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**OF GAZATTE OF INDIA-EXTRAORDINARY**

F. No. 14/20/2016-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi

Dated the 29th October, 2018

# FINAL FINDINGS

**Subject: WP No. 7671 of 2018 (Andhra Petrochemicals Limited v. Union of India) High Court of Judicature at Hyderabad for the state of Telangana and the State of Andhra Pradesh, Hon'ble High Court order dated 31st July, 2018 in the final findings dated 28th November, 2017 issued in the anti-dumping investigation concerning imports of Normal Butanol or "N-Butyl Alcohol" originating in or exported from Saudi Arabia- Redetermination**

No. 14/20/2016-DGAD: Having regard to the aforecited subject and the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the AD Rules).

## A. BACKGROUND

a) The Designated Authority (hereinafter referred to as the "Authority"), under the above Rules, received a written application from The Andhra Petrochemicals Ltd. ('APL') (hereinafter referred to as the "petitioner") as domestic industry of the subject goods, alleging dumping of "Normal Butanol" or "N-Butyl Alcohol" (hereinafter also referred to as "subject goods" or "NBA") originating in or exported from Saudi Arabia (hereinafter referred to as the "subject country") and resultant injury to domestic industry and requesting recommendations for imposition of anti-dumping duty on imports of the product under consideration from the subject country.

b) The Authority, on the basis of the aforesaid application initiated an investigation, against imports of the subject goods from the subject country on 02.09.2016.

c) After detailed investigation and examination, the Authority recommended termination of investigation vide its final findings Notification No. 14/20/2016 - DGAD dated 28th November, 2017.

d) Aggrieved by the recommendations of the Authority in the above referred Final Findings, M/s Andhra Petrochemicals Ltd., the domestic industry in this investigation, filed Writ Petition (Writ Petition No. 7671 of 2018) in the High Court of Judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh.

e) The Hon'ble High Court passed final orders in Andhra Petrochemicals Limited v. Union of India (W.P. No. 7671 of 2018) on 31st July, 2018, remitting the matter back to the

Designated Authority for consideration afresh taking into account the scheme and structure of the rules of 1995 of the final findings dated 28th November, 2017 and to complete the exercise expeditiously and in two months from the date of receipt of a copy of final order dated 31st July, 2018. The Authority received the certified copy of the Final order on 31st August, 2018, although the order was available on the website of the High Court of Judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh even earlier.

f) The Authority issued a Disclosure statement on 26th September, 2018 on the issues wherein the Hon'ble High Court had directed the Authority to revisit the final finding dated 28th November, 2017.

g) Relevant extracts of the order dated 31st July, 2018 passed by the Hon'ble High Court are as under:

(i) "*Rule 4 thereof, as already stated, sets out the duties of the designated authority and requires it to submit its findings, provisional or otherwise, to the Central Government not only as to the injury but also the threat of injury to an industry established in India or the material retardation to the establishment of an industry in India, consequent upon import of a like article from the specified countries. Therefore, the designated authority was wholly unjustified in holding that it had no mandate to look into the possible threat of injury to or material retardation of the domestic industry consequent upon the import of the product from Saudi Arabia. Rule 5(2) of the Rules of 1995 merely requires the application to specify the injury, where applicable, but that by itself would not circumscribe the duty of the designated authority under Rule 4(1)(c). Rule 11 also makes this clear as the designated authority is required thereunder to record a finding that import of the like article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India. This Rule is captioned 'Determination of injury' and therefore makes it clear that the scope of the investigation is not dictated or restricted by the contents of the application made by the domestic industry under Rule 5(2).*" ( Refer page 20 and 21 of the Certified copy of the order referred)

(ii) *"The refusal by the designated authority in the case on hand to look into any possible threat of injury or material retardation to the establishment of any industry in India therefore falls short of the statutory mandate. That apart, the specific conclusion of the designated authority was that the investigation had to be terminated in accordance with Rule 14(b) of the Rules of 1995…It is evident from the aforestated provision that it is only when the designated authority does not find sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation that it can terminate it. In the case on hand, as already noted supra, the findings recorded by the designated authority clearly demonstrated sufficient evidence of dumping within the short span of three months by the exporters/ producers from Saudi Arabia and also the injury caused to the domestic industry thereby. Therefore, the designated authority could not have taken recourse to this clause for justifying the termination of investigation. In fact, none of the clauses in Rule 14, which deals with termination of investigation, had application whereby the designated authority could have taken such a step."* (Refer Page 21 and 22 of the certified copy of order referred)

(iii) *"…the designated authority found that several other countries who were exporting the very same product to India had been subjected to anti-dumping measures, allowing exporters/producers from Saudi Arabia to do so without subjecting them to the same anti-dumping measures, even though their activities within a short span of three months*

*clearly indicated their invasive capturing of the domestic market and the consequential injury to domestic industry, was clearly not warranted. Though the counter-affidavit stressed upon the designated authority not rendering final findings and recommendations only on the ground that the dumping took place for three months during the period of investigation, the final findings, as set out supra, clearly indicate to the contrary. It may also be noted that the Rules of 1995 specifically provide for extension of the period of investigation but despite the same, the designated authority did not deem it appropriate to seek such extension.* (Page 22 and 23 of the Certified copy of order referred)

(iv) *Though the learned Assistant Solicitor General for India appearing for the respondents would contend that Annexure-I to the Rules of 1995 would indicate that at least six months sales need to be taken into account, we are of the opinion that the argument is misconceived. Annexure-I relates to determination of normal value, export price and margin of dumping and in respect of all these three aspects, the designated authority had no difficulty in determining the normal value, export particulars and margin of dumping in relation to exporters/producers from Saudi Arabia. Further, Clause (2) in Annexure-I speaks of the period of six months in the context of sales made by such exporters/producers of the like product in their domestic market or to a third country for the purpose of determining the normal value and no more. This clause therefore does not indicate any requirement of the dumping being in excess of three months during the period of investigation, as wrongly assumed by the designated authority in its final conclusion. There is no mention of any length of duration being required in the context of the Rules of 1995 for ascertaining or evaluating the injury to the domestic industry by dumping of like products by exporters/producers from foreign countries, but all through, the designated authority linked the three months period, January to March, 2016, to justify his termination of the investigation, which is wholly unsustainable."* (Refer Page 23 of the certified copy of order referred)

h) The operative part of the order passed by Hon'ble High Court is as under:

*"On the above analysis, this Court finds that the designated authority, having recorded findings in support of the injury sustained by the domestic industry by dumping of like products by exporters/producers from Saudi Arabia, failed to carry through on the same note and strangely did a volteface, when it came to the final recommendation. This was on the strength of his misconceived notion that a three month span of dumping was insufficient for recording a finding. As we have already noted that there is no such mandate in the Rules of 1995, the Final Findings dated 28.11.2017 are set aside and the matter is remitted to the designated authority for consideration afresh, taking into account the scheme and structure of the Rules of 1995 and the observations made hereinabove. This exercise shall be completed expeditiously and, in any event, not later than two months from the date of receipt of a copy of this order."* (Refer Page 24 of the certified copy of order referred)

The Authority therefore in accordance of the Hon'ble High Court's order has addressed various issues raised in this remand investigation.

## B. PROCEDURE

1. The procedure described below has been followed:

a) In compliance with the order of Hon'ble High Court, the Authority provided an opportunity to interested parties to present their views orally in an oral hearing held on 13th August, 2018. The oral hearing was attended by the Domestic Industry and other interested parties.

b) The interested parties who presented their views orally at the time of oral hearing were requested to file written submissions of the views expressed by them orally and were allowed to file rejoinders to the submissions made by the opposing parties. The following interested parties filed submissions subsequent to the oral hearing:

i. M/s TPM representing M/s Andhra Petrochemicals Ltd. (Domestic Industry)
ii. Embassy of Kingdom of Saudi Arabia
iii. M/s LKS representing Saudi Butanol Company (SABUCO), Saudi Acrylic Acid Company (SAAC), Sadara Chemical Company (SADARA), Petrochem Middle East FZE (PETROCHEM), National Industrialization Petrochemical Marketing Co (TASNEE MARKETING) and Toyota Tsusho Corporation (TOYOTA)

c) All the relevant submissions made by interested parties during the earlier round of investigation (which resulted in final findings dated 28th November, 2017) and submissions during the remand proceedings by Hon'ble High Court vide order dated 31st July, 2018 the observations made by Hon'ble High Court and submissions to the disclosure statement have been taken into account in this finding.

d) The Authority made available non-confidential version of the submissions/evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. The public file was inspected by interested parties and who requested copies of the documents from the public file, were provided the same.

e) Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. The Authority accepted the confidentiality claims, wherever warranted and such information has been considered 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, which was made available through public file.

f) The Non-injurious Price (hereinafter referred to as 'NIP') considering 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) 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. This remains unaltered in this redetermination.

g) The POI in the original Investigation was considered as 1st April 2015 to 31st March 2016 (12 months) (hereinafter referred to as the 'period of investigation' or the 'POI'). The examination of trends, in the context of injury analysis covered the period from 2012-13, 2013-14, 2014-15 and the POI. The Authority has considered post POI period import data for the period 2016-17, 2017-18 and April, 2018 – August, 2018 as available from DGCIS to evaluate threat of material injury in accordance with the Hon'ble High Court's Order.

h) Exchange rate for conversion of US$ to Rs. is considered for the POI as Rs.65.91 as per customs data.

i) *** in this Final Findings represents information furnished by the interested parties on confidential basis, and so considered by the Authority under the Rules.

## C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

2. The Hon'ble High Court has not made any specific observations with regard to scope of product under consideration and like Article in its order dated 31st July, 2018. The Authority further notes that none of the interested parties have raised any issues with regard to the product under consideration and like article in the present remand proceedings. The Authority has therefore not revisited examination with respect to product under consideration and like article in the present finding.

## D. SCOPE OF DOMESTIC INDUSTRY AND STANDING

3. The Hon'ble High Court has not made any specific observations with regard to scope of domestic industry in its order dated 31st July, 2018. The Authority further notes that none of the interested parties have raised any issues with regard to the domestic industry in the present remand proceedings. Therefore, the Authority has not revisited examination with respect to domestic industry and standing in the present finding.

## E. MISCELLANEOUS ISSUES

### a. Views of the Domestic Industry

4. The domestic industry has made the following submissions: -

a) There was no need for granting oral hearing in the present remand proceedings. The High Court has not directed the Designated Authority for holding the oral hearing in the present case. Had the High Court wished the Designated Authority to hear the interested parties, the same would have been specifically stated by the High Court in its order. CESTAT in the matter of Rubber Chemicals, wherein the CESTAT has remanded the case back to the Designated Authority and wherein the CESTAT had specifically directed the Designated Authority to hear the interested parties.

b) In a remand back proceeding, the Designated Authority is not required to undertake fresh determination. The Designated Authority is required to only address the issues raised by the interested parties before High Court and decided by High Court. The Designated Authority is required to consider the matter only to extent remanded back by the High Court. The Designated Authority is not required to examine any other aspect of the case. The petitioner requests the Designated Authority to consider the order and recommend imposition of anti-dumping duty. Therefore, the Designated Authority is required to only address the issue raised by the petitioner to reconsider the causation of injury suffered by the domestic industry due to dumped imports from Saudi Arabia and modify the final findings in the light of the observations made by High Court. The Designated Authority may, therefore not entertain any argument with regard to appropriateness or otherwise of the High Court order made by the interested parties.

c) The argument of interested parties at the time of oral hearing tantamount to challenging correctness or otherwise of the decision of the High Court. Firstly, the party did not participate in the Writ Petition decided by the High Court. Secondly, scope of present proceedings is not to review the correctness or otherwise of the order of High Court. The

Designated Authority is not required to consider the correctness or otherwise of the order of the High Court. The Designated Authority may, therefore not entertain any argument with regard to appropriateness or otherwise of the High Court order made by the interested parties.

**b. <u>Views of Exporters, Importers, Consumers and other Interested Parties</u>**

6. M/s Lakshmi Kumaran & Sridharan Attorneys representing producers/exporters from Saudi Arabia viz. Saudi Butanol Company, Saudi Acrylic Acid Company, Sadara Chemical Company, National Petrochemical Industrialization Marketing Company, Toyota Tsusho Corporation, Petrochem Middle East FZE has submitted the following:

a) Domestic industry has claimed that no oral hearing was required in the present case since there is no specific direction by the Hon'ble High Court to conduct oral hearing. Firstly, the submission of the domestic is redundant since the oral hearing has already taken place and the domestic industry has also participated in the same. Secondly, it is incorrect to state that oral hearing is not required because Hon'ble High Court has not given any specific direction in this regard. There is no requirement of specific direction from the Hon'ble High Court to conduct oral hearing. The Hon'ble High Court has directed the Designated Authority to make afresh determination based on the scheme and structure of the Anti-dumping Rules 1995, which includes the requirement to conduct oral hearing. Rule 6 (6) of the Anti-dumping rules provides for the opportunity of oral hearing to interested parties.

b) Moreover, Hon'ble Supreme Court in the case of Automotive Tyre Manufacturers Association vs. The Designated Authority and Ors. [(2011)2SCC258] has specifically observed that oral hearing is mandatory because principles of natural justice are required to be followed in the case of anti-dumping investigation. Hon'ble Supreme Court observed that:

"*It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected……..In light of the aforenoted legal position and the elaborate procedure prescribed in Rule 6 of 1995 Rules, which the DA is obliged to adhere to while conducting investigations, we are convinced that duty to follow the principles of natural justice is implicit in the exercise of power conferred on him under the said Rules…. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour*

*of the witnesses etc. and also clear up his doubts during the course of the arguments*." (emphasis added)

Thus, there is no doubt that the law laid down by the Hon'ble Supreme Court is required to be followed and hearing is to be granted by the Designated Authority before issuing the final findings even in the case of remand proceedings.

