

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

**F. No. 6/42/2019-DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Trade Remedies)  
4<sup>th</sup> Floor, Jeevan Tara Building,  
5, Parliament Street, New Delhi -110001**

**Dated: 20<sup>th</sup> January, 2021**

**NOTIFICATION**

**FINAL FINDINGS**

**Case No. ADD(OI) 33/2019**

**Subject: Final Findings in the Anti-dumping investigation concerning imports of Aniline from China PR.**

**A. BACKGROUND OF THE CASE**

1. M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited (hereinafter also referred to as the “Applicant”) filed an application, before the Designated Authority (hereinafter referred to as the “Authority”) in accordance with the Customs Tariff Act 1975 as amended from time to time (hereinafter also referred as the “Act”) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter also referred as the “Rules”) for initiation of anti-dumping investigation concerning imports of Aniline (hereinafter also referred to as the “product under consideration” or “PUC” or “subject goods”) from China PR (hereinafter also referred to as the subject country).
2. The Authority, on the basis of a prima facie evidence submitted by the Applicant, issued a public notice vide Notification No. 33/2019–DGTR dated 24<sup>th</sup> January, 2020, published in the Gazette of India, initiating the subject investigation in accordance with Section 9A of the Act, read with Rule 5 of the Rules, to determine the existence, degree and effect of any alleged dumping of the subject goods originating in or exported from subject country and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.
3. The Authority having regard to the Act and the Rules, considered it appropriate to recommend interim duties and issued Preliminary Findings vide F. No. 6/42/2019-DGTR dated 12<sup>th</sup> June 2020, recommending imposition of provisional anti-dumping duties (ADD) on imports of the subject goods, originating in or exported from the subject country. Accordingly, the Central Government vide Notification No.20/2020-Customs (ADD) dated 29<sup>th</sup> July, 2020 imposed provisional ADD on imports of Aniline, originating in or exported from China PR which is valid for 6 months.

## B. PROCEDURE

4. The procedure described herein below has been followed with regard to the subject investigation: -
- a. The Authority notified the Embassy of the subject country in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra.
  - b. The Authority issued a public notice dated 24<sup>th</sup> January, 2020 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning the import of subject goods from the subject country.
  - c. The Embassy of subject country in India was informed about the initiation of the investigation in accordance with Rule 6(2) of the Rules. The Authority sent a copy of the initiation notification to the Government of the Subject Country, through its Embassy in India, known producers/exporters from the subject country, known importers/users and the Domestic Industry as well as other domestic producers as per the addresses made available by the Applicant and requested them to make their views known in writing within the prescribed time limit.
  - d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Government of the subject country, through its Embassy in India in accordance with Rule 6(3) of the Rules supra. A copy of the non-confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.
  - e. The Authority also forwarded a copy of the notice to known producers/ exporters from the subject country, known importers/users in India, other Indian producers and the domestic industry as per the addresses made available by the Applicant and requested them to make their views known in writing within time limit given in the initiation notification.
  - f. The Embassy of the subject country in India was also requested to advise the exporters/producers from its country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to the Embassy along with the names and addresses of the known producers/exporters from the subject country.
  - g. The Authority sent exporter's questionnaire to the following known producers/exporters in the subject country in accordance with Rule 6(4) of the Rules: -
    - i. M/s Sinopec Nanjing Chemical Industries Co., Limited
    - ii. M/s Bayer Material Science (Shanghai) Co., Limited
    - iii. M/s Jilin Connell Chemical Industry Co., Limited
    - iv. M/s Shanxi Tianji Coal Chemical Group Co., Limited
    - v. M/s Shandong Jinling Chemical Co., Limited
    - vi. M/s Jiangsu Ruxiang Chemical Co., Limited
    - vii. M/s Henan Kaipu Chemical Co., Limited
    - viii. M/s BASF (China) Co., Limited
    - ix. M/s Yantai Wanhua Polyurethanes Co., Limited
    - x. M/s Hebei Jiheng Chemical Group Co., Limited
    - xi. M/s Shandong Haihua Co., Limited
  - h. In response to the above notification, following producers, their related exporters/traders have submitted the exporter questionnaire responses: -
    - i. M/s Wanhua Chemical Group Co., Limited
    - ii. M/s Wanhua Chemical (Hong Kong) Co., Limited
    - iii. M/s Kempar Energy Pte. Limited.

- iv. M/s Wanhua Chemical (Yantai) Trading Co., Limited
- v. M/s Wanhua Chemical (Ningbo) Co., Limited
- vi. M/s Wanhua Chemical (Ningbo) Trading Co., Limited
- i. The Authority sent questionnaires to the following known importers / users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules: -
  - i. M/s NOCIL Limited
  - ii. M/s Aarti Industries Limited
  - iii. M/s Bodal Chemicals Limited
  - iv. M/s Bhageria Industries Limited
  - v. M/s Kutch Chemicals Industries Limited
  - vi. M/s Mayur Dychem Intermediate LLP
  - vii. M/s Industrial Solvents & Chemicals Private Limited
- j. In response to the above notification, following importers/users have submitted importer questionnaire responses:
  - i. M/s Bhageria Industries Limited
  - ii. M/s Bodal Chemicals Limited
  - iii. M/s Kutch Chemicals Industries Limited
  - iv. M/s Colourtex Industries Private Limited
  - v. M/s Mayur Dye Chem Intermediates LLP
  - vi. M/s NOCIL Limited
  - vii. M/s Aarti Industries Limited
  - viii. M/s Jemby Chem Limited
  - ix. M/s Bharat Organics Limited
  - x. M/s Nutan Dye Chem Private Limited
  - xi. M/s Remik Chemicals Private Limited
  - xii. M/s Laxmi Organic Industries Limited
  - xiii. The Dyestuffs Manufacturers' Association of India (DMAI)
  - xiv. M/s Wanhua Chemical Group Co., Limited, M/s Wanhua Chemical (Hong Kong) Co., Limited, M/s Wanhua Chemical (Yantai) Trading Co., Limited, M/s Wanhua Chemical (Ningbo) Co., Limited., and M/s Wanhua Chemical (Ningbo) Trading Co., Limited collectively.
- k. The Authority issued Preliminary Findings vide F. No. 6/42/2019- DGTR dated 12<sup>th</sup> June, 2020. The interested parties were provided an opportunity to submit their comments on the Preliminary Findings.
- l. In accordance with Rule 6(6) of the Rules, the Authority also provided an opportunity to all interested parties to present their views orally in a hearing held on 19<sup>th</sup> October, 2020. All the parties who had attended the oral hearing were advised to file written submissions of the views expressed orally. The parties shared their non-confidential submissions with other interested parties and were advised to offer their rebuttals.
- m. The Authority made available the non-confidential version of the evidence presented by various interested parties through emails .
- n. A request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which has been received by the Authority. The Authority has relied upon DGCI&S data for computation of the volume and values of imports and its analysis after due examination of the transactions.
- o. The Non-Injurious Price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by

the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

- p. Information was sought from the applicant and the other interested parties to the extent deemed necessary. Verification of the data provided by the Domestic Industry and other interested parties was conducted to the extent considered necessary for the purpose of present investigation.
- q. The period of investigation (POI) for the purpose of present investigation is 1<sup>st</sup> April, 2019 to 30<sup>th</sup> September, 2019 (6 months). The injury examination period has been considered as the period from 2016-17, 2017-18, 2018-19 and the POI.
- r. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- s. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the present Final Findings on the basis of facts available.
- t. A Disclosure Statement containing the essential facts in this investigation which forms the basis of the present final finding was issued to the interested parties on 12<sup>th</sup> January, 2021. The post Disclosure Statement submissions received from the Domestic Industry and other interested parties have been considered, to the extent found relevant, in this Final Finding Notification.
- u. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported with evidence and considered relevant to the present investigation.
- v. **\*\*\*\*** in these final findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- w. The exchange rate adopted by the Authority for the subject investigation is US \$ 1= Rs. 70.73.

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

5. At the stage of initiation, the product under consideration was defined as: -

*"The product under consideration for the purpose of present investigation is "Aniline" which is also known as "Aniline Oil". Aniline is a transparent, oily liquid and is a primary amine compound. Its colour transforms to light pale-yellow liquid when freshly distilled. Its colour darkens when exposed to light or air. Aniline is a basic organic chemical, essential for vital industries such as drugs, pharmaceuticals, dyes and dye intermediates.*

*The subject products are classified under Chapter Heading 29 under the code 29214110. The customs classification is indicative only and in no way, binding upon the product scope."*

### **C.1. Submissions made by the Domestic Industry**

6. The following submissions have been made by the Domestic Industry with regard to the PUC:
  - a. The PUC is Aniline, also known as Aniline Oil, which is a transparent oily liquid and is used in drugs, pharmaceuticals, dyes and dye intermediates.
  - b. The product is classified under custom heading 2921 41 10 of the Act.
  - c. The goods produced by the Applicant are like article to the imported goods as they are comparable in terms of physical and chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods, and are technically and commercially substitutable. There is no known significant difference in the technology employed by the Domestic Industry and the producers in subject country.
  - d. Articles produced by the Domestic Industry have 99.8% purity by wt. and with water content of 0.1% by wt. max. As per the brochure shared by Wanhua Chemical Group Co., their product has a purity of more than 99.80% and water content of < 0.10.

### **C.2. Submissions made by other interested parties**

7. The submissions made by the other interested party with regard to the PUC and like article are as follows:
  - a. The level of impurities and moisture content in Domestic Industry's product is much higher as compared to the imported.

