

To be published in the Gazette of India, Extraordinary, Part 1 Section 1

**F. No. 6/7/2021-DGTR**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Trade Remedies**  
**4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi -110001**

**Dated: 27/07/2022**

**NOTIFICATION**

**FINAL FINDINGS**  
**Case No. A.D (OI)-07/2021**

**Subject: Anti-dumping investigation concerning imports of “Electrogalvanized Steel” from Korea RP, Japan and Singapore.**

**F. No. 6/7/2021-DGTR** - Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter 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 thereof, as amended from time to time (hereinafter referred as the “Anti-Dumping Rules” or “Rules” or “AD Rules”);

**A. BACKGROUND OF THE CASE**

1. M/s American Precoat Speciality Private Limited (hereinafter referred to as the “petitioner” or the “applicant” or the “domestic industry” or “DI”) filed an application before the Designated Authority (hereinafter referred to as the “Authority”) seeking initiation of an anti-dumping investigation concerning imports of “Flat rolled products of hot rolled or cold rolled steel that are continuously electrolytically plated or coated with zinc, with or without alloying elements” (hereinafter referred to as “Electrogalvanized Steel” or “EG steel” or “subject goods” or “product under consideration” or the “PUC”) originating in or exported from Korea RP, Japan and Singapore (hereinafter referred to as “subject countries”), citing that dumped imports of the subject goods from the subject countries are causing material retardation to the establishment of the domestic industry.
2. The Authority, on the basis of *prima facie* evidence submitted by the applicant issued a public notice vide Notification No. 6/7/2021-DGTR dated 28<sup>th</sup> June 2021, published in the Gazette of India, Extraordinary, initiating an anti-dumping investigation in accordance with Rule 5 of the Rules to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject countries, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury in the form of material retardation to the domestic industry.

## **B. PROCEDURE**

3. The procedure described below has been followed in this investigation:
  - i. The Authority notified the Embassies of the subject countries in India about the receipt of the present application before proceeding to initiate the investigation in accordance with Rule 5(5) of the Rules.
  - ii. The Authority issued a public notice dated 28<sup>th</sup> June 2021, published in the Gazette of India, Extraordinary, initiating an investigation concerning imports of the subject goods originating in or exported from the subject countries.
  - iii. The Authority sent a copy of the initiation notification to the Embassies of the subject countries in India, known producers and exporters from the subject countries, known importers / users and the domestic industry as per the information made available to it by the applicant and requested them to make their views known in writing within the prescribed time limit.
  - iv. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of the subject countries in India, in accordance with Rule 6(3) of the Rules. A copy of the non-confidential version of the application was circulated to the other interested parties.
  - v. The Embassies of the subject countries in India were also requested to advise the producers / exporters in their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers / exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
  - vi. The Authority forwarded a copy of the public notice initiating the anti-dumping investigation to the following known producers/exporters in the subject countries and offered an opportunity to them to make their submissions known in accordance with Rule 6(2) of the Rules:
    - (i) Hyundai Steel Company
    - (ii) Traverse International Insulation Materials LLC
    - (iii) Baosteel Singapore PTE Limited
    - (iv) Metal One Corporation
    - (v) POSCO
    - (vi) Woosung Plating Co. Ltd.
    - (vii) Hanwa Co. Ltd.
    - (viii) Okaya and Co. Ltd.
    - (ix) JFE Steel Corporation
    - (x) Hua Jin Holding Pte Ltd.
    - (xi) Ewis Ante Enterprise Pte Ltd.

- (xii) Pana Resources Pte Ltd.
- (xiii) Yesteel Industrial
- (xiv) Dong Ma Corporation
- (xv) Shin Steel Co. Ltd.
- (xvi) Doowon Steel Co. Ltd.
- (xvii) Samin Corporation

vii. In response to the initiation notification of the subject investigation, the following producers/exporters from the subject countries have responded by filing a questionnaire response:

- (i) Hyundai Corporation
- (ii) LG Hausys Ltd.
- (iii) B.N. Steela Co. Ltd.
- (iv) Hyundai Steel Company
- (v) Nippon Steel Corporation
- (vi) Honda Trading Corporation
- (vii) Nippon Steel Trading Corporation
- (viii) NSM Coil Centre Co. Ltd.
- (ix) NST Nihon Teppan Co. Ltd.
- (x) Sanwa Steel Co. Ltd.
- (xi) Sumitomo Corporation Global Metals Co. Ltd.
- (xii) Tetsusho Kayaba Corporation
- (xiii) Samyang Steel
- (xiv) DK Dongshin Co. Ltd.
- (xv) Dongkuk Steel Mill Co. Ltd.
- (xvi) Dongkuk Steel India Pvt. Ltd.
- (xvii) POSCO, Korea RP
- (xviii) Samsung C&T Corporation
- (xix) POSCO International Corporation
- (xx) Winsteel Co. Ltd.
- (xxi) POSCO C&C, Korea RP
- (xxii) DCM Co. Ltd., Korea RP
- (xxiii) Dana Korea Co. Ltd.

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

- (i) Yamaha Motor India Private Limited
- (ii) Nash Industries (I) Private Limited
- (iii) Automotive Ancillary Services Private Limited
- (iv) Elin Electronics Limited

- (v) Golkonda Engineering Enterprises Limited
- (vi) Himalaya Communications Limited

ix. In response to the initiation notification of the subject investigation, the following importers/users have responded by filing a questionnaire response:

- (i) Hyundai Steel Anantapur
- (ii) Hyundai Steel India Private Limited
- (iii) POS-Hyundai Steel Mfg (I) Private Limited
- (iv) Hyundai Motor India Limited
- (v) Tata Motors Limited
- (vi) Whirlpool of India Limited
- (vii) Honda Trading Corporation India Private Limited
- (viii) Neemrana Steel Service Centre
- (ix) Rajasthan Prime Steel Processing Centre Private Limited
- (x) POSCO India Processing Centre
- (xi) POSCO India Pune Processing Centre
- (xii) LG Electronics India Private Limited

x. The following producers/exporters have not submitted the questionnaire responses but have made the legal and factual submissions during the course of the investigation:

- (i) JFE Steel Corporation
- (ii) Kobe Steel Limited

xi. The period of investigation (POI) for the present investigation is from 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2020. The injury investigation period for the present investigation is 2017-18, 2018-19, 2019-20 and the POI. The Authority has also considered data of the domestic industry for the post-POI period (1<sup>st</sup> January 2021 to 30<sup>th</sup> June 2021) in the present case.

xii. The applicant was authorized by the Authority to procure transaction-wise import data for the period of investigation and the preceding three years from the DGCI&S. Post initiation of the investigation, there was a change in the policy regarding dissemination of the data. The Authority procured import data from DG Systems to verify the import data submitted by the applicant. However, because of the sorting methodology adopted by DG Systems, the procured data was not comprehensive vis-à-vis the DGCI&S data submitted by the applicant.

xiii. To overcome this limitation the Authority decided to rely on the data filed by the domestic industry along with the data of the responding exporters. Given that co-operation from the exporters is quite significant, the data filed by the domestic

industry coupled with the data of the responding exporters provide a reliable basis for estimating total imports of the subject goods during the POI and related parameters thereof.

- xiv. The Authority sought further information from the applicant to the extent deemed necessary. The verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the present investigation. The Authority has considered the verified data of the domestic industry in its analysis in the present case.
- xv. The Authority sought further information from the other interested parties to the extent deemed necessary. The verification of the data provided by the other interested parties was conducted to the extent considered necessary for the purpose of the present investigation. The Authority has considered the verified data of the domestic industry in its analysis in the present case.
- xvi. The Authority made available the non-confidential version of the submissions made by the various interested parties. A list of all the interested parties was uploaded on the DGTR website along with the request to all of them to email the non-confidential version of their submissions to all the other interested parties since the public file was not accessible physically due to the ongoing COVID-19 global pandemic.
- xvii. The domestic industry has submitted the financial data in accordance with Generally Accepted Accounting Principles (GAAP) and which has been duly certified by Chartered Accountant/Cost Accountant. The non-injurious price (NIP) has been calculated on the basis of the information furnished by the domestic industry keeping in mind the principles mentioned under Annexure III to the Rules. The NIP has been worked out so as to ascertain whether duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xviii. In accordance with Rule 6(6) of the Rules, the Authority provided opportunity to the interested parties to present their views orally in a public hearing held on 19<sup>th</sup> April 2022 through video conferencing. The parties presented their views in the oral hearing and were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
- xix. The submissions made by the interested parties, arguments raised and the information provided by the various interested parties during the course of the investigation, to the extent the same were supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this disclosure statement.

- xx. 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 has conducted the examination on the basis of facts available.
- xxi. The information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to the other interested parties. Wherever possible, the parties providing the information on confidential basis were directed to provide an adequate summary of the confidential version in a non-confidential version.
- xxii. \*\*\* in this disclosure statement represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.
- xxiii. The exchange rate adopted by the Authority for the subject investigation is US \$1= INR 75.02.

## C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

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

*“3. The product under consideration ('PUC') is 'Flat rolled products of hot rolled or cold rolled steel continuously electrolytically plated or coated with zinc, with or without alloying elements'. The product under consideration is commonly known as electrogalvanized steel.*

*4. The product under consideration may be either of alloy or non-alloy steel, whether or not of prime or non-prime quality. The product under consideration may be in coils or not in coils form. The product under consideration includes all types of electrogalvanized steel whether or not coated, passivated, pre-treated, pre-painted, colour coated, thin organic coated, chromated, phosphated, printed, whether or not corrugated or profiled, and whether or not having anti-fingerprint treatment.*

*5. The following are excluded from the scope of product under consideration:*

- i. Flat rolled steel products that are plated or coated with alloy of aluminium and zinc.*
- ii. Flat rolled steel products that are plated or coated with alloy of zinc and nickel with nickel being aimed at a minimum 11 %.*
- iii. Hot-dip galvanized flat rolled steel products.*
- iv. Tin-mill flat rolled steel products*

*6. The intended end use of the product under consideration is for protection from corrosion and is majorly used in the manufacturing of electronic appliances, auto*

*applications, consumer electronics, furniture, HVAC, roofing and siding, ceiling grid, construction, office equipment etc.*

*7. The product under consideration is classified under HS Codes 7210, 7212, 7225 and 7226 of Schedule I of the Customs Tariff Act, 1975. However, imports of the product under consideration have also been made under HS Codes 7209 & 7211 of Schedule I of the Customs Tariff Act, 1975.”*

5. During the course of investigation, Product Control Number (PCN) methodology was proposed by few interested parties for appropriate comparison. The Authority proposed the following PCN methodology on 10<sup>th</sup> August 2021:

<b>S. No.</b>	<b>PCN Parameter</b>	<b>Description</b>	<b>Code</b>
1	Coating	Bare Electrogalvanized Steel	B
		Electrogalvanized steel which is passivated, pre-painted, colour coated, thin organic coated, chromated, phosphated or printed	C

6. Interested parties were requested to provide comments to the proposed PCN methodology by 16<sup>th</sup> August 2021. The Authority issued final PCN methodology on 14<sup>th</sup> October 2021 which is noted below:

<b>Sr. No.</b>	<b>PCN Parameter</b>	<b>Code</b>
1	Bare Electrogalvanized Steel	A
2	Coated Electrogalvanized Steel	B
3	Laminated Electrogalvanized Steel	C

### **C.1. Submissions made by other interested parties**

7. The other interested parties have submitted as follows regarding the scope of the PUC:

- The applicant has stated that the major raw materials used for production of the PUC are CR coil and other chemicals and therefore, it becomes imperative to examine whether EG steel is just another form of CR steel as the Authority is already conducting a sunset review of imports of Cold Rolled/Cold Reduced flat steel products<sup>1</sup>.
- The grades of the PUC which are sold and exported by JFE Steel Corporation (hereinafter JFE) and Nippon Steel Corporation to India are not commercially produced or sold by the domestic industry. Further, these grades of PUC cannot be commercially or technically substituted with the grades produced and sold by the domestic industry. JFE is a fully integrated steel producer. This makes it possible for JFE to control the

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<sup>1</sup> <https://www.dgtr.gov.in/sites/default/files/Initiation%20Notification%20%20%28English%29%20CRSSR%2031.03.2021%20%281%29.pdf>

quality of substrates for the EG steel and to produce higher quality EG steel. The domestic industry purchases substrates for manufacture of EG steel. Therefore, it is estimated that the quality of the substrates of the domestic industry vary greatly. Also, it cannot do quality improvement in-house.