c) Domestic industry submitted that the order of the Hon'ble High Court is not open for review by any interested party. It is agreed that the order of the Hon'ble High Court cannot be reviewed or revised by the interested parties. However, we cannot be prevented from raising legal arguments after taking into account the observations of the Hon'ble High Court. As already stated, the Hon'ble High Court has directed the Designated Authority to make afresh determination based on the scheme and structure of the Anti-dumping Rules and after considering the observations made in its judgment. Accordingly, we have made detailed submission based on the structure and scheme of the Anti-dumping Rules and based on the observations of the Hon'ble High Court.

d) Domestic industry claims that in the remand proceedings the Designated Authority is not required to undertake fresh determination and is not required to examine other aspects of the case. The claim of the domestic industry is in direct contravention with the observations made by the Hon'ble High Court. The Hon'ble High Court has directed the Designated Authority to make "afresh" determination based on the structure and scheme of the Anti-dumping Rules. Hon'ble High Court has observed that:

"*As we have already noted that there is no such mandate in the Rules of 1995, the Final Findings dated 28.11.2017 are set aside and the matter is remitted to the designated authority for consideration a fresh, taking into account the scheme and structure of the Rules of 1995 and the observations made hereinabove*." (emphasis added)

Thus, it is clear that the Hon'ble High Court has not prevented the Designated Authority from considering all the legal issues and in fact has specifically directed to issue "a fresh" determination. Hon'ble High Court has specifically granted 2 months time to the Designated Authority to issue a fresh determination.

e) Domestic industry claimed that Respondents did not participate in the writ petition before the Hon'ble High Court and the argument of the Respondents before the Designated Authority is tantamount to challenging the correctness or otherwise of the decision of the Hon'ble High Court, which cannot be permitted. The domestic industry did not make producers/exporters from Saudi Arabia as Respondents in the Court proceedings. Consequently, no notice was served by the domestic industry or by the Hon'ble High Court on the Respondents regarding the writ petition filed by the domestic industry. Thus, non-participation of the Respondents before the Hon'ble High Court does not imply lack of co-operation of any kind from the Respondents and it cannot be held against them. The Respondents have been determined as co-operating parties by the

Designated Authority in the original investigation and have duly participated in the hearing before the Designated Authority that was scheduled pursuant to the remand proceedings.

f) It is incorrect to state that argument of the Respondents tantamount to challenging the correctness or otherwise of the decision of the Hon'ble High Court. The domestic industry has failed to identify even one submission or argument of the Respondent which questions the correctness of the decision of the Hon'ble High Court. In fact, the Respondents have made submissions in compliance with the specific directions of the Hon'ble High Court and after taking into account all the observations of the Hon'ble High Court. Thus, nothing prevents the authority from taking into account the legal issues raised by the Respondents.

### c. Examination by the Authority

7. The Authority notes that being a Quasi-Judicial body, it is required to follow the principles of natural justice and interested parties have been provided an opportunity of being heard. The Authority followed the mandate of AD Rules to conduct an oral hearing and provide an opportunity to interested parties to make their submissions before the Authority.

8. The Authority further notes that Hon'ble Supreme Court in Automotive Tyre Manufacturers Association vs. The Designated Authority and Ors. has held that the Authority is required to conduct an oral hearing before issuing the final findings. The Authority notes that the Hon'ble High Court has not restrained the Authority to hold an Oral hearing. Inviting submissions from all interested parties on various facets of AD Rules and Act in no way undermines the principles of natural justice.

## F. Determination of Normal Value, Export Price and Dumping Margin

9. The Hon'ble High Court has not made any specific observations with regard to normal value, export price and dumping margin in its order dated 31st July, 2018. The Authority further notes that none of the interested parties have raised any issues with regard to the normal value, export price and dumping margin in the present proceedings. Therefore, the Authority has not revisited its examination with respect to determination of normal value, export price and dumping margin in the present finding, and these remain the same as evaluated in the original finding dated 28.11.2017.

## G. INJURY

10. The Authority notes that Hon'ble High Court had made certain observations on the issue of injury and causal link. Further, interested parties during the course of remand proceedings have made elaborate submissions on injury and causal link. Therefore, the Authority has reexamined the injury and causal link aspect in the present finding.

### a. Submissions made by the Domestic Industry

11. The domestic industry has submitted that: -

a) Imports from the subject country started in January 2016 and the volume of such dumped imports in just three months was significant enough to cause material injury to the domestic industry.
b) The petitioner has segregated the entire injury information within the POI into two parts – (i) April – December 2015 – when there were no imports from the subject country, and, (ii) January – March 2016 – when the imports from the subject country started.
c) While still examining the injury to the domestic industry during the POI, the Authority may additionally consider the period January to March 2016, in particular, to examine the extent and degree of injury caused to the domestic industry by dumped imports from the subject country.
d) Imports in the post POI period shows that the imports during the POI were not casual exports to India from a new plant, but a market opportunity seen by the subject exporters to dump the product.
e) The capacities with SABUCO, the production sharing by the three promoter companies and the options with them for utilization of the production further shows that the imports in the POI were not casual, but were conscious decisions of these companies to grab the Indian market.
f) There is significant difference between the prices offered by the domestic industry and the foreign producers. Thus, the domestic industry is unable to raise the prices above the costs as a result of dumping of the product in the Country.
g) Even when the domestic industry has been offering sub-optimal prices, it was losing sales. Thus, decline in sales volumes is a direct consequence of dumped imports from the subject country.
h) Despite sub-optimal prices offered by the domestic industry, the imports were undercutting the prices of the domestic industry and creating price pressure on the domestic industry.
i) Imports are depressing the prices of the domestic industry and preventing the price increases that would have occurred in the absence of dumping.
j) Performance of the domestic industry with respect to sales, production and capacity utilization had improved as investigations for imposition of anti-dumping duty on other sources were under process in the first nine months of the POI, i.e. April-December 2015. However, the performance in respect of the above parameters has significantly deteriorated in the last three months of the POI, i.e. January-March 2016 as fresh dumping from the subject country started. Further, the Authority had notified positive findings recommending imposition of anti-dumping duty on imports from these sources on 19$^{th}$ February 2016.
k) Performance of the domestic industry was adverse in terms of profits, return on investments and cash profit throughout the injury period. Situation has worsened with the commencement of dumped imports from the subject country in Jan-Mar 2016 period of the POI.
l) Dumping margin is significant.
m) The most important factor affecting the prices of the domestic industry is import price from subject country. Thus, the price depression is due to dumping of the product in the market.
n) Growth of the domestic industry is adverse in terms of both, volume and price parameters.
o) The domestic industry has suffered material injury as a result of dumping from the subject country.
p) The injury margin is significant.
q) Definitive anti-dumping duty is required to be imposed in accordance with the dumping margin and injury margin.
r) The form of measure is required to be kept as fixed quantum in US$.

s) The purpose of segregation of POI in two parts is to show the effect of dumping of the subject goods on the performance of domestic industry and its causal link with injury.

t) The impact of dumping of subject goods in just 3 months is so significantly felt, that, material injury has been caused to the domestic industry.

u) Imports upto Dec., 2015 were from other sources dumping the product under consideration and where ADD was imposed after March, 2016. Imports from Saudi started in last quarter of the POI and were significant in no time. Shifting of dumping from one source to other source does not imply that causal link is broken.

v) The issue concerning shut down because of fire in the plant of propylene supplier of petitioner in the previous period has already been examined by the Designated Authority.

w) The cause of plant shut down in the present POI was suspension of production in view of un-remunerative prices in the market because of the presence of low priced dumped imports from the subject country.

x) Domestic industry is not required to cater to 100% of the demand before seeking protection under the law. Further, there is no restriction on imports of the product in the country at fair prices.

y) In the light of the order of the Hon'ble High Court, Andhra Pradesh and information earlier provided, the petitioner requests the Authority to kindly:

- Consider the determination made wherein the Authority has already concluded the following:
  - Imports from Saudi Arabia entered India in significant volume in the last three months of the period of investigation, both in absolute terms and in relation to production and consumption in India.
  - There was significant price undercutting of 25% to 35% by the Saudi Arabian exporters/producers during these three months.
  - There was price underselling to the extent of 55% to 75%.
  - Performance in respect of the parameters of sales, production and capacity utilization deteriorated in the last quarter of the period of investigation i.e. January to March 2016 as fresh dumped imports from Saudi Arabia started.
  - The injury margins determined by the Authority in respect of exporters from Saudi Arabia were also high, ranging from 70% to 90%.

- Modify the final findings in so far as the following observations of the Authority are concerned:
  - Period of last 3 months of POI of exports of subject goods from Saudi Arabia is not sufficient to evaluate injury to the domestic industry as material injury determination would require data on imports and domestic industry's sales for a longer duration.
  - Causal link between imports from Saudi Arabia and injury to the domestic industry is not conclusively established on the basis of 3 months of export period.
  - The Authority in view of the above does not consider it appropriate to recommend levy of an Anti-Dumping Duty on the subject goods from Saudi Arabia and hereby terminates the investigation in accordance with Rule 14 (b) of AD Rules.

z) The argument that the Designated Authority had not made any final conclusion regarding the inappropriateness of the POI *per se* in the present anti-dumping investigation made during the last three months of the POI is to say that the Final Finding is incomplete and deficient, and that the Designated Authority issued final

findings even without first establishing appropriateness of the POI is incorrect as the Designated Authority concluded its finding in para 94 (vii) of final finding. Moreover, Hon'ble High in its judgment categorically held that 3 months imports in the POI are sufficient to determine dumping and consequent injury to domestic industry. Any such argument however at this stage is not tenable. The issue is not open for consideration at this stage and has already attained finality.

The Authority has determined positive and, in fact, significant dumping margin and injury margin in respect of exports made by the exporter. The Hon'ble High Court has also observed in this regard that the findings recorded by the designated authority clearly demonstrated sufficient evidence of dumping and the domestic industry suffered injury. There is no legal requirement under the law that the dumped imports should exist in the entire period of investigation.

aa) As regards the submissions that the petition did not specifically disclose the fact that imports from Saudi Arabia took place only in the last three months of the POI, the interested parties have no locus standi to challenge the final finding on this aspect now, before the Designated Authority. The interested party is trying to mislead the Authority, by advancing highly misleading and factually incorrect statement. The petitioner provided complete listing of imports for the entire injury period in the petition. It is evident from the information provided that the imports occurred in the POI only.

Another meaning of the argument of the exporter is that the Authority carelessly initiated the investigation.
There is no requirement in the AD law to require the continuity of the imports over the entirety injury period or in entirety of the POI. The requirement for imposing the antidumping duties is that the imports from the subject country should be more than 3% and the prices are dumped prices.

bb) The issue of POI being of at least 6 months is not open for consideration at this stage and has already attained finality.The Designated Authority may therefore not entertain any argument with regard to appropriateness or otherwise of the High Court order.

Another interpretation of the argument is that the Designated Authority should have different yardstick for one country and more than one country case. If dumping is occurring only from one country, such dumping should have been uniformly spread through the investigation period. But, if dumping is happening from more than one country, it is OK if dumping is sporadic from different countries within the investigation period! The argument of the exporter implies that in some combination of countries, the Designated Authority would accept petition. In some combination, the Designated Authority would reject the petition.

The Hon'ble High Court has observed in the present matter as follows:

> *"….Clause (2) in Annexure-I speaks of the period of six months in the context of sales made by such exporters/producers of the like product in their domestic market or to a third country for the purpose of determining the normal value and no more. This clause therefore does not indicate any requirement of the dumping being in excess of three months during the period of investigation, as*

*wrongly assumed by the designated authority in its final conclusion……..There is no mention of any length of duration being required in the context of the Rules of 1995 for ascertaining or evaluating the injury to the domestic industry by dumping of like products by exporters/producers from foreign countries, but all through, the designated authority linked the three months period, January to March, 2016, to justify his termination of the investigation, which is wholly unsustainable."*

cc) The Hon'ble High Court in its judgment categorically held that 3 months imports in the POI are sufficient to establish causal link between dumped imports and consequent injury to domestic industry. Any such argument however at this stage is untenable and attained finality. Now it is not open for the interested parties to raise such contentions.

dd) The final findings has incorrectly analysed causal link between dumping and injury suffered by the domestic industry due to dumped imports from Saudi Arabia as observed by the Hon'ble High Court. Since the High Court has already decided the issue of whether dumping caused injury, the issue cannot be argued by the interested parties. The Designated Authority may therefore not entertain any argument with regard to appropriateness or otherwise of the High Court order.

*"….it is only when the designated authority does not find sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation that it can terminate it…….In the case on hand, as already noted supra, the findings recorded by the designated authority clearly demonstrated sufficient evidence of dumping within the short span of three months by the exporters/ producers from Saudi Arabia and also* ***the injury caused to the domestic industry thereby****. Therefore, the designated authority could not have taken recourse to this clause for justifying the termination of investigation. In fact, none of the clauses in Rule 14, which deals with termination of investigation, had application whereby the designated authority could have taken such a step."*

ee) As regards domestic industry not having presented any facts, information or argument against the decision of the DA regarding absence of causal link before the Hon'ble High Court tantamount to challenging correctness or otherwise of the decision of the High Court. The argument also tantamount to stating that the High Court has passed the order without application of mind. Firstly, the party did not participate in the Writ Petition decided by the High Court. Secondly, scope of the present proceedings is not to review the correctness or otherwise of the order of High Court. The Designated Authority is not required to consider the correctness or otherwise of the order of the High Court. The Designated Authority may therefore not entertain any argument with regard to appropriateness or otherwise of the High Court order.

