/s Hangzhou CIEC Resource Co., Ltd., China.

45. Since complete information for the entire exports chain to India is not on record, the Authority, rejects the complete response of aforesaid three companies comprising producer M/s Guxian Jinhua Coking Co., Ltd., China PR and traders / exporters M/s Tianjin Rongsen Investment Co., Ltd., China PR and M/s Hangzhou CIEC Resource Co., Ltd., China PR. The Authority is, therefore, not in a position to give them the individual margin.

**Export Price for M/s Hebei Risun Coking Limited, China PR (Producer); M/s Hebei CNC Risun Coking Limited, China PR (Producer) and M/s Beijing RisunHongye Chemicals Company Limited, China PR (Trader/Exporter)**

46. The questionnaire responses have been submitted by M/s Hebei Risun Coking Limited, China PR, M/s Hebei CNC Risun Coking Limited, China PR and M/s Beijing RisunHongye Chemicals Company Limited, China PR (Trader/Exporter).

- (i) M/s Hebei Risun Coking Limited, China PR and M/s Hebei CNC Risun Coking Limited, China PR have mentioned in their responses that the subject goods produced by them are exported through the related trader / exporter M/s Beijing Risun Hongye Chemicals Company Limited, China PR. M/s Hebei CNC Risun Coking Limited, China PR has also exported \*\*\* MT to India through Million Link (Tianjin) International Trade Co., Ltd., China PR.
- (ii) M/s Beijing Risun Hongye Chemicals Company Limited has disclosed in its questionnaire responses that the subject goods have been exported to India through another unrelated trader/exporter, namely, Million Link (Tianjin) International Trade Co., Ltd., China PR.
- (iii) Responses have also been submitted by the traders Million Link (Tianjin) International Trade Co., Ltd. and one more trader CNBM International Corporation, China.
- (iv) Million Link (Tianjin) International Trade Co., Ltd. and CNBM International Corporation, China have disclosed the so-called trader/exporter M/s Beijing Risun Hongye Chemicals Company Limited as a producer of the subject goods in China PR.
- (v) Further, M/s Beijing Risun Hongye Chemicals Company Limited has indicated in its response that the subject goods have been exported through only one company, i.e., Million Link (Tianjin) International Trade Co., Ltd and there is no disclosure of the information with regard to other channel of exports to India through CNBM International Corporation.
- (vi) It is also noted that none of the above mentioned producers and trader/exporter has submitted Appendix 2 as part of their responses and in the absence of Appendix 2, the Authority is not in a position to correlate and identify the exports of the subject goods to India by them.
- (vii) On the basis of the information submitted by them, it is observed that M/s Beijing Risun Hongye Chemicals Company Limited has suppressed vital information from the Authority and has not given the complete details on record for all its procurement/production and export sales to India. It is also not clear whether the producers M/s Hebei Risun Coking Limited, China & M/s Hebei CNC Risun Coking Limited have exported the subject goods to India through any other trader / exporter apart from M/s Beijing Risun Hongye Chemicals Company Limited.

47. Since there are no complete details for the entire export chain, the Authority rejects the response of aforesaid three companies. The Authority, therefore, is not in a position to give them the individual margin.

**Export Price for M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd., China PR (Producer) and M/s Tianjin Taijin International Trade Co., Ltd., China PR (Trader/Exporter)**

48. The questionnaire responses have been submitted by M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd., China PR (Producer) and M/s Tianjin Taijin International Trade Co., Ltd., China PR (Trader/Exporter).

- (i) The producer M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd. has mentioned in its response that the subject goods produced by it are exported

through the related trader / exporter M/s Tianjin Taijin International Trade Co., Ltd., China PR.

- (ii) This trader/exporter has disclosed in its questionnaire responses that the subject goods have been exported the entire quantity to India through another trader/exporter IMR Metallurgical Resources AG, Switzerland.
- (iii) However, it is noted that the said trader/exporter from Switzerland has not submitted its response.

49. Since there is no complete information for the entire export chain, the Authority rejects the complete response of aforesaid two companies comprising producer M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd., China PR and trader / exporter M/s Tianjin Taijin International Trade Co., Ltd., China PR. The Authority is, therefore, not in a position to give them the individual margin and thus considers them as non-cooperative.

**Export Price for M/s Million Link (Tianjin) International Trade Co., Ltd., China PR (trader/exporter) and M/s Million Link (China) Investment Ltd., Hong Kong (trader/exporter)**

50. The questionnaire responses have been submitted by M/s Million Link (Tian Jin) International Trade Co., Ltd., China PR and M/s Million Link (China) Investment Ltd., Hong Kong.

- (i) The traders/exporters M/s Million Link (Tianjin) International Trade Co., Ltd. and M/s Million Link (China) Investment Ltd. have mentioned in their respective responses that the subject goods exported to India by them have been acquired/procured from twelve traders/exporters and producers.
- (ii) It is also noted from the response of trader M/s Million Link (China) Investment Ltd that it has also directly exported the goods procured from another trader, namely, Tianjin Textile Industrial Supply and Sales Co. Ltd.
- (iii) However, it is noted that there are no responses from any of the thirteen traders/exporter and the producers. It is also noted that the aforementioned two traders/exporters have also not specified as to how much quantity is procured/purchased by them from each trader/exporter and the producer that has been exported to India.

51. Since there is no complete information for the entire export chain, the Authority rejects the complete response of aforesaid two companies, i.e., M/s Million Link (Tian Jin) International Trade Co., Ltd., China PR and M/s Million Link (China) Investment Ltd., Hong Kong. The Authority is, therefore, not in a position to give them the individual margin.

**Export Price for M/s CNBM International Corporation, China PR (Trader/Exporter)**

52. The trader/exporter M/s CNBM International Corporation has filed the questionnaire response.

- (i) The trader has mentioned in its response that the subject goods exported to India by it have been acquired/procured from eleven traders/exporters and

producers. However, it is noted that there are no responses from any of the eleven traders/exporter and producers.

- (ii) Further, the subject goods have been exported to India by CNBM International in the period of investigation through four traders/exporters, namely, M/s Joe Yee Resources Pte. Ltd., Singapore, M/s Huihai Group Limited, Hong Kong, M/s Avani Resources Pte Ltd, Singapore and M/s IMR Metallurgical Resources AG, Switzerland.
- (iii) However, no response has been submitted by any of these traders.
- (iv) It is also noted that the aforementioned trader/exporter has also not specified as to how much quantity is procured/purchased by it from each trader/exporter and the producers that has been exported to India.

53. Since there is no complete information for the entire export chain, the Authority rejects the complete response of the trader/exporter M/s CNBM International Corporation, China PR. The Authority is, therefore, not in a position to give them the individual margin.