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

8. The submissions made by the Domestic Industry and other interested parties with regard to the product under consideration related issues are examined and addressed hereunder.
9. The PUC in the present investigation is Aniline which is a basic organic chemical for drugs, pharmaceuticals, dyes and dye intermediates. The product is also called Aniline oil.
10. The Authority has considered the PUC as under:-

*The product under consideration for the purpose of present investigation is "Aniline" which is also known as "Aniline Oil". Aniline is a transparent, oily liquid and is a primary amine compound. Its colour transforms to light pale-yellow liquid when freshly distilled. Its colour darkens when exposed to light or air. Aniline is a basic organic chemical, essential for vital industries such as drugs, pharmaceuticals, dyes and dye intermediates.*

*The subject products are classified under Chapter Heading 29 under the code 29214110. The customs classification is indicative only and in no way, binding upon the product scope.*

11. Some interested parties claimed that the level of impurities and moisture content in the Domestic Industry's product is higher as compared to the imported product. However, no verifiable evidence has been provided by them, nor has the impact of possible difference been quantified and demonstrated. Evidence provided by the Domestic

Industry shows that the product manufactured by it has a purity and moisture level equivalent to that with the product supplied by the responding producer.

12. It has been noted from the information available on record that the product produced by the Domestic Industry is like article to the PUC imported from the subject country. The product produced by the Domestic Industry, and subject goods imported from subject countries are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions and uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The Authority holds that the subject goods produced by the Domestic Industry are like article to the product imported from subject countries in terms of Rule 2(d) of the AD Rules.
13. The product under consideration is classified under the Chapter Heading 29 under the tariff code 2921 41 10. The customs classification is only indicative and is not binding on the scope of the product under consideration.

#### **D. SCOPE OF DOMESTIC INDUSTRY & STANDING**

##### **D.1. Submissions made by the domestic industry**

14. The Domestic Industry has made the following submissions with regard to the scope of domestic industry and standing:
  - a. The Applicant is the sole producer of the subject goods in India.
  - b. The Applicant has not imported the subject goods from subject country and is not related to any exporter in the subject country or importer of subject goods in India.
  - c. The Applicant satisfies the requirement of Rule 2(b) and Rule 5(3) of the Rules.

##### **D.2. Submissions made by other interested parties**

15. The following submissions have been made by other interested parties with regard to the scope and standing of domestic industry:
  - a. There was another producer, viz. HOCL earlier. But it has closed its production on account of its working capital and other issues.

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

16. Rule 2(b) of the Rules defines Domestic Industry as under:

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

17. The Application has been filed by M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited. From the facts brought forth by the Domestic Industry and other interested

parties, it is evident that there is no other producer of the subject goods in India. The Applicant has not imported the subject goods from subject country and is not related to any exporter in the subject country or importer in India.

18. Accordingly, the Authority holds that the Applicant constitutes Domestic Industry within the meaning of Rule 2(b) of the Rules and considers that the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

## **E. CONFIDENTIALITY**

### **E.1 Submissions made by the Domestic Industry**

19. The following submissions have been made with regard to confidentiality by the Domestic Industry.
- a. The Applicant has given justification for claiming costing numbers as confidential.
  - b. Complete information as required by Trade Notice: 10/2018 dated 7<sup>th</sup> September, 2018 has been provided.
  - c. Reference to the decision in the matter of RIL vs Designated Authority has no relevance here. The Hon'ble Supreme Court had held information cannot be claimed confidential from the party who has supplied the same.
  - d. Information with regard to the capacity of the Domestic Industry as reported on the company website is based on installed operating capacity. However, the Applicant has taken approval for higher capacity from the pollution control board. The capacity reported in the injury statement is based on capacity as per the consent order issued by pollution control board which is confidential and not available in public domain.
  - e. Even respondents have claimed confidentiality on the ground that the information is business sensitive information.

### **E.2 Submissions made by other interested parties**

20. The following submissions have been made by the other interested parties with regard to confidentiality -
- a. Excessive confidentiality has been claimed by the Applicant as it has not provided any information at all in the Section VI of the petition. Since it is a multi-product company, the annual report does not provide information in relation to the PUC. Though, the capacity and capacity utilization of the subject goods are disclosed in the annual report, the same has also been claimed confidential.
  - b. Only figures have been claimed confidential, nature of expenses and name of raw material and utilities have been disclosed.
  - c. The statement by the Domestic Industry that summarization of information is not possible cannot fulfill legal requirement. It is required to show a good cause for claiming information as confidential.
  - d. Jurisprudence on confidentiality has been well settled by the Hon'ble Supreme Court in Reliance Industries Ltd v. Designated Authority and Ors, reported at 2006 (202) ELT 23 (SC).
  - e. Information with respect to capacity, production and capacity utilization is available on the website and the annual report has still been claimed as confidential.

- f. The Domestic Industry has claimed excessive confidentiality with regard to sales realization in Formats L and H.

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

21. Various submissions made by the Applicant as well as other interested parties during the course of the investigation with regard to confidentiality, to the extent considered relevant by the Authority, have been examined and addressed as follows.
22. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection as per Rule 6(7).
23. With regard to confidentiality of information, Rule 7 of the Rules provides as follows:  
*"Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*  
*(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*  
*(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorize its disclosure in a generalized or summary form, it may disregard such information."*
24. As regards the contentions with regard to confidentiality of information, it is noted that information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered 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. The Authority made available the non-confidential version of the evidence submitted by various interested parties in the form of public file. The information related to imports, performance parameters and injury parameters of domestic industry has been made available in the public file. Business sensitive information has been kept confidential as per practice.
25. The relevant data required in Format-H are installed capacity, production quantity and capacity utilization percentage for the injury period including POI, which is taken into consideration for optimization of capacity utilization/ production while computing NIP. In addition to it, Format L indicates the NIP claimed by the petitioner. This statement



also gives optimum production which is obtained by multiplying the maximum capacity utilization percentage during POI and injury period with the installed capacity during the POI. These are business sensitive information, the disclosure of these would give competitive advantage to competitors. The information has been provided by applicant in accordance with the trade notice no. 14/2018 dated 1<sup>st</sup> October, 2018.

## **F. MISCELLANEOUS SUBMISSIONS**

### **F.1 Submissions by the Domestic Industry**

26. The following miscellaneous submissions have been made by the Domestic Industry.
- a. A 6-month POI was proposed for the reason that the import prices from China PR had declined drastically in a very short period. As a result, the performance of the Domestic Industry deteriorated drastically. The other interested parties have not shown how reason given by the Domestic Industry is inappropriate.
  - b. A 6-month POI is in complete consistency with the past decisions and practice of the Authority.
  - c. Claims of the interested parties that there is no justification provided in the preliminary findings issued by the Authority for a 6-month POI are incorrect.
  - d. The Manual only provides guidelines. The final decision is taken by the Authority on case-specific basis, after considering the facts and circumstances.
  - e. There has been an increase in dumped imports which has impacted the performance of the Domestic Industry. The other interested party have not been able to establish how a 12-month period would have eliminated a situation and depicted "true" picture of company's performance.
  - f. The POI is required in order to determine the existence of dumping. The dumped imports from China have taken place across the complete POI and the Applicant has also sold across the whole period of investigation.
  - g. As regards submissions concerning fluctuation in the price of benzene, it would have affected both the Indian producer as well the Chinese producers and would not have had any direct impact on POI.
  - h. ADD will be levied only to ensure that imports happen at fair prices. Imports in India in the past have happened from various other sources which will always have to keep check on prices of the domestic industry.
  - i. The other interested parties have claimed that it has some information available with respect to the Applicant not being able to provide goods on time but have failed to provide it to the Authority. There is no reason why the Domestic Industry would not provide goods on time.
  - j. The consumers have merrily availed the benefit of low prices at the cost of the Domestic Industry and are now contending that their performance will be adversely impacted if the ADD is imposed.
  - k. As against the submission that duty will be against public interest, it has been contended that duty has been in force for last 20 years in India. The other interested parties have not provided information on number of Dyestuff producers which have shut down their plants in these 20 years because of the ADD.
  - l. The examination of post-POI data is warranted in case of a sunset review investigation and not in any fresh anti-dumping investigation.
  - m. There is no basis for the request by the respondent for demanding duty on the basis of quota in the anti-dumping law.

- n. As regards submission that duty has led to increased imports of petrol/gasoline, there appears to be no reason how duty imposed in 2020 could have led to increase in imports in 2019.
- o. Other interested parties have not provided any evidence to suggest that imposition of anti-dumping duty would affect the production of drugs.
- p. Prices of Aniline and benzene have fluctuated violently. The imposition of duty on trigger price basis will not serve the purpose for both the domestic industry and the users.

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

27. The other interested parties have made the following submissions on various issues:
- a. The Applicant has not brought any substantive evidence to prove condition for initiation of the investigation and has instead exaggerated imports and invented the injury. There are bare assertions and false statement with inaccurate and insufficient data.
  - b. The users of Aniline are primarily small and medium scale units working in price sensitive and competitive market. The imposition of ADD will impact it which is already facing slowdown and increased cost of input chemicals.
  - c. The POI is a deviation of past practice of Authority. Even in the recently initiated investigation of newsprint, the Authority adopted a 9-month POI when the Applicant had requested for a 6-month POI. The same is also a deviation from the practice followed by other members.
  - d. As per para 5.10 of the SOP, POI should be 12 months. No justification has been provided by the Authority.
  - e. A 6-month POI has been chosen to hide the effects of shutdown due to maintenance of 27 days by the Domestic Industry in the year 2018-19. As a result, the POI has been left to only for 5 months.
  - f. The present case does not reflect the justification to consider a 6-month POI. At least a year period should be taken for considering all cyclic impacts associated with the business to examine injury. No justification has been provided in initiation notification or preliminary finding issued by the Authority for a 6-month POI.
  - g. The inappropriateness of POI is also visible from the fluctuating monthly import prices. The Applicant has claimed a decline in the import price in the POI. However, over the POI the price has increased by 6% which shows inappropriateness of shorter period for injury analysis.
  - h. The shortage of raw material would lead to disruption in production of downstream products. Duties may be recommended only if the capacities of local producers are sufficient to cater demand.
  - i. Downstream products are also manufactured in China PR which are being shipped to India and other customers of Indian producers in the European Union (EU) and Asia.
  - j. The effects of Covid-19 pandemic are visible on the dyestuff producers in the SME/MSME sector and any additional duty on the inputs shall lead to permanent closure of many units.
  - k. The Applicant cannot cater to the demand and therefore, the imports will continue. The duty would allow the Applicant to manipulate the price and increase its profits.
  - l. There is a huge demand-supply gap for the product in India which necessitates substantial imports and any ADD in such case is unjustified.