- c) EG steel of special formability grades (deep drawing quality) with one-side coating i.e., JFE-CE-EZ, JFE-CF-EZ, JFE-CG-EZ, JFE-CGX-EZ-JEFC270E, JFEC270F, JFEC260G, SECE, SECF and SECG should be excluded from the scope of the PUC.
- d) The production of one side-coated EG steel is difficult and is manufactured through a deep drawing process which requires a high level of manufacturing technology. It is used for manufacturing of fuel tanks of motorcycles and agricultural machinery.
- e) The domestic industry has not mass-produced or commercially produced one-side coating during the POI or the post-POI.
- f) Regarding the domestic industry's submission with respect to clarification of "coated EG steel", it is submitted that the process of coating is different from the process of passivating, pre-printing, chromating, phosphating and printing. The two processes cannot be equated and therefore, EGS which has undergone such processes cannot form part of bare EGS.
- g) Automotive steel products require unique specifications and such standards are non-negotiable and non-substitutable due to very nature of the automotive industry.
- h) The domestic industry has the capacity to manufacture only upto a maximum width of 1270 mm whereas JFE can manufacture upto 1850 mm. In a previous investigation,<sup>2</sup> the Authority has restricted the width of PUC to 1650/1250 mm as the domestic industry did not manufacture beyond 1650/1250mm. Thus, the PUC should be capped at 1270 mm width only.
- i) Customers choose Nippon Steel's product due to stable quality and delivery control.
- j) Colour coated, printed (referred to as high quality EGS) and laminated EGS manufactured and sold by POSCO Steeleon should be excluded from the PUC as they are not commercially or technically substitutable with the PUC manufactured by the domestic industry. The above-mentioned categories of EG Steel are primarily used in manufacturing of home appliances, wherein if the surface of the appliance is not flawless, it is treated as a defective item.
- k) The domestic industry does not have the technology and machinery to manufacture laminated /pattern printed/color coated EGS used in manufacture of home appliances. The same may also be verified by conducting a plant visit at the petitioners' factory in Gujarat. Therefore, laminated /pattern printed /colour coated EGS used in manufacture of home appliances should be excluded from the scope of the PUC.
- l) Film Laminated Steel Sheets ("FLSS") used in home appliances are not manufactured by the domestic industry and therefore should be excluded from the scope of the PUC.

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<sup>2</sup> Anti-dumping investigation concerning imports of Flat Rolled Products of Stainless Steel from China PR, Korea RP, European Union, Japan, Taiwan, Indonesia, USA, Thailand, South Africa, UAE, Hong Kong, Singapore, Mexico, Vietnam and Malaysia, Final Finding dated 23 December 2020; Anti-Dumping duty investigation concerning imports of Cold Rolled Flat Products of Stainless Steel from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA, Final Finding dated 24 November 2009.

- m) The respondent's (POSCO) exports and the product manufactured by the domestic industry are not in a competitive relationship as the PUC cannot be considered a like article as defined under Rule 2(d) of the Rules.
- n) A combined reading of Rule 2(b) and (d) of the Rules clearly enunciates that if particular product is excluded from the scope of the PUC, no material injury can be attributed to imports of such products.
- o) Keeping in line with the previous DGTR practice<sup>3</sup> of exclusion of grades of the PUC not manufactured by the domestic industry, the Authority should grant the PCN exclusions claimed by JFE and NSC. In the case of *Exotic Decor Pvt Ltd vs. Designated Authority*<sup>4</sup>, *Magnet Users Association vs. Designated Authority*<sup>5</sup> and *Indian Refractory Makers Association v. Designated Authority*<sup>6</sup> CESTAT has held that products not manufactured by the domestic producer should be excluded from the PUC as they cannot cause material injury to the DI.
- p) The Authority should take into account the factors outlined by the Hon'ble CESTAT in *Merino Panel Products Ltd. v. Designated Authority*<sup>7</sup> and WTO panel and Appellate Body Reports<sup>8</sup> to ascertain whether an imported article can be categorised as like article to the domestic product or technically and commercially substitutable with the domestic product.
- q) The pricing, physical and chemical properties, quality and finishing of the product manufactured by the domestic industry and that of the imported high quality EGS product differ. Further, the end uses and consumer preferences of the two products differ. A letter from Indian importers regarding the usage of high quality EGS in manufacturing of refrigerator and other such home appliances substantiates this claim. Therefore, high quality EGS should be excluded as they are not like article under Rule 2(d) of the Rules.
- r) There is no clarity on what the phrase “aimed at a minimum of 11%” used in the product exclusion means.
- s) During the oral hearing the, the petitioner had clarified that the phrase meant the PUC with minimum 11 % of nickel content should be excluded.
- t) Nickel-zinc ratio is between 9% to 13% for nickel-zinc EGS produced and exported by Hyundai Steel Corporation. Therefore, the Authority should revise nickel content ratio to a minimum 9% while defining the exclusion.

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<sup>3</sup> In *Anti-dumping investigation concerning imports of “Coated Paper” originating in or exported from China PR, European Union and USA*, Final Finding dated 26 December 2018, the DGTR excluded certain products from the scope of PUC as it was not produced by the domestic industry therein. Further, in *Anti-dumping investigation concerning imports of Flat Rolled Products of Stainless Steel originating in or exported from China PR, Korea RP, European Union, Japan, Taiwan, Indonesia, USA, Thailand, South Africa, UAE, Hong Kong, Singapore, Mexico, Vietnam and Malaysia*, Final Finding dated 23 December 2020, the DGTR excluded certain grades from the scope of investigation as the domestic industry therein did not rebut the claim of the exporter (who was seeking exclusion) that certain grades cannot be produced by the domestic industry and that comparable grades have not been produced and sold by the domestic industry.

<sup>4</sup> Anti-Dumping Appeal No. 52233 OF 2018

<sup>5</sup> (2003 (157) ELT 150 (Tri.).

<sup>6</sup> 2009 (119) E.L.T. 319 (Tri.).

<sup>7</sup> (2016) (334) ELT 552.

<sup>8</sup> *Japan – Alcoholic Beverages* Appellate Body Report, WT/DS11/AB/R, *Japan - Alcoholic Beverages*, p. 20. *Canada – Periodicals* Appellate Body Report, WT/DS31/AB/R, *Canada – Periodicals*, p. 21

- u) LG India uses special type of EG steel, namely, laminated [VCM, vinyl coated and PVC coated, Polyethylene terephthalate (PET)] (hereinafter referred to as laminated PUC) EG steel for manufacture of Refrigerator front doors. The domestic industry has admitted that it does not manufacture laminated/VCM grade and nor does it have the technology to manufacture the same and therefore, LG India is compelled to import the same.
- v) Laminated PUC is physically and visibly distinct from other types of the PUC as a thin layer of vinyl and PVC sheet is applied over the EG steel and is different from painted PUC which uses paint as a layer of coating on the EG steel.
- w) There is significant difference in the usage of the two categories of the PUC. Laminated PUC gives a visual appeal to the final product (refrigerator) which cannot be given by any other type of the PUC.
- x) Laminated PUC is also much more expensive than other types of PUC and the same can be analysed from the sample invoices.
- y) LG India requires special type of painted/coated (PCM, pre-coated) EG steel for some of its refrigerator models. The domestic industry is manufacturing a different category of painted/coated PUC.
- z) The imported product and the product manufactured by the domestic industry are not substitutable. In the case *Birla Periclase v. Designated Authority*<sup>9</sup>, CESTAT had excluded the imported article as it was not a substitute of PUC manufactured in India. The Tribunal had noted that both Fused Magnesia and Sintered Magnesia are used for withstanding high temperature but Fused Magnesia being a denser mineral for refractory applications cannot be considered as a substitute of latter. Hence, excluded Fused Magnesia from the scope of the PUC.

aa) In case the Authority decides to include laminated PUC and special type of painted/coated PUC required by LG India, it is requested that a user-based exemption may be granted. Such exemption is required in the facts of the present case as the said products are not locally produced in India and has already been granted in Anti-Circumvention investigations concerning imports of Cold Rolled Flat Products of Stainless-Steel originating in or Exported from China PR, Korea, European Union, South Africa, Taiwan, Thailand and USA<sup>10</sup>

bb) HES-JEC270E of thickness 0.8 mm used in motorcycle, NSECC of thickness 0.5-1 mm used in automobile, SECC of thickness 1.0-2.0 mm used in automobile and NSEC270E of thickness 1.2 mm used in automobile should be excluded.

cc) With regard to exclusions sought by JFE, it is submitted that non-filing of questionnaire response does not preclude an exporter from seeking exclusions. The same has been allowed by the Authority in the past as was done in the Anti-dumping investigation concerning imports of Flat Rolled Products of Stainless Steel.<sup>11</sup>

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<sup>9</sup> 2000 (116) E.L.T. 336 (Tribunal).

<sup>10</sup> Final Findings dated August 18, 2017, pg. 96-97.

<sup>11</sup> *Anti-dumping investigation concerning imports of Flat Rolled Products of Stainless Steel originating in or exported from China PR, Korea RP, European Union, Japan, Taiwan, Indonesia, USA, Thailand, South Africa, UAE, Hong Kong, Singapore, Mexico, Vietnam and Malaysia*, Final Finding dated 23 December 2020.

dd) The PUC imported by Tata Motors is a safety critical equipment in vehicle and the approval / homologation process before the ARAI itself takes more than a year with the required testing process. The fuel tanks are required to comply with the Automotive Standard 095:2007 Requirements for Metallic Fuel Tanks of Automotive Vehicles issued by the Automotive Research Association of India (ARAI). Considering the criticality of the PUC to be used in automotive applications, the same should be excluded from the scope of the PUC.

ee) Tata motors uses EG steel with a minimum nickel content of 12-14% in the manufacturing of automotive fuel tanks.

ff) The applicant has while segregating the import data has designated all PUC with ZN-NI description as NPUC. This shows that domestic industry intended to exclude PUC with nickel content meant for automotive application. The domestic industry is also not seeking relief against PUC meant for automotive application.

gg) In the absence of proper basis for fixing a threshold of 11% nickel content, the Authority should exclude all products containing nickel regardless of the percentage of nickel.

hh) EG steel used in automobiles should be of a higher quality as it is related to safety of automobile and may cause a massive recall of automobiles. Therefore, EG steel used in automobiles should be excluded from scope of PUC.

ii) Dongkuk Steel Mills Co. sells only laminated EG steel (PCN category C) which admittedly is not manufactured by the domestic industry and therefore, this product should be removed from the PUC.

## C.2. Submissions made by the domestic industry

8. The domestic industry has submitted as follows regarding the scope of the PUC:

- The product exclusion “*nickel being aimed at a minimum of 11%*” can be rephrased as “*nickel content being a minimum of 11%*”.
- EG steel is broadly used in the following industry segments/applications:
  - Automotive Sector
  - Construction and Architecture
  - Home Appliances
  - Home Entertainment
  - Food and beverage, medical devices & other miscellaneous applications
- Hyundai Corporation has claimed that EG steel with 9-13 % can be used in automotive sector which must be verified by the Authority as EG steel having a minimum of 11% nickel content will provide the anti-corrosion properties to EG steel required for use in automotive sector. Tata Motors has also admitted during the oral hearing that it is importing EG steel having Nickel Content of 11% or more. The Authority should verify whether Tata Motors has imported EG steel with less than 11% nickel content. If Tata Motors has not imported EG steel with less than 11% nickel content then its request for exclusion of all products containing nickel regardless of nickel content is not justified.
- The biggest segment where EG steel is used is automotive sector. The domestic industry intends to supply EG steel to automotive sector. In fact, the domestic industry has

undertaken localisation projects for a number of types of EG steel used in the automotive sector.

- e) The domestic industry has been involved in localisation projects of at least 28 products such as LED TV Backplate, kitchen chimney housing, fuel tank, audio player housing, sun roofing etc. A detailed presentation in this regard has already been provided to the Authority and has also been shared with the interested parties.
- f) The domestic industry does not manufacture “laminated and/or pattern printed EG steel which is used in refrigerator front doors”. The Authority may exclude these product types from the scope of the PUC. However, complete technical description of such “laminated EG steel” should be specified in the final findings if the Authority decides to exclude the same from the scope of the PUC. The following description was proposed by the domestic industry for exclusion of laminated EG steel:

*“Bare electrogalvanized Steel which is subjected to a phosphated pre-treatment alongwith an appropriate primer and / or base coat on Topside and a primer and/or backcoat on bottom side and laminated on top side, with a printed - Vinyl / PET / ALF or LDPE film of min 50 Microns.”*

- g) If the Authority decides to exclude “printed EG steel” from the scope of the PUC, complete technical description of such “printed EG steel” should be specified in the final findings. The following description was proposed by the domestic industry for exclusion of printed EG steel:

*“Bare electrogalvanized steel which is subjected to a phosphated pre-treatment along with an appropriate primer and / or coloured base coat on topside and a primer and or coloured backcoat on bottom side and printed in minimum 3 colours on top side.”*

- h) The quality of products manufactured by the domestic industry is at par with that of the exporters. The request for exclusion of product types due to difference in quality is without any legal basis.<sup>12</sup> Further, no issues have been raised by any of the customers regarding the quality of the products.
- i) Most of the requests for product exclusions have been made by producers/exporters from the subject countries and not by actual users in India. Therefore, there is no claim with evidence that orders have been placed on the domestic industry for the concerned

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<sup>12</sup> In *DSM Idemitsu v. Designated Authority*, 2000 (119) E.L.T. 308 (Tribunal) CESTAT held as under :  
*“The plea of the appellants’ counsel is not convincing since he did not adduce any evidence/technical literature with reference to process of manufacture to show that product manufactured by the domestic manufacturers was different from the goods exported into India. He failed to substantiate that they are not similar and interchangeable except stating that they were different grades. Difference in quality will not make an article as different and Designated Authority was right in observing ‘that the fact that qualities may be different, does not imply that the imported products and the domestic are not like articles. We do not find any valid reason to disturb the findings given by the Designated Authority on this issue.”*

product types for which exclusions are being sought but domestic industry has expressed inability to supply the concerned product types.