#### **Export Price for M/s Tianjin Litong Energy Development Co., Ltd., China PR (Producer)**

54. The producer M/s Tianjin Litong Energy Development Co., Ltd. has filed the questionnaire response.

- (i) The producer has mentioned in its response that the subject goods produced by it are exported through unrelated traders / exporters M/s GRT Holding Pte., Ltd., Singapore, M/s Kailuan (Hong Kong) International Co., Ltd., Hong Kong and Noble Resources International Pte., Ltd., Singapore.
- (ii) However, it is noted that the said traders/exporters have not submitted their response except Appendix 2 of M/s GRT Holding Pte., Ltd., Singapore as part of the response of the producer.
- (iii) It is also noted that the producer M/s Tianjin Litong Energy Development Co., Ltd. has also exported \*\*\*MT through one trader Sinochem International Corporation, China PR. This fact has come to the notice from the response filed by Sinochem International Corporation. However, this fact has not been disclosed by the producer in its response.

55. Since there is no complete information for the entire export chain, the Authority rejects the complete response of the producer and trader/exporter M/s Tianjin Litong Energy Development Co., Ltd. PR. The Authority is, therefore, not in a position to give them the individual margin.

#### **Export Price for M/s Sinochem International Corporation, China PR, M/s Sinochem International (Overseas) Pte, Ltd, Singapore, M/s Steel Mont Trading Ltd, United Kingdom and M/s Tianjin Xinchuan Mineral Trading Co., Ltd., China PR, (Traders/Exporters)**

56. The questionnaire responses have been submitted by M/s Sinochem International Corporation, China PR, M/s Sinochem International (Overseas) Pte, Ltd, Singapore,

M/s Steel Mont Trading Ltd, United Kingdom and M/s Tianjin Xinchuan Mineral Trading Co., Ltd., China PR (Traders/Exporters)

- (i) The trader/exporter M/s Sinochem International Corporation, China PR has mentioned in its response that the subject goods exported to India have been acquired/procured from three companies, namely, Tianjin Taijin International Trade Co., Ltd. (trader), Tianjin Litong Energy Development Co., Ltd. (producer) and Tianjin Xinchuan Mineral Trading Co., Ltd. (trader).
- (ii) M/s Sinochem International Corporation has exported the subject goods to India through the traders/exporters M/s Sinochem International (Overseas) Pte, Ltd, Singapore and Steel Mont Trading Ltd, United Kingdom.
- (iii) M/s Tianjin Xinchuan Mineral Trading Co., Ltd., China PR has also submitted the response. However, neither the names of its producers/suppliers are disclosed nor there is any response submitted on record for such producers/suppliers.
- (iv) Further, the other aforesaid two companies, i.e., Tianjin Taijin International Trade Co., Ltd. (trader) and Tianjin Litong Energy Development Co., Ltd. disclosed by M/s Sinochem International Corporation have nowhere mentioned in their responses that they have sold the subject goods to M/s Sinochem International Corporation.

57. Since there is no complete information for the entire export chain, the Authority rejects the complete response of the traders/exporters M/s Tianjin Xinchuan Mineral Trading Co., Ltd., China PR, M/s Sinochem International Corporation, China PR, M/s Sinochem International (Overseas) Pte, Ltd, Singapore and Steel Mont Trading Ltd, United Kingdom. The Authority is, therefore, not in a position to give them the individual margin and thus considers them as non-cooperative.

### **Export Price for non-cooperative producers/exporters from China PR**

58. The Authority has determined the export price for non-cooperative producers/exporters from China PR on the basis of the facts available from the DGCIS import data. Accordingly, the export price so determined for non-cooperative producers/exporters from China PR is shown in the dumping margin table below.

### **Export Price for Australia**

#### **Export Price for M/s BlueScope Steel (AIS) Pty Ltd, Australia**

59. It is seen from questionnaire response submitted by M/s BlueScope Steel (AIS) Pty Ltd, Australia, that all the export sales to India (\*\*\*MT) have been made through the trader M/s Noble Resources International Pte Ltd, Singapore. However, it is noted that neither any response has been submitted by M/s BlueScope on behalf of this trader Noble Resources International Pte Ltd, Singapore nor this trader has filed any response directly. The Authority afforded reasonable opportunity to the producer for furnishing the details of the exporter but did not receive the information for the exporter. Since the essential information for the complete value chain up to the Indian customers, the adjustments claimed by Noble Resources while exporting to Indian customers, the terms and conditions of such sales, etc. are not available for

examination, the Authority, therefore, is not in a position to determine the individual dumping margin in respect of producer M/s BlueScope Steel (AIS) Pty Ltd., Australia on the basis of their data and thus considers them as non-cooperative.

### **Export Price for non-cooperative producers/exporters from Australia**

60. The Authority has determined the export price for non-cooperative producers/exporters from Australia on the basis of the facts available from the DGCIS import data. Accordingly, the export price so determined for non-cooperative producers/exporters from Australia is shown in the dumping margin table below.

### **Dumping Margin**

61. Considering the normal values and export prices for the subject goods, as determined above, the dumping margin for the subject goods as a whole has been determined as follows. It is seen that the dumping margin for the subject goods is more than de-minimis and significant.

### **Dumping Margin Table**

Country	Producer/Exporter	Normal Value	Export Price	Dumping Margin	Dumping Margin	Dumping Margin
		US\$ / MT	US\$ / MT	US\$ / MT	%	% Range
China PR	All Producers/Exporters	***	***	***	***	55-65
		***	***	***	***	
Australia	All Producers/Exporters	***	***	***	***	20-30

## **F. ASSESSMENT OF INJURY**

### Views of the Domestic Industry

62. The submissions made by domestic industry with regard to injury and causal link are as follows:

- i. Volume of dumped imports from the subject countries have increased not only in absolute terms but also as percentage of total imports and in comparison to domestic production and total demand in India.
- ii. The domestic prices have significantly come down over the injury investigation period due to the decline in the landed value from the subject countries.
- iii. Market share of the domestic sales has significantly come down over the injury investigation period.
- iv. Output and the capacity utilisation of the domestic industry have come down significantly over the injury investigation period.

- v. Sales volume and sales have significantly come down over the injury investigation period.
- vi. The profitability, cash flows and rate of return on capital employed have been seriously impacted over the injury investigation period.
- vii. There is a positive price undercutting and significant price underselling for each of the subject countries in the period of investigation.
- viii. The inventories of the subject goods have significantly increased over the injury investigation period.
- ix. The number of employees engaged by the domestic industry has come down over the injury investigation period. Similarly, the wages have also come down in the period of investigation as compared to previous year 2012-13.
- x. The productivity has also come down over the injury investigation period. The ability to raise capital investment has also been affected in the period of investigation.

xi. The submissions of the interested parties are contradictory, as on the one hand they state that the injury analysis is to be made for all producers and on the other hand they state that the losses for the one producer cannot be considered as representative of the entire domestic industry. It is submitted that the analysis of the injury is to be made for all the producers forming part of the domestic industry as defined but not for single producer as suggested by them.