- m. Since HOCL has closed its production, the users are totally dependent on the capacity of GNFC for many years including the POI.
- n. The short POI does not reflect the true picture of the company's performance. It warrants collection of post period data to make examination more objective.
- o. Probability of distortions in the assessment and determination of dumping, injury and causal link on such a short period is very high and outcomes can be abundantly misleading.
- p. The Domestic Industry has not given reasons in its application nor has the Authority in its initiation notice given reasons for departing from normal 12 month's POI. A period of 6 months or 18 months can only be taken in exceptional circumstances with proper justifications.
- q. The plant of Domestic Industry was under shut down for 2 months during the POI. The working period within the POI was only 4 months.
- r. Protection to the Domestic Industry should be restricted to its capacity to the tune of 40,000 MT and not beyond that. Essential imports should be free of any ADD.
- s. Imports of petrol/gasoline have increased at an alarming rate as the local production become costlier due to duty and has seen a sudden surge of over 2000% over 2019.
- t. The imposition of duty will impact the public interest as the product is necessary for manufacturing certain essential drugs and healthcare components such as paracetamol, tylenol, acetaminophen, and gloves.
- u. The Applicant could easily manipulate the price of the POI in the domestic market if duties are levied.
- v. Dyestuff producers are small and medium scale units which operate in very price sensitive and highly competitive market. Any duty will render this industry unviable leading to shutting down of operation of Dyestuff producers.
- w. The Authority has not identified NOCIL Limited and Aarti Industries Limited in the Preliminary Finding.
- x. The Authority may impose duty in form of either a fixed quota or in alternative on the margin of the injury.
- y. The Authority may fix duty in the form of a trigger price or on variable basis in order to ensure that Domestic Industry does not extract any unfair gain from the duty imposition.
- z. Contrary to the justification given for the POI by the Authority that there is a steep decline in import prices from subject country, the import price has in fact increased.
- aa. The Domestic Industry is using demand-supply gap to achieve supernormal profits. Any fall in profit due to temporary international and internal factors, it applies for dumping duty.
- bb. The Domestic Industry has resorted to monopolistic practices by taking advantage of duties and increasing its prices though benzene prices have declined.
- cc. The Domestic Industry has on several occasions entered into negotiations with users and refused to conclude supplies. In an absence of assured supply at fixed prices from a supplier, end-users cannot rely upon the same supplier and therefore are forced to seek alternative sources.
- dd. Contrary to the claim of the Applicant that there are surplus capacities in China leading to imports in India, imports are due to demand and supply gap and capacities are not surplus, but demand-driven.

### F.3 Examination by the Authority

28. The Authority has considered the views of interested parties, as under: -

- a. Regarding the submission of other interested parties on the selection of POI of 6 months, the Authority notes that the adoption of 6 months as the POI is not inconsistent with the Rules. The Domestic Industry substantiated the need for considering April, 2019 to Sept, 2019 (6 months) as the POI. The Authority accepted the same, being satisfied with the reasons given by the Domestic Industry. The Authority considers that 6 months POI in the present case is appropriate as the decline in import prices from subject country is steep in April-Sept, 19, as compared to the preceding year. The Application in the present case was filed on 27<sup>th</sup> December, 2019 and therefore, data for the period after September, 2019 was not available at the stage of initiation. The purpose of an anti-dumping investigation is to examine whether the product has been dumped and whether such dumping has caused material injury to the Domestic Industry. Thus, the Authority notes that the POI chosen for the case is consistent with the legal position at the time of initiation and the practice being followed by the Authority. It is further noted that the Rules have been amended vide Customs Notification no. 9/2020- customs dated 2<sup>nd</sup> February, 2020 wherein Rule 2(da) and Explanation to Rule 22 have been inserted, incorporating the following provisions:

*"The POI shall :-*

*(i) not be more than six months old as on the date of initiation of investigation.*

*(ii) be for a period of twelve months and for the reasons to be recorded in writing the designated authority may consider a minimum of six months or maximum of eighteen months."*

It is noted that the above amendment has been carried out after the initiation of the present investigation. Nevertheless, the Authority had duly considered the justification provided by the Applicant for selection of April, 2019 to Sept, 2019 (6 months) as POI, as mentioned above. The other interested parties have not brought any substantial evidence to show that a 6-month POI is not justified for the present investigation and considering a 12-month POI would have shown a different scenario.

- b. The Authority notes that the demand-supply gap in the country does not bar a Domestic Industry from seeking redressal from dumped imports. As held by the CESTAT in the matter of DSM Idemitsu Limited vs. Designated Authority, demand-supply gap does not justify dumping. The foreign producers can always meet the Indian demand by selling the product at undumped prices. Even after the imposition of ADD, the imports are not restricted in the country. Therefore, there is no basis for the claim that imposition of ADD can lead to shortage of the raw material for the downstream industry. The Authority notes that imposition of ADD provides a level playing field and does not prevent fair competition in the market. The Authority also notes the submission of the Domestic Industry that Aniline is produced and exported by many countries. The users are free to import the subject goods from any source.
- c. The Authority notes that the present investigation is for Aniline and not for its downstream product. The import of downstream product of Aniline does not affect the present case.

- d. The Authority notes that the investigation was initiated on the basis of sufficient prima facie evidence submitted by the Applicant.
- e. It has been claimed that the plant of the Domestic Industry was shut down for a few months due to which the working period within the POI was curtailed. It is noted that the Domestic Industry suspended its operations when it was left with significant inventories due to decline in sales. During the period of suspension of production, the Domestic Industry continued to sell goods in the domestic Indian market and imports continued to happen. Therefore, there is no reason the operating period has been left restricted to only a few months. In fact, dumping is quite likely to create a situation where some Domestic Industry may be forced to suspend production and may go completely out of business for the majority or entirety of the investigation period. That does not, however, mean that the Domestic Industry in such a situation cannot request imposition of ADD.
- f. It is noted that since the Domestic Industry had inventories, it should not have faced issues in supplying the goods. In the absence of any verifiable information regarding Domestic Industry facing issues in supply of goods, impact of the submission on the present investigation remained unestablished.
- g. As regards the supply of goods at fixed prices, it is noted that the prices of the feedstock in the production of subject goods is very volatile. In such a case, it is quite likely that producers are not able to supply goods at fixed prices. In any case, the issue is not relevant to decide whether the goods were sold at dumping prices and whether such dumping caused injury to the Domestic Industry.
- h. As regards the submission that the imposition of ADD will be against public interest, no verifiable evidence has been provided. ADD has been imposed on the imports of subject goods in past. The purpose of duty is not to stop imports, but to ensure that they enter at fair and non-injurious prices. Further, even in the past, there have been imports from various sources. The users are free to import from any source. Further, the users can seek review of the present ADD under Rule 23 in case there is no continued justification for imposition of the same.
- i. As regards the submission that imports of petrol/gasoline have increased after 2019, it is noted that same pertains to the period when the duties were not in force and, therefore, the increase in imports cannot be linked to the duty imposed.
- j. As regards the contention of the parties about the form of duty, the Authority notes that as per the Rules, the mandate of the Authority is to determine the existence, degree and effect of the alleged dumping and to recommend the amount of ADD, which, if levied, would be adequate to remove the injury to the Domestic Industry. The Authority notes that the form of duty is determined after evaluating all facts relevant for the present investigation and the form of duty shall depend on such facts.

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

29. Under Section 9A(1)(c) of the Act, normal value in relation to an article means:
- (i) *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
  - (ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of*

*the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*

- (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*
- (b) Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin."*

### **G.1 Submissions of the Domestic industry**

30. The submissions made by the Domestic Industry with regard to normal value, export price and dumping margin are as follows:
- a. The normal value of Chinese producers cannot be accepted unless the producers show that their accounts reasonably reflect the costs associated with the production and sale of the product under consideration, having regard to the provisions of Rule 7 and 8 of the Rules, provisions of Accession Protocol of China, and the practice being followed by the Designated Authority.
  - b. The normal value needs to be determined based on the surrogate country.
  - c. Barring China and the EU, the number of producers of the subject goods in other countries are very few.
  - d. The production capacity in the EU is almost at the same level as in China.
  - e. Only exports from the EU are more than 5% of exports to India.
  - f. Even on a comparison of GDP and GNI, there is no country except the EU which can be considered as an appropriate surrogate country.
  - g. The EU can be considered as an appropriate surrogate country for the purpose of determination of normal value.
  - h. Exports from Belgium to Germany constitute evidence of price of Aniline in a market economy third country.
  - i. The dumping margin is positive and significant.
  - j. If the respondent wanted to claim normal value on the basis of its cost and prices, Chinese producers should have filed questionnaire response on market economy issued by Authority. Unless the respondent establishes market economy conditions, prices in China PR cannot be accepted.
  - k. Provisions of Article 15(a)(ii) have already expired. But provisions of Article 15(a)(i) are still applicable and must be considered for determination of normal value in China PR.
  - l. The Applicant has established the level of development in terms of the PUC is similar and no other country has level of development similar to the level of development of China PR. There is no country other than the EU which could have been considered as a surrogate country.
  - m. Prices from Belgium to Germany is a representative of intra EU price which can be considered as prices prevailing in European region.
  - n. Normal value on the basis of price paid or payable also establishes significant dumping.

- o. If the only reason of low cost was due to the fact that the plant of Wanhua are with latest development in technology which gives better yield performance, the responding producer should have claimed market economy treatment and claimed its own normal value.