The decision of the Hon'ble High Court is based on the submissions made by the domestic industry and the Designated Authority. The Designated Authority may, therefore, not entertain any argument with regard to appropriateness or otherwise of the High Court order made by the interested parties.

ff) The argument that the DA has inadvertently summarized in paragraph 74 of the Final Findings that dumped imports from subject country as well as other non-subject countries have adversely impacted the performance of the domestic industry. The Designated Authority is only required to remove paragraph 74 of the Final Findings to conclude that there is no need for imposition of anti-dumping duty on imports from the subject country tantamounts to review of not only the order of the Designated Authority but also of the High Court. Petitioner submits that the interested parties are not entitled to review the order of either the Designated Authority or the High Court. On facts, the observation of the Authority in paragraph 74 is correct.

gg) The domestic industry had provided the relevant information in the written submissions dated 27th October 2017 with regard to threat of material injury. However, the Authority had not considered this information as has been observed by the Hon'ble High Court as follows:

> *"….the designated authority was wholly unjustified in holding that it had no mandate to look into the possible threat of injury to or material retardation of the domestic industry consequent upon the import of the product from Saudi Arabia….The refusal by the designated authority in the case on hand to look into any possible threat of injury or material retardation to the establishment of any industry in India therefore falls short of the statutory mandate…."*

**b. <u>Views of Exporters, Importers, Consumers and other Interested Parties</u>**

12. The other interested parties have submitted as follows: -

a) The application neither fulfills the preconditions for initiation nor qualifies the test of adequacy and accuracy under Rule 5 as sufficient evidence establishing dumping, injury and casual link was not supplied.
b) Confidentiality - Some of the information provided in the non-confidential version of the Petition is either misleading or insufficient to allow the interested parties to comment meaningfully thereupon. The domestic industry must be directed to disclose the data at least in ranges to allow a meaningful understanding of that table.
c) Price undercutting margins alleged in the petition should not be considered. Exports are made by Saudi Arabian producers to Indian traders, who incur expenses of storage and warehousing. These costs increase the landed value by 25 – 30%. Price undercutting should be based on comparison of domestic selling price with the resale price of traders in India.
d) There is absence of causal link between the imports from Saudi Arabia and injury suffered by the domestic industry. Imports from Saudi Arabia increased from NIL in 2014-15 to 8,791 MT in the POI. The sales of domestic industry also increased by 7,117 MT over the same period.
e) Imports from the other countries were coming into India at dumped prices and free of anti-dumping duty in the POI, which was imposed after the completion of POI. Imports from Saudi Arabia entered Indian market only for the last 3 months of the POI (Apr 15 to Mar 16) and the entire injury period.
f) The injury suffered is self-inflicted by the domestic industry. The Annual Report of the petitioner shows that they have only one source of raw material supply and had to shut down plant because of fire accident in the plant of the supplier.

g) Imposition of anti-dumping duties on imports from Saudi Arabia would go against the public interest. There is a demand supply gap. The domestic industry would be able to supply only 32% of demand in India even when producing at full capacity.
h) There is absence of non-confidential versions of costing data.
i) Price undercutting margins alleged in the petition should not be considered. Exports are made by Saudi Arabian producers to Indian traders, who incur expenses of storage and warehousing. These costs increase the landed value by 25 – 30%. Price undercutting should be based on comparison of domestic selling price with the resale price of traders in India.

j) Imports from the other countries were coming into India at dumped prices and free of anti-dumping duty in the POI, which was imposed after the completion of POI. Imports from Saudi Arabia entered Indian market only for the last 3 months of the POI (Apr 15 to Mar 16) and the entire injury period.
k) The injury suffered is self-inflicted by the domestic industry. The Annual Report of the petitioner shows that they have only one source of raw material supply and had to shut down plant because of fire accident in the plant of the supplier.
l) Imposition of anti-dumping duties on imports from Saudi Arabia would go against the public interest. There is a demand supply gap. The domestic industry would be able to supply only 32% of demand in India even when producing at full capacity.
m) Domestic industry has segregated POI in two periods (i) April to December 2015 and (ii) January to March 2016. Domestic industry does not dispute that there were no imports from the subject country in the first period i.e. for first 9 months of the POI. Domestic industry also admits that period of data collection in the present investigation is effectively of three months and not one year as identified by the Designated Authority. Domestic industry does not deny that the period of data collection for dumping investigations normally should be twelve months and in any case not less than six months. However, Domestic industry relies on the observation made by the Committee of Anti-dumping practices that investigating authority can take into account particular circumstances of a given investigation in setting the periods of data collection for both dumping and injury to ensure that they are appropriate in each case. Domestic industry claims that dumping, injury and causal link is to be determined based on the import data of three months.
n) The claim of the domestic industry cannot be accepted; Firstly, Domestic industry fails to provide for 'particular circumstance' that would necessitate shorter period of investigation; Secondly, the Designated Authority as a matter of practice has followed the recommendation of Committee on Anti-dumping practice in all investigations in past. Domestic industry has failed to provide even one instance in India or in any other jurisdiction where assessment of dumping, injury and causal link is based on the data of three month period only; Thirdly, if the 'particular circumstance' in the present case would have required a shorter period of investigation for data collection, the Designated Authority would not have formally selected one year as the period of investigation in the notice of initiation. In other words, the Designated Authority has already decided that there is no 'particular circumstance' that would necessitate shorter period of investigation; Fourthly, the reliance by the Domestic industry on the observations made by the Panel in *Guatemala – Cement II* is incorrect. Observation of Panel is regarding duration of injury investigation period and not POI. In fact, Panel in *Guatemala – Cement II* allowed a shorter period of one year and not three months for determination of injury due to existence of particular circumstance.
o) Merely because the Anti-dumping Agreement does not expressly mandate specific duration for POI does not mean that selection of a shorter time duration of one month, two months or three months as POI is permitted. Appellate Body in *EC-Tube or Pipe Fitting*s clearly

noted that a POI provides data collected over a sustained period of time, which period can allow the investigating authority to make a dumping determination that is less likely to be subject to market fluctuations or other vagaries that may distort a proper evaluation.

p) If the Designated Authority will base its determination regarding dumping, injury and causal link based on a three month time period, it will set a wrong precedent. There would be no minimum duration for which import data has to be analyzed and determination will be based even in cases where imports are occurring for one month or two months. Moreover, it cannot be disputed that three month data cannot reasonably reflect the export behavior of the producers and exporters in Saudi Arabia. Anti-dumping duty recommendation is prospective in nature, which is applicable for next five years. It is required that assessment of dumping, injury and causal link is based on the import data which is reflective of the export behavior of the producer and exporter in the exporting country. Thus, it is incorrect to contend that shorter period of three months is consistent with the provisions of WTO Anti-dumping Agreement and the Anti-dumping Rules. Consequently, entire claim of dumping, injury and causal link that is based on three months data is incorrect and unreliable.

q) If the Designated Authority decides to continue the investigation despite the fact that there is import data of only three months, it is submitted that there can be no bifurcation of the period of investigation into nine months and three months for assessment of injury and causal link. Domestic industry cannot continue to sub-divide the period of investigation once the same is fixed by the Designated Authority. Considering the period of investigation as a whole, there is complete absence of causal link between the imports originating in Saudi Arabia and the alleged injury. The production & domestic sales of the domestic industry increased in the same period when the imports from Saudi Arabia entered India, therefore signifying that imports from Saudi Arabia had no impact on the performance of the domestic industry. Similarly, production capacity remained stable and production, capacity utilization and market share increased. Below table is illustrative:

**Production capacity of the domestic industry and total demand in India in MT**

| **Particulars** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Imports from Saudi Arabia | MT | 0 | 0 | 0 | 8,791 |
| Imports from EU, Malaysia, Singapore, South Africa & the USA | MT | 31,929 | 42,016 | 55,243 | 50,606 |
| Total Demand | MT | 46,769 | 49,798 | 59,243 | 70,552 |
| Production capacity | MT | 22,500 | 22,500 | 22,500 | 22,500 |
| Sales | MT | 14,472 | 6,425 | 4,037 | 11,154 |
| Production | MT | 14,409 | 5,484 | 4,203 | 11,080 |
| Capacity utilization | % | 64.04% | 24.37% | 18.68% | 49% |
| Market share | % | 31% | 13% | 7% | 16% |

r) Thus, the injury suffered by the domestic industry, if any, is attributable to imports of normal butanol exported from the EU, Malaysia, Singapore, South Africa and the USA which constituted 85% of the volume of imports and had a 72% share in the domestic demand. Further, the factors such as the shutdown of the production plant for 7 months, the fire accident of 23 August 2013, the lasting consequences of those two events and the shortage in the supply of raw materials have caused the alleged injury suffered by the domestic industry.

s) Domestic industry is for the first time claiming that imports Saudi Arabia are causing threat of material injury based on post POI data. At the onset, it is submitted that Domestic industry cannot now claim that there is threat of material injury. Scope of investigation is determined by the initiation notice which did not provide for assessment of threat of Injury. The Domestic industry has never alleged threat of material injury at the time of filing of the petition or even during the public hearing. Present investigation is limited to the assessment of material injury as alleged in the petition and for which the Designated Authority determined that there was prima facie evidence in the notice of initiation. It is settled practice of the Designated Authority that post POI period is not considered for assessment of material injury in the original investigation. In the recently concluded Anti-dumping investigation concerning imports of Wire Rod of Alloy or Non-Alloy Steel originating in or exported from China PR, the Designated Authority observed that:

> "*With regard to the contention of the interested parties that post POI trends should be examined, the Authority notes that in an original investigation, post POI trends are not relevant. In case of reviews initiated in terms of Rule 23 of the AD Rules, would post POI trends become relevant because the Authority has to examine the likelihood of continuation or recurrence of dumping and injury if anti-dumping duty is withdrawn*"

It is an established practice of the Designated Authority to determine material injury based on the data of the POI in the original investigation. In other words, post POI data is irrelevant in the original investigation.

t) As explained in the questionnaire responses, the commercial production of normal butanol in Saudi Arabia started on 1st March 2016. Some exports of trial production product took place from Saudi Arabia to India during January 2016 and February 2016. Thus, imports into India were only made during the last three months of the POI, namely in January 2016, February 2016 and March 2016. Below table is illustrative:

**Monthly volume of imports in MT during the POI**

| **Particulars** | **April 2012 to March 2015** | **April 2015 to Dec 2015** | **Jan 2016** | **Feb 2016** | **Mar 2016** | **POI** |
|---|---|---|---|---|---|---|
| Saudi Arabia | 0 | 0 | 2,154 | 3,131 | 3,506 | 8,791 |

Source: Transaction-by transaction listing in the Petition

u) Thus, in fact POI considered by the Designated Authority is of 3 months only even though technically it is named as one-year period.
Period of investigation in case of anti-dumping investigation should be of at-least six months

v) Petition filed by the domestic industry noted that:

> "Information regarding imports and market share is provided in the injury information enclosed. It would thus be seen that there were no imports from Saudi Arabia up to 2014-15. There is significant volume of imports in absolute terms from Saudi Arabia in the proposed POI" (pg. 13)

w) Thus, the petition (non-confidential version) did not specifically disclose the fact that imports from Saudi Arabia took place only in the last three months of the POI.

x) Be that as it may, from a perusal of the final findings issued by the Designated Authority, we understand that Domestic industry has relied on the several previous findings of the

Designated Authority to support its claim that anti-dumping duty can be recommended in the present case:

(i) Ammonium Nitrate from Georgia, Indonesia & Iran
(ii) Flexible Slabstock Polyol from Australia, EU & Singapore
(iii) R-DVD from Malaysia, Thailand & Vietnam
(iv) Thermal Sensitive Paper from Indonesia, Malaysia & UAE
(v) Certain Phosphorous based compounds
(vi) Diclofenac Sodium from China
(vii) Caustic Soda from Qatar
(viii) Vitamin A Palmitate from EU, Singapore and Georgia
(ix) Vitrified/ Procelain Tiles from China and UAE**.**

y) In the case of *Ammonium Nitrate from Russia, Indonesia, Georgia & Iran*, the subject goods were imported from Georgia during the 2015-16 period i.e. POI. However, the domestic industry claims that imports occurred during only during three months of the POI from Georgia i.e. during July, Aug & Feb in 2015-16 period. The domestic industry has not presented following facts of the case:

(i) There is no observation in the final findings that subjects goods were imported from Georgia during three months in the POI. Moreover, no claim was made by the interested parties that the subject goods were imported from Georgia only for three months and therefore such an issue was not examined by the Designated Authority. The exporter from Georgia was also determined to be non-cooperative.
(ii) Subject goods were imported during the injury investigation period (including the POI) from other subject countries namely Russia, Iran and Indonesia.
(iii) Unlike the present investigation, due to imports from subject countries during the first three years of injury investigation period and during the period of investigation, the POI was not effectively of 3 months only.

z) Thus, complete analysis of the case based on the aforementioned facts makes it clear that the finding of the Designated Authority in Ammonium Nitrate from Georgia, Indonesia & Iran cannot be relied upon to support the claim of the domestic industry.

aa) In the case of Caustic Soda from Qatar, POI was determined to be 1 January 2001 to 30 September 2001. Subject goods were imported from Qatar during the POI. The domestic industry relied on the fact that subject goods were not imported from one of the participating exporter during the POI and in such a case, anti-dumping duty was imposed based on his sales contract with Indian importers. The domestic industry has once again failed to note that unlike the present case, subject goods were imported from subject country Qatar during the POI. The fact that there were no imports of subject goods during the POI from one exporter M/s Qatar Vinyl Company (QVC) Ltd. is an exporter specific concern and is not equivalent to a situation where there is absence of imports from subject country in general.

bb) In the case of Flexible Slabstock Polyol from Australia, EU & Singapore, subject goods were imported from Australia during the POI (January 2012 to December 2012)

cc) In the present case, Respondents have specifically relied on the recommendation of the Anti-dumping Committee which prescribes minimum six months period of data collection i.e. minimum six of months of POI. Thus, a finding of the Authority which notes that subject goods were imported during the POI of one year, does not in any way contrast the

claim of the Respondent. Similarly, in (i) R-DVD from Malaysia, Thailand & Vietnam (ii) Thermal Sensitive Paper from Indonesia, Malaysia & UAE (iii) Certain Phosphorous based compounds – POCl3 from EU and China (iv) Diclofenac Sodium from China (v) Vitamin A Palmitate from EU, Singapore and Georgia & (vi) Vitrified/ Procelain Tiles from China and UAE, the subject goods were imported during the POI and therefore there is no similarity of facts of these cases with the present case. There is no observation in the final findings of these cases that subject goods were imported only during three months in the POI. Moreover, no claim was made by the interested parties in these cases that the subject goods were imported only for three months and therefore such an issue was not examined by the Designated Authority.