#### View of the exporters, importers/consumers and other interested parties

63. The submissions made by the interested parties with regard to injury and causal link are as follows:

- (i) The import volumes, the demand and the market share are not correctly determined. It appears that the volumes in relation to the imports of PUC have been incorrectly determined as there is no indication that the Petitioners excluded the volume of PUC if it was imported by the companies that are producing Met Coke for their captive use.
- (ii) Decline in prices of the domestic industry is due to decline in the raw material prices but not due to dumped imports. The cost of the domestic industry is going up as they have high fixed costs (manpower costs, inward transportation cost). The losses appear to be as a result of Gujarat NRE Coke Ltd. The losses of one company should not be considered as representative of the entire domestic industry. The losses of Gujarat NRE Coke Ltd. could be because of the high price of coal and the company continues to use the imported coal from its related entity in Australia.
- (iii) The capacity utilisation has been consistently low throughout the injury period. This suggests that the increase in losses is not on account of the imports of PUC

but for inefficiencies of the domestic industry. Decline in capacity is not due to the imports but due to their inefficiency.

- (iv) Inefficiency in the method of production is leading to losses. The domestic producers are unable to provide good quality Met Coke and cannot meet the demand of steel, ferro-alloy and iron producers.
- (v) There is high inland freight cost of Met Coke from south/western region to eastern region where most of the users are situated which discourages users of Met Coke to source the same from domestic producers. Also, the injury to the domestic industry is because of decline in the export volumes.
- (vi) Imposition of duty would create extra burden on the secondary producers and it will result into increase in cost for the secondary producers. It will have adverse impact on the downstream industry. It will increase the cost of users. High Carbon Ferro Chrome industry is export intensive industry and imposition of duty would impact the cost and the prices and the fall in their exports.
- (vii) Requirement of increasing supply of Met Coke cannot be supplied by the domestic industry. This will be a major set-back for the Make in India campaign.
- (viii) The Petitioners alleged underselling on the ground that the landed prices were significantly lower than the NIP. However, there is no mention of the range of NIP and how the NIP was determined and no calculation was provided. The Authority must take into account the utilisation of heat or the use of any by-product generated during the production of met coke. The same should be adjusted from the NIP calculation of the subject goods.
- (ix) The total production of PUC by the Domestic Industry is not sufficient to cater to the demand for PUC in the domestic market in India. There is no sufficient evidence to prove that the domestic industry suffered material injury on account of dumped exports of PUC to India from Australia.
- (x) The declining market share of the Petitioners is on account of the increasing demand of PUC in the domestic market. While the demand for PUC has increased over the years in the domestic market in India, the production capacity of the Petitioners has remained almost uniform and has reported slight increase from April 11-March 12 to the POI. Further, 2011-2012 is not an appropriate base year to assess injury.
- (xi) The Petitioners willfully have mixed up two distinct and separate markets of PUC to depict an incorrect sales volume and value picture.
- (xii) The data provided by the Petitioners with respect to wages completely refute any allegations of injury to the domestic industry. Injury to the domestic industry is due to increase in wages.
- (xiii) A causal link is clearly lacking between the imports from Australia and the situation of the Indian domestic industry. There has been no negative impact from the allegedly dumped imports from Australia.

(xiv) There is a huge demand and supply deficit of PUC in the domestic market in India. The Petitioners have miserably failed to establish a causal link between exports from the subject countries and consequent injury being caused to the domestic industry. It is a contradictory stand being taken by the Petitioners in their Petition where they have excluded Japan and Ukraine, which have also made substantial exports to India during the POI.

(xv) The return of 22% on capital employed is highly inflated and thus the non-injurious price determined by adopting 22% ROCE will be highly inflated and not based on real situation.

#### Examination by the Authority

64. Rule 11 of the AD Rules read with its Annexure-II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....” While considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

65. Annexure-II of the AD Rules provides 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 articles; and (b) the consequent impact of these imports on domestic producers of such articles. 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. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been a 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.

66. As regards the impact of the dumped imports on the domestic industry, para (iv) of Annexure-II of the AD Rules states as follows:

*“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 margin of dumping actual and potential negative effects on cash flow, inventories, employment wages, growth, ability to raise capital investments.”*

67. For the examination of the impact of the imports on the domestic industry in India, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

#### Cumulative Assessment

68. Annexure II (iii) of the Anti-dumping Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that: -

- (i) the margin of dumping established in relation to the imports from each country/territory is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;
- (ii) Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

69. In the present case:-

- (i) the margin of dumping from each of the subject countries is more than the limits prescribed above;
- (ii) The volume of imports from each of the subject countries is more than the limits prescribed above; and
- (iii) Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete inter se and with the like goods offered by the domestic industry in the Indian market. It is noted that there is no submission made by any interested party disputing cumulative assessment in the present case.

70. In view of the above, the Authority considers it appropriate to cumulatively assess the effects of dumped imports from the subject countries.

#### **Demand and market share**

71. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of domestic industry and other Indian producers have been added to the total imports into India and the same has been summarized below:

	April 11- March 12	April 12- March 13	April 13 - March 14	POI April 14 - June 15 (Annualized)
Imports from Subject Countries (MT)	885453	170660	2082383	2531464
Imports from Australia (MT)	208007	40028	230896	233456

Imports from China (MT)	677446	130632	1851487	2298008
Imports from Other Countries (MT)	1421684	2963489	1843742	889330
Total Imports (MT)	2307137	3134149	3926125	3420794
Domestic Industry Sales (MT)	916027	1449781	1009658	904747
Sales of Other Domestic Producers (MT)	1220164	916452	673997	755872
Total Domestic Sales (MT)	2136191	2366233	1683655	1660619
Sales of Other Domestic Producers-who are Importers (MT)	411000	463000	889000	857000
Total Demand (MT)	4854328	5963382	6498780	5938413

72. It is noted that the overall demand for the product under consideration has increased over the injury investigation period.

### Volume Effects of Dumped Imports

#### Import Volume and Market Share

73. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the import data procured from DGCIS. The volume of imports of the subject goods from the subject countries has been analyzed as under:

	April 11- March 12	April 12- March 13	April 13 - March 14	POI April 14 - June 15 (Annualized)
Imports from Subject Countries (MT)	885453	170660	2082383	2531464
Trend in Imports from Subject Countries	100	19	235	286
Imports from Other Countries (MT)	1421684	2963489	1843742	889330
Trend in Imports from other countries	100	208	130	63
Total Imports (MT)	2307137	3134149	3926125	3420794
Trend in Total Imports	100	136	170	148
% Share of Subject Countries in Total Imports	38%	5%	53%	74%
Trend in Share of Imports from Subject Countries in Total Imports	100	14	138	193
% Share of Other Countries in Total Imports	62%	95%	47%	26%

74. It is noted from the above table that imports of the subject goods from subject countries have significantly increased in POI as compared to base year 2011-12 and as compared to year 2012-13, the increase in imports in POI is almost 15 times. It is also noted that the share of the imports from the subject countries in total imports has increased to 74% from 38% in the base year 2011-12.