## **G.2 Submissions made by other interested parties**

31. The submissions made by the interested parties with regard to normal value, export price and dumping margin are as follows:
- a. The Normal value cannot be adopted on the basis of selling price from Belgium to Germany as it does not fulfil the requirement of Rule 7 – second option. An option could have been price from Belgium to countries including India as a basis of normal value.
  - b. The price from Belgium to Germany amounts to intra-county price and cannot be seen as price in the EU. The price considered is very high as compared to prices prevailing in the EU.
  - c. It is inappropriate to consider the EU as a surrogate country. The Applicant has failed to put proper claims as permissible in law.
  - d. The Authority is requested to reconsider various propositions of the Applicant concerning normal value, presuming that Chinese producers may not be able to satisfy ME conditions.
  - e. The Authority has issued a separate questionnaire to exporters from China PR seeking voluminous information from exporters with regard to market economy.
  - f. India must fulfil its obligation to WTO and recognize China PR as a market economy status. The surrogate country methodology for China PR expired from 11<sup>th</sup> December, 2016. After the expiry of China's accession to WTO, it must be treated in the same way as any other WTO member and regardless of the domestic law of a particular member, imports from China PR must be demonstrated on the basis of Chinese prices and costs.
  - g. In the EU, most Aniline producers are also MDI manufacturers. Covestro has Aniline plants in Belgium and Germany and MDI plants in Germany and Spain. Covestro has to transfer Aniline from Belgium to Germany or Spain for MDI manufacturing. Such transfer price shall not be deemed as market price as Aniline is transferred within Covestro Group between affiliated parties. A similar situation applies to BASF, DOW, Huntsman and Borsod chem, except for CUF. The normal value cannot be considered on the basis of the transactions between related entities.
  - h. CUF is the only producer of Aniline in the EU which does not have MDI plant, hence Aniline cannot be transferred within CUF or its related parties which might be located in different countries unlike Covestro, BASF, DOW, Huntsman and Borsod chem do. CUF plant is located in Portugal only. For the purpose of normal value, sales of CUF (producer) by Portugal to Germany can be relied upon at best.
  - i. Para 13.18.2 of the Manual of Operating Practices for Trade Remedy Investigations states that an appropriate surrogate country may be relied after considering the level of development of country and PUC. The levels of development of Belgium and Germany are inconsistent.
  - j. There is a significant difference in the per capita income, GDP, GDP per person, consumer spending, GDP real growth rate, economy growth rate, economy growth, world trade growth and population between the two countries and hence they are not comparable.

- k. On the basis of data presented in the application, there is a significant difference between the quantity and price of imports from China PR and the EU in India.
- l. If the Authority does not agree with the submissions that Portugal to Germany prices should be considered as normal value, it is requested then that normal value for China PR can be constructed as per Para 7 of Annexure 1 of Rules. For this purpose, international prices of Benzene can be considered, the consumption factor of raw material can be considered for participating producer, utilities cost can be worked out with the prevailing prices in China and interest rate as prevailing in the international market including China may be considered. A reasonable profit may also be added for the product under consideration exported to India from China.
- m. The normal value for China PR must be determined on the basis of Chinese prices and costs. It may be constructed by considering international prices of raw material, consumption norms for participating producers, utilities cost on prices prevailing in China PR and interest rate as prevailing in international market including China PR.
- n. Section 15(a) (ii) of the Protocol on the Accession of the People's Republic of China to the World Trade Organization expired on 11<sup>th</sup> December, 2016. India no longer has a legal basis under the agreements of the World Trade Organization to calculate normal value in anti-dumping investigation of Chinese products using the non-market economy methodology.
- o. Plants of Wanhua are with latest development in technology which give better yield performance and reduce the cost of production.

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

#### **G.3.1 Determination of normal value and export price.**

##### **Market Economy Status for Chinese Producers**

- 32. Article 15 of China's Accession Protocol in WTO provides as follows: "Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

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

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



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

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

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

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

#### **Normal Value for all Producers in China PR.**

35. As none of the producers from China PR have claimed determination of normal value on the basis of their own data/information, the normal value has been determined in accordance with para 7 of Annexure I of the Rules which reads as under:
- In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid*

*selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

36. The Authority had also sought comments from the other interested parties on EU as a surrogate country for China. The extract of initiation notification is as under-

*9. All interested parties are advised to offer their comments on this issue within 30 days from the date of issuance of initiation notification. Pending detailed examination of the Page 3 of 6 claim of EU as a surrogate country for China for this investigation, the Authority, for the purpose of initiation of the present investigation, has taken the selling price from Belgium to Germany for determining the normal value of China PR.*

37. With regard to comments from the other interested parties on the EU as a surrogate country for China, it is noted that within the time line of 30 days given by the Authority in the initiation notification, none of the interested parties gave their comments on the proposition of considering EU as a surrogate country for China. However, the Dyestuffs Manufacturers' Association of India (DMAI) and Wanhua Group have raised concerns over the proposed methodology, after the given time period.
38. One of the interested parties has contended that the normal value in the instant case should be determined on the basis of price paid or payable in India, duly adjusted.
39. Since there are rival submissions with regard to consideration of the EU as an appropriate market economy third country and the Domestic Industry too has also not brought sufficient evidence to consider the EU as an appropriate surrogate country, normal value has been determined on the basis of price paid or payable in India, duly adjusted to include a reasonable profit margin, which has been determined considering cost of production in India, after addition for selling, general & administrative expenses and reasonable profits. The normal value so determined is given below in dumping margin table.

#### **Determination of Export Price**

**For M/s Wanhua Chemical Group Co., Limited, M/s Wanhua Chemical (Hong Kong) Co. and M/s Kempar Energy Pte. Limited, Singapore.**

40. The Authority notes that following producers/exporters have filed questionnaire responses:
- i. M/s Wanhua Chemical Group Co., Limited (Wanhua)
  - ii. M/s Wanhua Chemical (Hong Kong) Co., Limited, Hong Kong.
  - iii. M/s Kempar Energy Pte. Limited, Singapore.
  - iv. M/s Wanhua Chemical (Yantai) Trading Co., Limited
  - v. M/s Wanhua Chemical (Ningbo) Co., Limited
  - vi. M/s Wanhua Chemical (Ningbo) Trading Co., Limited
41. It is noted that M/s Wanhua Chemical Group Co., Ltd., (producer/exporter) is a producer of the subject goods in China PR, and has exported the subject goods through related and unrelated traders to customers in India during the POI. The responding producer/exporter has given details of the exports of subject goods to India in Appendix 3C of the exporters' questionnaire response. The responding producer/exporter has also clarified that Appendix 3A is not applicable in their case because there are no direct

sales to Indian customers. It is noted from the response that M/s Wanhua Chemical Group Co., Ltd., has exported \*\*\* MT subject goods to India through M/s Wanhua Chemical (Hong Kong) Co., Ltd., Hong Kong (Trader). M/s Wanhua Chemical (Hong Kong) Co., Ltd., Hong Kong, has in turn exported the same to India through M/s Kempar Energy Pte. Ltd., Singapore. The other related producer M/s Wanhua Chemical (Ningbo) Co., Limited has not exported the subject goods to India during POI directly or through its related traders. It is further noted that M/s Wanhua Chemical (Ningbo) Co., Ltd., M/s Wanhua Chemical (Yantai) Trading Co., Ltd., and M/s Wanhua Chemical (Ningbo) Trading Co., Limited, are not involved in exports to India.

42. For the exports to India, the producer/exporter has claimed adjustments on account of port and other related expenses, transportation via ship and Non-Refundable VAT. Further, bank charges and credit expenses claimed by the related exporter M/s Wanhua Chemical (Hong Kong) Co., Ltd., Hong Kong have also been considered to arrive at ex-factory export price. The Authority has relied upon the details of the exports given in the questionnaire response filed by the producer/exporter after desk verification of information. The adjustments towards port and other related expenses, transportation via ship and Non-Refundable VAT, bank charges and credit expenses of the trader have been accepted. Accordingly, the Authority has determined the net export price, as mentioned in the dumping margin table below.

**For all other producers/exporters from China PR**

43. The export price for all other producers and exporters who has not participated in the present investigation has been determined as per facts available considering after allowing due adjustments for ocean freight, marine insurance, credit cost, inland & port charges and VAT refund and the same has been mentioned in the dumping margin table.

**G.3.2 Dumping Margin**

44. Considering the normal value and export price for subject goods, the dumping margins have been determined as follows:

Country	Name of Producer	Normal Value/ CNV (US\$/MT)	Export Price (US\$/MT)	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin Range
China PR	Wanhua Chemical Group Co., Limited	***	***	***	***	30-40
	Other Producers	***	***	***	***	30-40

**H. INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK**

**H.1 Submissions made by the Domestic Industry**

45. The following submissions have been made by the Domestic Industry with regard to injury and causal link:

- a. The demand of the subject goods has declined in the POI. However, the demand is still more than the capacity and hence fall cannot cause injury to the Domestic Industry.
- b. The imports of the subject goods have increased significantly from the subject country in absolute terms and in relation to production and consumption.
- c. The import prices have steeply declined in the POI.
- d. The subject imports are undercutting the prices of the Domestic Industry.
- e. The selling price of the Domestic Industry has declined whereas the cost of sales of the Domestic Industry has increased.
- f. The imports have depressed the prices of the Domestic Industry.
- g. The capacity utilization of the Domestic Industry is low.
- h. The production and the sales of the Domestic Industry have seen a fall of more than 51% and 43% as compared to the base year.
- i. The profitability of the Domestic Industry has been severely impacted in the period of investigation as it is running in losses.
- j. Cash profits and the return on investment of the Domestic Industry have turned negative in the POI.
- k. The Domestic Industry has lost its market share of around 28% over the injury period. The market share of the subject country imports has taken an increase from around 46% to 78%.
- l. The average inventories with the Domestic Industry are significant representing around \*\*\*% of the annual sales value.
- m. The Domestic Industry has recorded a negative growth in all the parameters.
- n. The subject imports have increased at an alarming rate threatening to cause further injury.
- o. There are significant capacities with the producers in the subject country.
- p. The imports have had a depressing effect on the prices of the Domestic Industry and are likely to make way for an increase in demand of the subject imports.
- q. The Domestic Industry could have produced and sold to the extent of past had there been no dumped imports from the subject country.
- r. The Domestic Industry was faced with rising inventories and was twice in the period of investigation forced to curtail its production.
- s. There was a scope of increase in all the volume parameters of the Domestic Industry, but all the parameters show a decline.
- t. Against a total capacity of 4,036k MT in China, as per Applicant's estimates total consumption in China, Japan and Korea amounts to around only 2,374k MT. The capacities installed in China are significantly excessive as compared to the demand in its nearby region.
- u. The cost of Benzene in Aniline in the POI fell only by 12%; however, the import prices of Aniline from China fell by around 27% which shows that the fall in import price from China is significantly more than fall in the price of benzene.
- v. The history of trade remedial investigations shows that the Domestic Industry's performance has always been vulnerable to low priced dumped imports.
- w. The increase in imports over the injury period is significantly higher than the increase in demand. Had the increase in demand been the reason, imports from other countries would have also increased, but they have declined.
- x. While the demand has declined in period of investigation, imports from the subject country has increased.
- y. The landed price of imports from the subject country is significantly below the non-injurious price which shows that price at which the imports have entered is injurious to the Domestic Industry.