j) With respect to scope of the PUC in material retardation cases, DGTR Manual of Operating Practices provides that:

*"The PUC should preferably include those items, which are produced and commercially sold in the domestic market by the respective DI. An exception could be the cases where the applicant is a new industry, who has set up facility for a new product or could be an upstream product of an existing industry and the new industry is facing difficulty in capturing market on account of dumped imports of the product."*

k) In the case of new and unestablished domestic industry, which is claiming injury in the form of material retardation to the establishment of industry, the Authority cannot apply conventional rule that all product types not produced and/or commercial sold by the domestic industry are required to be excluded from the scope of the PUC. Applying such rigid rule in case of material retardation will be inherently contradictory because a new and unestablished industry is bound to face difficulty in commencing production and/or commercial sales of all product types when dumped imports are taking place. In fact, a material retardation case can also involve a situation in which the applicant domestic industry has not commenced production of the PUC. If conventional rule regarding exclusion of product types not produced and/or commercially sold by the domestic industry is applied in such cases, no anti-dumping duty investigation can be conducted.

l) In Anti-dumping investigation concerning imports of Coated/Plated Tin Mill Flat Rolled Steel Products originating in or exported from the European Union, Japan, USA and Korea RP, Authority noted regarding request for exclusion in paragraph 15 as follows:

*"With regard to Polymer Laminated tinplate that are Bisphenol-A/BPA Free and Chromium-free tinplate, the Authority notes as follows:*

**b. The request for exclusion of these two types of products has been made by the Japanese exporters and not by any Indian users. No evidence has been placed before the Authority by any Indian user establishing the fact that orders have been placed on the domestic industry for these two types of products and the domestic industry has shown its inability to produce and supply these two types of products."**

m) In Anti-dumping investigation concerning imports of SBR of 1500 and 1700 series from Korea RP, EU and Thailand (material retardation case), Authority noted as follows:

**"The current manufacturing status of a grade/grades does not erode the capability of a domestic industry to produce such grades in future when there are orders for the same and also fair play is established.** Further M/s RIL has placed on record the license to manufacture these grades depicting its capability to produce these. **Further the Authority has evaluated injury to RIL on account of material retardation.** The Authority concludes that these two grades cannot be excluded from the scope of Product under consideration."

- n) The product exclusion request of JFE Steel Corporation should not be considered as it has not filed the questionnaire response and thus cannot be treated as a cooperating exporter. Further, the grades mentioned by JFE are their own internal grades and they have not provided any equivalent Indian or international standard.
- o) In the *Anti-dumping investigation concerning imports of Ammonium Nitrate, originating in or exported from Russia, Indonesia, Georgia and Iran*, final finding dated 1<sup>st</sup> August 2017, the Authority rejected the claims of exclusion of product types by the exporter from Indonesia as it had not submitted the questionnaire response and merely advanced arguments. The relevant extracts are reproduced below:

*"22(i) As regards termination of investigation against Indonesia, Authority notes that PT Kaltim Nitrate did not file exporter's questionnaire response and merely advanced arguments. However, the company claimed that they have not exported the product under consideration but they did not provide any information whatsoever with regard to the product they have exported in the EQ to enable the Authority to verify their claim that the goods exported by them are beyond the scope of the product under consideration. The Authority notes that in the absence of verifiable information with regard to the goods exported by the company, the Authority cannot satisfy itself with regard to the product exported by them and whether the same falls beyond the scope of the product under consideration. The Authority therefore, could not establish that the imports of Ammonium Nitrate from Indonesia are not Ammonium Nitrate having density above 0.83 g/cc. However, based on the submission filed by them, the Authority notes that the anti-dumping duty, if levied, will attract duty only against the imports of PUC i.e. ammonium nitrate", whether prilled, granular, or in other solid form, with or without additives or coating, and having bulk density in excess of 0.83 g/cc."*

- p) The product exclusion request of JFE Steel Corporation for one-side coated EG steel should not be accepted. The applicant has shared purchase order, invoice and packing

list to substantiate its claim that it has produced and sold one-side coated EG steel used in automobiles.

- q) The product exclusion request of JFE Steel Corporation to exclude EG steel of width more than 1270mm because the domestic industry has not sold EG steel of width more than 1270 mm should not be accepted. The domestic industry has capacity to produce the products with width more than 1270 mm as well. Exclusions from the scope of the PUC based on width restriction criteria would lead to circumvention of duty as has been observed by the Authority in earlier anti-dumping investigation concerning imports of stainless-steel flat-rolled steel products
- r) The product exclusion request for HES-JEC270E of thickness 0.8 mm used in motorcycles and NSECC of thickness 0.5-1 mm used in automobile requested by Nippon Steel are their own internal grades and they have not provided any equivalent Indian or international standard.
- s) The product exclusion request of Nippon Steel for EG steel having thickness 1.0-2.0 mm used in automobiles cannot be accepted as the domestic industry has the capability to produce EG steel having thickness upto 1.5mm used in automobile application.
- t) The PCN methodology proposed by the Authority vide notice dated 10 August 2021 provided two categories of PCNs as noted below:

S.No.	PCN Parameter	Description	Code
1.	Coating	Bare Electrogalvanized steel	B
		Electrogalvanized steel which is passivated, pre-painted, colour coated, thin organic coated, chromated, phosphated or printed	C

However, in the final PCN methodology adopted by the Authority vide notice dated 14<sup>th</sup> October 2021, the Authority has provided three categories of PCNs as noted below:

S.No.	PCN Parameter	Code
1.	Bare Electrogalvanised Steel	A
2.	Coated Electrogalvanised Steel	B
3.	Laminated Electrogalvanised Steel	C

- u) In the final PCN methodology, the Authority has not included the description for “coated EG steel” PCN category, which was noted in the proposed PCN methodology. We therefore request the Authority to clarify that the description for “coated EG steel” is the same that was noted in the proposed PCN methodology.
- v) Bare EG steel falling under PCN category “A” is not a saleable product. EG steel which is saleable/marketable involves providing a layer of zinc along with mandatory layers of one or more of pre-treatments, passivations, colour coating, thin organic coating, anti-fingerprint etc to make it corrosion-free and give it the required shelf life. The

Authority should scrutinize if any producer/exporter has claimed that it has sold bare EG steel (PCN category “A”).

w) There cannot be product exclusion specific to exporter or importer. In the *sunset review of anti-dumping duty on cold rolled/cold reduced flat steel products of iron or Non-Alloy Steel' or other Alloy Steel of all width and thickness - not clad, plated or coated*, the Authority had noted:

*“The Authority also notes that products cannot be excluded because they are meant for specific segment of user industry in India. Also, Hyundai Steel Company, Korea RP has not claimed that technical specifications or product types of these imported products are different from the goods produced and supplied by the domestic industry' Hyundai Steel Company, Korea RP has also not provided a list of grades to the other interested parties for which exclusion request has been made.”*

x) For all the claims concerning exclusion of different product grades and types except laminated EG steel used in refrigerator front doors, there is not even a claim by users in India that orders have been placed on the petitioner and petitioner has shown inability to supply the product types for which the exclusion is requested. Petitioner has been involved in 28 localisation projects for various industries like home appliances, home entertainment, food & beverage, automotive, construction/architecture etc.

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

9. While the issue of material retardation has been adequately dealt with in relevant paras of this disclosure statement, the Authority herein below has briefly elucidated on the said issue in a limited manner for addressing the requests of the interested parties regarding exclusion of certain product types from the scope of the PUC.

10. In a material retardation case, the scope of the PUC also depends upon the capability of the domestic industry to produce the said goods. This capability is evaluated on the basis of the project feasibility report and efforts made on technical and financial aspects by the industry. The determination of the quantum of the appropriate measure in India which follows the lesser duty rule also requires the determination of NIP of actually produced subject goods which requires taking into account the spectrum of the PUC produced by the domestic industry. The extension of a measure to goods which are yet to be commercially produced depends on the factual matrix of the case.

11. During the course of the investigation, the domestic industry has provided information with respect to localisation efforts undertaken by the domestic industry. The domestic industry has explained “localisation” to mean that most of the techno-commercial steps have been taken for developing the required variety of EG steel and that the domestic industry can supply the required variety of EG steel as and when orders are placed on them. The domestic industry claimed that they are moving ahead for localisation of at least 28 products such as LED TV backplate, kitchen chimney housing, fuel tank, audio player housing, sun roofing etc. However, at the same time they claimed exclusion of certain grades/types of PUC not being produced by them.

12. The domestic industry has confirmed that it does not manufacture “laminated EG steel” and the same can be excluded from the scope of the PUC. Therefore, the Authority accepts the claim of the other interested parties to exclude “laminated EG steel” from the scope of PUC. Laminated EG steel is not a technical description of the product type and is used in common parlance. Thus, the Authority seeks comments on the following proposal of the domestic industry regarding the description for the exclusion of laminated EG steel from the scope of the PUC:

*“Bare electrogalvanized Steel which is subjected to a phosphated pre-treatment along with an appropriate primer and / or base coat on Topside and a primer and/or backcoat on bottom side and laminated on top side, with a printed - Vinyl / PET / ALF or LDPE film of minimum 50 Microns.”*

13. Similarly, the domestic industry has also confirmed that it does not manufacture “printed EG steel” and the same can be excluded from the scope of the PUC. Therefore, the Authority accepts the claim of the other interested parties to exclude printed EG steel from the scope of the PUC. Printed EG steel is not a technical description of the product type and is used in common parlance. Thus, the Authority seeks comments on the following proposal of the domestic industry regarding the description for the exclusion of printed EG steel from the scope of the PUC:

*“Bare electrogalvanized Steel which is subjected to a phosphated pre-treatment along with an appropriate primer and / or coloured base coat on Topside and a primer and or coloured backcoat on bottom side and printed in minimum 3 colours on top side commonly known as printed EG steel”*

14. The Authority notes that the claim of Tata Motors and Hyundai Steel Group for exclusion of EG steel used in automotive application cannot be accepted. The Authority notes that exclusion from the PUC is granted for specific product types/grades based on clear description of such product types/grades after evaluating the submissions and information on record. Tata Motors and Hyundai Steel Group have not specified any specific product type/grade for which exclusion is sought by them. Rather, they have sought exclusion in generic terms for EG steel used in automotive application. Tata Motors and Hyundai Steel Group have also not placed on record any evidence to demonstrate that orders were placed on the domestic industry for the products for which exclusion is being sought by them and that the domestic industry has shown its inability to supply those products to the users. The claim of Tata Motors and Hyundai Steel Group for exclusion of EG steel used in automotive application is based on a generic premise that the PUC is critical for safety and may cause a massive recall of automobiles if the quality does not meet the standards. The Authority notes that EG steel is extensively used in the automotive sector and the domestic industry has supplied the PUC for some automotive applications. The Authority notes that products used in automotive, *inter alia* include fuel tank, audio player housing, sun roofing, MLS

engine gasket, air bag ECU housing component, door handle support member, baffle plate, stator cover, stator housing, electronic control unit cover, bracket for cover etc.

15. POSCO Steeleon and LG India have made a request for exclusion of colour coated EG steel from the scope of the PUC. The Authority has examined the information provided by the domestic industry, which shows that the domestic industry is producing and selling colour coated EG steel. Thus, the Authority has not accepted the product exclusion request of POSCO Steeleon and LG India with respect to colour coated EG steel.
16. LG India has requested for an importer-specific exclusion of painted EG steel from the scope of the PUC. The Authority has examined the information provided by the domestic industry, which shows that the domestic industry is producing and selling painted and colour coated EG steel. Thus, the Authority has not accepted product exclusion request of LG India with respect to painted EG steel.
17. Nippon Steel has made a request for exclusion of HES-JEC270E of thickness 0.8 mm used in motorcycle, NSECC of thickness 0.5-1 mm and SECC of thickness 1.0-2.0 mm used in automobile. The Authority notes that the description of the grades for which exclusion is being sought by Nippon Steel are their own internal specifications and they have not provided any equivalent Indian or international standards. Also, no evidence has been placed before the Authority by any interested party establishing the fact that orders have been placed on the domestic industry for these grades and the domestic industry has shown its inability to produce and supply these types of products. The Authority notes that the domestic industry has submitted that it has the capability to produce EG steel of thickness of upto 1.5 mm. Thus, the Authority has not accepted the product exclusion request of Nippon Steel.
18. JFE Steel Corporation, Japan has made a request for exclusion of EG steel of special formability grades (deep drawing quality) with one-side coating i.e. JFE-CE-EZ, JFE-CF-EZ, JFE-CG-EZ, JFE-CGX-EZ-JEFC270E, JFEC270F, JFEC260G, SECE, SECF and SECG from the scope of the PUC. The Authority notes that JFE Steel Corporation has not participated in the present investigation by filing a questionnaire response. Therefore, the Authority is not in a position to ascertain if JFE Steel Corporation has even exported those grades to India for which it is seeking exclusion. Further, the description of the grades for which exclusion is being sought by JFE Steel Corporation are their own internal specifications and they have not provided any equivalent Indian or international standards. Also, no evidence has been placed before the Authority by any interested party establishing the fact that orders have been placed on the domestic industry for these grades and the domestic industry has shown its inability to produce and supply these types of products. The Authority also notes that the domestic industry has provided evidence of sales made by them for one-side coated EG steel used in automobiles. This shows that the domestic industry has commercially produced and sold one-side coated EG steel. Therefore, the Authority has not accepted the product exclusion request of JFE Steel Corporation.
19. JFE Steel Corporation has also requested for exclusion of EG steel of width above 1270 mm from the scope of the PUC. As JFE Steel Corporation has not filed the questionnaire

response, the Authority is not in a position to ascertain if JFE Steel Corporation has even exported EG steel of width above 1270 mm to India for which it is seeking exclusion. Exclusions from the scope of the PUC based on width restriction criteria could also lead to circumvention of duty. Therefore, the Authority has not accepted the product exclusion request of JFE Steel Corporation.