#### Imports in relative terms

75. Imports in relation to consumption and production have been analysed as under:

	April 11- March 12	April 12- March 13	April 13 - March 14	POI April 14 - June 15 (Annualized)
Imports from Subject countries (MT)	885453	170660	2082383	2531464
Total Domestic Production (MT)	1623436	1724319	1206650	1041819

% Share of Subject Countries in Total Domestic Production	55%	10%	173%	243%
Total Demand (MT)	4854328	5963382	6498780	5938413
% Share of Subject Countries in Total Demand	18%	3%	32%	43%

76. It is noted that imports in relation to production and consumption have significantly increased over the injury investigation period.

### Price effect of imports

77. With regard to 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 of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price suppression and price depression, if any.

### Price undercutting

78. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry.

Country	POI
Domestic Selling Prices (Rs./MT)	***
Landed Value (Rs./MT)	
Subject Countries	***
Australia	***
China	***
Average	***
Price Undercutting (Rs./MT)	
Subject Countries	***
Australia	***
China	***
Average	***
Price Undercutting (%)	
Subject Countries	***
Australia	***
China	***
Average	***
Price Undercutting (%)Ranges	

Subject Countries	
Australia	-2%-10%
China	1%-10%
Average	1%-10%

79. The Authority notes that the price undercutting for the subject countries is positive in the period of investigation.

### **Price-underselling**

80. The Authority has also examined price underselling suffered by the domestic industry on account of dumped imports from the subject countries, as follows:

Country	POI
Desirable Selling Prices (Rs./MT)/NIP	***
Landed Value (Rs./MT)	
Subject Countries	
	***
Australia	***
China	***
Average	***
Price Underselling (Rs./MT)	
Subject Countries	
	***
Australia	***
China	***
Average	***
Price Underselling (%)	
Subject Countries	
	***
Australia	***
China	***
Average	***
Price Underselling (%)Ranges	
Subject Countries	
Australia	5-15%
China	10-20%
Average	10-20%

81. It is noted from the above table that there is a significant price underselling from each of the subject countries due to severely dumped imports of subject goods from

the subject countries. This high level of price underselling clearly indicates that the domestic industry has suffered injury with regard to all parameters of injury.

### **Price suppression and depression**

82. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority considered the changes in the costs and prices over the injury period.

	April 11- March 12	April 12- March 13	April 13 - March 14	POI April 14 - June 15
Landed Value Rs. / MT	***	***	***	***
Indexed	<b>100</b>	<b>98</b>	<b>74</b>	<b>59</b>
Domestic Selling Price Rs. / MT	***	***	***	***
Indexed	<b>100</b>	<b>92</b>	<b>78</b>	<b>78</b>
Cost Rs. / MT	***	***	***	***
Indexed	<b>100</b>	<b>91</b>	<b>121</b>	<b>104</b>

83. It is noted from the table that the prices of the domestic industry have declined significantly in the POI as compared to base year 2011-12 due to consistent pressure from dumped imports from the subject countries. It indicates that the domestic prices are depressed due to the presence of dumped imports from the subject countries. It is also seen that the cost of the domestic industry increased over the injury investigation period although it is marginal, the domestic industry was prevented from increasing its prices due to the presence of the imports from the subject countries at dumped prices. Thus, the prices of the domestic industry are also suppressed.

### **Economic parameters of the domestic industry**

84. 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. With regard to 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 and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

85. Various injury parameters relating to the domestic industry are discussed herein below:

#### **i. Production, capacity and capacity utilization of the Domestic Industry**

86. The production, domestic sales, capacity & capacity utilization of the domestic industry have been stated as follows:

	April 11- March 12	April 12- March 13	April 13 - March 14	POI April 14 - June 15 (Annualized)
Capacity (MT)	3094000	3163000	3298000	3348000
Total Production (MT)PUC	1623436	1724319	1206650	1041819
Capacity Utilization%	52%	55%	37%	31%
Domestic Industry Sales (MT)	916027	1449781	1009658	904747

87. The Authority notes that the capacity utilization of the domestic industry has deteriorated and has significantly come down over the injury investigation period.

88. It is noted that while the sales of the domestic industry went up in 2012-13 as compared to base year 2011-12, the same have significantly come down in the POI coupled with the decline in selling prices resulting into significant losses to the domestic industry.

## ii. Market share

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

	April 11- March 12	April 12- March 13	April 13 - March 14	POI -April 14- June 15 (Annualized)
Domestic Industry Sales (MT)	916027	1449781	1009658	904747
Sales of Other Domestic Producers (MT)	1220164	916452	673997	755872
Total Domestic Sales (MT)	2136191	2366233	1683655	1660619
Sales of Other Domestic Producers Who are Importers (MT)	411000	463000	889000	857000
Imports from Subject Countries (MT)	885453	170660	2082383	2531464
Imports from Other Countries (MT)	1421684	2963489	1843742	889330
Total Imports (MT)	2307137	3134149	3926125	3420794
Total Demand (MT)	4854328	5963382	6498780	5938413
Domestic Industry's Market Share in Total Demand	19%	24%	16%	15%
Market Share of Total Domestic Sales in Demand	44%	40%	26%	28%
% Share of Subject Countries in Demand	18%	3%	32%	43%

90. It is noted that the share of imports from subject countries has increased significantly from 18% in base year 2011-12 and 3% in the next year to 43% in the POI whereas the market share of the domestic industry as well as total domestic sales in India have significantly come down over the injury investigation period. It is seen that in spite of the increase in total demand by more than 22%, the market share of the domestic sales instead of going up has significantly come down. It indicates that the imports from the subject countries have not only captured the growth in the demand in India but have also taken over the significant market share of the domestic sales. Thus, the imports have caused material injury to the domestic industry.

## iii. Profits, return on investment and cash flow

91. The cost of sales, selling price and profit/loss along with return on investment and cash flow of the domestic industry have been analysed as follows:

	April 11- March 12	April 12- March 13	April 13 - March 14	POI -April 14- June 15 (Annualized)
Domestic Industry Sales (MT)	916027	1449781	1009658	904747
Indexed	100	158	110	99
Sales Value (RsLacs)	***	***	***	***
Indexed	100	145	86	77
Selling Price- Rs./ MT	***	***	***	***
Indexed	100	92	78	78
Cost (Rs. Lacs)	***	***	***	***
Cost -Rs. / MT	***	***	***	***
Indexed	100	91	121	104
Profit (Rs. Lacs)	***	***	***	***
Indexed	-100	-128	-1002	-571
Profit/Loss- Rs. / MT	***	***	***	***
Indexed	-100	-81	-909	578
Profit/Loss (%)	***	***	***	***
Indexed	-100	-88	-1165	-743
ROCE (%)	***	***	***	***
Indexed	100	97	-347	-171
Cash Flow (In Rs. Lacs)	***	***	***	***
Indexed	-100	-154	-2064	-1101

92. It is seen that the selling price of the domestic industry is below the level of cost in POI and there are significant losses to the domestic industry in POI as a result of dumped imports from the subject countries.