- z. Significant volumes at low prices from subject country are preventing the Domestic Industry from achieving and maintaining optimum capacity utilization.
- aa. The Applicant has established a causal link between the dumped imports and material injury to the Domestic Industry.
- bb. Raw materials have been procured from unrelated party at market prices.
- cc. The Domestic Industry is required to be considered as it exists and not in ideal conditions.
- dd. Submissions of other interested parties that injury is due to other factors is mere conjecture. No substantive evidence has been provided to show that alleged injury may be due to some other factor.
- ee. Interested parties have not even identified any particular factor and have merely resorted to conjectures "might have", "reasons not known to us".
- ff. The Authority is only required to identify whether listed factors have caused injury and if they have not caused injury, it is then required to consider only such other factors as are identified by a party, shows its existence, establishes its relevance and quantifies its impact.
- gg. Export sales of the applicant are insignificant in volume. The reference to any injury submission by the interested parties on them should hold no relevance.
- hh. As regards submission that selling price and cost are affected due to low production, selling price has no nexus with the decrease in production and significant share of cost consists of cost of raw material and utilities which are variable in nature. The fall in production would not have had any major impact on the cost of Domestic Industry.
- ii. The Applicant is operating at an abysmally low level of capacity utilization and is in losses due to the dumped imports from China PR. With the same plant capacity, the Domestic Industry has been able to run its operations profitably in past. If the Domestic Industry is now suffering losses, it cannot be due to low plant size.
- jj. As regards the contention that there is a minor fall in profits, it is not a question of fall in profits, but a situation of significant financial losses.
- kk. Prices of the Domestic Industry are not governed by international factors, but by prices of goods in market and raw material prices in India. Because of dumped imports from China, the Domestic Industry has been unable to charge remunerative prices.
- ll. While price undercutting is a function of selling price and landed price of imports, profitability is a function of selling price and cost of sales. There is no reason to link both of them.
- mm. In all the previous years, the landed price was above cost of sales, whereas the landed price was much lower than the cost of sales in the POI.
- nn. The market share of Domestic Industry has declined in the POI and the same has been taken over by dumped imports from China PR causing injury the Domestic Industry.
- oo. The argument that the applicant is facing constraints in procurement of Benzene is incorrect. The document relied upon by the respondent does not pertain to the POI. Notice asking for bids is a routine business practice and it does not mean that it is facing constraints in procurement of raw material. Contrary to the submission of the respondent, the prices of benzene have declined.
- pp. On the submission of cost of exporter being low due to natural gas, the Authority may ask the respondent to kindly quantify low cost due to natural gas used by the exporters as per the complete chain from Ammonia to Aniline.
- qq. On the submission that Domestic Industry denied supplies, the Domestic Industry is operating with surplus inventories and idle capacities. There is no reason why

- the Domestic Industry would refuse supplies unless prices offered are significantly loss-making prices.
- rr. On the Domestic Industry increasing its prices in the post-POI it is submitted that Benzene prices have also increased.
  - ss. As regards the submission that the Domestic Industry cannot provide subject goods at fixed prices, benzene prices are not fixed over the period. Therefore, no producer of Aniline will supply the product at a fixed price.
  - tt. The Domestic Industry was forced to shut down its production due to piling up of huge inventories. The Domestic Industry had sufficient inventory to supply in the market. The Applicant cannot be expected to continue production even in a situation where it is left with huge inventory due to unremunerated prices.
  - uu. As regards the submission that the Domestic Industry has claimed both material injury and threat of injury, there is no limitation under the Rules in this regard.
  - vv. Against the submission that the Domestic Industry was not producing for a period of 2 months, the Domestic Industry suspended production not because there were technical constraints for production of Aniline but the fact that the Applicant could not match its prices with the prices of dumped material.

## **H.2 Submissions made by other interested parties**

46. The submissions made by the interested parties with regard to injury are as follows:

- a. When price undercutting was at highest level, the Domestic Industry was earning very good profits. However, when the price undercutting at the lowest level, it has suffered losses. This shows that there is no correlation between price of imports and profitability.
- b. Around 70,000-75,000 MT of subject goods is imported because the production capacity in India is lower than the demand in India.
- c. Imports are made from China as they are most competitively priced because of economies of scale.
- d. The fact that the Domestic Industry was making high profits when undercutting was 10-20% in the base year and made losses when it was 0-10% in the POI shows the distortion on account of less than 12 months of POI.
- e. Price undercutting was negative for at least 2 months in the POI which shows that landed price of imports is not a factor of injury and losses cannot be on account of pressure of imports.
- f. The Domestic Industry was operating at capacity utilization around 108% in 2018-19 and 119% in the POI. Even after a dip, it would have been at a very reasonable level. Further, slight correction from the past high numbers is not a situation suggesting injury.
- g. Temporary movements in prices due to economic slowdown, fluctuations in input cost based on crude, etc. cannot be termed as injury to impose ADD for another 5 years.
- h. Injury could be self-inflicted and could be caused due to shut down by the Domestic Industry.
- i. A sudden decline in the economic trend during the POI raises serious questions about the data as everything was normal in the injury period between 2016-17 to 2018-19
- j. There is a decline in both the domestic sales (43%) and the export sales (33%) in the POI as compared to the base year which shows that injury may be due to some other reason.

- k. The increase in cost of sales and decrease in selling price is due to low production and capacity utilization, not due to imports from subject country.
- l. Article 3.5 of the Agreement requires the Authority to examine factors other than dumping causing injury.
- m. The Appellate body in US-Hot Rolled Steel, ruled that the examination by panel in US-Norwegian Salmon AD was erroneous (Panel in US Atlantic had held that there is no need to isolate the injury due to the other factors)
- n. The application fails to address a number of issues which have an impact on the performance of the Domestic Industry.
- o. The Applicant may have accumulated Benzene or have any long-term contract for supply at high price, as when price of Benzene has declined by around 24%, cost declined only by 4%.
- p. With the increase in the price of Benzene, the landed value of Aniline from China increased earlier and when the prices have declined in 2019, the landed value of Aniline has also declined.
- q. There are reasons other than imports from subject country which might have caused injury to the Domestic Industry. Due to lack of information available in the public domain, other interested parties cannot substantiate it. The application also fails to address injury suffered due to other factors.
- r. The applicant is trying to mislead the Authority by fabricating injury. In order to conceal them, the Applicant has opted for small period of investigation.
- s. There is a decline in both domestic and export sales of Domestic Industry which shows that the reason for decline in sales is not imports from subject countries but the other inherent problem.
- t. An increase in cost of sales and decline in selling price is due to the low capacity utilization and decrease in production.
- u. The Domestic Industry was operating at 108% capacity utilization and could meet only 35% of the Indian demand. At such high capacity utilization there cannot be any volume injury in actual terms and indexed numbers are highly misleading.
- v. The Domestic Industry is still operating at the same capacity at which it started production and has not increased it though demand has been growing in the past two decades.
- w. The Domestic Industry should establish higher capacity/ economies of scale before seeking further protection after having availed the benefit of anti-dumping duty for many years.
- x. The Applicant has claimed that there is steep decline in prices during the POI but monthly price during the POI shows an increasing trend.
- y. The Domestic Industry was making high profits when price undercutting was in the level of 10-20% in base year and made losses when it was 0-10% in the POI.
- z. A slight correction from the high past volume parameters achieved through monopolistic position is not a situation suggesting injury.
- aa. A negative return on capital employed from a healthy level could be due to a dip in short-term headwinds.
- bb. Decline in productivity shows that the Domestic Industry has failed in effective manpower management. The effect of the same is being attributed as injury due to imports.
- cc. The Domestic Industry has been consistently operating at a high capacity utilization. Even in the POI of only 6 months, capacity utilisation is 60%.
- dd. The Domestic Industry has been able to easily sell all its production and even in the POI, it has sold around 60% of production in domestic market.

- ee. Imports from the subject country have taken up the market share of other countries and any decline in the market share of the Domestic Industry is only due to a stagnant capacity.
- ff. A decline in landed prices is commensurate with the decline in raw material prices.
- gg. The trend of selling price and landed price of the subject goods from China has been identical.
- hh. An increase in inventories is due to an increased focus of the Domestic Industry on exports.
- ii. The Domestic Industry suffers on account of self-inflicted limitations. It produces ammonia in the manufacture of Aniline from fuel oil which is costlier as compared to Natural Gas used by the exporters.
- jj. When the Domestic Industry was under shutdown for two months and the performance parameters are bound to be distorted.
- kk. An increase in imports is mainly due to decrease in import from other countries and market share of the Domestic Industry has constantly decreased due to limited capacity.
- ll. Most of the injury parameters of the Domestic Industry were constantly increasing as compared to the base year barring the POI.
- mm. The claim of the threat of material injury assumes absence of the current injury to the Domestic Industry and the claims have not been substantiated by any facts and is based on assumptions and conjectures.
- nn. Asian Benzene prices have increased again due to a shortage of supply. The Applicant has also faced constraints in procurement of Benzene in the POI.
- oo. Any fall in sale during the POI was due to supply issues due to shutdowns and imports did not take away its share.
- pp. Aniline prices moved as per the trend of key raw material prices only and to see any reliable trend in this regard, the Authority must consider price of Aniline and Benzene for at least 12 months.
- qq. Price of Aniline which fell for a short period has been on a rising trajectory immediately.
- rr. GNFC never cared for the users and want duties to rig the market by taking advantage of the demand supply. No ADD should be imposed unless GNFC increases the capacity so that the users are not dependent on imports.