20. The Authority notes that the phrase “*nickel being aimed at a minimum of 11%*” means EG steel having at least 11% nickel content.
21. The Authority notes that Hyundai Steel Group has stated that it has exported products that have zinc-nickel content in the ratio of 9-13% and therefore, minimum nickel content should be prescribed as 9% for excluded product instead of 11%. The Authority has examined the claim of Hyundai Steel Group and found some instances where it has exported the products to India having nickel content between 9-11%. The Authority, therefore, accepts the claim of Hyundai Steel Group to exclude products having nickel content of minimum 9% instead of 11% as noted in the initiation notification.
22. The Authority has received comments on the disclosure statement regarding the proposed definition of exclusions from the PUC. The requests of the parties contained too many technicalities which were not substantiated by any documentary evidence and therefore have not been accepted by the Authority. To accommodate the differing views, the Authority has decided to define the exclusions in a generic manner and have been dealt in paras below.
23. Accordingly, the revised scope of product under consideration in the present investigation is as under:

*The product under consideration ('PUC') is 'Flat rolled products of hot rolled or cold rolled steel continuously electrolytically plated or coated with zinc, with or without alloying elements'. The product under consideration is commonly known as Electrogalvanized steel.*

*The product under consideration may be either of alloy or non-alloy steel, whether or not of prime or non-prime quality. The product under consideration may be in coils or not in coils form. The product under consideration includes all types of Electrogalvanized steel whether or not coated, passivated, pre-treated, pre-painted, colour coated, thin organic coated, chromated, phosphated, printed, whether or not corrugated or profiled, and whether or not having anti-fingerprint treatment.*

*The following are excluded from the scope of product under consideration:*

- i. Flat rolled steel products that are plated or coated with alloy of aluminium and zinc.
- ii. Flat rolled steel products that are plated or coated with alloy of zinc and nickel with nickel content being a minimum 9%.
- iii. Hot-dip galvanized flat rolled steel products.
- iv. Tin-mill flat rolled steel products
- v. Laminated Electrogalvanized Steel.
- vi. Printed Electrogalvanized Steel.

*The intended end use of the product under consideration is for protection from corrosion and is majorly used in the manufacturing of electronic appliances, auto applications, consumer electronics, furniture, HVAC, roofing and siding, ceiling grid, construction, office equipment etc.*

*The product under consideration is classified under HS Codes 7210, 7212, 7225 and 7226 of Schedule I of the Customs Tariff Act, 1975. However, imports of the product under consideration have also been made under HS Codes 7209 & 7211 of Schedule I of the Customs Tariff Act, 1975.*

24. The Authority notes that in the PCN methodology prescribed by the Authority on 14<sup>th</sup> October 2021, the Authority had prescribed three PCN categories which are mentioned as follows:

Sr. No.	PCN Parameter	Code
1	Bare Electrogalvanized Steel	A
2	Coated Electrogalvanized Steel	B
3	Laminated Electrogalvanized Steel	C

25. The domestic industry has submitted that bare EG steel or PCN category A is not a saleable product per se. The EG steel which is saleable/marketable involves providing a layer of zinc along with mandatory layers of one or more of pre-treatments, passivations, colour coating, thin organic coating, anti-fingerprint etc. EG steel with stand-alone zinc plating/coating cannot sustain the vagaries of weather, requisite shelf life, post forming operations, storage and shipment. Thus, the complete process for making EG steel, includes one of the processes such as passivation, pre-treatment, thin organic coating, anti-fingerprint etc. in addition to base zinc.

26. Based on the submissions made by the domestic industry, the Authority examined whether foreign producers/exporters have shown exports of bare EG steel or PCN category A in their questionnaire response. It was noted that only few producers/exporters had reported exports of bare EG steel or PCN category A. The Authority discussed this issue with the producers/exporters who had reported exports of bare EG steel or PCN category A. During

the discussions it was noted that the bare EG steel or PCN category A reported by them in their questionnaire response does not have only zinc coating. On top of zinc coating, some or the other process or additional coating is also done to provide requisite shelf life to the product.

27. Therefore, the Authority is proposing to examine only PCN category B ‘Coated Electrogalvanized Steel’.
28. The Authority notes that there is no known difference in the product under consideration produced by the Indian industry and exported from the subject countries. The product under consideration produced by the Indian industry and imported from the subject countries are comparable in terms of characteristics such as physical characteristics, manufacturing process and technology, function and uses, product specifications, pricing, distribution, and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The subject goods produced by the domestic industry are like article to the product under consideration imported from subject countries within the scope and meaning of Rule 2(d) of the Rules.

## **D. SCOPE OF THE DOMESTIC INDUSTRY AND STANDING**

### **D.1. Submissions of other interested parties**

29. The other interested parties have submitted the following with regard to the scope of the domestic industry and its standing:
  - a) The applicant has not disclosed either to the Ministry of Corporate Affairs nor to the Good and Services Tax Portal that it deals in EG steel falling under HS codes 7209, 7210, 7211, 7212, 7225 and 7226. This fact raises questions on the eligibility of the domestic industry. If the Authority consider the applicant as an eligible domestic industry, then it must provide an explanation as to why the applicant did not report the turnover to the authorities.

### **D.2. Submissions of the domestic industry**

30. The domestic industry has submitted as follows with regard to the scope of the domestic industry and is standing:
  - a) The applicant started commercial production of subject goods in July 2019. Prior to this, India had been fully dependent on imports of the subject goods for its domestic demand.
  - b) The applicant, being the first and the only producer of the product under consideration, holds 100% share in the total domestic production of the subject goods in India.
  - c) The domestic industry has not imported the subject goods from the subject countries and is also not related to any producers/exporters or importers of subject goods in India.
  - d) The evidence available on record indicates that the applicant satisfies the requirements of standing as per Rule 2(b) and Rule 5 of the Rules.

- e) The domestic industry has provided the GST registration certificate which clearly mentions that the domestic industry deals in EG steel (HSN code 7210).

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

31. 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”.*

- 32. The present investigation has been initiated pursuant to a petition filed by American Precoat Speciality Private Limited as the sole producer of the subject goods in India. The petitioner started commercial production in July 2019.
- 33. The Authority notes that the present application has been filed for examination of the material retardation to the establishment of an industry. The Indian industry for the product under consideration is at a nascent stage and is yet to establish itself in the market. As indicated by the applicant, there are no other producers of the PUC in India. The applicant is the sole producer of the subject goods, and therefore, holds 100% of the share of total domestic production of the subject goods.
- 34. None of the interested parties have contested the claim of the applicant that it is the sole producer of the subject goods in India. The applicant has not imported the subject goods from subject countries and is also not related to any producers/exporters or importers of subject goods in India.
- 35. The Authority notes the claim of interested parties regarding the non-submission of certain documents with respect to the production of the PUC before the Ministry of Corporate Affairs and GST Authority. The investigating team has conducted an on-site verification of the domestic industry and ascertained that the applicant has been producing the PUC. The interested parties can raise this issue before the appropriate forum. Accordingly, the Authority, therefore, holds that the applicant constitutes eligible domestic industry within the meaning of Rule 2(b) of the Rules and that the application satisfies the criteria of standing in terms of Rule 5(3) of the Rules.

## **E. CONFIDENTIALITY**

### **E.1. Submissions of other interested parties**

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

- a) The petition filed by the domestic industry does not disclose certain essential information which would allow the respondents to adequately make their case and has not conformed to the requirements established under Rule 7 of the Rules and Trade Notice Nos. 10/2018 and 1/2013.
- b) The domestic industry has claimed excessive confidentiality in its application regarding the costing information. The Hon'ble Supreme Court in Sterlite Industries (India) Ltd. v. Designated Authority<sup>13</sup> and Reliance Industries Ltd. v. Designated Authority and Ors.<sup>14</sup> has observed that “...confidentiality under Rule 7 is not something, which must be automatically assumed” and that “...party has also to satisfy the DA that the matter is really confidential.”
- c) The non-confidential version of the petition does not allow the interested parties to exercise their right to defence.
- d) Proforma IV A and IV B have not been filed as per the prescribed format and are therefore, deficient.
- e) Excessive confidentiality has been claimed over demand figures, NIP, product brochure, financial statement and with regard to actual vis-a vis projected performance. No substantial reason has been forwarded to support such claims.
- f) The petitioner has not provided any details in the non-confidential version regarding comparison performed by it with respect to actual versus projected performance. Accordingly, the Authority should direct the petitioners to provide the details to the respondents.
- g) The exporters/producers have provided all the necessary information in both confidential and non-confidential versions and, therefore, the claim of excessive confidentiality is false.
- h) The petitioner's claims regarding sales channel, sales negotiation process and details of related companies involved in the PUC are unfounded in law and are not required as per Trade Notice No. 10/2018.
- i) The applicant has not addressed any of the claims raised by the Japanese mills with regards to their excessive confidentiality claims.
- j) POSCO Steeleon and its unrelated exporters have duly filed their questionnaire responses in accordance with Rule 7 and Trade Notice 10/2018 and the domestic industry has not demonstrated how the questionnaire responses are in violation of requirements under the Rule. Further indexation of data has been provided wherever it was possible.

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<sup>13</sup> (2006) 10 SCC 386.

<sup>14</sup> (2006) 10 SCC 368.

- k) DK Dongshin Co. Korea and Samyang Co., Korea have duly filed the questionnaire responses in accordance with Rule 7 and Trade Notice 10/2018 and certain portions of information have been claimed confidential by adducing proper reasons which has not been contested by the petitioner.
- l) Hyundai Corporation has adhered to Rule 7 and relevant trade notice and has accordingly filed the questionnaire responses.
- m) LG Hausys Ltd. has adhered to the guidelines of the questionnaire format and has clearly provided indexed figures wherever it was possible.
- n) As the information regarding annual account and balance sheet of the company can be obtained after payment of prescribed fee to MCA there is no requirement for treatment of such information as confidential.

## **E.2. Submissions of the domestic industry**

37. The domestic industry has submitted as follows with regard to the confidentiality:

- a) The petitioner has filed all information and prepared the non-confidential versions in accordance with the requirements laid down in Trade Notice No. 10/2018 dated 7<sup>th</sup> September 2018.
- b) Non-confidential version of submissions provided by the petitioner have all the information to permit reasonable understanding of the substance of the confidential information contained therein.
- c) The confidentiality claims of producers/exporters in subject countries are far more egregious.
- d) The Authority has not found any claim of confidentiality of the domestic industry to be inadequate and has not requested disclosure of any specific information subsequent to the filing of the application.
- e) The petitioner submits that transaction wise data was obtained by the petitioner from the DGCI&S by giving an undertaking that the data will not be shared by the petitioner with any other third party nor placed/published in public domain.

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

38. The Authority made available the non-confidential version of the information provided by the various parties to all the other interested parties as per Rule 6(7).

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

### ***“7. 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 interested 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 summarisation 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.”*

40. The information provided by the interested parties on confidential basis was examined with regards to sufficiency of such claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, the parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

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

41. Under Section 9A(1)(c) of the Act, the normal value in relation to an article means:

“.....

*(i) the comparable price, in the ordinary course of trade, for the like article when destined 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 to an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

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

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

### **F.1. Submissions of other interested parties**

42. The other interested parties have submitted as follows:

- a) The normal value determined in the present case is inappropriate as it is not based on documentary evidence about prevailing price in the subject countries and the domestic industry has not made efforts to obtain prevailing price in the subject countries.
- b) NSC and its corresponding traders have submitted information with the Authority as per the prescribed formats. It is requested that the Authority consider this information for calculation of individual dumping margin and landed price.