93. The domestic industry is also injured as there are significant cash losses and further, the return on investment is significantly negative in the POI.

#### iv. Inventories

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

	April 11- March 12	April 12- March 13	April 13 - March 14	POI-Apr 14 - June 15
Opening Stock (MT)	***	***	***	***
Indexed	100	137	153	170
Closing Stock (MT)	***	***	***	***
Indexed	100	112	124	139
Average Stock (MT)	***	***	***	***
Indexed	100	122	136	152

95. It is noted from the above table that the stock of the domestic industry has significantly increased in the POI as compared to base year 2011-12.

#### **v. Employment and wages**

96. The position with regard to employment and wages is as follows:

	April 11- March 12	April 12- March 13	April 13 - March 14	POI -April 14- June 15 (Annualized)
No of Employees	***	***	***	***
Indexed	100	98	87	77
Wages Total (Rs. Lacs)	***	***	***	***
Indexed	100	120	101	104

97. It is seen that the number of employees engaged by the company have come down over the injury investigation period. The wages have marginally increased over the injury investigation period.

#### **vi. Productivity**

98. The data relating to productivity shows as follows:

	April 11- March 12	April 12- March 13	April 13 - March 14	POI Apr 14 - June 15
Production (MT)	***	***	***	***
Employees	***	***	***	***
Production per Employee (MT)	***	***	***	***
Indexed	100	108	85	84

99. It is noted that the productivity per employee during the period of investigation has declined in the POI as compared to base year 2011-12.

#### **vii. Magnitude of Dumping**

100. Magnitude of dumping, as an indicator of the extent to which the dumped imports can cause injury to the domestic industry, shows that the dumping margins determined against the subject countries are above de minimis and significant.

#### **viii. Ability to raise capital investment**

101. It is noted that the domestic industry has incurred significant losses and the investment in the sector at present and in the near future as well is restricted due to presence of dumped imports from subject countries. The negative profitability, reduced cash flow and no returns clearly indicate that the ability of the domestic industry to raise capital investments for the sector is endangered by the dumped imports.

#### **ix. Factors affecting domestic prices**

102. Consideration of the import prices from the subject countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market show that the landed value of imported material from subject countries are significantly below the selling price and non-injurious price of the domestic industry, causing significant price undercutting and underselling in the Indian market. There is no viable substitute to this product. Demand for the product is not a factor responsible for price suppression faced by the domestic industry. It is thus evident that the factors responsible for the domestic industry prices are the import prices of the product from the subject countries. As the information would show, the imports prevented the domestic industry from increasing their prices in line with the increase in the cost.

#### **x. Growth**

103. Growth of the domestic industry is adverse, as growth with regard to all parameters such as sales, production, capacity utilisation, market share, inventories profits, return on investments, cash flows, etc. is significantly negative during period of investigation.

#### **Conclusion on material injury**

104. After examining the volume and price effects of imports of the subject goods from the subject countries and its impact on the domestic industry, it is noted that volume of imports of subject goods from subject countries have increased significantly in absolute terms and in relation to production and consumption in India. It is noted that the domestic industry has suffered volume injury as well as price injury in terms of decline in sales and market share, decline in production and capacity utilisation, increase in inventories, decline in number of employees, decline in domestic selling prices, price depression and price suppression, price undercutting and price underselling, significant losses, significant negative return on investments and significant cash losses because of the presence of dumped imports from the subject countries. Thus, the Authority concludes that the domestic industry has suffered material injury.

#### **Other Known Factors & Causal Link**

105. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price undercutting, underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti- Dumping have been examined by the Authority to see whether any other factor, other than the dumped imports, could have contributed to injury to the domestic industry.

##### **(i) Volume and prices of imports from third countries**

106. It is noted that the imports from other countries like Colombia, Japan, European Union, Russia and Ukraine are also above the *de minimis* limits in the period of investigation. However, the imports from these countries are at undumped prices and that the prices from these countries are higher than the export prices from each of the

subject countries. The import of subject goods from all other sources is at below *de minimis* limits during the period of investigation. Thus, on the basis of import data, it is seen that the imports from subject countries are being made at dumped prices and are above the *de minimis* limits causing material injury to the domestic industry.

**(ii) Contraction of demand and changes in the pattern of consumption.**

107. As noted earlier, demand has increased over the injury investigation period. Therefore, the domestic industry is not affected due to changes in demand.

**(iii) Developments in technology:**

108. There are no technology issues for production of the product concerned and therefore, technology used for production of PUC is not a factor causing injury to the domestic injury.

**(iv) Trade restrictive practices of and competition between the foreign and domestic producers**

109. There is no trade restrictive practice which could have contributed to the injury to the Domestic Industry.

**(v) Export performance of the domestic industry**

110. The injury information examined by the Authority is for domestic operations only and, therefore, export performance has not caused injury to the Domestic Industry.

**(vi) Productivity of the Domestic Industry**

111. It is noted that the productivity has declined over the injury investigation period only due to significant increase in dumped imports over the same period as the domestic industry was not able to sell the subject goods in the domestic market otherwise the productivity of the domestic industry could have increased. Thus, the effect on the productivity of the domestic industry is only due to presence of dumped imports.

112. Besides, the Authority also examined the submissions with regard to other causal link factor such as there is high inland freight cost of Met Coke which discourages users of Met Coke to source the same from domestic producers. The Authority notes that the Met Coke producers in India are reasonably spread all over India. The Authority also notes that applicant companies are located in south as well as in the western region. It is also stated by the domestic industry that there are several merchant producers of Met Coke who are located in East. The interested parties have cited the plants of the user companies like JSW, SAIL, Tata Jamshedpur, JSPL, Monnet etc. in support of their claim for higher domestic freight. However, the Authority notes that none of these companies have filed any objections in the present investigation. Therefore, there is no logic for the interested parties to contend it to be a factor of injury or causal link factor. It is thus noted that listed known other factors and as well as others do not show that the domestic industry could have suffered injury due to these other factors. The Authority examined whether the dumping of the product

has caused injury to the domestic industry. The following parameters show that injury to the domestic industry has been caused by dumped imports:

- (i) The imports of the subject goods from the subject countries are undercutting the prices of the domestic industry in the market.
- (ii) The domestic industry was prevented from increasing its prices. The price suppression suffered by the domestic industry is because of dumping of the subject goods by the subject countries.
- (iii) The domestic industry is forced to sell at prices even below the cost of production which is resulting into significant financial losses. The price suppression caused by the imports thus results in financial losses in the POI.
- (iv) Performance of the domestic industry was severely affected in terms of decline in sales and market share, decline in production and capacity utilisation, increase in inventories, decline in number of employees, decline in domestic selling prices, price depression and price suppression, price undercutting and price underselling, significant losses, significant negative return on investments and significant cash losses with regard to profits and cash flow due to dumped imports from the subject countries.

113. It is, therefore, concluded that the domestic industry suffered material injury due to the dumped imports from subject countries.