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

47. Rule 11 of Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, "*.... taking into account all relevant facts, including the volume of dumped imports, their effects on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....*". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.



48. Since the POI is not of 12 months, in order to ensure that the actual/indexed figures are directly comparable with preceding years, the actual/indexed data has been “annualised” and mentioned in these Final Findings. Since the POI in the present case is six months, the figures have been multiplied by 2 to make them comparable to the previous years. For this reason, the indexed figures for the POI actual and annualised show the same figures in these Final Findings.

### H.3.1. Volume Effect of Dumped Imports on Domestic Industry

#### a. Assessment of Demand / Apparent Consumption

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

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
Sales of Domestic Industry	MT	41,604	41,339	34,813	11,952	23,904
Trend	Indexed	100	99	84	57	57
Subject Imports	MT	40,523	48,918	66,748	46,767	93,534
Trend	Indexed	100	121	165	231	231
Other countries imports	MT	4,127	16,441	21,370	823	1,645
Trend	Indexed	100	398	518	40	40
Total demand	MT	86,253	1,06,697	1,22,931	59,542	1,19,083
Trend	Indexed	100	124	143	138	138

50. The demand for the subject goods has increased over the injury period with a marginal decline in the POI.

#### b. Increase in imports from the subject country in absolute and relative terms

51. With regard to the volume of the imports, the Authority is required to consider whether there has been a significant increase in the imports, either in absolute terms or relative to production or consumption in India.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Imports from China PR	MT	40,523	48,918	66,748	46,767	93,534
Import from Other Countries	MT	4,127	16,441	21,370	823	1,645
Total imports	MT	44,650	65,358	88,118	47,590	95,179
<b>Subject Imports in relation to</b>						
Total imports	%	91%	75%	76%	98%	98%
Indian Production	%	98	117	176	462	462
Trend	Indexed	100	119	180	472	472
Indian Demand	%	47%	46%	54%	79%	79%
Trend	Indexed	100	98	116	167	167

52. It is noted that the subject imports have increased significantly in absolute terms over the injury period. The subject imports have also increased in relative terms. The imports have increased in relation to total imports, production and consumption in India. Further, imports show an increase as compared to both the base year and the immediate previous year. It is further noted that the subject import have shown massive growth in

relation to the Indian production as compared to both the base year and the immediate previous year.

### H.3.2 Price Effect of the Dumped Imports on the Domestic Industry

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

#### a. Price Undercutting

54. For the purpose of price undercutting analysis, the net selling price of the Domestic Industry has been compared with the landed value of imports from the subject country. Accordingly, the undercutting effects of the imports from the subject country work out as follows:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Net Sales Realisation	₹/MT	***	***	***	***	***
Trend	Indexed	100	125	121	91	91
Landed Price	₹/MT	69,424	95,464	94,632	69,255	69,255
Trend	Indexed	100	138	136	100	100
Price undercutting	₹/MT	***	***	***	***	***
Trend	Indexed	***	***	***	***	***
Price undercutting	%	***	***	***	***	***
Price undercutting	Range	10-20%	0-10%	0-10%	0-10%	0-10%

55. It is seen that the imports from subject country are entering at a price below the domestic selling price of the Domestic Industry, resulting in positive price undercutting.

#### b. Price Suppression and Depression

56. In order to determine whether the imports are depressing the domestic prices or whether the effect of such imports was to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period, were compared alongwith import prices.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Cost of Sales	₹/MT	***	***	***	***	***
Trend	Indexed	100	109	118	113	113
Selling price	₹/MT	***	***	***	***	***
Trend	Indexed	100	125	121	91	91
Landed Value	₹/MT	69,424	95,464	94,632	69,255	69,255
Trend	Indexed	100	138	136	100	100

57. The following is observed:

- a. Imports from the subject country were earlier at a price above cost of sales of the Domestic Industry upto 2018-19. However, imports were at a price below cost of sales of the Domestic Industry in the POI. It is also noted that from 2017-18, there has been a significant decline in the selling prices of subject goods while cost of sales increased.
- b. Whereas cost of sales, selling price and import price declined in POI, the decline in landed price of imports was far higher and significant as compared to cost of sales.
- c. Thus, the imports of subject goods from subject country has prevented price increases which otherwise would have occurred due to increase in cost of production. The Domestic Industry has suffered price suppression on account of import of subject goods from subject country. Further, the subject imports have depressed the prices of the domestic industry to a very significant extent.

### **Price underselling**

58. The non-injurious price (NIP) of the Domestic Industry has been determined and compared with the landed value of the subject goods to arrive at the extent of price underselling. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation on the basis of principles mentioned in Annexure III of the Rules. The analysis shows that during the POI, the landed value of subject imports was below the non-injurious price of the Domestic Industry, as can be seen from the table below, demonstrating positive price underselling effect:

SN	Particulars	Unit	POI
1	Landed Price	Rs/MT	69,255
2	NIP	Rs/MT	***
3	Price underselling	Rs/MT	***
4	Price underselling	%	***
5	Price underselling	Range	0-10

59. It is seen that the landed price of the subject goods from the subject country was lower than the NIP determined for the Domestic Industry. The price underselling for China PR is positive and significant.

### **H.3.3. Economic Parameters of the Domestic Industry**

60. Annexure II to the Rules provide that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the Domestic Industry are discussed below. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

**a. Production, Capacity, Capacity utilization and Sale**

61. Capacity, production, sales and capacity utilization of the Domestic Industry over the injury period is given in the table below: -

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Capacity	MT	***	***	***	***	***
Trend	Indexed	100	100	100	100	100
Production	MT	***	***	***	***	***
Trend	Indexed	100	101	91	49	49
Capacity utilization	%	***	***	***	***	***
Trend	Indexed	100	101	91	49	49
Domestic Sales	MT	41,604	41,339	34,813	11,952	23,904
Trend	Indexed	100	99	84	57	57

62. It is seen that
- The capacity of the Domestic Industry has remained constant over the injury period.
  - The production and capacity utilization of the Domestic Industry marginally increased in 2017-18, but declined thereafter, with a significant decline in the POI. Considering the demand and supply gap, the Domestic Industry could have produced more.
  - The sales of the Domestic Industry declined throughout the injury period, with a significant decline in the POI
  - Exports sales of the Domestic Industry are insignificant in volume.
63. It is thus seen that production, capacity utilization and sales of the Domestic Industry declined in 2018-19 and thereafter in the POI. The decline in these parameters is quite significant and the same appears to be a consequence of increase in imports from subject country.

**b. Market Share**

64. The market share of the Domestic Industry over the injury period is shown in table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Domestic Industry	%	48%	39%	28%	20%	20%
Trend	Indexed	100	80	59	42	42
Subject Imports	%	47%	46%	54%	79%	79%
Trend	Indexed	100	98	116	167	167
Other countries	%	5%	15%	17%	1%	1%
Trend	Indexed	100	322	363	29	29
Total	%	100	100	100	100	100

65. It is seen that the market share of the Domestic Industry has consistently declined over the injury period. The market share of the Domestic Industry declined by 58 basis points over the injury period, when the share of subject imports in demand increased by 67 basis points over the injury period. The market share of all other countries also declined over the period. As regards the contention that the increase in market share of subject

country is due to decline in market share of other countries, it is noted that the increase in market share of subject country is more than the decline in market share of all other countries.

**c. Profitability, return on investment and cash profits**

66. Profitability, return on investment and cash profits of the Domestic Industry over the injury period are given in the following table:

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualised
Cost of sales	₹/MT	***	***	***	***	***
Trend	Indexed	100	109	118	113	113
Selling price	₹/MT	***	***	***	***	***
Trend	Indexed	100	125	121	91	91
Profit per unit	₹/MT	***	***	***	***	***
Trend	Indexed	100	205	132	(26)	(26)
Total Profit/(Loss)	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	203	111	(15)	(15)
Cash Profit	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	202	110	(14)	(14)
Profit before Interest	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	198	107	(14)	(14)
Return on Capital Employed	%	***	***	***	***	***
Trend	Indexed	100	204	106	(18)	(18)

67. It is seen that:

- The Domestic Industry was earning profits till 2018-19. While profit per unit increased in 2017-18, the same declined in 2018-19, and thereafter in POI. Profitability of the Domestic Industry declined so significantly in the POI that the Domestic Industry suffered financial losses in the POI.
- The cash flow and return on investment followed the same trend as that of profits. The cash profits and return on investment increased in 2017-18 and declined thereafter till the POI so significantly that the Domestic Industry suffered cash losses and negative return on investment in the POI.

**d. Employment, Wages and Productivity**

68. Employment, wages and productivity of the Domestic Industry over the injury period are given in the table below.

Particulars	Unit	2016-17	2017-18	2018-19	POI	
					Actual	Annualized
No of Employees	Nos	***	***	***	***	***
Trend	Indexed	100	100	104	103	103
Salary and Wages	Rs. Lacs	***	***	***	***	***
Trend	Indexed	100	102	129	104	104
Productivity per day	MT/Day	***	***	***	***	***
Trend	Indexed	100	101	91	49	49

69. It is seen that performance of the Domestic Industry has not changed significantly in respect of employment and wages. The productivity per day has declined in the POI because of decline in production.

**e. Inventories**

70. The inventory position with the Domestic Industry over the injury period is given in the table below:

Particulars	Unit	2016-17	2017-18	2018-19	POI	POI (A)
Average Inventory	MT	***	***	***	***	***
Trend	Indexed	100	26	380	479	479

71. It is seen that the average inventories with the Domestic Industry have increased significantly in last two periods including the period of investigation as compared to the first two periods of the injury period.