- c) Despite raising the issue with respect to non-filing of PCN-wise information including the PCN-wise dumping and injury margin during the oral hearing, the petitioner has not filed the same. If the petitioner has not filed the same even after six months of filing deadline, the same should not be accepted at this stage and the investigation should be terminated immediately.
- d) If the Authority has received PCN-wise information from the petitioner, the Authority should confirm the same and the information should be shared immediately with the interested parties.
- e) In cases where PCNs are prescribed, the dumping and injury margin are determined PCN wise to ensure an apple-to-apple comparison which is a well-settled issue.
- f) DK Dongshin Co., Korea has submitted its data and the Authority may determine the individual margin based on data file through EQR.
- g) Further DK Dongshin CO., Korea has exported the PUC directly to India and there have been no related importer or exporter in the chain.
- h) Samyang Steel has made only 4-5% of exports through an unrelated exporter and the value chain is complete as per the requirements under the Rules. It has submitted its data and the Authority may consider the same for determining an individual dumping margin.
- i) DCM Co. Ltd. has submitted information with the Authority as per the prescribed formats. It is requested that the Authority consider this information for calculation of export price, individual dumping margin and landed price.
- j) POSCO Steeleon and POSCO Korea RP have made available all information with the Authority as per the prescribed formats. It is requested that the Authority consider this information for calculation of export price, individual dumping margin and landed price.
- k) No plausible rationale has been provided by the domestic industry regarding the usage of international price of raw materials based on import price into India nor any justification has been provided as to how such prices reflect the cost of production in Japan.
- l) The adjustment made to the cost are based on experience of the domestic industry and no reason has been given as to how such adjustments are reflective of the cost of production in Japan.
- m) No evidence has been adduced regarding the adjustments made under the heads of ocean freight, marine insurance, port expenses, inland freight, handling charges, commission, and bank charges. In particular the adjustments claimed against CIF is abnormally high and the Authority should verify the same.
- n) The domestic industry has admitted itself as a new industry and has to deal with miscellaneous start-up costs and inefficiencies and therefore, domestic industry's experience cannot be the basis for construct normal value.
- o) Further, all such adjustments have been claimed as confidential and thereby, prevented the other interested parties from submitting meaningful rebuttals to such claims. In such a case the objective of a "fair comparison" as enshrined in Art. 2.4 of the WTO Agreement on Anti-dumping (hereinafter referred to as the AD Agreement) is not possible and would also run afoul of the requirements of Art. 5.2 of the AD Agreement as well as Rule 5(2) of the Rules.

- p) Adjustments made to arrive at the ex-factory export price have not been supported by evidence.
- q) The Authority must direct the domestic industry to revise the import data as it includes data of products that are not manufactured by the domestic industry. Accordingly, the domestic industry should be directed to share the same.
- r) The import price of cold-rolled steel from the subject countries is lower than the import price of EG Steel. The applicant has not taken into account the fact that cold-rolled steel is sold in various grades and therefore, it would be improper to compare the average prices of cold rolled steel and EG steel.
- s) EG Steel is manufactured by using low grade CR Steel and therefore, average price of CR steel is not representative as it includes the price of high-grade CR steel as well.
- t) The petitioner has made a monthly comparison of prices CR steel and EG steel from Japan and Korea RP during the POI and concluded that prices of CR steel is much higher than that of EG steel and has thereafter, relied on the sunset review conducted by Authority regarding "cold rolled/cold reduced flat steel products"<sup>15</sup> to conclude that dumping margin would be even higher in the present investigation. It is submitted that each investigation is different and examination of dumping and injury has to be performed independently. Further, without ascertaining the nature of prices (i.e. whether they are spot or contract) a fair comparison of prices of EG steel and CR steel cannot be done.
- u) The non-participation of an unrelated producer cannot hamper the rights of a participating producer to seek an individual margin.
- v) The domestic industry has requested the Authority to adopt sampling methodology for exporters from Korea RP. It is submitted that the domestic industry cannot request and it is the Authority's prerogative to do so for administrative convenience.
- w) As per Rule 17(3) of the Rules, the Authority if it wishes to sample exporters and producers must consult and obtain consent of the exporters and producers of the subject country.
- x) Furthermore, in case such sampling becomes necessary, the Authority must inform the exporters and producers within 80 days of the issuance of initiation notification i.e. at the initial stage of the investigation and not after the oral hearing has been conducted.
- y) As the producers and exporters from Korea RP export different grades of the PUC, the imports are not homogenous, a sampling exercise will defeat the requirement of objective examination as requirement Art. 3.1 of AD Agreement and Rule 11(2) of the Rules.
- z) The Authority should exclude laminated EG steel out of the PUC which would automatically rule out several exporters and thereafter, the Authority would not need to resort to sampling methodology.

## **F.2. Submissions of the domestic industry**

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<sup>15</sup> Final Findings in sunset review investigation concerning imports of "Cold Rolled/cold reduced flat steel products of iron or Non-Alloy Steel' or other Alloy Steel of all width and thickness - not clad, plated or coated" originating in or exported from China PR, Japan, Korea RP and Ukraine dated 14<sup>th</sup> September 2021.

43. The domestic industry has submitted as follows:

- a) Efforts were made to get information about the cost of production and domestic selling price for the subject goods in the subject countries. As the product under consideration is classified under multiple HSN codes, the petitioner was not able to obtain the accurate information regarding the export price of the subject goods from the subject countries to an appropriate third countries for determination of normal value.
- b) The petitioner has constructed the normal value in the following manner:
  - i. **Raw materials and other consumables:** International price of raw material [CR flat steel based on import prices into India published by the Ministry of Commerce on their website <https://commerce.gov.in/trade-statistics>] has been adopted and considered for construction of normal value. The price of coating material has been adopted based on domestic industry's experience. The raw material consumption has been taken on the basis of domestic industry's experience.
  - ii. **Other Manufacturing Costs/ Conversion Costs:** Other manufacturing costs have been considered based on the experience of the domestic industry.
  - iii. **SGA Costs and Finance costs:** SGA costs and finance costs have been considered based on the experience of the Domestic Industry.
  - iv. **Profit Margin:** A profit margin of 5% has been considered for working out the normal value.
- c) The Japanese mills have not provided any alternative source of information that could have been relied upon by the petitioner to estimate the normal value and the export price.
- d) JFE Steel Corporation and Kobe Steel Corporation had the opportunity to participate and provide their actual information to the Authority for determination of the normal value. However, both these companies have taken a cautious decision not to provide such information even when both these producers put together have more than 70% share in total exports of the PUC from Japan to India.
- e) NSC has filed questionnaire response and therefore, the burden of proof is upon NSC to demonstrate the appropriateness of its cost of production, domestic selling price and export price as submitted in the questionnaire response.
- f) Import price of the subject goods from subject countries is lower than the import price of cold rolled steel flat products (CR steel).
- g) A review of the questionnaire responses filed by producers/exporters regarding their domestic sales, exports to India shows that India is a focus market for them and they have intensified dumping in the POI not allowing the domestic industry to establish itself in the Indian market. For most of the participating producers/exporters from the subject countries, their domestic sales have reduced but their exports to India have increased.
- h) Questionnaire response of some traders/importers are completely confidential. Non-confidential version of Appendix 1 of these companies is blank.
- i) The Authority may consider adoption of sampling methodology for co-operating producers from Korea RP.

j) Exports to India from Korea RP and Japan involve related traders, unrelated traders, as well as related importers in India. It is not known from the review of non-confidential version of questionnaire response filed by the interested parties that whether all related entities involved in the production of the subject goods and all related/unrelated entities involved in exports to India have participated and whether the export value chain is complete. Thus, the Authority should examine the following:

- i. Whether all related entities involved in production and all related/unrelated entities involved in exports to India have participated?
- ii. Whether exporters from Korea RP followed different pricing for related importers vis-a-vis unrelated importers? (targeted dumping).
- iii. Whether exporters export the subject goods to India at a higher price and their related party resells the subject goods at a loss?
- iv. Whether related/unrelated trader have recovered all their expenses and earned reasonable profits for exports to India? (middleman dumping).

k) Dumped imports from the subject countries are substantial.

l) Price offered by customers to applicant for EG steel are at par or lower than CR steel prices. The customers quote the low price of imported EG steel and ask the applicant to match the price of the imported EG steel.

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

44. The Authority had sent questionnaires to the known producers/exporters from the subject countries, advising them to provide the information in the form and manner prescribed by the Authority. The following producers/exporters from the subject countries have filed exporter's questionnaire responses:

- i. Hyundai Corporation
- ii. LG Hausys Ltd.
- iii. B.N. Steela Co. Ltd.
- iv. Hyundai Steel Company
- v. Nippon Steel Corporation
- vi. Honda Trading Corporation
- vii. Nippon Steel Trading Corporation
- viii. NSM Coil Centre Co. Ltd.
- ix. NST Nihon Teppan Co. Ltd.
- x. Sanwa Steel Co. Ltd.
- xi. Sumitomo Corporation Global Metals Co. Ltd.
- xii. Tetsusho Kayaba Corporation
- xiii. Samyang Steel
- xiv. DK Dongshin Co. Ltd.
- xv. Dongkuk Steel Mill Co. Ltd.
- xvi. Dongkuk Steel India Pvt. Ltd.

- xvii. POSCO, Korea RP
- xviii. Samsung C&T Corporation
- ix. POSCO International Corporation
- xx. Winsteel Co. Ltd.
- xi. POSCO C&C, Korea RP
- xxii. DCM Co. Ltd., Korea RP
- xxiii. Dana Korea Co. Ltd.

45. The Authority has analysed the submissions made by the interested parties including the domestic industry.

46. The Authority notes the sampling request made by the domestic industry with respect to importers from Korea RP. Such a request cannot be entertained at this belated stage of investigation and keeping in view the factual matrix of the investigation such an exercise is not appropriate.

### **Korea RP**

#### **DCM Co. Ltd., Korea RP**

47. The Authority notes that DCM Co. Ltd., Korea RP has only exported the excluded category of EG steel i.e. laminated EG steel to India and therefore, the Authority has not determined individual dumping margin and injury margin for DCM Co. Ltd.

#### **Samyang Steel Co., Ltd., Korea RP**

48. The Authority notes that Samyang Steel Co., Ltd., Korea RP has only exported the excluded category of EG steel i.e. laminated EG steel to India and therefore, the Authority has not determined individual dumping margin and injury margin for Samyang Steel Co., Ltd., Korea.

#### **BN Steela Co.Ltd., Korea RP**

49. The Authority notes that BN Steela Co. Ltd., Korea RP has only exported the excluded categories of EG steel i.e. PCN category B (printed pre-painted EG steel) and PCN category C to India through an unrelated trader LG Hausys Ltd., Korea RP. Accordingly, no separate normal value and ex-factory price has been determined for BN Steela Co., Ltd., Korea RP.

#### **50. DK Dongshin Co., Ltd., Korea RP (Producer/Exporter)**

##### **Determination of normal value**

- i. Based on the information furnished in the exporter questionnaire responses, the Authority notes that DK Dongshin Co., Ltd., is a producer cum exporter of the subject goods from Korea RP. As noted, Dongshin has exported the subject goods directly to

its unrelated customers in India. It has sold coated and laminated EG Steel in the domestic market as well as exported the same to India during the POI. However, information pertaining to only coated EG steel is utilised for the purpose of present investigation based on the scope of the PUC as determined herein above.

- ii. Dongshin has sold \*\*\* MT of the Coated Electro Galvanized Steel in the domestic market during the POI whereas, it has exported \*\*\*MT of the coated EG steel to India. The Authority notes that the domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. If profit making transactions are more than 80% of the total sales, then all the transactions in the domestic sales are being considered for the determination of the normal value and in cases, profitable transactions are less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value. In the present case since only \*\*\*% of domestic sales are profitable hence profitable domestic sales have been considered to determine normal value. The Company has claimed adjustments on account of credit cost and inland transportation and the same is allowed by the Authority. Accordingly, the normal value at ex-factory level for Dongshin has been calculated and the same is mentioned in the dumping margin table below.

### **Determination of export price**

- i. It is noted that DK Dongshin Co., Ltd has exported \*\*\* MT of coated EG steel to India during the POI. The Authority has verified the response filed by DK Dongshin Co., Ltd. Dongshin has claimed adjustment on accounts of ocean freight, marine insurance, port expenses, credit cost, claim expenses and inland transportation and the same have been allowed by the Authority.
- ii. Accordingly, the export price for DK Dongshin Co. Ltd., Korea has been determined based on the weighted average export price to India, and the same is mentioned in the dumping margin table below.

## **51. Dongkuk Steel Mill Co., Ltd. Korea RP**

### **Determination of normal value**

- i. During the POI, Dongkuk Steel Mill Co., Ltd., Korea RP, has sold \*\*\*MT of subject goods of Invoice value \*\*\*KRW in the domestic market to unrelated parties. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of subject goods. If profit making transactions are more than 80% of the total sales, then all the transactions in the domestic sales are being considered for the determination of normal value and in cases, profitable transactions is less than 80%, only

profitable domestic sales have been taken into consideration for the determination of the normal value. In the present case since only \*\*\*% of domestic sales are profitable hence profitable domestic sales have been considered to determine normal value.

- ii. Dongkuk Steel Mill Co., Ltd., Korea RP, has claimed adjustment on account of early payment discount, inland transportation, credit cost, packing cost, indirect selling expense and claim expenses and the same have been allowed by the Authority. Accordingly, PCN-wise normal value at ex-factory level for Dongkuk Steel Mill Co., Ltd., Korea RP, has been determined and the same is shown in the dumping margin table below.