dd) In sum, none of the past decisions of the Authority referred by the domestic industry are applicable in the present case. Therefore, it is incorrect to claim that past decision of the Designated Authority substantiates the claim of the domestic industry that it is appropriate to recommend the imposition of anti-dumping in the present case. In fact, there is no previous case in India in which the Designated Authority has recommended anti-dumping duty based on the period of investigation of 3 months.

ee) WTO Anti-dumping Agreement & Indian Anti-dumping Rules do not expressly provide any specific period as the minimum duration for period of investigation. However, absence of a specific provision in the Anti-dumping Rules does not mean that there is no guidance regarding the appropriateness of the POI and the authority can consider a short period of three months, two months or one month as appropriate for the purpose of anti-dumping investigation. Recommendation by the WTO Committee on Anti-dumping Practices provides that:

> "The Committee recommends that with respect to original investigations to determine the existence of dumping and consequent injury -
>
> 1. *as a general rule:*
>
> *(a) the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable*." (emphasis added)

ff) The WTO Anti-dumping Committee considers that minimum period of six months of data collection is appropriate to determine existence of dumping, injury and causal link. The guideline effectively means that the period of investigation should be such that it shall have at-least 6 months of import data from the subject country. Even though it is in the form of a recommendation, there is no ambiguity in the guideline regarding the obligatory nature of the provision which stresses that the minimum period should be 'no less than six months'.

gg) Notwithstanding this committee recommendation, the WTO Panel and Appellate Body have observed in several cases that the fixation of POI is not un-regulated under the Anti-dumping Agreement and should cover a representative period. WTO Panel in the *Mexico – Steel Pipes* recognised that lack of express requirement in Anti-dumping Agreement regarding the period of investigation does not mean that an investigating authority's discretion in respect of period it selects as the basis for its injury analysis is unlimited. In this case, the period of investigation was July-December 2000 and a corresponding six months period in previous two years (1998 & 1999) was considered as inappropriate for injury analysis.

hh) The Panel stressed that investigating authority is required to make an objective examination based on positive evidence. Panel observed that:
"*We consider that an objective examination of positive evidence of the effects of dumping on the state of the domestic industry which enables the authority to conclude that dumped imports are causing injury to the domestic industry involves an analysis of trends over time of the volume and price of imports and of the state of the domestic industry*". (emphasis added)

ii) Thus, it is clear that the Designated Authority is required to make an objective assessment based on positive evidence which requires analysis of imports over a sustained period of time. Period of investigation of three months will not allow objective assessment based on positive evidence.

jj) In *EC – Tube or Pipe Fittings*, the European Commission conducted its examination using a POI of one year from 1 April 1998 to 31 March 1999. The Brazilian Real was devalued by 42 percent towards the end of this period in January 1999. Brazil argued that the European Commission was obligated to compare normal values with export prices solely from the post-devaluation period.

kk) Appellate Body observed that Brazil's approach would imply that determination will be based on the data of a very short period. Permitting such discretionary selection of data from a period of time within the POI would defeat the objectives underlying investigating authorities' reliance on a POI for the purposes of a dumping determination. Moreover, the Appellate Body observed that a POI provides data collected over a sustained period of time, which period can allow the investigating authority to make a dumping determination that is less likely to be subject to market fluctuations or other vagaries that may distort a proper evaluation. Appellate Body noted that the standardized reliance on a POI, although not fixed in duration by the Anti-Dumping Agreement, assures the investigating authority and exporters of a consistent and reasonable methodology for determining present dumping, which anti-dumping duties are intended to offset.

ll) In *Mexico - Anti-Dumping Measures on Rice*, the Mexican investigating authority examined data for a period of investigation covering March to August 1999 for purposes of its dumping determination, and March to August 1997, 1998, and 1999 for purposes of its injury analysis. Appellate Body observed that period of investigation relating to the March to August period of 1997, 1998, and 1999, on the facts at issue, did not provide an accurate and unbiased picture of the state of the domestic industry and, thus, did not result in an objective examination as required by Article 3.1.

mm) In the case of *Commissioner or Customs, Bangalore Vs. G.M. Exports*, the Hon'ble Supreme Court while determining the legality of anti-dumping duty imposed during the gap period between the end of provisional duty and the date of imposition of final duty, observed that:
"*In a situation where India is a signatory nation to an international treaty, and a statute is made in furtherance of such treaty, a purposive rather than a narrow literal construction of such statute is preferred. The interpretation of such statute should be construed on broad principles of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them*." (emphasis added)

nn) Thus, Hon'ble Supreme Court has specifically held that:

***a.*** *when domestic statute (i.e. Customs Tariff Act & Anti-dumping rules) is vague or ambiguous, treaty is the legitimate aid to the construction of the provisions of the statute; &*

***b.*** *Interpretation should be construed on broad principles of general acceptance that is not inconsistent with treaty obligations.*

oo) It is clear that if short period of 3 months is considered as POI, it will be inconsistent with the general principle requiring a lengthy POI of at-least 6 months and with the obligations incurred by India under the Anti-dumping Agreement. Hon'ble Supreme Court has specifically laid down the requirement that interpretation of Anti-dumping Rules is required to be carried out in a purposive manner that will not be inconsistent with treaty obligations.

pp) Indian authority has consistently followed the recommendation of the Anti-dumping committee while determining the period of investigation. The final findings of the DGAD in past cases expressly relied on the recommendation of WTO Committee of Anti-dumping practice for fixation of the POI. There is no reason to deviate from this consistent practice of the Designated Authority.

qq) Law and practice of WTO member countries like European Union (EU) & the United States (US) indicate that they have regularly followed the recommendation of Committee on Anti-dumping practices.

rr) The EU Basic Anti-dumping Regulation provides that "for the purpose of representative finding, an investigation period shall be selected which, in the case of dumping shall, normally, cover a period of not less than six months immediately prior to the initiation of the proceeding."

ss) The US Anti-dumping Regulations provide that "In an antidumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation…"

tt) Respondent requests the authority to consider the aforementioned submissions and clearly determine that the POI in this investigation is effectively of 3 months only and such short duration of the POI cannot be relied upon in an anti-dumping investigation for reaching any conclusion regarding dumping, injury and causal link in accordance with the structure and scheme of the Anti-dumping Rules in light of the obligations incurred by India under the Anti-dumping Agreement.

uu) The domestic industry notes that the observations made by the Designated Authority in relation to dumping, injury and price effect and requests them to confirm the same and conclude accordingly. Domestic industry requests the Designated Authority to modify its final conclusion noted in paragraph 94 of the final findings.

vv) Domestic industry does not provide for any reason to substantiate its claim in this regard. Respondents submit that the observations of the Authority noted by Domestic Industry are not final conclusions of the Designated Authority and therefore cannot replace the final conclusions of the Designated Authority noted by the domestic industry.

ww) The domestic industry has not provided any legal or factual basis to substantiate that the POI can be of only three months in an anti-dumping investigation and that the Designated Authority should revise its final conclusion that causal link between dumped imports and injury cannot be conclusively established.

xx) M/s Lakshmikumaran & Sridharan representing exporters stated that in the final findings, the Designated Authority determined that:
"*Causal link between imports from Saudi Arabia and injury to the domestic industry is not conclusively established on the basis of 3 months of export period*"

yy) Hon'ble High Court has not observed that the aforementioned findings of the authority regarding causal link is incorrect. Hon'ble High Court has observed regarding the

incorrectness of the conclusion of the Designated Authority in relation to dumping and injury. Hon'ble High Court has observed as below:

"*Having recorded findings in support of the injury sustained by the domestic industry by dumping of like products by exporters/producers from Saudi Arabia, failed to carry through on the same note and stragely did a volte-face, when it came to the final recommendation. This was on the strength of his misconceived notion that a three months span of dumping was insufficient for recording a finding. As we have already noted there is no such mandate in the Rules of 1995, the final findings dated 28.11.2017 are set aside and the matter is remitted to the designated authority for consideration afresh, taking into account the scheme and structure of the Rules of 1995 and the observations made hereinabove*." (emphasis added)

zz) Thus, Hon'ble High Court has noted that the Designated Authority has given a finding of material injury to the domestic industry and a finding of dumping by the exporters from Saudi Arabia but has not recommended duty because imports were occurring for a three months period. Hon'ble High Court has accordingly held that the Designated Authority could not have taken recourse to Rule 14(b) to terminate the investigation since Article 14(b) provides for insufficient evidence of dumping or injury as a ground to terminate the investigation.

aaa) In accordance with Section 9B of the Customs Tariff Act & Article 3.5 of the Anti-dumping Agreement and Annexure II, para. 5 of Indian Anti-dumping Rules, it must be demonstrated that dumped imports are, through the effects of dumping causing injury to the domestic industry and that injury caused by any known factors other than the dumped imports at the same time is not attributed to the dumped imports. Thus, apart from existence of dumping and injury, the structure and scheme of the Rules require establishment of causal link. If there is no causal link between dumped imports and injury to the domestic industry, the Designated Authority cannot recommend imposition of anti-dumping duty.

bbb) Respondents submits that determination of causal link between alleged dumped imports and injury to the domestic industry is not possible in the present case in accordance with provisions of Anti-dumping Agreement and Indian Anti-dumping Rules because (i) it is not possible to establish that injury caused to the domestic industry throughout the injury investigation period of 4 years and particularly during the POI is due to imports during three months of January to March 2016 (ii) the Designated Authority cannot examine existence of any known factors other than dumped imports which at the same time are injuring the domestic industry in a span of 3 months period.

ccc) Domestic industry had not presented any fact, information or argument against the decision of the Designated Authority regarding absence of causal link before the Hon'ble High Court and therefore there is no need for the Designated Authority to revise its final conclusion regarding causal link.

ddd) The Hon'ble High Court has noted that the Designated Authority cannot refuse to conduct assessment of threat of material injury because it was not claimed by the domestic industry in its petition.

eee) Respondents submit that assessment of threat of injury is not possible in the present case due to insufficient information regarding imports i.e. for 3 months period. Para (vii) of Annexure II of the Anti-dumping Rules require that threat of material injury shall be based on facts. Designated Authority shall consider:

i. Significant rate of increase in imports into India
ii. Sufficient freely disposable or an imminent, substantial increase in, capacity of the exporter

iii. Whether imports are entering at prices that will have significant depressing or suppressing effect on domestic prices

fff) No information is provided by the domestic industry regarding any of the above parameters. No assessment of threat of injury can be made in absence of conclusive data regarding the aforementioned parameters.

ggg) M/s Lakshmikumaran & Sridharan representing exporters requests the Designated Authority to make afresh determination that there is no requirement to recommend imposition of anti-dumping duty on the subject imports as per the Anti-dumping rules due to short duration of the POI of 3 months and due to absence of causal link between dumped imports and injury.

**c. Submissions by Saudi Kayan**

13. The submissions are as follows:

a) Saudi kayan along with Saudi Acrylic Acid Co ("SAAC") and Sadara Chemical Co ("Sadara") have setup a joint venture company, M/s Saudi Butanol Company ("SABUCO"), each with one third shareholding. Saudi kayan, Sadara, and SAAC have entered into a Tolling and Processing Agreement (hereinafter referred as "Agreement") with SABUCO and it converts propylene into Normal Butanol and iso Butanol on tolling basis for three producers.

b) It is clarified that Saudi Kayan has not exported the subject goods to India during the POI (1st April 2015 to 31st march 2016). Also, Saudi Kayan is not related to any of the exporters or producers in Saudi Arabia who have exported the subject goods to India during the POI.

c) Considering the above facts and in terms of Rule 22 of the AD Rules,1995, Saudi Kayan reserved its right to apply for a New Shipper Review in case the authority recommends for imposition of AD duty in the subject investigation.

**d. Submissions by Royal Embassy of Saudi Arabia, New Delhi**

a) Saudi Butanol Company ("SABUCO") is a toll processor of normal butanol and a joint venture set up by 3 companies, namely Sadara Chemical Company ("SADARA"), Saudi Kayan Petrochemical Company ("Saudi Kayan") and Saudi Acid Acrylic Company ("SAAC"). SADARA, Saudi Kayan and SAAC supply the raw materials to SABUCO where it is transformed into normal butanol. SABUCO then returns the normal butanol to each company within the proportion of the raw materials supplied by each of them.

b) The commercial production of normal butanol started in Saudi Arabia on 1 March 2016. Some exports of trial production took place from Saudi Arabia to India during January 2016 – March 2016. Accordingly, imports of normal butanol from Saudi Arabia came into India only during the last three months of the POI. Producers from Saudi Arabia i.e. SAAC and SADARA who had exported normal butanol to India during the POI duly cooperated with the Authority in the anti-dumping investigation.

c) The Authority may kindly note that the primary objective of setting up production facility for normal butanol in Saudi Arabia was to consume normal butanol within Saudi Arabia for further manufacture of value added/downstream products like Butyl Glycol Ether (BGE) and Butyl Acrylate and then to export such value added/downstream products from Saudi Arabia. However, the plants for manufacturing such value added/downstream products were not fully operational during the POI of the anti-dumping investigation and therefore normal butanol was exported to different countries from Saudi Arabia including India during the POI.

d) The plants for manufacturing value added products/ downstream products gradually became fully operational after the POI of the anti-dumping investigation. Consequently, normal butanol started getting more and more consumed by these plants and the exports of normal butanol from Saudi Arabia gradually started declining. This is clearly evidenced by the below mentioned import data, which shows that imports of normal butanol from Saudi Arabia into India declined considerably during the financial year 2017-18 and have completely stopped during the current financial year.