### **Magnitude of Injury Margin**

#### **Injury Margin**

114. The non-injurious price of the subject goods produced by the domestic industry so determined has been compared with the landed value of the exports from the subject countries determined on the basis of the average price reported by the exporters from the subject countries for computation of injury margin during POI. The injury margins so determined are as under:-

#### **Injury Margin**

Country	Producer/Exporter	Non-Injurious Price	Landed Price	Injury Margin	Injury Margin	Injury Margin
		US\$/MT	US\$/MT	US\$/MT	%	% Range
Australia	All	***	***	***	***	5-15
China PR	All	***	***	***	***	10-20

## **G. POST DISCLOSURE STATEMENT COMMENTS**

### **Post Disclosure comments of the opposing interested parties**

115. Post disclosure comments of the opposing interested parties, in brief, are as follows:

- i. It is submitted that if some unrelated producers/traders who are separate entities and the cooperating producer/exporter has no control over their decision of not to file Exporters Questionnaire response with the Designated Authority, the cooperating producers/exporters are related companies should not be penalized as their own export chain and information is complete. They are the valid candidate to get individual Dumping Margin.
- ii. In such a situation where the Authority has complete information of one group, the Authority should have given individual Dumping Margin to the cooperating exporters and they qualify for that.
- iii. The Authority has not conducted any on-site verification to verify information/data submitted by the respondents. When there was doubt about the information/data submitted by the producers/exporters, on-site verification becomes more crucial to get better idea about the responses filed by the producers/exporters. Failure to not conduct on site verification by the Authority has made the investigation incomplete.
- iv. Information submitted by respondents may not be ideal in all respect but was complete to arrive at the reasonable result. While providing such a voluminous data and information running into thousands of pages and one omission in the initial questionnaire response cannot be termed as deliberate attempt to mislead the Authority when the Authority had subsequently received and accepted all the relevant information.
- v. The Law does not permit an Investigating Authority to reject export price of a fully cooperating producer/ exporter on the ground that some of its exports transactions are made through an unrelated trader who have not cooperated with the Authority. Only two conditions are specified where the export price claimed by the producer/exporter can be rejected and in such a situation also the Investigating Authority can construct the export price and cannot reject the same.
- vi. M/s BlueScope Steel (AIS) Pty Ltd, Australia should not be granted a “less favourable” outcome on account of non-participation by NRIPL, who failed to furnish requested information. In fact, BlueScope has cooperated with the investigating authority within the meaning of the Anti-dumping Rules and has supplied all the information and acted to the best of its abilities. It is requested to strike a balance between the efforts that can be expected from the interested parties in responding and the practical ability of those interested parties to meet fully with all demands made by the investigating authority.
- vii. Sinochem International Corporation submitted the documentary evidence substantiating that adequate efforts were made repeatedly to seek information of the suppliers of goods supplied by M/s Tianjin Xinchuan Mineral Trading Co., Ltd.

While Xinchuan helped and provided an EQR response through Sinochem, it had no ability to provide information of the suppliers which are unrelated to it. Moreover, Xinchuan also provided information of the suppliers of the product concerned that were resold by Sinochem to India during POI. Further, Tianjin Taijin International Trade Co., Ltd. and Tianjin Litong Energy Development Co., Ltd. have reported sales to Sinochem in the Appendix 1 of their EQR responses as they were not aware if such sales were made to India or not.

- viii. Likewise, it is submitted that the Authority should not reject the responses of M/s Million Link (Tian Jin) International Trade Co., Ltd., China PR, M/s Million Link (China) Investment Ltd., Hong Kong, M/s CNBM International Corporation ~~an~~ M/s Tianjin Litong Energy Development Co., Ltd. as the failure of any unrelated parties to respond to the EQR shall not result in less favourable or even punitive results.
- ix. It is requested that the rejection of complete response of M/s Linhuan Coking & Chemical Co., Ltd., M/s China National Minerals Co., Ltd., China PR, and M/s Minmetals South-East Asia Corporation Pte Ltd., Singapore, by the Authority is not in accordance with the Law and practice being followed by various Jurisdictions worldwide. Separate individual dumping margin should be granted to :
  - (i) M/s Linhuan Coking & Chemical Co., Ltd., M/s China National Minerals Co., Ltd., China PR and M/s Minmetals South-East Asia Corporation Pte Ltd., Singapore, based on their responses filed.
  - (ii) Separate individual dumping margin should be granted to M/s Hebei Yuzhou Coal Chemical Industry Co., Ltd., (Producer/Manufacturer), China PR and M/s Tianjin Taijin International Trade Co., Ltd., (Exporter/Trader) China PR, based on their responses filed.
  - (iii) Separate individual dumping margin should be granted to M/s Guxian Jinhua Coking Co., Ltd., China PR (Producer), M/s Tianjin Rongsen Investment Co., Ltd., China PR and M/s Hangzhou CIEC Resource Co., Ltd., China PR, based on its responses filed.
  - (iv) Separate individual dumping margin should be granted to M/s Hebei Risun Coking Limited, M/s Hebei CNC Risun Coking Limited, M/s Beijing Risun Hongye Chemicals Company Limited, China PR, based on their responses filed.
- x. BlueScope submits that Metallurgical Coke exported by BlueScope to India has i) specific market ii) specific customer. The Metallurgical coke exported is different from Market of Foundry Coke. BlueScope does not compete with this market segment to which Domestic Industry caters to and are covered by Rule 2 (b) of the Anti-Dumping Rules, 1995. Therefore, BlueScope cannot be said to have caused any injury to the market segment to which the Petitioners cater to, on account of alleged dumped exports of PUC to India.
- xi. The PUC should not include the Met Coke with ash content less than 12.5% and ash content above 15%. Norms laid down by DGFT provide that Low Ash Met Coke is upto 15%. Met Coke containing low ash (upto 12.5%), low phosphorous (up to 0.018%) and low sulphur (upto 0.65%) or Met Coke containing low ash (upto 12%), low moisture (upto 5%), low phosphorous (up to 0.035%) and low sulphur

(upto 0.65%) are to be excluded. The lump coke used by steel producing companies in their blast furnaces is to be excluded from the scope of the PUC as this is not produced by the domestic industry. The observation that the impact of using Met Coke between 15%-18% in place of Met Coke below 15% would be reduction in productivity and that it would be compensated with the cost savings on account of lower price of Met Coke with ash content between 15-18% as compared to Met Coke of ash content below 15% is erroneous. The users of met coke only use met coke having ash content upto 12.5% and, at best, blend the same with met-coke having ash content upto 15%. It is commercially imprudent to reduce productivity at the cost of using met coke having higher ash content. There is, in fact, a huge demand-supply gap between Met Coke having ash content less than 12.5% produced by the Domestic Industry and the requirement of such Met Coke of the Respondents. Even in the cases where pig iron/steel manufacturers procured Met Coke from the Domestic Industry, there have been complaints in relation to the quality or non-conformity with the ash requirements. To assess the correctness of the conclusion of the Authority, the Respondent has been repeatedly requesting the Authority for a month-wise production and sale data of Met Coke having ash content less than 12.5%.