### **Determination of export price**

- i. During the POI, Dongkuk Steel Mill Co., Ltd., Korea RP, has sold \*\*\*MT of subject goods of invoice value \*\*\*US\$ directly to related/unrelated parties in India and indirectly through two unrelated traders namely Hyundai Corporation, Korea RP and CORE STL. It is further noted that out of these two traders CORE STL, has not filed its exporters questionnaire response with the Authority, which constitute only \*\*\*% of the total exports to India made by Dongkuk Steel Mill Co., Ltd., Korea RP, hence the same has not been considered for the final determination.
- ii. Dongkuk Steel Mill Co., Ltd., Korea RP, has claimed adjustment on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost, packing expenses, indirect selling expense and bank charges and the same have been allowed by the Authority. Accordingly, PCN-wise export price at ex-factory level for Dongkuk Steel Mill Co., Ltd., Korea RP, has been determined and the same is mentioned in the dumping margin table below.

## **52. Hyundai Steel Company, Korea RP**

### **Determination of normal value**

- i. During the POI, Hyundai Steel Company, Korea RP, has sold \*\*\*MT of subject goods of Invoice value \*\*\*KRW in the domestic market to unrelated/related parties. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of subject goods. If profit making transactions are more than 80% of the total sales, then all the transactions in the domestic sales has been considered for the determination of normal value and in cases, profitable transactions is less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value. In the present case since only \*\*\*% of domestic sales are profitable hence only profitable domestic sales have been considered to determine the normal value.

- ii. Hyundai Steel Company, Korea RP, has claimed adjustment on account of ocean freight, insurance, inland transportation and credit cost and the same have been allowed by the Authority. Accordingly, PCN-wise normal value at ex-factory level for Hyundai Steel Company, Korea RP, has been determined and the same is mentioned in the dumping margin table below.

#### **Determination of export price**

- i. During the POI, Hyundai Steel Company, Korea RP, has sold \*\*\*MT of the subject goods of invoice value \*\*\*US\$ directly to related parties in India namely Hyundai Steel India Pvt. Ltd., Hyundai Steel Anantapur Private Limited and indirectly to India through one unrelated trader namely Hyundai Corporation, Korea RP.
- ii. Hyundai Steel Company, Korea RP, has claimed adjustment on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost and any other deduction(bank charges) and the same have been allowed by the Authority. Accordingly, PCN-wise export price at ex-factory level for Hyundai Steel Company, Korea RP, has been determined and the same is shown in the dumping margin table below.

### **53. POSCO, Korea RP**

#### **Determination of normal value**

- i. POSCO Co., Ltd is a listed company (joint-stock corporation) in Korea RP. During the POI, POSCO Co., Ltd has sold \*\*\* MT of subject goods having invoice value \*\*\* KRW to related and unrelated parties. Based on their response, it is noted that while their domestic sales are in sufficient quantity in the domestic market when compared to exports to India for all the PCNs, the product sold in the domestic markets is not similar to the product exported to India. Accordingly, there were no domestic sales or no profitable domestic sales or the domestic sales were insufficient of comparable product. Thus, normal value was constructed based on the cost of production of the products exported to India along with reasonable addition for profits.
- ii. POSCO Co., Ltd has claimed adjustments on account of early payment discount, packing cost, credit cost and inland freight and the same have been allowed by the authority. Accordingly, weighted average normal value at ex-factory level has been determined and the same is shown in the dumping margin table below.

#### **Determination of export price**

- i. POSCO Co., Ltd. has exported \*\*\* MT of the subject goods to India indirectly through related and unrelated exporters. It has filed exporters questionnaire response along with its related exporter namely, POSCO International Corp., Korea RP. Further, POSCO Co., Ltd has also exported some quantities through unrelated trader which has not filed its questionnaire response with the Authority. However, it is also noted by the Authority that exports to India made through non-cooperating unrelated parties are very

insignificant in terms of total exports to India. The Authority has taken lowest ex-factory export price of cooperating export chain as ex-factory export price of non-cooperating unrelated trader for each PCN.

- ii. The related exporter of POSCO Co., Ltd has further sold the subject goods to related processors/importers of POSCO Co., Ltd, Korea RP, namely POSCO-India Processing Center Private Limited and POSCO India Pune Processing Center Pvt. Ltd. All these related parties have also filed end-user questionnaire responses.
- iii. It is noted from the response filed by above mentioned POSCO Co., Ltd's subsidiaries in India that, one of them has incurred losses during the sale of the subject goods imported from their parent company i.e., POSCO Co., Ltd. through different trading channel as mentioned above. As its sales price of subject goods are lower than its purchase price, suitable adjustment has been made from POSCO Co., Ltd's landed price and net export price. Further adjustments have been allowed on account of ocean freight, credit cost, port and other related expenses, insurance, bank charges and packing costs. The weighted average export price has been determined at ex-factory level and the same is shown in the dumping margin table below.

#### **54. POSCO SteeLeON Co., Ltd, Korea RP**

##### **Determination of normal value**

- i. POSCO SteeLeON Co., Ltd (erstwhile known as POSCO Coated and Color Steel Co. Ltd.), Korea RP is a part of the POSCO Group. During the POI, POSCO SteeLeON Co., Ltd has sold \*\*\* MT of subject goods having invoice value \*\*\* KRW to related and unrelated parties. Based on their response, it is noted that their domestic sales are in sufficient quantity in the domestic market when compared to exports to India for all the PCNs. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to cost of production of subject goods. In case profit making transactions for particular PCN are more than 80% then the Authority has considered all the transactions in the domestic market for the determination of the normal value and in cases, where profitable transactions for particular PCN are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value. Wherever, there were no domestic sales or no profitable domestic sales or the domestic sales were insufficient of particular PCN, normal value was constructed based on cost of production along with reasonable addition for profits. In the present case since only \*\*\* % of domestic sales are profitable hence profitable domestic sales have been considered to determine normal value.
- ii. POSCO SteeLeON Co., Ltd has claimed adjustments on account of packing cost, credit cost and inland freight and the same have been allowed by the authority. Accordingly, weighted average normal value at ex-factory level has been determined and the same is shown in the dumping margin table below.

### **Determination of export price**

- i. POSCO SteeLeON Co., Ltd has exported \*\*\* MT of the subject goods to India indirectly through unrelated exporter namely Samsung C&T Corporation, Korea RP without involvement of any related importer/processor. POSCO SteeLeON Co., Ltd. and Samsung C&T Corporation have filed exporters questionnaire response separately.
- ii. Adjustments have been allowed on account of credit cost, port and other related expenses, bank charges and packing costs. The weighted average export price has been determined at ex-factory level and the same is shown in the dumping margin table below.

### **Normal value and export price for all other producers and exporters**

55. The Authority notes that no other producer/exporter from Korea RP has responded to the Authority in the present investigation.
56. In view of non-cooperation, the Authority has determined normal value for all non-cooperating producers on price as per facts available in terms of Rule 6(8) of the Rules.
57. With regard to the export price, in view of non-cooperation of the producers/exporters, the Authority determined export price for all non-cooperating producers as per facts available in terms of Rule 6(8) of the Rules. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission and bank charges. The normal value and export price so determined for all non-cooperating producers and exporters from Korea RP is mentioned in the dumping margin table.

### **Japan**

#### **58. Nippon Steel Corporation**

##### **Determination of Normal Value**

- i. During the POI, Nippon Steel Corporation (“NSC”) produced and sold the PUC to related/unrelated traders/users in the domestic market. The Authority notes that two related entities of NSC i.e., Nippon Steel Trading Corporation and NST Nihon Teppan have filed their questionnaire response. Further, the related re-sellers of Nippon Steel Trading Corporation i.e., Sanwa Steel Co., Ltd., Tetsusho Kayaba Corporation, and NSM Coil Center Co., Ltd have also filed their responses. It is therefore seen that NSC and its related traders constituting about \*\*\* % of the total domestic sales of NSC that have participated and filed their questionnaire responses. The domestic sales made to non-cooperative related parties are therefore insignificant in terms of total domestic sales. The Authority has accordingly determined the normal value based upon the total domestic sales. The domestic sales of NSC are also found to be in sufficient volumes when compared with exports to India.

- ii. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. For each PCN, if profit-making transactions are more than 80%, then the Authority has considered all the transactions in the domestic market, and in cases where profitable transactions are less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value. In the present case since only \*\*\* % of domestic sales are profitable hence profitable domestic sales have been considered to determine normal value.
- iii. NSC has claimed adjustments on account of inland freight, inland insurance, storage cost, rebate/discounts, credit cost, and warranty. The Authority has accepted the adjustments claimed based on verified information. The normal value at the ex-factory level for NSC has been determined accordingly, and the same is shown in the dumping margin table below.

### **Determination of Export Price**

- i. The Authority notes that, during the POI, NSC has exported a total quantity of \*\*\* MT, through related/unrelated traders namely Nippon Steel Trading Corporation (related trader), Honda Trading Corporation (unrelated trader), and Sumitomo Corporation Global Metals Co., Ltd (unrelated trader).
- ii. NSC and its related/unrelated trading companies, Nippon Steel Trading Corporation, Honda Trading Corporation, and Sumitomo Corporation Global Metals Co., Ltd have filed their questionnaire responses. The related traders/importers of the aforementioned companies i.e., Tetsusho Kayaba Corporation, Neemrana Steel Service Center India Pvt. Limited, Rajasthan Prime Steel Processing Center Pvt. Ltd and Honda Trading Corporation India Pvt Ltd have also filed their questionnaire responses.
- iii. The sales made by NSC through these companies constitute \*\*\* % of the total exports to India. Accordingly, the Authority notes that the exports to India made through non-cooperative unrelated parties are insignificant in terms of total exports to India.
- iv. The quantity reported by NSC has been considered by the Authority for determining the export price. The Authority, for calculating the ex-factory export price for each PCN, has considered the data filed by the NSC and its traders. NSC claimed adjustments on account of inland freight, inland insurance, storage cost, and credit cost. In addition, the Authority has made appropriate adjustments to the export price in those cases where it was noted that the related or unrelated traders involved in the export chain to India were incurring losses on the sales of the PUC.
- v. Accordingly, the export price for NSC has been determined based on the weighted average export price to India, and the same is shown in the dumping margin table below.

### **Normal value and export price for all other producers and exporters**

59. The Authority notes that JFE Steel Corporation and Kobe Steel Ltd. from Japan have also participated in the investigation. However, they have not filed exporter questionnaire response and have made only legal submissions. The Authority has treated JFE Steel Corporation and Kobe Steel Ltd. as non-cooperative. No other producer/exporter from Japan has responded to the Authority in the present investigation.
60. In view of non-cooperation, the Authority has determined normal value for all non-cooperating producers on price as per facts available in terms of Rule 6(8) of the Rules.
61. With regard to export price, in view of non-cooperation of the producers/exporters, the Authority determined export price for all non-cooperating producers as per facts available in terms of Rule 6(8) of the Rules. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission and bank charges. The normal value and export price so determined for all non-cooperating producers and exporters from Japan is mentioned in the dumping margin table.

### **Singapore**

#### **Determination of Normal Value**

62. None of the producers/exporters from Singapore have participated in the present investigation and filed questionnaire response. In the absence of cooperation from the producers/exporters of the product under consideration in Singapore, the Authority is constrained to proceed with the principles of facts available in terms of Rule 6(8) of the Rules with regard to determination of normal value for all non-cooperative producers/exporters from Singapore. The Authority has, therefore, constructed the normal value for all non-cooperative producers/exporters from Singapore on the basis of the cost of production of the domestic industry, duly adjusted with selling, general and administrative expenses, plus reasonable profit. The constructed normal value so determined for Singapore producers/exporters is mentioned in the dumping margin table.

#### **Determination of export price**

63. None of the producers/exporters from Singapore have participated in the present investigation and filed questionnaire response. In the absence of cooperation from the producers/exporters of product under consideration in Singapore, the Authority is not able to determine individual export price for producers/exporters on the basis of their questionnaire response and is constrained to proceed with the principles of best available information with regard to determination of export price. In view of non-cooperation of the producers/exporters, the Authority determined export price as per facts available in terms of Rule 6(8) of the Rules considering volume and value of imports for the period of investigation as per DGCI&S data. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission and bank charges. The normal value and export price so determined is mentioned in the dumping margin table.

#### **Dumping Margin**

64. The dumping margin determined for producers/exporters from Korea RP, Japan and Singapore is given in the table below:

Producer/Exporter	Normal Value (USD/MT)	NEP (USD/MT)	DM (USD/MT)	DM %	Range
<b>Korea RP</b>					
POSCO Group	***	***	***	***	Negative
Dongkuk Steel Mill Co.Ltd.	***	***	***	***	Negative
Hyundai Steel Company	***	***	***	***	0-10
DK Dongshin Co. Ltd.	***	***	***	***	20-30
All Others	***	***	***	***	50-60
<b>Japan</b>					
Nippon Steel Corporation	***	***	***	***	70-80
All Others	***	***	***	***	110-120
<b>Singapore</b>					
Any Producer/Exporter	***	***	***	***	20-30

65. It can be seen that the dumping margin for two producers/exporters from Korea RP is negative whereas for rest of the producers/exporters from Korea RP, Japan and Singapore is more than the de-minimis limit prescribed under the Rules.