**Import of Normal Butanol from Saudi Arabia**

| **Particulars** | **Qty (MT) January 2016 - March 2016** | **Qty (MT) April 2016 – March 2017** | **Qty (MT) April 2017 – March 2018** | **Qty (MT) April 2018 – July 2018*** |
|---|---|---|---|---|
| Imports into India from Kingdom of Saudi Arabia | 8,791 | 27,494 | 18,013 | Nil |

Source: **Export-Import Data Bank (Department of Commerce, India)**
*** As Reported till July, 2018**

e) It is submitted that Indian domestic industry is relying on a transitional time period when normal butanol was exported from Saudi Arabia to India to claim that there is a threat of material injury to the domestic industry. The claim of the domestic industry is not based on complete facts and recent import statistics and is therefore devoid of merit.

**e. <u>Examination by the Authority</u>**

14. The Authority takes note of the Hon'ble high Court's directions and submissions made both during the earlier round of investigation and submissions made during the present remand case by Domestic Industry and various interested parties. The Authority has examined injury to the domestic industry in accordance with the Anti-dumping Rules and considering the submissions made by the interested parties.

15. The Authority notes that analysis has been done for the entire period of investigation including the last three months of POI. The analysis of imports from the subject country during POI and its impact on DI has been validated with the aspect of threat of injury as noted in the later paras in this finding keeping in view the directions of the Hon'ble High Court Order.

16. The Authority notes that for recommendation of Anti-Dumping Duty there are three pre-requisites i.e. dumping from the subject country, material injury being suffered by the domestic industry and causal link between injury and dumping. In the succeeding paragraphs, the Authority has analyzed the issue of injury and causal link. The Authority in view of the Hon'ble High Court's directions to examine the facets of injury as per rules has examined in addition to the material injury, the threat of material injury also. The retardation to establishment of industry does not seem relevant here with the DI being in existence and producing PUC since long.

17. The Authority also notes that AD Rules require the Authority to examine injury by examining both volume and price effect. A determination of injury involves an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for the like article and (b) the consequent impact of these imports on domestic industry. With regard to the volume of dumped imports, the Authority is required to consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the effect of the dumped imports on prices the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product 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.

18. As regards the consequent impact of dumped imports on the domestic industry, Para (iv) of Annexure-II of Anti-dumping Rules states as under:

*"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments."*

19. The Authority has examined the injury parameters objectively taking into account the facts and arguments made by the parties in their submissions. The Authority had examined comments to the disclosure statement appropriately before issuing the present finding.

## H. Assessment of Demand

20. The demand for subject goods has been determined by adding domestic sales of domestic like product with imports of subject goods from all countries. For the purpose of present injury analysis, the Authority has relied on the transaction-wise import data procured from DGCI&S. The Authority notes that demand of subject goods increased significantly over the injury period as depicted in the table below.

| **Demand** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Sales of Domestic Industry | MT | 14,472 | 6,425 | 4,037 | 11,154 |
| Imports – Subject Country | MT | 0 | 0 | 0 | 8,791 |
| Imports – Countries with AD Measures | MT | 31,929 | 42,015 | 55,243 | 50,606 |
| Imports – Other Countries | MT | 205 | 750 | 0 | 0.32 |
| Demand/consumption | MT | 46,606 | 49,190 | 59,280 | 70,551 |
| *Trend* | | *100* | *106* | *127* | *151* |

**POI: 2015-16*

## I. Volume Effect of Dumped Imports and Impact on Domestic Industry

### a) Import Volumes and Share of Subject Country

21. 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. The imports of the subject goods from Saudi Arabia started only from January 2016 in the POI. There were no imports of the subject goods from the subject country till December 2015.

| **Particulars** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Imports - | | | | | |
| Subject Country | MT | 0 | 0 | 0 | 8,791 |
| Countries with AD Measures | MT | 31,929 | 42,015 | 55,243 | 50,606 |
| Other Countries | MT | 205 | 750 | - | 0.32 |
| Total Imports | MT | 32,134 | 42,765 | 55,243 | 59,397 |
| Demand | MT | 46,606 | 49,190 | 59,280 | 70,551 |
| Production | MT | 14,409 | 5,484 | 4,203 | 11,080 |
| Subject imports in relation to - | | | | | |
| Total Imports | % | No imports from Subject country | | | 15% |
| Consumption | % | | | | 12% |
| Production | % | | | | 79% |

## J. Price Effect of the Dumped Imports on the Domestic Industry

22. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows:

*"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."*

23. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any.

**a) <u>Price Undercutting</u>**

24. The Authority has compared landed price of imports from the subject country with net sales realization of the domestic industry, net of all rebates and taxes, at the same level of trade. This comparison shows that during the period of investigation, the subject goods originating in the subject country were imported into the Indian market at prices which were lower than the selling prices of the domestic industry. The Authority notes that DI has stated that the Authority has not clarified Price underselling/ Price undercutting as being positive or negative. The Authority confirms that the data in table clearly implies a positive Price underselling and Price Undercutting.

| **Particulars** | **Unit** | **POI** |
|---|---|---|
| Net Selling Price | Rs/Kg | *** |
| Landed Price | Rs/Kg | 39.43 |
| Price undercutting | Rs/Kg | *** |
| Price undercutting | % | 25-35% |
| Price undercutting | Range (%) | 25-35% |

**b) <u>Price Underselling</u>**

25. The Authority notes the price underselling quantum of the domestic industry on account of dumped imports from the subject country. For this purpose, the NIP determined for the domestic industry has been compared with the landed price of imports from the subject country. However whether this price underselling is attributable unambiguously to the dumped imports requires a causal analysis which is stated in the later paras of this finding.

| **Particulars** | **Unit** | **POI** |
|---|---|---|
| Non-injurious Price | Rs/Kg | *** |
| Landed Price | Rs/Kg | 39.43 |
| Price underselling | Rs/Kg | *** |

| | | |
|---|---|---|
| Price underselling | % | 55-75% |
| Price underselling | Range (%) | 55-75% |

**c) Price Suppression/Depression**

26. 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. The position is shown as per the table below:

| **Particulars** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Selling Price | Rs/Kg | *** | *** | *** | *** |
| *Trend* | Indexed | *100* | *110* | *92* | *73* |
| Cost of Sales | Rs/Kg | *** | *** | *** | *** |
| *Trend* | Indexed | *100* | *112* | *113* | *79* |

27. The Authority notes that the imports from Saudi Arabia came into India only during the POI. The imports started from January 2016. It is seen that the costs of sales of domestic industry reduced from 113 indexed points in 2014-15 to 79 indexed points during the POI. During the same period, selling price of the domestic industry reduced from 92 indexed points to 73 indexed points.

**K. Economic parameters of the domestic industry**

28. Annexure II to the Anti-dumping Rules requires that determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The 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 and the ability to raise capital investments. An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury. The various injury parameters relating to the domestic industry are discussed below.

**a) Production, Capacity, Capacity Utilization and Sales**

29. The performance of the domestic industry with regard to production, domestic sales, capacity & capacity utilization is as follows:

| **Particulars** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Capacity | MT | 22,500 | 22,500 | 22,500 | 22,500 |

| | | | | | |
|---|---|---|---|---|---|
| Production | MT | 14,409 | 5,484 | 4,203 | 11,080 |
| Capacity Utilization | % | 64.04% | 24.37% | 18.68% | 49.24% |
| Domestic Sales | MT | 14,472 | 6,425 | 4,037 | 11,154 |
| Demand | MT | 46,606 | 49,190 | 59,280 | 70,551 |

30. The Authority notes that the imports from Saudi Arabia came into India only during the POI. The imports started from January 2016. It is seen from the above table that the performance of the domestic industry had shown improvement in terms of production, sales volume and capacity utilization during the POI especially compared to two years prior to POI. The Authority notes that the capacity of the domestic industry remained same from base year to POI.

**b) <u>Profits, profitability, return on investment and cash profits</u>**

31. The cost of sales, selling price, profit/loss, cash profits and return on investment of the domestic industry has been analyzed as follows:

| **Particulars** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Cost of Sales | Rs/Kg | *** | *** | *** | *** |
| *Trend* | *Indexed* | *100* | *112* | *113* | *79* |
| Selling Price | Rs/Kg | *** | *** | *** | *** |
| *Trend* | *Indexed* | *100* | *110* | *92* | *73* |
| Profit/Loss (per unit) | Rs/Kg | *** | *** | *** | *** |
| *Trend* | *Indexed* | *-100* | *-155* | *-732* | *-268* |
| Profit/loss total | Rs. Lacs | *** | *** | *** | *** |
| *Trend* | *Indexed* | *-100* | *-69* | *-204* | *-206* |
| Profit before interest | Rs. Lacs | *** | *** | *** | *** |
| *Trend* | *Indexed* | *-100* | *-58* | *-305* | *-280* |
| Cash Profit | Rs. Lacs | *** | *** | *** | *** |
| *Trend* | *Indexed* | *-100* | *-82* | *-308* | *-290* |
| Return on Investments | % | *** | *** | *** | *** |
| *Trend* | *Indexed* | *-100* | *-67* | *-360* | *-379* |

32. The Authority notes that the imports from Saudi Arabia came into India only during the POI. The imports started from January 2016. It is seen from the above table that the domestic industry was suffering losses throughout the injury period and also in POI. The loss as well as cash loss was at its peak during the year 2014-15. The loss as well as cash loss continued in POI but reduced during the POI.

**c) <u>Market Share</u>**

33. The share of imports from Subject Country and the domestic industry is as below:

| **Market Share** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Domestic Industry | % | 31% | 13% | 7% | 16% |
| Subject country | % | 0% | 0% | 0% | 12% |
| Countries with AD Measures | % | 69% | 85% | 93% | 72% |
| Other Countries | % | 0% | 2% | 0% | 0% |

34. It is seen from the above table that the market share of the domestic industry has improved in the POI. The Authority notes that imports from subject country came into India only during POI, and attained a market share of 12% during POI.

**d) <u>Employment, Productivity and Wages</u>**

35. The position with regard to employment, wages and productivity is as follows:

| **Particulars** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Employment | Nos. | *** | *** | *** | *** |
| *Trend* | *Indexed* | *100* | *98* | *97* | *93* |
| Wages | Rs. Lacs | *** | *** | *** | *** |
| *Wages* | *Indexed* | *100* | *103* | *112* | *107* |
| Productivity per day | MT per day | *** | *** | *** | *** |
| *Trend* | *Indexed* | *100* | *38* | *29* | *77* |
| Productivity per employee | MT | *** | *** | *** | *** |
| *Trend* | *Indexed* | *100* | *39* | *30* | *82* |

36. The level of employment has slightly declined over the injury period and POI. However, productivity per day and productivity per employee has slightly improved during the POI.

**e) <u>Inventories</u>**

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

| **Particulars** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Average Inventory | MT | *** | *** | *** | *** |
| *Trend* | *Indexed* | *100* | *50* | *11* | *16* |

38. It is seen that the average inventory level of domestic industry has come down significantly during the POI which shows that the domestic industry is able to sell whatever it produces.

**f) <u>Growth</u>**

39. The data relating to growth of the domestic industry is shown in the following table:

| **Growth** | **Unit** | **2012-13** | **2013-14** | **2014-15** | **POI** |
|---|---|---|---|---|---|
| Production | MT | - | -62% | -23% | 164% |
| Domestic Sales | MT | - | -56% | -37% | 176% |
| Cost of sales | Rs./Kg | - | 12% | 1% | -30% |
| Selling price | Rs./Kg | - | 10% | -16% | -21% |
| Loss | Rs./Kg | - | 55% | 373% | -63% |
| ROI | % | - | 1% | -6% | 0% |
| Market Share | % | - | -18% | -6% | 9% |

40. The Authority notes that the growth of the domestic industry in terms of the volume parameters such as, production, sales volume, market share etc. shows improvement in the POI. Information in terms of price parameters, such as profits, ROI shows that these parameters have remained negative throughout the injury investigation period and POI cost of sales declined during POI. However, imports from Saudi Arabia started only in January, 2016.

**g) Ability to raise capital investments**

41. The Authority notes that the imports from the subject country have happened only during the last three months of the POI. The domestic industry has been suffering losses throughout the injury investigation period and the POI.

**h) Level of dumping & dumping margin**

42. It is noted that imports from the subject country are entering the country at dumped prices and that the margin of dumping is above de-minimis limits.

**i) Factors Affecting Domestic Prices**

43. The authority notes that the domestic industry has been making losses throughout the injury period and POI. Prices of domestic industry remained suppressed during 2012-13, 2013-14, 2014-15 and 1st April 2015 to 31st December 2015 due to factors other than the imports from subject country. Even during the three months period when imports from subject country came into India, they only came at the prices prevailing at that point of time as set by other countries which were the dominant player in the Indian market.

## L. Observations on Injury

44. Imports from the subject country had entered India during the last 3 months of POI. There were no imports from the subject country during the previous 3 years as well as first 9 months of POI. Prices of domestic industry remained suppressed throughout the injury investigation period and the POI. It is but obvious that the suppressed prices of the domestic industry during 2012-13, 2013-14, 2014-15 and 1st April 2015 to 31st

December 2015 were due to factors other than the imports from subject country.

45. Performance of the domestic industry has shown improvement during the POI with respect to sales, production, capacity utilization, market share and inventory.

46. The domestic industry has been suffering losses throughout the injury period and also in POI. The loss as well as cash loss was at its peak during the year 2014-15. The loss as well as cash loss reduced during the POI.

## M. Evaluation of Causal Link

47. The Authority notes that the interested parties have argued that injury to the domestic industry is due to their dependence on one source of propylene, plant shutdown of its supplier i.e. HPCL due to fire accidents, dumping from other countries in the POI and other factors like inevitability to import due to huge demand supply gap. The Authority considered these aspects while undertaking evaluation of causal link between Dumping and consequential Injury.

48. It is noted that the imports from Saudi Arabia started in January, 2016 and the share of the imports from subject country constituted 12% of the total market share during POI. There were no imports during first nine months of the period of investigation i.e. April 2015 to December, 2015.

49. Annexure II para (v) of the AD Rules lays down as follows:

"*It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry*."