- xii. The captive producers of Met coke cannot be legally excluded from the scope of the domestic industry. This understanding is supported by the determination of the Appellate Body of the WTO in United States–Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan and United States–Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan. The production of Bengal Energy and Visa SunCoke Ltd. cannot be excluded for assessing the standing of the domestic industry. As per the data available in the public domain, the petitioner companies account for less than a major proportion of the domestic production and these petitioners are willfully trying to mislead the Authority into believing that they account for production of a major proportion of the PUC in India.
- xiii. The reliance cannot be placed on the decision of the CESTAT in Pig Iron Mfrs. Assn. v. Designated Authority reported at 2000 (116) E.L.T. 67 (Tribunal) as it was premised on the absence of any binding precedent by the WTO. The situation has changed now in light of the AB Reports (issued in 2001) and India is now obliged to follow these WTO decisions.
- xiv. Even assuming that the exclusion of the captive producers from the scope of the domestic industry is legal, it is not possible to analyse the injury to the Domestic Industry as one will not be able to assess the demand, market share, effect on price in the absence of details about production, sales and volume of Met Coke used by the captive user. In fact, it is imperative to take into account the sales of met coke by the captive producers to assess the demand and the market share. As has been mentioned, the Authority has not given details of the domestic sales in the merchant market in relation to those who produce Met Coke for captive use and also have sales in the merchant market.
- xv. The Authority is requested to give exemption to the manufacturers of pig iron or steel using a blast furnace, the manufacturers of steel using COREX technology, the manufacturers of pig iron using COREX technology and the manufacturers of ferro alloys as allowed to them in the previous anti-dumping investigation.

xvi. Market intelligence also suggests that Gujarat NRE Coke Ltd imported coal from its related entity in Australia when the costs of the raw materials were the highest as the Australian entity was about to shut its operations. It must be noted that Gujarat NRE continues to use the same raw materials. The losses of Gujarat NRE Coke Ltd. could be because the high coal prices which the company continues to use – leading to higher costs. For assessing the raw material prices to calculate the NIP, the authority must account for the unreasonable high costs of Gujarat NRE. If the prices of Gujarat NRE are taken into account, it would go contrary to Annexure III of AD Rules that mandates the use of POI prices and not historical prices to compute the NIP.

xvii. Injury to the domestic industry is due to the fall in their export sales. The losses to the domestic industry appear to be as a result of Gujarat NRE Coke Ltd. The losses of one company should not be considered as representative of the entire domestic industry. The losses of Gujarat NRE Coke Ltd. could be because of the high price of coal and the company continues to use the imported coal from its related entity in Australia.

#### Post Disclosure comments of the Domestic Industry

116. Post Disclosure Comments of the Domestic Industry, in brief, are as follows:

i. For determination of NIP of the subject goods of the applicant producers, namely, M/s Bhatia Coke and Energy Ltd. and M/s Basudha Udyog Pvt. Ltd., after making the adjustment of cost/credit of the power plant, it is stated that there are two ways to handle the heat so generated in the manufacturing process of Met Coke, i.e., either to get the heat exhausted in the atmosphere or get it captured for generation of power. It may be seen that the merchant manufacturers of Met Coke world over use the manufacturing process of exhausting the heat in the atmosphere and they do not capture the heat. This is because waste heat power generation is not commercially beneficial. It may be seen that to capture the heat for power generation, an additional / secondary power generation plant is required to be set up which involves significant capital cost along with the cost of operation including labour & management cost, maintenance cost, interest cost and depreciation cost. It may also be seen that whether or not to install standalone plant of Met Coke or to have power generation plant along with it are two independent decisions and are two independent plants and therefore, the adjustment of cost or credit of one plant with the other would be inappropriate and would unduly affect the cost of Met Coke or power.

ii. The various import transactions which are abnormally valued (wherever the price is higher than the NIP) may be excluded from the determination of landed value for the non-cooperative exporters from the subject countries. These abnormal value transactions may be present in the import data due to data inaccuracies and these transactions may also have been affected as a result of the involvement of several companies/parties from the subject countries in exports to India as none of the producers / exporters have provided complete trails of the export chain to India.

## **Examination by the Authority**

117. The Authority notes that the post disclosure statement submissions made by the interested parties are mostly repetitive in nature. However, the Authority examines the issues to the extent considered relevant as under:

i. With regard to the request of BlueScope for accepting their response, the Authority notes that since the essential information for the complete value chain up to the Indian customers, the adjustments claimed by Noble Resources while exporting to Indian customers, the terms and conditions of such sales, etc. are not available for examination, the Authority is not in a position to determine the individual dumping margin in respect of producer M/s BlueScope Steel (AIS) Pty Ltd., Australia on the basis of their data.

ii. With regard to the contention of the responding producers/exporters from China PR that if some unrelated producers/traders who are separate entities and on whose decision of not to file Exporters Questionnaire Response with the Authority, the cooperating producer/exporter has no control, then the cooperating producers/exporters should not be penalized, particularly when their own export chain of related producers/exporters is complete. They are the valid candidate to get individual Dumping Margin. It has been contended by the interested parties that the authority should not have rejected questionnaire responses of the producers on the ground that full information on exports to India was not available. The interested parties have stressed that the requirement under the law is necessary information and as is reasonably available to the producers. Reference has also been made to the WTO decision with regard to standards that the Authority should lay down and the obligations of the interested parties for providing necessary information. In this regard, the Authority notes that when the subject goods produced by Chinese producers have been exported to India by some exporters, those producers cannot claim that they have no relationship with the exporters and cannot ask these companies to file the responses to complete the export chain. In the absence of completion of the export chain the Authority does not determine the individual dumping margin for the Chinese producers/exporters.

iii. With regard to exclusions from the product scope, the Authority notes that there is no justification for any exclusion from the product under consideration. The Met Coke with Ash content between 15%-18% is technically and commercially substitutable with the Met Coke below 15%. The impact of using Met Coke between 15%-18% in place of Met Coke below 15% would be reduction in productivity and that it would be compensated with the cost savings on account of lower price of Met Coke with ash content between 15-18% as compared to Met Coke of ash content below 15%. From the third party test reports supplied by the domestic industry, it is seen that the domestic industry manufactures Met Coke with ash content below 12.5%. The Authority also notes that it does not require any specific technology to manufacture Met Coke with low or high ash content. The production of Met Coke is dependent upon the ash contained in the coking coal. Lower the ash content of coking coal, the lower ash content would be there in Met Coke produced and vice versa. Therefore, there is no case of the interested parties for any exclusion from the product scope under the investigation. Further, the input-output norms laid down by the DGFT are not binding on the product definition in the anti-dumping investigations as they are prescribed for different purpose. With regard to the exclusion of Met Coke containing low ash (upto 12.5%), low phosphorous (up to 0.018%) and low sulphur (upto 0.65%) or with

moisture content of upto 5% from the scope of the product under consideration, it is noted that the domestic industry has provided sufficient evidence to show that they have produced and supplied the subject goods of the above description. The Authority also notes that there is no case for exclusion of lump coke from the scope of the product under consideration. After considering the information on record, there is no known difference in the subject goods produced by the domestic industry and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from the subject countries are comparable in terms of their characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods. The users are using the dumped goods from the subject countries and the goods produced by the domestic industry interchangeably. With regard to demand-supply gap, if any, the Authority further notes that the purpose of anti-dumping duty in general is to re-establish fair competition in the domestic market but not to restrict availability of the product. Thus, the submissions of the interested parties on PUC and its availability are unfounded. With regard to providing month-wise production data to the interested parties, it is seen that the request of the interested parties is not tenable.