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

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

### **G.1. Submissions by the other interested parties**

67. The other interested parties have submitted as follows with regard to the injury and causal link:

- a) The initiation notification has not clarified the basis on which the domestic industry was considered as unestablished industry. Therefore, it is bad in law and the investigation must be terminated.
- b) The domestic industry cannot claim injury on the basis of material retardation to the establishment of an industry since it has already commenced commercial production, and is, therefore, not an 'unestablished industry'. Reliance was placed on the following:
  - a. Proposal<sup>16</sup> at the WTO for amendment of the Anti-dumping Agreement<sup>17</sup>;
  - b. Practice mentioned in the US Handbook of Procedure<sup>18</sup>;

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<sup>16</sup> Draft Consolidated Chair Texts of the AD and SCM Agreements, WTO Negotiating Group on Rules, TN/RL/W/213.

<sup>17</sup> "3.9 A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility. **An industry may be considered to be in establishment where a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in the territory of the importing Member, but production has not yet begun or has not yet been achieved in commercial volumes.** In making a determination whether an industry is in establishment, and in examining the impact of dumped imports on the establishment of that industry, the authorities may take into account evidence concerning, *inter alia*, installed capacity, investments made and financing obtained, and feasibility studies, investment plans or market studies." (Emphasis supplied)

<sup>18</sup> "Petitioners may allege that the establishment of an industry in the United States is materially retarded by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. The statute does not define "material retardation;" however, in considering this issue in past cases, the Commission has begun by examining the question of whether the U.S. industry is "established." If U.S. producers have commenced production of the product, the industry is considered to be established if U.S. producers have "stabilized" their operations. In making this assessment, the Commission has examined the following factors: (1) **when the U.S. industry began production;** (2) **whether the production has been steady or start - and stop;** (3) **the size of**

- c. WTO Panel Report in Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey<sup>19</sup> (hereinafter referred to as Morocco — HRC (Turkey);
- c) The assessment of material retardation can be assessed on the basis of the following:
  - a. An industry is in an establishment where production has not yet begun but a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in the territory of the importing Member; (or)
  - b. An industry is in establishment when, though the production has begun, it has not yet been achieved in commercial volumes.
  - c. In addition, an investigating authority may take into account evidence concerning, *inter alia*, installed capacity, investments made and financing obtained, and feasibility studies, investment plans, or market studies in assessing whether the industry is in establishment as well as the impact of dumped imports on establishment of industry.
- d) The domestic industry’s claims regarding material retardation are based on conjecture and are not based on “affirmative, objective, … verifiable...and credible” evidence.
- e) In its recent final findings issued in *Anti-dumping investigation (Material-Retardation) concerning imports of "N, N'- Dicyclohexyl Carbodiimide (DCC)" originating in or exported from China PR*<sup>20</sup> the Authority had taken note of Morocco’s practice<sup>21</sup> in determining if domestic industry is established. The principles considered by the Authority in that investigation are summarized below:
  - a. When did the domestic industry begin its production?
  - b. Whether the production of the subject good is merely a new product line in an existing industry?
  - c. Size of production compared to the size of the domestic market as a whole.
  - d. Stability of production.

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***domestic production compared to the size of the domestic market as a whole; (4) whether the U.S. industry has reached a reasonable “break - even point;” and (5) whether the activities are truly a new industry or merely a new product line of an established firm. If the industry is not established, the Commission considers whether the performance of the industry reflects normal start-up difficulties or whether the imports of the subject merchandise have materially retarded the establishment of the industry.”***

<sup>19</sup> Para 7.154 of Panel Report in Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey WT/DS513/R (2018).

<sup>20</sup> Final Findings in Anti-dumping investigation (Material-Retardation) concerning imports of "N, N'- Dicyclohexyl Carbodiimide (DCC)" originating in or exported from China PR dated 24 February 2022.

<sup>21</sup> “7.141. In determining whether the domestic industry was established, the MDCCE applied the following five criteria: (a) how long the domestic industry had been producing the domestic like product; (b) the market share of the domestic like product; (c) whether the domestic industry’s production had been stable; (d) whether the domestic industry had reached profitability/break-even point; and (e) whether the domestic industry constituted a “new” industry. The MDCCE noted, in its final determination, that it had reached its finding that the domestic industry was unestablished based on a separate and collective consideration of its conclusions on these criteria.”

- f) The Authority has held in Anti-dumping investigation concerning imports of Styrene Butadiene Rubber (SBR) of 1500 series and 1700 series, originating in or exported from European Union, Korea RP, and Thailand that the test regarding material retardation is applicable only in case of an industry that is yet to be fully established<sup>22</sup>.
- g) The Authority should clarify the basis on which the domestic industry has been considered an unestablished industry.
- h) The petitioner has failed to provide sufficient evidence on the factors enumerated to prove that it is an unestablished industry, thereby requiring an assessment of material retardation.
- i) As per the Para 11.7.49 of the Manual, the Authority should consider the following factors in its examination of material retardation:
  - a. the ability to produce a marketable product;
  - b. the product being qualitatively acceptable to purchasers; and
  - c. the ability to sell the product at a price that is competitive with fairly traded imports.
- j) The mere factum of investments made by the applicant should not lead to a conclusion that the applicant is a ‘new’ industry.
- k) The Authority must first examine whether the petitioner was yet to find a way into the market or was already established by assessment of production volumes.
- l) The applicant is not a new industry but has been dealing in paints and varnishes and therefore, adding a new product line cannot be counted as a separate industry altogether. It should be examined if the petitioner has reaped benefits because of the existing production, marketing and other operations<sup>23</sup>.
- m) The sole fact that the petitioner started its production in July 2019 cannot be a ground to treat the domestic industry as a nascent industry or unestablished industry. Further, capacity underutilization cannot be a ground for considering an industry as materially retarded.
- n) In case the Authority concludes that the domestic industry is suffering from material retardation, it should normate the inefficiencies prevalent in the domestic industry’s production cost and high abnormal costs while determining the NIP.
- o) In previous investigations, the Authority has assessed parameters such as capacity utilization, production, net sales realization, sales, magnitude and margin of dumping and

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<sup>22</sup> Para 71 of Final Findings in Anti-dumping investigation concerning imports of Styrene Butadiene Rubber (SBR) of 1500 series and 1700 series, originating in or exported from European Union, Korea RP and Thailand, dated 12 July 2017.

“71. While the test of material injury or threat of material injury can be applied to an existing domestic industry or to the extent of operations that the domestic industry has had in the past, in the case of domestic industry yet to be fully established, the test to be applied is that of material retardation. The Authority notes that the following two conditions are relevant where the test of material retardation may be applicable:

(i) in case of “developing industry” which has not yet begun commercial production but substantial commitment to commence production has been made;

(ii) in case of “nascent industry” whose commercial production although has begun but the industry has yet to find its place in the market.”.

<sup>23</sup> Para 7.211 of Morocco – HRC (Turkey).

compared these parameters with the projected levels as mentioned in the domestic industry's project reports. In some instances<sup>24</sup>, post-POI data has also been analysed.

p) The petitioner has not established any of the following factors applicable in case industries with a shorter performance period as mentioned by the Authority in the *FKM* case<sup>25</sup>:

- Actual performance to the extent of domestic industry's existence/operations.
- Comparison of actual performance with the performance planned or considered by the petitioner while deciding to set up the plant.
- Performance of the domestic industry in respect of macroeconomic parameters in the post-POI period.
- Post-POI data for the purpose of examining whether the performance of the domestic industry was adverse even in the post-POI period.

q) The factors averred by the domestic industry for classification of an industry as a nascent industry are not supported by the past decision of the Authority and should be rejected.

r) Regarding the domestic industry's submission that in a material retardation case the trend of economic parameters is of limited relevance, it is submitted that in light of the Authority's final findings in *Anti-dumping investigation concerning imports of Veneered Engineered Wooden Flooring originating in or exported from China PR, Malaysia, Indonesia, and the European Union*<sup>26</sup>, the petitioner's submissions should be rejected.

s) Regarding the claim of cumulative assessment of subject imports made by the domestic industry, it is submitted that such an assessment is not appropriate in the present case. The imports from Korea have followed an entirely different trend in comparison to other subject as well as non-subject countries. In light of Appellate Body's observation in *EC - Tube or Pipe Fittings*<sup>27</sup> dispute wherein it had observed that country-specific volume trends may be relevant in the context of an investigating authority's evaluation of condition of competition between imported products and imported and domestic products, such an analysis would be improper.

t) The increase in imports from the subject countries did not prevent the domestic industry from increasing its sales volume as well as profitability.

### **Volume Effect**

u) The volume of the imports from the subject countries have not increased either in absolute or relative terms during the POI. The imports have fallen by 24 index points from 2018-19 and 21 index points from 2019-20 in the POI.

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<sup>24</sup> Final Findings in Antidumping investigation concerning imports of Non-Woven Fabric originating in or exported from Malaysia, Indonesia, Thailand, Saudi Arabia and China PR remanded by Hon'ble CESTAT No. 14/23/2015-DGAD dated 15th September, 2020.

<sup>25</sup> Final Findings in Anti-dumping duty investigation on the imports of Fluoroelastomers, (FKM), originating in or exported from People's Republic of China dated 19<sup>th</sup> October 2020.

<sup>26</sup> *Anti-dumping investigation concerning imports of Veneered Engineered Wooden Flooring originating in or exported from China PR, Malaysia, Indonesia and the European Union*, Final Findings dated 13 February 2018.

<sup>27</sup> WT/DS219/AB/R European Communities — Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil (2003).

- v) While the increase in imports has been around 11 index points from the start of the POI to the end of the POI, the increase in production and capacity utilisation during the same period was to the extent of 274 points.
- w) The import data includes laminated EG steel which must be excluded to reflect the correct figures of import volume.
- x) Imports from Japan have fallen by 24 index points from 2018-19 and 12 index points from 2019-20 in the POI.
- y) No injury has been caused to the petitioner due to imports from Korea, particularly from Dongkuk Steel Co. A perusal of the EQR clearly establishes that price of the subject imports from Korea have been high throughout the injury investigation period.
- z) The demand of the PUC has increased over the injury period and imports from Korea have been made to meet this increased demand.
- aa) The import volume from Korea has increased from 100 MT to 141 MT and has registered a decline of 15 % in the POI in comparison to the preceding year. In the meantime, imports from Singapore has increased by 106 %. The injury is due to imports from Singapore.
- bb) The petitioner has failed to disclose the trend of demand for 2019-20 and the POI which is in violation of Rule 7 of the Rules.

### **Price Effect**

- cc) The petitioner's selling price has grown at a much a higher rate than the cost. Therefore, there is no price suppression/depression.
- dd) The price/MT of imports of the PUC from non-subject countries with substantial imports (Malaysia, Hong Kong and Belgium) even after addition of BCD is lower than that of the subject countries. This shows that there is no price effect.
- ee) The Authority should examine the appropriateness of selling price and verify whether these prices were based on the trends of import price and whether there have been changes in the selling price in accordance with the change in price of the subject imports.
- ff) The domestic industry has performed exceedingly well in terms of production as well as profitability and therefore, it cannot claim injury on account of price undercutting.
- gg) There has been a mere increase of 1% in cost of sales during the POI while at the same time, the selling price has increased by 6 %.
- hh) The landed price from the subject countries is well above the cost of production of the domestic industry.
- ii) The assumption of 22 % ROCE would lead to an inflated NIP and consequently, colour the price underselling analysis. The CESTAT in *Indian Spinners Association v. Designated Authority*<sup>28</sup> and *M/s Bridge Stone Tyre Manufacturing v. Designated Authority*<sup>29</sup> has held that a high level of 22% return on investment gives an inflated picture of price underselling which cannot be a true indicator of injury.
- jj) The interest rate as well as corporate tax rate has come down over the years and therefore, there is no basis to provide such a high ROCE.

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<sup>28</sup> 2004 (170) E.L.T. 144 (Tri. - Del.)

<sup>29</sup> 2011 SCC OnLine CESTAT 3694.

- kk) The raw material costs, utilities and production must be optimized as required under Annexure -III to the AD Rules to remove any injury on account of any such inefficiencies. Start-up costs should also be optimised in computation of NIP as was done in the case of "Polyurethane leather" against China PR<sup>30</sup> (wherein the domestic industry had been in existence for around 2.5 years) and "*N, N'-Dicyclohexyl Carbodiimide (DCC)*" originating in or exported from China PR<sup>31</sup>.
- ll) The decline in selling price is on account of the declining cost of sales and the same cannot be attributed to the landed prices which has increased throughout the injury period.
- mm) Proper adjustments need to be made to cost as well as the selling price of the applicant industry as it is a new industry and it is expected to have a higher cost to manufacture as well as to sell the product.
- nn) The domestic industry's profits have grown phenomenally and such a growth is possible only when the selling price is higher than the cost of production of the domestic industry.
- oo) The domestic industry's claim regarding its price being higher by 10-30% are conjectures and cannot be sustained unless supported by documentary evidence.
- pp) The applicant's claims regarding consumer taking price decision based on imported product has no significance. The Authority should first settle the scope of the PUC and thereafter, comparisons should be made.
- qq) The domestic industry is suffering from internal deficiencies and lacks effective marketing as well as consumer study. Moreover, it is not able to meet consumer specifications and requirements as it lacks technical know-how and specialised technology.
- rr) On the one hand the domestic industry is claiming that there are start-up inefficiencies and on the other hand it is asserting that the improvement in its parameters has been only due to 'base effect'.