50. The Authority notes that during the POI, the imports from Saudi Arabia i.e. Subject Country occurred during last 3 months i.e. January-March 2016. In the first 9 months of POI and the preceding 3 years, imports were mainly from Malaysia, European Union, USA, South Africa and Singapore which were subjected to Anti-dumping levy in April 2016 i.e. Post POI. The Authority notes that import price from all/some of these countries shows declining trend during April 2015 to March 2016 which is also manifested in the corresponding declining Net Sales Realization (NSR) of the Domestic Industry.

51. The Authority had reexamined appropriate segregation of various factors so as to evaluate the causal link aspect along with the threat of injury to DI from the imports

from subject country. The Authority had reexamined whether other factors listed below under the Antidumping Rules could have contributed to injury to the domestic industry for examination of causal link between dumping and material injury to the domestic industry.

**a) <u>Imports from third countries</u>**

52. The Authority had examined the import data of the subject goods obtained from DGCI&S on transaction-wise basis in the original investigation. The Authority recalls that the imports from Saudi Arabia came into India only during the POI. The imports started from January 2016. It is also noted that the domestic industry was suffering losses during 2012-13, 2013-14, 2014-15 and during the period of investigation. In the first 9 months of POI and the preceding 3 years, imports were mainly from Malaysia, European Union, USA, South Africa and Singapore which were subjected to Anti-dumping levy in April 2016 i.e. Post POI. The Authority had reexamined price trend from the subject country and other countries for last 3 months of POI as under.

53. Data pertaining to last 3 Months of POI (January to March 2016) is as follows as also stated in original investigation:

| SN | Particulars | Unit | Jan to Mar 16 |
|---|---|---|---|
| 1 | Landed Price- Saudi Arabia | Rs/Kg | 39.43 |
| 2 | Landed Price- Countries attracting ANTI-DUMPING DUTY | | |
| A | EU | Rs/Kg | 59.19 |
| B | Malaysia | Rs/Kg | 37.83 |
| C | South Africa | Rs/Kg | 39.75 |
| D | USA | Rs/Kg | 38.38 |
| E | Singapore | Rs/Kg | 38.36 |
| 3 | NSR | Rs/Kg | *** |
| 4 | Price undercutting | | |
| A | Saudi Arab | Rs/Kg | *** |
| B | EU | Rs/Kg | *** |
| D | Malaysia | Rs/Kg | *** |
| E | South Africa | Rs/Kg | *** |
| F | USA | Rs/Kg | *** |
| G | Singapore | Rs/Kg | *** |

It is seen from the above table that imports from Malaysia, USA and Singapore came at prices lower than the prices of the subject country and the imports from South Africa came at almost the same price as that of the subject country during the period of January 2016 to March 2016. Therefore Malaysia, USA, South Africa and Singapore have continued to exert price pressure on the domestic industry and set the prices in the domestic market. Imports from Saudi Arabia came into India to bridge the demand-

supply gap and came at prices prevailing at that point of time which were set by the major exporting countries like Malaysia, USA, South Africa and Singapore. The Authority during this remand investigation examined the behavior of imports from the subject country further under the threat of injury examination based on post POI import data as available.

**b) Contraction in demand**

54. The Authority notes that the demand for the subject goods has shown significant improvement during the injury period. Possible contraction in demand could not have caused injury to the domestic industry.

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

55. The Authority notes that there is no trade restrictive practice which could have contributed to the injury to the domestic industry.

**d) Developments in technology**

56. The Authority notes that the technology adopted and manufacturing process adopted by the domestic industry is quite comparable with that adopted by producers in the subject country.

**e) Changes in pattern of consumption**

57. The domestic industry is producing the subject goods that have been imported into India. Possible changes in the pattern of consumption are not a factor that could have caused claimed injury to the domestic industry.

**f) Export performance**

58. Petitioner has not exported the product under consideration. Thus, the claimed injury to the domestic industry is on account of domestic operations only.

**g) Performance of the domestic industry with respect to other products**

59. The performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the domestic industry's performance. The information considered by the Authority is with respect to the product under consideration only.

**h) Injury Margin**

60. The Authority notes that Hon'ble High Court has not made any specific observations with regard to quantum of injury margin in its order dated 31st July, 2018. The Authority further notes that none of the interested parties have raised any issues with regard to the injury margin in the present proceedings. Therefore, the Authority is not revisiting its examination with respect to injury margin quantum in the present final finding.

## N. Threat of Injury and Post POI Analysis

61. In view of the specific directions of Hon'ble High Court vide its order dated 31st July, 2018, the Authority analysed whether there could be a possibility of threat of material injury to domestic industry because of imports from the subject country.

62. With regard to the threat of injury, Annexure II para (vii) of the AD Rules lays down as follows:

*"(vii) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the designated authority shall consider, inter alia, such factors as:*

*(a) a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;*

*(b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;*

*(c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and*

*(d) inventories of the article being investigated*."

63. With regard to the threat of material injury, the Authority notes as follows:

(a) The Authority notes that imports from subject country entered only during last three months of the period of investigation i.e. from January, 2016 to March, 2016. In order to examine whether there has been a significant rate of increase of dumped imports into India from the subject country, the imports need to be compared with a base period. In the present scenario, there are no imports during 2012-13, 2013-14 and 2014-15, any import occurring during POI would therefore automatically show an increase. Therefore, imports during last 3 months of the period of investigation will not lead to conclusion. The Authority notes that in the petition of the domestic industry in the original investigation which culminated into final findings dated 28th November, 2017, the petitioner had claimed material injury and not threat of injury. In view of the Hon'ble High Court order dated 31st July, 2018, the Authority analysed the post POI period data to examine whether there is a threat of material injury to the domestic industry.

The Domestic Industry submitted that there are significant imports from subject country in January 2016 – March 2016 and the capacity of subject goods in Saudi Arabia is significant enough for imports during post POI. However, on the other hand, the submissions of Kingdom of Saudi Arabia states that the purpose of the setting up of 3,30,000 capacity is to be used captively to manufacture value added products like

Butyl Glycol Ether (BGE), Butyl Acrylate etc. In order to examine above submissions, the Authority analysed post POI data. As per latest DGCI&S data, imports from subject country started only during last three months of the period of investigation i.e. from January, 2016. The trend of post POI imports is as under:

| **Particulars** | **Qty (MT) 2016 - 17** | **Qty (MT) 2017 - 18** | **Qty (MT) 2018 - 19** |
|---|---|---|---|
| April – June | 9372 | 5893 | Nil |
| July – September | 8147 | 5567 | Nil |
| October – December | 4447 | 5983 | - |
| January – March | 5529 | 570 | - |
| Total | 27495 | 18013 | Nil |

(b) The Authority during exporter verification had noted that the commercial production of producer started only on 1st March, 2016. The Authority further notes that SABUCO is a joint venture company formed by Sadara Chemical Company, Saudi Acrylic Acid Co., and Saudi Kayan Petrochemical Co. each with one-third shareholding. SABUCO converts propylene into Normal Butanol and Iso Butanol on tolling basis for the three joint venture companies.

(c) The Authority notes that the imports from Saudi Arabia came into India only during the POI. The imports started from January 2016 and the domestic industry was suffering losses throughout the injury period and also in POI. The loss as well as cash loss was at its peak during the year 2014-15. The losses reduced during the POI. The Authority further notes that the costs of sales of domestic industry reduced from 113 indexed points in 2014-15 to 79 indexed points during the POI. During the same period, selling price of the domestic industry reduced from 92 indexed points to 73 indexed points.

(d) The Authority also notes that to establish the inventory available with the participating producers was indeed significant to establish threat of material injury would require a reasonable duration of imports from the subject country. The Authority notes that the capacity of subject goods of SABUCO is 3,30,000 MT with imports from the subject country during period of investigation being 2.6% of the total capacity, 8.33% in 2016-17 of the total capacity, 5.45% in 2017-18 of the total capacity and Nil imports in 2018-19 of the total capacity. The Authority therefore considered the post POI trend for conclusively establishing the threat of injury to domestic industry.

## O. <u>Post Disclosure Comments</u>

### (a) Submissions made by the domestic industry:

64. The domestic industry had made the following submissions:

(i) The authority had earlier declined to recommend anti-dumping duty primarily on the following grounds.

a. Commercial production of just one month also constrains determination of a representative and realistic normal value for operating producers/exporters.
b. Period of last 3 months of exports in the POI of subject goods from Saudi Arabia is not sufficient to evaluate injury to the domestic industry.

c. Causal Link between imports from Saudi Arabia and injury to the domestic industry is not conclusively established on the basis of 3 months of export period.

(ii) The Hon'ble High Court however held as follows:

*"On the above analysis, this Court finds that the designated authority, having recorded findings in support of the* ***injury sustained by the domestic industry*** *by dumping of like* ***products*** *by exporters/ producers from Saudi Arabia, failed to carry through on the same note and strangely* ***did a volteface, when it came to the final recommendation****."*

*"….In the case on hand, as already noted supra, the findings recorded by the designated authority clearly demonstrated sufficient evidence of dumping within the short span of three months by the exporters/ producers from Saudi Arabia and also* ***the injury caused to the domestic industry thereby****. Therefore, the designated authority could not have taken recourse to this clause for justifying the termination of investigation. In fact, none of the clauses in Rule 14, which deals with termination of investigation, had application whereby the designated authority could have taken such a step."*

(iii) The sole issue before the DA for not recommending ADD was the alleged short period of three months and allegedly absence of causal link for this reason. However, this very basis of the authority for declining to recommend ADD was held inappropriate/incorrect by High Court. Such being the case, it would not be appropriate now to once again consider the very same facts and decline the protection to the domestic industry. The disclosure statement has analysed injury to the domestic industry by repeatedly referring to three months period and ostensibly considering that the said period is insufficient to hold injury or causal link. The disclosure statement ignores the order of High Court and tantamount to once again considering the very same basis which was held to be incorrect by the High Court.

(iv) The disclosure statement is indicative of a consideration by the DA that since subject dumped imports were present only in three months of the POI out of twelve months POI and further since the domestic industry was suffering injury even in nine months prior to commencement of imports from Saudi Arabia, it implies that there are "other factors" which are causing injury to the domestic industry. The petitioner requests the Designated Authority to kindly disclose such essential fact to the petitioner in case the Designated Authority has found that there is some other factor which has caused injury to the domestic industry.

(v) The Designated Authority may kindly follow the Hon'ble High Court judgment wherein, it was categorically held that 3 months imports in the POI are sufficient to determine dumping and consequent injury to domestic industry. The Authority has determined positive and, in fact, significant dumping margin and injury margin in respect of exports made by the exporters from Saudi Arabia. The Hon'ble High Court has also observed in this regard that the findings recorded by the designated authority clearly demonstrates sufficient evidence of dumping and the domestic industry suffered injury. There is no legal requirement under the law that the dumped imports should exist in the entire period of investigation.

(vi) Rule 16 dealing with disclosure of essential facts under consideration implies that the Designated Authority will disclose "all essential facts under consideration" of the authority which shall form the basis of its determination. The authority is required to make determination based on only those facts which have been disclosed in the final findings.

Considering the Rule 16, therefore, the petitioner requests the authority to kindly consider the facts as disclosed in the disclosure statement as the upper limit of essential facts under consideration. Further, in case the Designated Authority has found any other essential fact, the petitioner requests its disclosure to the domestic industry.

(vii) The Authority is requested to kindly refer to the final finding earlier issued in the case. It is evident that without any change in facts, the Authority has done injury analysis in the current disclosure differently from the way it had conducted in the original finding. The analysis with regard to import volumes, share of subject country, price undercutting, price underselling and post POI analysis is different irrespective of no change in facts and circumstances of the case.

(viii) With regard to conclusion on injury in the previous Final finding, the Authority in the disclosure statement has taken contrary view in para 47 to 49 of the disclosure statement. The segregated injury analysis in the previous finding in para 77 to 79 done by the Authority is completely missing in the present disclosure statement. The Authority without any reason deleted the same in the present disclosure statement. It is requested that another disclosure statement be issued, incorporating the same analysis. It is relevant to note that even Hon'ble High Court observed the same in the judgment.

(ix) The Authority has very carefully analyzed and highlighted that the prices of imports from Saudi Arabia was determined on the basis of prices of the subject good from Malaysia, USA, South Africa and Singapore. The Authority for the purpose of current investigation has taken such an discriminatory approach towards treatment of dumped imports when the designated authority found that several other countries who were exporting the very same product to India had been subjected to anti-dumping measures, allowing exporters/producers from Saudi Arabia to do so without subjecting them to the same anti-dumping measures, even though their activities within a short span of three months clearly indicated their invasive capturing of the domestic market and the consequential injury to domestic industry.

(x) Under the Anti-dumping Rules, there is no mandate to pick and choose the country among subject counties for imposition of anti-dumping duty. Rule 19 of anti-dumping Rules provides that imposition of duty shall be on non-discriminatory basis.

(xi) Whereas if we look into the practice of the Designated Authority; the presence of dumped imports from other countries have never been treated as an excuse for another country to dump a good in India and the same being appreciated and acknowledged by the Authority. Reference in many previous investigations viz. PVC suspension from EU and Mexico, Sunset Review Investigation on Pentaerythritol from China PR and Anti-Dumping investigation on Hexamine from China PR and UAE, the Authority had recommended duty on imports from dumped good from one set of subject countries while there were significant dumped imports from another set of subject countries who were attracting Anti-Dumping Duty.

(xii) It is submitted that never before in the history has dumped imports from other subject countries attracting Anti-Dumping Duty were considered as a cause of injury while examining causal link from the new sources.

(xiii) Para (v) of the annexure II refers to injury to the domestic industry due to other factors. While referring to such other factors, the rule provides that the authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the

volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. The rule further identifies certain factors which could be considered relevant and would be existing at the same time and causing injury to the domestic industry. The disclosure statement repeatedly refers to the possible "other factors" without identifying any, except dumped import from other sources. The petitioner is therefore making these submissions on the basis of its understanding of the disclosure statement that none of the other listed known factors have caused injury to the domestic industry and barring imports from other countries, the Designated Authority has not found any other factor which could be responsible for causing injury to the domestic industry.