**f. Growth**

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

Particulars	Unit	2017-18	2018-19	POI Annualized
Production	Y/Y	1%	-10%	-46%
Domestic Sales	Y/Y	-1%	-16%	-31%
Capacity Utilization	Y/Y	1%	-10%	-46%
Average Inventory	Y/Y	-74%	1362%	26%
Market Share of DI	Y/Y	-20%	-27%	-29%
Profit/(Loss)	Y/Y	103%	-46%	-113%
Cash Profit	Y/Y	102%	-45%	-112%
PBIT	Y/Y	98%	-46%	-113%
Return on Capital Employed	Y/Y	104%	-48%	-117%

**g. Magnitude of Dumping Margin**

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

**h. Ability to Raise Capital Investment**

74. The Domestic Industry is suffering financial losses in the period of investigation. With the competition being faced by the Domestic Industry because of the imports, the operations of the industry have been impacted which has affected the ability to raise capital investment. However, it may be added that the Domestic Industry is a multi-product company and therefore ability to raise capital investment is not governed based on the performance of the product under consideration (PUC) alone.

**i. Factors affecting domestic prices**

75. The import prices are directly affecting the prices of the Domestic Industry in the market. It is noted that the landed value of the subject goods from subject country is not only below its net selling price but also the non-injurious price of the Domestic Industry. Further, the landed prices of subject imports have depressed the prices of the domestic industry leading to financial losses. The imports of subject goods from third

countries are negligible in volumes and not injuring to the Domestic Industry. The demand for the product under consideration is far higher than the capacities in the country and cannot be the reason of injury to the Domestic Industry. Dumped imports are impacting the prices of the product in the market. Thus, it is noted that the principal factor affecting the domestic prices is the landed price of dumped imports of subject goods from the subject country.

76. The Authority has taken note of various submissions made by the Domestic Industry and other Interested parties on injury and causal link, and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority in the preceding paras ipso facto addresses submissions made by the domestic industry and other interested parties.
77. It is seen that the growth of the Domestic Industry in terms of production, capacity utilization, domestic sales volume, inventories, profits, cash profits and return on investment was adverse and negative in the POI.
78. As regards the contention that there is no co-relation between price undercutting and profits, the Authority notes that positive price undercutting does not always mean that the Domestic Industry performance should always decline. Further, a high price undercutting implies that the selling price of the Domestic Industry was higher than the import price. It is noted that during the POI, because of steep decline in the import price, the domestic industry has been forced to reduce its selling prices significantly. Further, despite reducing prices, the Domestic Industry has lost significant sales volumes. Decline in sales volumes despite reduction in selling price because of price undercutting and consequent increase in import volumes shows that the Domestic Industry reduced its prices, and still lost volumes, while subject imports were undercutting the Domestic Industry prices and their import volumes also increased.
79. As regards the contention that Chinese imports are due to economies of scale leading to competitively priced, the Authority notes that the dumping margin is positive considering the normal value as proposed by the Applicant, and the constructed normal value (CNV) as determined by the Authority. This fact shows that subject imports have entered into this country at dumped prices.
80. As regards negative price undercutting in at least two months of the POI, the Authority notes that the price undercutting is required to be determined for the investigation period. It is quite possible that price undercutting is positive in some import transactions or months and negative in some other import transactions or months. The Authority is, however, required to determine weighted average price undercutting for the entire investigation period.
81. As regards arguments about lower production capacity of Domestic Industry, it is noted that the capacity utilisation of the Domestic Industry declined by about 50% over the injury period which is quite significant.
82. As regards fluctuations in input cost based on crude, etc., the Authority notes that no verifiable information has been provided showing that such factors affected export price and did not affect normal value.

83. As regards alleged plant shut down, it is seen that production and capacity utilisation of the Domestic Industry declined by about 50%. Further, the Authority examined the trend of inventories with the domestic industry. It is seen that the Domestic Industry invariably had inventories throughout the period thus clearly showing that the decline in sales is not due to possible absence of production.
84. As regard the contention that the deterioration is only in the POI, the Authority notes that the performance of the Domestic Industry deteriorated even in 2018-19 in respect of production, capacity utilisation, domestic sales, market share, profit per unit, total profit, cash profit, inventories. The deterioration that started in 2018-19 continued further and intensified in POI.
85. The other interested parties have claimed that the Applicant may have purchased Benzene at higher prices as its cost has not declined with decline in price of Benzene. Further, it has also been claimed that the Domestic Industry uses ammonia in the manufacture of Aniline which is costlier as compared to Natural Gas used by the exporters. Under the Rules, the Authority is required to consider the Domestic Industry as it exists and examine whether the performance of the Domestic Industry deteriorated over the injury period. It is noted that cost of Benzene has been taken as per the books of accounts maintained by the company. It is further noted that fluctuation in the prices of raw material is a global factor and not peculiar to Indian market only and so would have affected the producers in the subject country as well. It is also noted that the Domestic Industry is expected to adjust its prices of domestic like product, in accordance with the fluctuations in the prices of raw material. However, the Domestic Industry was prevented from adjusting its prices because of the presence of dumped imports from China which were depressing and undercutting its prices.
86. The Authority has taken note of the trend of raw material prices over the injury period. It is seen that the fall in landed price of subject goods from China is more than fall in raw material prices. The landed price of imports from China have decreased sharply in the POI.
87. As regards submission of other interested parties on the exports of the Domestic Industry, it is seen that the exports undertaken by the Domestic Industry are very insignificant in volume.
88. In relation to submission that low market share of the Domestic Industry is due to limited capacity, it is noted that the Domestic Industry was operating with idle capacity in the period of investigation and it was forced to suspend its production due to surplus inventories. Therefore, fall in market share of the Domestic Industry cannot be attributed to capacity of the Domestic Industry. It is also noted that with significant inventories with the Domestic Industry, there appears no reason why the Domestic Industry would have not supplied the goods in the market.
89. Interested parties have argued that injury to the Domestic Industry could be due to some other reason. It is noted that the other interested parties have not brought forward any evidence of other factor which could have caused injury to the Domestic Industry. In the absence of verifiable evidence, the Authority has examined other known factors listed under the Rules to consider whether injury to the Domestic Industry is caused due to any other factor.



## **I. INJURY MARGIN**

90. The Authority has determined Non-Injurious Price (NIP) for the Domestic Industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The non-injurious price of the product under consideration has been determined by adopting the information/data relating to the cost of production provided by the domestic industry and duly certified by the practicing cost accountant for the period of investigation. The non-injurious price has been considered for comparing the landed price from the subject country for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilization of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.
91. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on facts available.
92. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below:

Country	Name of Producer	Non-Injurious Price (US\$/MT)	Landed Value (US\$/MT)	Injury Margin US\$/MT	Injury Margin (%)	Injury Margin % (Range)
China PR	Wanhua Chemical Group Co., Limited	***	994.19	***	***	0-10
	Others	***	909.30	***	***	10-20

## **E. EXAMINATION OF INJURY**

93. The examination of the imports of the subject product and performance of Domestic Industry shows that the volume of imports has increased in absolute terms as well as in relation to production and demand in India. The imports are undercutting the prices of the Domestic Industry, and the price underselling is also positive. The imports of subject goods from subject country has prevented price increases which otherwise would have occurred due to increase in cost of production. The Domestic Industry has suffered price suppression on account of import of subject goods from subject country. Further, the subject imports have depressed the prices of the Domestic Industry to a very significant extent.
94. It is also noted that production, capacity utilization and domestic sales of the Domestic Industry declined over the injury period, with significant decline in the POI. The market share of the Domestic Industry has declined over the injury period with significant decline in the POI. At the same time, the market share of subject imports from subject

country has increased significantly. It is also noted that the Domestic Industry is faced with significant inventories.

95. The profitability of the Domestic Industry declined significantly over the injury period, and the Domestic Industry suffered financial losses in the period of investigation. The performance of the Domestic Industry deteriorated in respect of cash flow, PBIT and return on investment. The Domestic Industry suffered cash losses and negative return on investment in the period of investigation. Further, growth of the Domestic Industry became negative in the POI in respect of a number of injury parameters.

## **I. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS**

96. As per the Rules, the Authority, inter alia, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than dumped imports could have contributed to the injury to the Domestic Industry.
97. The other interested parties have submitted that the injury suffered by the Applicant is due to other reasons and not due to the imports from the subject country. The Authority notes that the interested parties have not presented any verifiable evidence establishing that the Domestic Industry has suffered injury due to factors other than dumped imports. Even though the claims made by the opposing interested parties are mere assertions, the same have been examined based on information available on record.

### **a. Volume and prices of imports from third countries**

98. Imports from subject country account for around 98% share in the imports. Thus, it cannot be said that imports from other countries are causing injury.

### **b. Demand for the product**

99. The demand of the subject goods has increased over the injury period with marginal decline in the POI when compared to the preceding year. However, demand in the POI was significantly higher than the demand in base year. The decline in demand cannot be a reason for the injury suffered by the Domestic Industry.

**c. Export performance of the Domestic Industry**

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

**d. Developments in technology**

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

**e. Performance of other products being produced and sold by the Domestic Industry**

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

**f. Changes in the pattern of consumption**

103. There have been no material changes in the pattern of consumption of the PUC. Hence, changes in the pattern of consumption have not caused injury to the domestic industry.

**g. Conditions of Competition and Trade restrictive practices**

104. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

**J. POST-DISCLOSURE COMMENTS**

105. Post-disclosure submissions have been received from the interested parties. The Authority has examined the post-disclosure submissions made by the interested parties, including reiterations which have already been examined suitably and addressed adequately in the relevant paragraphs of these final findings. The issues raised for the first time in the post disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.

**J.1 Submissions of the Domestic Industry**

106. The following submissions have been made by the Domestic Industry on the Disclosure Statement:
- i. The Authority is requested to consider adequate return on the working capital deployed in the capital input. Therefore, grant of profit only on the fixed assets and ignoring investment in working capital has led to understate NIP.
  - ii. The imposition of ADD on the imports of the subject goods from China PR will not be against the public interest.
  - iii. The questionnaire response filed by users withholds significant information from the Authority.

- iv. The expression public interest is a wider term which covers domestic industry as well.
- v. The sole producer is unable to sell despite demand and supply gap, due to dumped imports.
- vi. ADD is a redressal of unfair price discrimination by the producers in other countries, which is injurious to the industry in India.
- vii. Producers in China PR enjoy an unfair advantage, as they are operating under non-market economy conditions.
- viii. Chinese producers have significant high capacities.