iv. With regard to the standing of the applicant producers, the Authority notes that the present application is filed by or on behalf of the manufacturers who are marketing / selling their production of Met Coke. It is stated that there are two different categories of producers of Met Coke in India, i.e., manufacture of Met Coke for captive use and manufacture of Met Coke for marketing / sales. The manufacturers who are producing Met Coke for their captive use are being excluded from the purview of the current investigation as their production is not in competition with the imported subject goods. Further, the economics of producers for captive consumption and of producers for sale are very different. The former saves on the costs of marketing sales, inventory etc. Therefore, the captive producers are being treated as a separate category of producers and have been excluded from the purview of the current investigation while determining the domestic industry. Thus, as per the information available on record, the production of the petitioners accounts for a major proportion of the total domestic production and is 48.35% of Indian production and their share along with the supporting three domestic producers, namely, Jindal Stainless Ltd., Shree Arihant Trade Links India Pvt. Ltd. and Ennore Coke Ltd. is 62.98%. The exclusion of Bengal Energy and Visa SunCoke from the domestic industry is justified as on the basis of the evidence available on record they have imported significant quantities of subject goods. Thus, in view of the above, the Authority concludes that the applicant producers have the standing in the investigation.

v. With regard to the submissions of the interested parties that reliance cannot be placed on the decision of the Hon'ble CESTAT in Pig Iron Mfrs. Assn. v. DA as there was no jurisprudence available at that time from WTO Appellate Body Reports in United States –Anti-Dumping Measures on Certain Hot Rolled Steel Products from Japan and United States-Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan on the exclusion of the captive producers, the Authority notes that the facts in the current investigation and the aforesaid Appellate Body Reports are totally different. There was no determination made with regard to the standing of the domestic industry and it is amply clear from the decision of the Hon'ble Tribunal Pig Iron Mfrs. Assn. v. DA that the producers having captive consumption and the merchant

producers are different categories of producers and, therefore, these two categories of producers can be dealt with as separate domestic industries. Thus, considering the legal provisions with regard to the determination of the standing and the decision of the Hon'ble Tribunal, the applicant companies meet the criteria of standing and are eligible to be considered as the domestic industry in this investigation.

vi. With regard to computation of demand of the product concerned, it is seen that the demand has been computed on the basis of the sales by merchant producers. Since the captive producers are not considered as part of the domestic industry, their sales have not been considered for the determination of demand. However, even if, the sales by the captive producers is included in the total demand, it does not change the fact that the imports of subject goods are taking place in India from subject countries at significantly dumped prices, the imports from the subject countries have significantly increased over the injury investigation period, the market share of the domestic industry has declined significantly. In fact, the injury to the domestic industry will be more pronounced after considering the sales by captive producers in the demand. Thus, there is no inconsistency in the demand computation or the analysis of the market share in the current investigation.

vii. With regard to the granting of exemption from anti-dumping duty to certain users in the current investigation in view of the exemptions granted to them in earlier investigation, the Authority notes that there is no legal basis in the Indian Anti-dumping law to exempt any user from the imposition of the anti-dumping duty. The analysis of the effect of levy of anti-dumping duty on the relative competitiveness of any other industry is outside the purview of the anti-dumping investigation. Further, the circumstances of each investigation may differ. The present investigation is independent of the past investigations. At present, the merchant met coke producers have the capacity to meet the demand of the manufacturers of pig iron or steel using blast furnace, the manufacturers of pig iron or steel using COREX technology and the manufacturers of ferro alloys.

viii. With regard to coal purchased by Gujarat NRE from its related entity in Australia, the Authority notes that Gujarat NRE had stopped buying / importing coking coal from its coal mines in Australia from October 2013. Therefore, there is no rational in the submissions that losses of Gujarat NRE Coke Ltd. are because of the high coal prices which the company continued to use.

ix. With regard to the determination of injury to the domestic industry, the information for the export operations has not been considered. Therefore, the injury information examined by the Authority is for domestic operations only and, therefore, export performance has not caused injury to the Domestic Industry.

x. With regard to the submissions of the interested parties that the losses to the domestic industry is because of Gujarat NRE losses, the Authority notes that the injury is analyzed on the basis of the information of all the constituents of the domestic industry and is not analyzed in isolation for a producer or part of the domestic industry.

## **H. INDIAN INDUSTRY'S INTEREST**

118. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti dumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

## **I. CONCLUSIONS AND RECOMMENDATION**

119. 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) It is noted that the dumped imports from Australia and China PR increased significantly in the POI as compared to the base year 2011-12 justifying recommendation of the duty.
- (ii) The product under consideration has been exported to India from the subject countries below normal values. The dumping margins are positive and so significant that it justifies recommendation of duty.
- (iii) The domestic industry has suffered material injury on account of subject imports from the subject countries.
- (iv) The material injury has been caused by the dumped imports of subject goods from the subject countries.

120. The Authority notes that the investigation was initiated and it was notified to all the interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of anti-dumping duty is required to offset dumping causing injury.

121. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, anti-dumping duty equal to the amount indicated in the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central

Government, on all imports of the subject goods originating in or exported from the subject countries.

**Duty table**

Sl No	Sub-heading	Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit	Currency
1	27040030	Low Ash Metallurgical Coke excluding Metallurgical Coke with ash content in excess of 18%.	China PR	China PR	Any	Any	25.20	MT	USD
2	-do-	-do-	China PR	Any country other than the subject countries	Any	Any	25.20	MT	USD
3	-do-	-do-	Any country other than the subject countries	China PR	Any	Any	25.20	MT	USD
4	-do-	-do-	Australia	Australia	Any	Any	16.29	MT	USD
5	-do-	-do-	Australia	Any country other than the subject countries	Any	Any	16.29	MT	USD
6	-do-	-do-	Any country other than the subject countries	Australia	Any	Any	16.29	MT	USD

*\*Note: Where there is overlapping of anti-dumping duty on the subject goods with respect to a subject country in different customs notifications, the duty applicable to that subject country shall be one imposed under the customs notification in which the said country has been specifically mentioned under the Column "Country of Origin".*

122. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

123. An appeal against the order of the Central Government arising out of these

findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**(A.K. Bhalla)**  
**Additional Secretary and Designated Authority**