(xiv) It is also relevant to consider Rule 16 and Para (v), Annexure II. Reference to other factors listed under Annexure II when read with Rule 16 makes it very evident that the other factors referred in Annexure II are in the nature of facts. Since this is in the nature of facts, the authority is required to disclose that whether injury to the domestic industry has been caused by any other such factor.

(xv) A question that may arise for consideration in the present case is whether dumped import from other sources can constitute other factor causing injury to the domestic industry. Following are relevant in this regard.

- The final findings issued by the authority in respect of imports from Malaysia, Singapore, South Africa and USA concluded as follows:

  i. The domestic industry has suffered material injury and the same is established on price undercutting and underselling without considering decline in volume parameters such as production, sales, capacity utilization, and inventories.
  ii. The performance of the domestic industry has deteriorated due to dumped imports from subject country.
  iii. The causal link between dumped imports and injury can be established from the facts that imports are significant in terms of absolute terms and relative terms.
  iv. The imports of the product under consideration are causing price suppression and are preventing the domestic industry from raising the prices. Consequently, profits, cash flow and ROI has declined.
  v. The subject imports are resulting in price underselling in the market.
  vi. The growth of the domestic industry became negative in terms of a number of price and volume related economic parameters. While negative growth in volume parameters could be due production suspension, negative growth in the price parameters is primarily due to dumping of the product in the country.

(xvi) It is thus evident that the imports from other country were found as dumped imports and were found to have caused injury to the domestic industry to such an extent that the authority considered it appropriate to recommend ADD on these imports. Since these imports from other countries are dumped imports, it could be considered that the domestic industry was suffering injury from dumped imports from EU, Malaysia, Singapore, South Africa and USA during the relevant period of the present case.

(xvii) The scope of Para (v) of Annexure II under other factors does not however include dumped imports from other sources. The listing of factors such as the volume and prices of

imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry clearly shows the rules have distinguished and differentiated between dumped import as one factor and other factors such as the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry as other factors. Thus, the authority is not required to segregate injury caused to the domestic industry due to other dumped imports.

(xviii) Following WTO panel report is relevant in this regard.

**i. WTO Panel Report in the matter of Malleable Cast Iron- Tube or pipe fittings from Brazil., wherein the Panel noted as follows**

*In its determination, the European Communities identified certain factors, other than dumped imports, that were potentially causing injury to the domestic industry including imports from third countries not subject the investigation; decline in consumption and substitution. With respect to each of these factors individually, the European Communities conducted a separate examination and found either that it "is not such as to have contributed in any significant way to the material injury suffered by the Community industry"(decline in consumption);313 that it made "no significant contribution" (export performance) or that "no significant influence" could have resulted (own imports of the product concerned),314 that it cannot have significantly contributed to injury (substitution),**315 or (in the case of imports from the countries not subject to the investigation) "even if imports from other third countries may have contributed to the material injury suffered by the Community industry, it is hereby confirmed that they are not such to have broken the causal link between the dumping and the injury found").**316 The European Communities concluded that any other factors that may have contributed to the injury to the domestic industry were "not such as to have broken the casual link" between dumped imports and injury.3*

*7.368 These aspects of the EC determination indicate to us that the European Communities analysed individually the causal factors concerned and identified the individual effects of each of these causal factors. With respect to each of the factors, the European Communities concluded that the extent of the contribution to injury was not significant, or, in one case, extrapolated that, even if the effect were significant, it would not be such as to "break the causal link" between dumped imports and material injury. The European Communities' overall conclusion was that none of these factors had an effect that was such to have broken the causal link between dumped imports and material injury.*

(xix) It is evident from the above that dumped imports from other sources in any case cannot be an "other factor" of injury for causal link analysis. The petitioner also brings kind attention to past determinations made by the authority in the CDR, DVDR and PVC suspension case in this regard.

(xx) The authority has considered import up to the period, September, 2018 for the purpose of threat analysis, which implies consideration of 30 months data after the POI. Petitioner submits that firstly, there is no mandate under the Rules to consider post POI data for the purpose of threat of injury analysis. However, in practice, the Authority has never considered data beyond 6 months for the purpose of post POI analysis. In the context of sunset review investigations and wherever authority has not found continued dumping and injury in the POI, the authority has considered post POI data. However, the authority has invariably considered only 6 months data for post POI analysis. In fact, in the matter of mid-term review concerning Phenol and Acetone, the DI heavily contended that the market situation was extremely temporary and the authority should consider last one year data after the post POI. The authority however declined to consider post POI beyond 6 months stating that post POI data cannot be considered for more than 6 months period. Such being the case, consideration of import data for the period up to September, 2018 is inappropriate and unjustified. The petitioner requests the authority to kindly consider imports only up to September 2016 as the post POI for the present purpose. Import data for the period after October 2016 cannot be adopted for the purpose of threat analysis.

(xxi) Keeping the analysis of post POI data open-ended brings speculation and unsurety in the data to be analyzed. It has been a constant practice of the Designated Authority to have taken a period of 6 months for the purpose of the post POI analysis. The same can be concluded from the list of cases detailed below:

a. Anti-Dumping Investigations on imports of 'Front Axle Beam and Steering Knuckles meant for heavy and medium commercial vehicles' originating in or exported from China PR
b. Anti-dumping investigation on imports of 'Viscose Staple Fibre excluding Bamboo fibre' originating in or exported from China PR and Indonesia
c. Sunset Review (SSR) investigation of Anti-Dumping duty on imports of 'Polypropylene originating in or exported from Singapore.
d. Anti-dumping investigation (Sunset Review) concerning imports of "Melamine" originating in or exported from European Union, Iran, Indonesia and Japan.
e. Sunset Review of Anti-dumping investigation concerning imports of Vitamin-A Palmitate originating in or exported from China PR and Switzerland.
f. Sunset Review (SSR) anti-dumping investigation concerning imports of 'Digital Versatile Discs-Recordable of all kinds (DVD-R)' originating in or exported from Vietnam and Thailand.
g. Sunset Review (SSR) Anti-dumping investigation concerning imports of 'Front Axle Beam' and 'Steering Knuckles' meant for heavy and medium commercial vehicles originating in or exported from China PR.

(xxii) The abovementioned cases clearly shows that whether it is original investigation or sunset review investigations, the Authority has constantly referred to period of 6 months only as the post POI. However the current disclosure issued has kept the post POI period open –ended.

(xxiii) Even otherwise with regard to threat of injury, petitioner submits that in the disclosure statement, Authority merely referred the parameters but did not examined all the mandatory parameters, petitioner submits that the parameters mentioned in the Annexure-II, paragraph- (vii) are mandatory in nature. We request the authority to examine the same to conclude on threat of material injury.

(xxiv) The Authority in the disclosure statement has stated under various paragraphs no. 56, 46 that the prices of imports from Saudi Arabia was guided by the prices offered by Malaysia, USA, South Africa and Singapore as they were the dominant players in the market setting the prices. Petitioner submits as follows in this regard:

a. Never before, the Authority has considered whether import price from one dumped sources were influenced by dumped imports from other sources.
b. There is no provision under the law which requires the Authority to consider this analysis
c. There is no provision under the law which states that the Designated Authority shall exonerate those dumped sources from payment of ADD where the dumping was triggered due to dumped from other countries.
d. It is entirely immaterial whether Saudi producer followed the prices of other dumped sources.
e. Assuming that Saudi producer followed the prices of other dumped sources, the same per se establishes that the Saudi producer joined injury to the domestic industry caused by the NBA-1 countries by resorting to dumping.
f. this fact itself cannot be a justification for the exporters in Saudi to export the subject goods at dumped prices. Dumping a product in a market should be condemned if it is causes injury to the domestic industry.
g. Imports from EU (and even other countries) in NBA-1 case were at a higher prices. But, the Designated Authority did not conclude similar to what is proposed in the present case.
h. Even in NBA-1 case, it is not that 4 countries were at the same time setting the prices. It is obvious that some country was setting the prices and others were following. This is true for any case where more than one source is involved. Petitioner fails to understand and appreciate what is special in the present case.

(xxv) The Authority in para 66(a) of the disclosure statement brings a new fact which was not considered by the Authority while concluding the Final findings. Petitioner submits that this cannot be considered now. The Saudi producer or Govt. can give an undertaking that the producer in Saudi shall not export the product to India, as its production is meant for captive consumption. The Designated Authority can consider suspension of investigations in that situation. Petitioner shall have no reservation or objection in this regard.

**(b) Submissions made by the exporters, importers and Other Interested Parties/ other Parties**

65. M/s LKS representing SABUCO, SADARA, SAAC, PETROCHEM, TASNEE MARKETING and TOYOTA submitted the following:

(i) WTO Committee on Anti-dumping Practices provides that period of data collection in an anti-dumping investigation should be of at least six months. In the present case, the POI was effectively of three months only as the imports happened from Saudi Arabia only during the last three months of POI i.e. January, 2016 to March, 2016. On this ground itself, the investigation should be terminated.

(ii) While examining the injury parameters, the Authority has observed positive improvements in almost all the volume parameters such as production, sales volume, capacity utilization, market share and inventory of the Domestic Industry during the period of investigation. On volume parameters, the Domestic Industry is not facing any injury during POI. We request the Authority to kindly confirm this fact in the final findings.

(iii) The Authority while analyzing price suppression/depression has noted that the imports from Saudi Arabia took place during the last three months of the POI i.e. January, 2016 to March, 2016. The costs of sales of domestic industry reduced from 113 indexed points in 2014-15 to 79 indexed points during the POI (decline of 34 indexed points) whereas the selling price of the domestic industry reduced from 92 indexed points in 2014-15 to 73 indexed points in POI (decline of 19 indexed points). This clearly shows that there is no price suppression suffered by the domestic industry during the POI. Therefore, imports from Saudi Arabia cannot be said to be causing any price suppression as imports from Saudi Arabia took place only in last three months of the POI. We request the Authority to kindly confirm this fact in the final findings.

(iv) With regard to price parameters analysed in para 34 and 35 of the disclosure statement, the Designated Authority has noted that the imports from Saudi Arabia came into India only during the last 3 months of POI. However, the domestic industry was suffering losses for the entire period of investigation including injury investigation period. The Authority has observed that losses and cash losses were at their peak during 2014-15 and reduced in POI. This clearly shows that the imports from Saudi Arabia were not responsible for the losses suffered by the Domestic Industry during the entire injury investigation period and the POI and there is complete absence of any causal link between the imports of subject goods from Saudi Arabia and the losses suffered by the domestic industry. We request the Authority to kindly confirm this fact in the final findings.

(v) The Authority in para 53 – 55 of the disclosure statement has noted that the imports from Saudi Arabia came into India only during the last 3 months of POI. However, the Domestic Industry was suffering losses due to imports from countries other than Saudi Arabia during the entire injury investigation period including the POI. It is submitted that imports from Saudi Arabia during last 3 months of POI entered into the Indian market at the prices prevailing in India at that point of time and fixed by other countries who were the dominant players in the Indian market. It is also submitted that imports from some of the other countries came at prices even lower than the prices of Saudi Arabia during the last 3 months of the POI. Therefore, there is neither any causal link nor any threat of material injury to the domestic industry due to the imports of subject goods from Saudi Arabia. We request the Authority to kindly confirm the same in the final findings.

(vi) The observations of the Authority in para 66 of the disclosure statement clearly demonstrate that there is no threat of material injury to the domestic industry due to the imports of subject goods from Saudi Arabia as the imports from Saudi Arabia have significantly declined in 2017 – 18 and have completely stopped during 2018-19. We request the Authority kindly confirm these observations in the final findings.

(vii) No exports of Normal Butanol have been made by SAAC and SADARA to either India or to any other country in 2018-19. The primary objective of entering into the joint venture agreement for SAAC and SADARA was to get Normal Butanol which would be used for captive consumption either by them or by their related companies to manufacture value added products like Butyl Acrylate and Butyl Glycol Ether (BGE).

(viii) Mere creation of additional capacity in subject country is not sufficient for presuming that there may be diversion of goods to the Indian market or would lead to dumping of the subject goods into India. In this regard, the Respondents also rely on Indian Spinners Association v. Designated Authority wherein the Hon'ble CESTAT found that mere existence of surplus capacities would not be indicative of an imminent threat of injury.

(ix) Respondents submit that the Domestic Industry is trying to take undue advantage of a small window of three months of imports from Saudi Arabia and trying to get Anti-Dumping Duty imposed on imports of subject goods from Saudi Arabia. The respondents are making this statement because the facts of the case clearly demonstrate that imports from Saudi Arabia took place during the last three months of the POI i.e. January, 2016 to March, 2016 and have significantly declined in 2017-18 and become nil in 2018-19. The performance of the Domestic Industry has gradually improved since 2015-16 as outlined in its Annual Reports of respective years is tabulated below:

| **Particulars** | **2015-16 (Rs. in lakhs)** | **2016-17 (Rs. in lakhs)** | **2017-18 (Rs. in lakhs)** |
|---|---|---|---|
| Revenue from operations | 37580.83 | 37043.04 | 53275.25 |
| Profit/(loss) before tax | (2630.43) | (1090.47) | 4725.98 |

As can be seen from the above table, the performance of the Domestic Industry has drastically improved since the end of the POI. The Domestic Industry incurred losses of Rs. 2630.43 Lakhs in 2015-16 which reduced to Rs. 1090.47 Lakhs in 2016-17 and turned into good profits of Rs. 4725.98 Lakhs during 2017-18. We, therefore, request the Authority to terminate the present investigation and not to fall into the trap of the Domestic Industry whereby they want to get Anti-Dumping Duty imposed for five years based on imports during a small window of three months from Saudi Arabia wherein they were suffering losses due to imports from other countries and not due to imports from Saudi Arabia.

## P. Examination by the Authority

66. The Authority notes the submissions by various parties some of which are repetitive in nature and were addressed in the disclosure statement. To the extent fresh arguments have been made and considered relevant, the specific issues have been dealt at appropriate places in the findings above. The Authority has examined submissions of interested parties herein below to the extent relevant and not addressed elsewhere.