## **J.2 Submissions of Other Interested Parties**

107. The submissions of other interested parties on the Disclosure Statement are as follows:

- i. The demand-supply gap for the product in the country is severe.
- ii. The Authority's analysis of injury based on just six months as POI is misleading.
- iii. Import prices and performance of the Domestic Industry have improved in the post-POI period.
- iv. The injury data do not show any situation of considerable fall in performance of the Domestic Industry.
- v. The Authority should consider this case as an unfit case for ADD by considering larger interest of the users and any ADD at the cost of several small-scale users shall not do any good to the overall economic interest of the country.
- vi. The Authority is requested not to confirm the provisional duties earlier imposed in this matter.
- vii. The Authority has justified a six-month POI by stating, "*decline in import prices from subject country is steep in April-Sept, 19*". However, data provided in the petition filed by the Domestic Industry shows that import prices increased by around Rs. 3,200 (around 6%) in the month of September as compared to April prices.
- viii. The two months admitted shutdown of the Domestic Industry effectively reduced the POI to 4 months which is impermissible in law.
- ix. The present POI is not correctly adopted due to the following reasons:
  - a. It violates the guidelines given under the WTO Agreement and Manual issued by DGTR.
  - b. There is a wide fluctuation in the prices of Benzene, the major raw-material to manufacture Aniline and constitutes more than 75% of the cost of production of Aniline.
  - c. A short POI does not reflect the true picture of company's performance.
  - d. During the course of hearing the Domestic Industry stated that the plant of the Company remained shut for two months during the POI, which means that the virtual working period within the POI was only four months.
- x. The claim of confidentiality by the Applicant industry is excessive.
- xi. The extraordinarily short POI coupled with the two months shut-down of the Domestic Industry ensure that the performance parameters of the Domestic Industry relating to production, sales, profits and other parameters are bound to be distorted.
- xii. The Respondents note from the Disclosure Statement that the Authority has not considered the submissions of the Domestic Industry with respect to threat of material injury. The Respondents request the Authority to kindly confirm the same position in the Final Findings.
- xiii. There is no information in Section IV of the Disclosure Statement as to how actually the Authority has computed raw material cost, cost of utility, capacity utilization for normation of the cost. Also, the Authority has not disclosed as to how it has

- determined the important parameters such as capacity utilization, production, etc. given the admitted position that the Domestic Industry was under shut down for significant period during the POI.
- xiv. Since India uses lesser duty rule, the correct computation of NIP is of critical importance. Further, the Authority is requested to provide the proper methodology used for the computation of normal value.
  - xv. The Authority must evaluate the claims for confidentiality of information and not designate information as confidential without a proper examination.
  - xvi. The party providing the information on a confidential basis may be of the opinion that such information is not susceptible to summarization and not furnish the non-confidential summary of such information. However, in such a case, Rule 7(2) of the Rules requires the party to submit a statement of reasons as to why summarization is not possible. In addition to the above, the Authority is also required to evaluate the claims of confidentiality and determine whether the information in question can be kept confidential or not. In the present matter, the claim for confidentiality has been granted automatically without a thorough evaluation of the information to which the confidentiality claim pertains.
  - xvii. In accordance with relevant provisions of the Protocol on China's accession to the WTO, the "surrogate country" practice in Anti-Dumping actions should be lacking in multilateral legal basis since 11<sup>th</sup> December, 2016. Such a practice is bound to expire from then on. The Authority is requested not to use "surrogate country" methodology in calculating the normal value for this case, regardless of whether China is treated as a market economy country. Such understanding could find compelling support from the interpretation of the legal logical relationship between Article 15(a) and 15(b) of the protocol in the appellate body report on the "Fastener case" initiated by China PR against the EU recently released by the WTO Appellate Body, which, without any doubt, has provided strong justification for China PR to automatically obtain the market-economy status once the Article 15 of the Protocol expires.
  - xviii. The sudden decline of economic parameters during the POI raises serious questions about the authenticity of the data provided by the Applicant.
  - xix. The cost of sales increased from 100 in the base year to 113 during the POI (Annualized) whereas the selling price declined from 100 in the base year to 91 during the POI (Annualized). This increase in cost of sales and decline in selling price is directly linked with the low-capacity utilization and decrease in production. When the production and capacity utilization decline, the cost of sales increases due to fixed cost expenses and labour cost and not because of the imports from the subject countries.
  - xx. The levy of ADD will establish monopoly of the Applicant and will not be in the public interest.
  - xxi. The Post-POI ought to be investigated by the Authority to review whether the trend in the shorter period has indeed been borne out in the entire annual year and thereafter provide a reasoned basis for the differences if any.
  - xxii. The Domestic Industry has clearly contravened the provisions for confidentiality under the Rules.
  - xxiii. In the period after POI, the Domestic Industry has significantly increased the prices of aniline. Clearly, the injury period cannot be held as 6 months since the market has recovered.
  - xxiv. Given the economic slowdown faced by auto industry & housing industry, imposing ADD on Aniline will result into disastrous consequences for the said industries.
  - xxv. The Domestic Industry has failed to establish a causal link between the dumped imports and material injury to the Domestic Industry vide its Application.

- xxvi. The trend in the Selling Price and the Landed Price of the subject goods from China has virtually been identical and there is no impact of the landed price on the selling price of the Domestic Industry.
- xxvii. The conclusion pertaining to the decline in profitability of the Domestic Industry being attributable to an increase in imports from China is uncorroborated and inadequately established.
- xxviii. The exporters may have the benefit of economies of scale, however, despite a growing demand the sole domestic producer in India has not expanded capacities and has consistently operated at maximum capacity utilization.
- xxix. The Authority has incorrectly determined the NIP by adopting the information/data relating to the cost of production for a 6-month POI.

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

108. The Authority has examined the post-disclosure submissions made by the interested parties including reiterations which have already been examined suitably and addressed adequately in the relevant paras of these final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below.
- i. As regards the submission of the Domestic Industry with regard to understated NIP, the Authority notes that NIP has been determined as per consistent practice of the Authority in terms of Annexure III of the Anti-dumping Rules.
  - ii. With regard to argument of other interested parties for disclosure of proper methodology used for the computation of normal value, it is noted that the same is already explained in the appropriate paragraphs of this findings.
  - iii. As regards increase in import price in post-POI period, the Authority considers that post-POI data cannot be considered for determination in the present case. Further, post-POI parameters in any case cannot be selectively considered by the Authority. Consideration of post POI data implies de-facto updation of all relevant information and thereafter full examination thereof, including verification.
  - iv. As regards the argument that the present case is not a fit case for imposition of ADD considering larger interest of the users and any ADD at the cost of several small-scale users shall not do any good to the overall economic interest of the country, the Authority notes that the interested parties have merely made submission about possible adverse effect on the users (and not public at large). Further, these parties have not quantified the adverse impact of proposed measures either on consumers or public at large. It is also seen that the prices of aniline were in the region of Rs. 95,000 pmt (CIF) during 2017-18 and 2018-19 and declined to Rs. 69,255 pmt (CIF) during the POI. Thus, the landed price of imports after adding proposed ADD shall remain materially below the prices that had prevailed over a long duration of two years.
  - v. With regard to the argument that the two months admitted shutdown of the Domestic Industry effectively reduced the POI to 4 months which is impermissible in law, the Authority notes that the plant was not shut down completely for two months. The plant was shutdown for a few days in the POI, as per details below. However, even when the production was suspended for few days, the Domestic Industry had inventories for undertaking sales. In fact, the inventory levels with the domestic industry in the POI were higher than the inventory levels in the past. Further, the Domestic Industry submitted that these shutdowns were not for technical reasons and were for commercial reasons.

- vi. As regards the doubts about the authenticity of the data provided by the Applicant, it is clarified that all the data in the present finding is based on due desk verification. The decline in economic parameters of the Domestic Industry during the POI is a consequence of decline in the import price and increase in the dumped imports from China.
- vii. As regards the argument that this case as an unfit case for ADD considering larger interest of the users. It is noted that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.
- viii. With reference to the arguments regarding causal link and material injury, the Authority notes that these issues have been adequately examined in the relevant paragraphs above.

#### **K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

- 109. The Authority notes that the purpose of anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The Interested parties have not established that imposition of duties is going to adversely impact the public interest.
- 110. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

#### **L. CONCLUSION**

- 111. After examining the submissions made by the interested parties and issues raised therein, and considering the facts available on record, the Authority concludes that:
  - a. The product under consideration has been exported to India from the subject countries below its normal value.
  - b. The Domestic Industry has suffered material injury.
  - c. Material injury has been caused by the dumped imports of subject goods from the subject countries.

#### **M. RECOMMENDATIONS**

- 112. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules, the Authority is of the view that imposition of Anti-Dumping is required to offset

dumping and injury. Therefore, Authority recommends imposition of anti-dumping duty on imports of subject goods from the subject country.

113. In terms of provision contained in Rule 4(d) & Rule 17(1) (b) of the Rules, the Authority recommends impositions of anti-dumping duty equal to lesser of margin of dumping and the margin of injury so as to remove the injury to the domestic industry. The Authority, therefore, considers it necessary and recommends imposition of anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder from the date of issue of the notification of imposition of provisional duty by the Central Government vide Notification No.20/2020-Customs (ADD) dated 29<sup>th</sup> July, 2020. Accordingly, definitive anti-dumping duty equal to amount mentioned in column 7 of the duty table below is recommended to be imposed for five (5) years from the date of imposition of provisional duties, on all imports of goods described at Column 3 of the duty table, originating in or exported from China PR.


**DUTY TABLE**

S. No.	Heading	Description	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	2921 41	Aniline	China PR	Any country including China PR	Wanhua Chemical Group Co., Limited	36.90	MT	US\$
2	2921 41	Aniline	China PR	Any country including China PR	Any combination other than the combination specified above	121.79	MT	US\$
3	2921 41	Aniline	Any country except China PR	China PR	Any	121.79	MT	US\$

114. Subject to the above, the Preliminary Findings notified on 12<sup>th</sup> June, 2020 is hereby confirmed.

**N. FURTHER PROCEDURE**

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

  
(B.B. Swain)

**Special Secretary and Designated Authority**