(i) The Authority notes various submissions of interested parties and holds that all relevant essential facts under consideration have been disclosed.

(ii) The domestic industry claims that the Authority has ignored the decision of the Hon'ble High Court because the sole issue before the Authority in this investigation is the absence of causal link due to short period of 3 months of imports from Saudi Arabia. Domestic industry also claims that the present disclosure statement should not contain additional facts and analysis that were not present in the previous final findings. The Authority notes that

the Hon'ble High Court directed the Authority to issue afresh determination based on the scheme and structure of the Anti-dumping Rules and also directed to analyze threat of material injury which was not examined in the previous findings. The Hon'ble High Court has not directed the Authority to recommend imposition of the anti-dumping duty without considering relevant facts under the scheme and structure of the Anti-dumping Rules. The Authority notes that the DI has submitted that the segregated injury analysis of 9 months and next 3 months of POI has been deleted in present disclosure by the Authority. The Authority in this regard recalls that in a segregated analysis in original finding, the Authority had confirmed about continued injury due to price depression to DI. However the Authority had attempted to conclusively establish a causal link between imports from Saudi Arabia and injury to DI which could not be established even on the basis of a segregated analysis. The Authority in this regard recalls Para 93(ii) of the original final finding dated 28th November, 2017. Therefore in the present remand investigation, when the post POI data is available, the authority as per the directions of the Hon'ble High Court has analyzed the same over a period of 2016-17, 2017-18, 2018-19 (till August, 2018) for the purpose of threat of material injury to DI as per the directions of the Hon'ble High Court. The Authority therefore holds that the disclosure statement contains essential facts which are in accordance with the scheme and structure of the AD Rules and after strictly complying with the specific directions of the Hon'ble High Court. This requires examining the trend of imports from Saudi Arabia in period past POI termed as Post POI which has been dealt in Para below.

(iii) With regard to post POI data, the domestic industry has contended that the post POI data should be restricted to 6 months while analyzing the threat of material injury considering the consistent practice of the Designated Authority for the purpose of post POI analysis. The Authority notes that the submissions of the domestic industry are not tenable on account of the following reasons. Firstly, no specific period is provided in the Act and AD Rules for the purposes of examination of threat of material injury. In a normal course of anti-dumping investigation, the Authority generally takes the recent post POI data which is available for not more than 6 to 9 months period. However, in the present facts of the case, the Authority has before it DGCIS import data as latest as August, 2018 which is not the case in other anti-dumping investigations. For the matter of convenience and availability of data with the Authority, the Authority generally takes most recent period which is usually 6 months post POI period. However, in the present investigation, data of more than 6 months available with the Authority cannot be ignored which allows the Authority to arrive at a fair conclusion. The Authority notes that the Hon'ble High Court's direction do not constrains the authority to examine threat of injury limited only to 6 months Post POI period till 30th September, 2016. Examining old data at this stage for threat of injury examination ignoring the recently available data will be unjust and unfair as only recent data would capture the true reality which no interested party should object keeping in view the circumstances of the case and also the directions of the Hon'ble High Court to strictly examine the case in accordance with the scheme and structure of the Rules of 1995. The Authority reiterates that obligation on it is to make objective assessment based on all facts available.

(iv) With regard to the submissions regarding analyzing dumped imports from other sources cannot be another factor of injury for causal link analysis, the Authority notes that in the present investigation, the facts are unique in nature as the imports from the subject country are nil during the injury investigation period and imports from Saudi Arabia have occurred only in the last three months of the period of investigation. There is an obligation on the Authority to examine whether the imports from the subject country can be primarily/mainly responsible for this penurious situation or other factors are responsible for causing injury to domestic industry. If other factors are primarily/mainly responsible for causing injury to the

domestic industry then imports from Saudi Arabia cannot be held responsible for causing injury to the domestic industry. During period of investigation, the Authority has observed positive improvements in almost all the volume parameters such as production, sales volume, capacity utilization, market share and inventory of the Domestic Industry. The price parameters were negative during injury investigation period and the period of investigation. The Authority notes that improvement in certain volume and price parameters happened in POI as compared to previous year/ previous 2 years. However since imports from Saudi Arabia did not occur during years prior to POI, and with performance on certain parameters showing improvement in POI, establishing nexus between imports from Saudi Arabia in POI and domestic industry's performance required close examination of import prices of other countries as well. Therefore, the Authority has examined other factors which are causing injury to the domestic industry. The Authority further notes that the Domestic Industry was suffering injury during injury investigation period due to dumped imports from EU, Malaysia, Singapore, South Africa and the USA and during period of investigation the import price from Saudi Arabia in last three months of POI was higher than Malaysia, Singapore and USA. All these factors led the Authority to reiterate that imports from Saudi Arabia cannot be primarily/mainly held responsible for the injury on the price parameters suffered by the domestic industry.

(v) With regard to discriminatory approach between treatment of dumped imports from other countries (on whom AD duty has been imposed) and allowing exporters/producers from Saudi Arabia to do exports without imposition of anti-dumping duty, the Authority holds that there is no discriminatory approach that has been adopted in the present investigation. The Authority notes that the contention of domestic industry is not correct as the DI is relying on Rule 19 which clearly states that there should be no discrimination between various producers/exporters in a country while imposing duties. In fact, contrary to the claim of the domestic industry, the Authority notes the Appellate Body Report in *European Communities – Definitive Anti-dumping Measures on certain Iron or Steel Fasteners from China* which interpreted Article 9.2 as under:

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

The Appellate Body interpreted that the non-discriminatory basis from all sources under Article 9.2 of Anti-Dumping Agreement refers to individual exporters or producers and not to the country as a whole. Therefore, the contention of the domestic industry is not correct that the Authority has taken a discriminatory approach towards treatment of dumped imports from other countries and allowing exporters/producers from Saudi Arabia to do exports without imposition of anti-dumping duty.

(vi) Domestic industry submits that para (v) of Annexure II refers to injury to the domestic industry due to other factors and the Authority shall not examine any other known factors not specifically listed in para (v). The Authority notes that the factors mentioned in Para (v) of Annexure II are indicative. The Authority while determining other factors has examined the imports from countries other than subject country which caused injury to the Domestic Industry as stated above. During these three months period when imports from subject country came into India, they came only at the prices prevailing at that point of time as set by other countries who were the major players in the Indian market. The Authority's view held in Para 93(ii) of the Original final finding is recalled.

(vii) Domestic Industry has cited past investigations wherein anti-dumping duty on subject goods has been recommended by the Authority on one set of countries and later on the other set of countries. The Authority recommends levy of duty on merits after analyzing dumping, injury and establishing causal link between dumping and injury. The facts and circumstances of the present investigation are quite different and the previous investigations cited by the domestic industry cannot be considered as a settled proposition of law especially when facts and circumstances in any investigation are in a distinct setting of price behaviors. The analysis done by the Authority is based on the facts and circumstances prevailing in that particular investigation. Therefore, the findings and outcome of those investigations can at best be indicative for similar situations. The Authority therefore reiterates that analysis of a particular investigation is totally different from other investigations done in the past and it is done on a case to case basis based on the facts and circumstances of a particular investigation as each case has its own unique facts.

(viii) With regard to contention of domestic industry for taking undertaking from Government of Saudi Arabia and producers/exporters from Saudi Arabia to produce subject goods for captive consumption and not to export to India, the Authority notes that in an Anti-Dumping investigation it has to examine dumping, injury and to establish causal link between injury and dumping. However, it is not permissible under the law to take undertaking from the Government of Saudi Arabia and producers/exporters from Saudi Arabia to produce subject goods for captive consumption and not to export to India. Therefore, the Authority holds that there is no provision under the Act and rules which enables the Authority to ask for such an undertaking from the Government of the subject country. In response to the disclosure, the Authority notes that DI has stated that Producers/exporters of Saudi Arabia or Saudi Government may give an under taking for non-exporting to India but have not mentioned any adverse impact of non-levy of AD duty on imports from Saudi Arabia on their economic performance post recommendation by the Authority. The Authority further notes from the Domestic Industry's audited financial reports available on its website and also submitted by the exporter that domestic industry's overall profitability improved despite non availability of AD measure on imports from Saudi Arabia. The Authority further notes that AD measure on 5 other countries i.e. EU, Malaysia, Singapore, South Africa and USA came in force in April, 2016 and it therefore appears that arresting the unfair imports from these countries improved the profitability, a consideration which the authority had acknowledged in para 93(ii) of the Original finding dated 28$^{th}$ November, 2017 which gets vindicated now.

(ix) The Authority holds that though imports from Saudi Arabia in 3 months of POI were significant, the Authority was bound as per the scheme and structure of the AD rules of 1995 to evaluate all essential parameters i.e. extent of dumping, extent of injury and most important the causal linkage between the dumping and injury to consider recommending levy of AD on dumped (unfair) imports under rule 17 of AD rules. Despite invasive capturing by Saudi Arabia, the non-conclusive establishment of causal link restrained the

Authority to recommend a measure as Causal Link is essentially a fundamental condition to recommend an AD levy. The Authority recognizes that AD rules need to be applied as per the scheme and mandate to protect the domestic industry from unfair trade practices. However, in event of non-fulfilment of any essential condition mandated under the rules, the Authority cannot traverse beyond the boundary of the mandate of AD rules to recommend an AD measure to protect the domestic industry. An AD measure as per AD rules is applied to the extent of injury or dumping whichever is lower so as to address the concerns of the user domestic industry also besides the injured domestic manufacturer. However in a situation like high quantity of imports where all conditions under AD rules are not met, an injured domestic manufacture can seek redressal under any other appropriate trade remedial measures.

(x) The Authority also holds that it needs to ensure compliance with the Hon'ble High Court's order wherein directions have been given to also examine threat of injury which the Authority did not consider earlier as the DI had not filed the application contending threat of material injury due to Imports from Saudi Arabia.

(xi) The Authority notes that the Hon'ble High Court has held that the Authority could not have taken recourse to terminate the investigation under Rule 14 of the AD Rules. The Authority after undertaking the detailed investigation issued the final findings under Rule 17 of the AD Rules, wherein a vital and non-negotiable parameter under Rule 17 (iii) reads as "to a causal link, where applicable, between the dumped imports and injury;" Therefore, failure to meet this condition could not have culminated into a positive recommendation of levy of an AD duty. Under such circumstances, the recommendation was to terminate the investigation which the Authority recommended under Rule 14 (b) which reads as "it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation". The applicable injury mentioned under Rule 14 (b) cannot be read delinked from existence of a causal link with dumping which is an integral part of recommending an AD measure under Rule 17. The Authority with this view terminated the investigation under Rule 14 (b). Noting that this conclusion under Rule 14 (b) created ambiguity of relevant provision of Authority's determination, the Authority hereby confirms that the termination of the investigation is under Rule 17 read with Rule 14 (b) of AD Rules.

(xii) The Authority notes that imports from Saudi Arabia during 3 months of POI were 8791 MT (annualized about 35000 MT). The post POI trend of imports from Saudi Arabia are noted as 27495 MT imports in 2016-17, 18013 MT imports in 2017-18 and 'Nil' from April 18 to August 18. The imports declined by almost 22% in 2016-17 and by 34% in 2017-18 and becoming Nil in the year 2018-19 (till August, 2018). With the declining trend reaching to a nil level has been without any measure imposed on imports from Saudi Arabia. The above trend therefore does not establish any threat of material injury to the Domestic Industry and in fact vindicates the recommendation of the Authority in the original findings that the imports from Saudi Arabia was insufficient to establish a conclusive causal link between dumping and consequential injury being suffered by the Domestic Industry.

(xiii) The Authority holds that though imports from Saudi Arabia in 3 months of POI were significant, the Authority was bound as per the scheme and structure of the AD rules of 1995 to evaluate all essential parameters i.e. extent of dumping, extent of injury and most important the causal linkage between the dumping and injury to consider recommending levy of AD on dumped (unfair) imports under rule 17 of AD rules. Despite invasive capturing by Saudi Arabia, the non-conclusive establishment of causal link restrained the

Authority to recommend a measure as Causal Link is essentially a fundamental condition to recommend an AD levy.

(xiv) The Authority recognizes that AD rules need to be applied as per the scheme and mandate to protect the domestic industry from unfair trade practices. However, in event of non-fulfilment of any essential condition mandated under the rules, the Authority cannot traverse beyond the boundary of the mandate of AD rules to recommend an AD measure to protect the domestic industry. An AD measure as per AD rules is applied to the extent of injury or dumping whichever is lower to address the concerns of the user domestic industry besides the injured domestic manufacturer. However in a situation like high quantity of imports where all conditions under AD rules are not met, an injured domestic manufacture can seek redressal under other appropriate trade remedial measures.

## Q. Conclusions and Recommendations:

67. Keeping in view the direction of the Hon'ble High Court, the mandate of AD rules and the Act, relevant submissions by various interested parties and facts available before the Authority to address the issues; the authority concludes as under:

(i) The Domestic Industry was suffering injury during the entire injury analysis period even when no imports were coming from Saudi Arabia.

(ii) Having evaluated the threat to Material Injury as directed by the Hon'ble High Court the Authority holds that in view of Post POI imports till August, 2018 the threat of material injury is not established.

(iii) In view of the above, the recommendation of the authority in original finding that imports of Subject goods from Saudi Arabia did not conclusively establish a causal link between dumping and material injury also stands vindicated and is reiterated.

(iv) The Authority holds that analysis and interpretation of both (ii) and (iii) above established that no injury to Domestic Industry due to imports from Saudi Arabia has been caused.

(v) The Authority in view of the above does not consider it appropriate to recommend levy of an Anti-Dumping Duty on the subject goods from Saudi Arabia and hereby terminates this investigation in accordance with Rule 14 (b), Rule 17(1) (iii), Rule 11(2) and para (v) of Annexure II of the Anti-Dumping Rules.

**(Sunil Kumar)**
**Additional Secretary & Designated Authority**