### **Economic Parameters**

- ss) It is submitted that the Authority must examine the overall state of the domestic industry as has been explained by the Panel in *Thailand – H-Beams*.<sup>32</sup>
- tt) Regarding the domestic industry's submission that its share is merely 15 % and imports are nearly five times of total domestic production, it is submitted that same should be assessed in light of the pandemic disruptions, short commercial span and low foothold of the domestic industry in the market.
- uu) The capacity of the petitioner has remained constant throughout the period July 2019 to the POI even though its net fixed assets have declined considerably by 18%. At the same time, the depreciation cost has increased considerably by around 61%. This means that either the applicant has increased its cost considerably or has incorrectly stated its fixed assets.

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<sup>30</sup> Final Findings in anti-dumping investigation concerning imports of "Polyurethane Leather which includes any kind of textile coated one sided or both sided with Polyurethane" originating in or exported from China PR dated 21<sup>st</sup> February 2022.

<sup>31</sup> *Supra* note 21.

<sup>32</sup> Para 7.236 of Thailand — Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H Beams from Poland WT/DS/122/R (2001).

- vv) The domestic industry has registered significant improvements in several economic parameters namely sales, market share, production, capacity utilisation, profits, cash profits, PBIT, ROCE and productivity throughout the injury period.
- ww) The applicant industry's production quantity has been steadily increasing and has registered a growth of 274 index points from the time it has commenced commercial production. In *Morocco — HRC (Turkey)*<sup>33</sup>, the Panel had considered production as an important factor for determining whether an industry has achieved stabilisation or not. The applicant's data clearly shows that it has achieved stabilisation.
- xx) Even in the short span of business, the petitioner has captured around 15 % of the total market share in India despite the devastating impact of COVID -19. In the case of *Morocco — HRC (Turkey)*<sup>34</sup>, the Panel had considered market share of the domestic industry as an important factor in assessing whether an industry has stabilized or not. There has been an incredible increase in the market share of the applicant which clearly indicates that the industry has stabilised.
- yy) Given the fact that there are no inventories with the petitioners, it becomes clear that the domestic industry has not been impacted by the imports.
- zz) A comparison of the domestic industry's profit and the quarterly import volume shows that there is no relation between the imports and the domestic industry's performance.
- aaa) The PBIT has increased from 100 index points in the base year to 469 index points during the POI which shows that the petitioner has been able to earn positive return on capital employed on the sale of subject goods. Further, the average capital employed as well as PBIT as percentage of average capital employed has increased by 103% and 113% respectively in the last quarter of the POI.
- bbb) The petitioner has in its application stated that the electrogalvanized steel project is self-financed which shows how well-established the applicant actually is.

### **Actual Performance vis-à-vis Projected Performance**

- ccc) The Authority must examine the reliability and validity of the project report. It must refer to a neutral third party forecast to determine if there is any actual material retardation.
- ddd) The Authority must examine whether the project report has taken into account the rise in steel prices which the industry has been facing since November 2019.
- eee) The Authority should also examine the selling price of the PUC mentioned in the project report as the petitioner may have shown high profitability in order to attract higher valuation.
- fff) The petitioner's project report was prepared in 2019 and therefore, does not include the impact of preventive measures applied by the Government of India with respect to COVID-19.
- ggg) The project report should be deemed irrelevant in the instant investigation as the domestic industry has been operating profitably and has achieved stability including the

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<sup>33</sup> *Supra* note 20.

<sup>34</sup> *Id.*

POI as well as the injury period. The Authority should instead carry out its examination on the basis of actual performance and post-POI data.

**Causal Link:**

- hh) The injury caused to the petitioner is due to start-up costs, price of raw materials and the buyer's market and the petitioner cannot immediately achieve sales and the market share.
- iii) The Government of India as well as the Competition Commission of India has acknowledged the adverse impact on businesses due to COVID-19 and the ensuing preventive measures.
- jjj) A comparison of the domestic industry's profit and import volumes as well as the price of the subject imports shows that there is no causal link between the imports and the domestic industry's performance. The difference between the actual and projected levels of production, sales, capacity utilization and profitability has been on account of COVID-19 preventive measures.
- kkk) It has been only a year and a half since the domestic industry commenced its commercial production, most of which was impacted by the COVID-19 restrictions and this has been acknowledged by the petitioner in its financial statement of 2019-20.
- lll) The pandemic has not allowed suppliers to shift their procurement from already existing import channels to the recently established domestic industry.
- mmm) The Authority should clarify whether it has relied upon the 2019 project report at the time of initiation and whether due adjustments have been made on account of the disruptions caused due to COVID-19.
- nnn) While the cost of the domestic industry has declined, both capacity utilisation and profits have shown an increasing trend which demonstrates stabilization and absence of material retardation and injury.

**Non-attribution Factors:**

- ooo) The applicant has presented itself as a 'new industry' and is bound to face certain inevitable start-up costs which would impact the new industry. The Authority should examine if such costs have been taken into account by the applicant.
- ppp) The Authority should examine if the applicant has faced any difficulties in procurement of raw materials and utilities at competitive rates or higher rates due to the COVID-19 restrictions.
- qqq) The applicant has not examined the impact of increase in steel prices on its performance. The price of CR coil has been on a steep rise since November 2019 and the petitioner has been suffering injury because CR coil is the primary raw material used in the manufacturing of EG steel.
- rrr) The petitioner has admitted that it is not backward integrated and purchases steel from third parties. Therefore, they are forced to purchase steel at higher prices in comparison to entities that are backward integrated.
- sss) Regarding the submission of the domestic industry that it is not able to procure any confirmed order due to dumped imports, it is submitted that the same is on account of COVID-19 pandemic and several other below mentioned factors:

- i. Lack of product approvals from end-users / buyers, which lowered the sales and prices of the domestic industry;
- ii. Low-grade sales by the domestic industry at low prices;
- iii. Change in market conditions between the planning stage and stage of commencement of the plant and new capacity additions;
- iv. Increased marketing expenses coupled with higher discounts.

## **G.2. Submissions by the domestic industry**

68. The domestic industry has made the following submissions with regard to injury and the causal link:

- a) Since the domestic industry has just commenced commercial production, it is at a nascent stage of production and, therefore, it cannot be considered to be an established industry.
- b) The analysis must be that of material retardation to the establishment of an industry.
- c) For material retardation criteria to apply, the industry must be unestablished. It is not necessary that an unestablished industry is the one where no production has commenced.
- d) There may be two types of unestablished industries: (a) a developing industry which has not yet commenced commercial production but has made a commercial commitment to commence production; and (b) a nascent industry that has commenced commercial production but is yet to establish itself in the market.
- e) The domestic industry began commercial production in July 2019 and is yet to establish itself in the market.
- f) It is pertinent to note that the there is no straight jacket meaning of ‘unestablished industries’ in the Anti-dumping Agreement, or the Customs Tariff Act, 1975 or the Antidumping Rules. In examining whether a nascent industry has established itself in the market or not, the Authority examines multitude of factors which differs from case to case.
- g) In examining whether a nascent industry has been established or not, due weightage should be given to the following:
  - i. short duration of time period for which the industry is in operation
  - ii. ‘newness’ and recent nature of the product and the domestic Industry
  - iii. limited market share
  - iv. limited capacity utilisation
  - v. fresh investment
  - vi. project report/feasibility studies showing substantial commitment etc. A careful review of all the criteria would show that the petitioner is an unestablished industry.
- h) The volume of the imports increased over the injury period even though the domestic industry set up its plant and commenced production.
- i) Mere absence of losses cannot form the basis of deciding the established/unestablished status of the domestic industry. The project has been self-financed and if the notional cost were to be added, the profitability parameter would portray a completely different picture.

- j) The Authority may note that categorisation of an industry as established/unestablished is only for the purpose of determining the appropriate standard of injury.
- k) In the *Veneered Engineered Wooden Flooring originating in or exported from China PR, Malaysia, Indonesia and the European Union*<sup>35</sup>, the domestic industry was in operation for 26 months, whereas in *FKM*<sup>36</sup> the domestic industry was in operation for 24 months. The Authority had considered the domestic industry in both situations to be unestablished. In the present investigation, the domestic industry has been in operation for mere 18 months.
- l) The criteria for determination of material retardation as observed by the Authority in *CPVC – Resin from China PR and Korea RP*<sup>37</sup> and *O-Acid from China PR*<sup>38</sup> are present in the current investigation as well.
- m) The petitioners have not been operational for the entire injury investigation period of 4 years and therefore, neither injury examination on the basis of material injury is possible nor can actual material injury be established.
- n) Most of the sales made by the petitioner during the POI were in food and beverage, medical devices, construction/architecture segment where imports have limited presence. The domestic industry has not been able to penetrate the automotive, home entertainment and home appliances market considerably wherein imports from the subject countries are being dumped.

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<sup>35</sup> *Supra* note 27.

<sup>36</sup> *Supra* note 26.

<sup>37</sup> Final Findings in Anti-dumping investigation concerning imports of "Chlorinated Polyvinyl Chloride (CPVC) Resin- whether or not further processed into compound", originating in or exported from China PR and Korea RP dated 19<sup>th</sup> February 2020.

The following factors were considered relevant:

- i. There is a significant idle capacity with the domestic industry considering the demand in India.
- ii. Low-capacity utilization of the domestic industry
- iii. Market share of the domestic industry remained insignificant
- iv. The Applicant has set up new capacities in the face of large existing and future demand but has not been able to reach optimum levels of production, sales and capacity utilization.
- v. The dumping margin determined in respect of the producers/exporters from the subject countries is significant for the period of investigation.
- vi. Imports from subject countries are at a price materially below the cost of production and non-injurious price of the domestic industry. Since the only competition to the domestic industry is imports and the domestic industry is new producer in the country, it is the import price that is solely responsible for the prices offered by the domestic industry.

<sup>38</sup> Final Findings in *Antidumping investigation concerning imports of O-Acid originating in or exported from China PR* dated 19<sup>th</sup> December 2017. The Authority had noted as follows:

- i. The examination of the imports of the subject goods and performance of domestic industry clearly shows that the import of the product under consideration are significant despite commencement of production by the domestic industry.
- ii. The imports are at a price materially below cost of production and NIP of the domestic industry, thus resulting in significant undercutting.
- iii. With regard to consequent impact of the dumped imports on the domestic industry, it is seen that the domestic industry could not sell its product in the domestic market despite repeated attempts in view of availability of significantly dumped imports in the market. Even when domestic industry started production and utilization of the new facilities created at modest level, production and capacity declined materially after reaching some levels.
- iv. The consumers are unwilling to buy from the domestic industry due to availability of the dumped material from China. The domestic industry is suffering significant financial losses, cash losses and negative return on investments.

- o) India is a focus market for the exporters from the subject countries and they have intensified dumping in the POI.
- p) The volume of imports is very high even when the products are available domestically and the petitioner has the capacity to fulfil the entire Indian demand.
- q) The imports from the subject countries are causing a price effect on the domestic industry in the form of price undercutting, price suppression/depression and price underselling.
- r) Import price of the subject goods, which is a value-added product, is lower than the import price of CR steel, which is a substrate for making the subject goods.
- s) Price offered by customers to the applicant for EG steel is at par or lower than CR steel prices. The customers quote the price of imported EG steel and ask the applicant to match the price of imported EG steel.
- t) The improvement in economic parameters has been on account of the low or nil base effect. The Authority was confronted with a similar situation in *CPVC – Resin from China PR and Korea RP*<sup>39</sup>.
- u) The petitioner has not been able to achieve the projected performance and is operating at a capacity utilization of merely 5-15%. The post-POI data would reflect the same data. The domestic sales occupy insignificant share (10-15%) in total demand. A similar situation existed in "*N, N'-Dicyclohexyl Carbodiimide (DCC)" originating in or exported from China PR*<sup>40</sup> wherein despite the fact that the domestic industry had nearly achieved its forecasted levels, the Authority had concluded that the domestic industry was suffering from material retardation.
- v) The profitability is much below the expected levels keeping in mind the fact that the petitioner is the sole producer of the subject goods in India and there is a significant demand for the subject goods in India. In material retardation cases, improvement of economic parameters is of limited relevance.
- w) The domestic industry has submitted the post-POI data (January 2021 to June 2021). The performance of the domestic industry in terms of production, sales and profitability shows a decline in the post-POI as compared to the POI period.
- x) The actual performance of the domestic industry as compared to projected performance is relevant in case of material retardation. Comparison of actual performance with

<sup>39</sup> *Supra* The Authority had noted as under:

“The production and capacity utilization of the domestic industry have increased during the period of investigation. However, the same was natural on account of the commencement of the plant in the period of investigation.”

<sup>40</sup> “Capacity, production, capacity utilization and sales: The Authority notes that the domestic industry has a total capacity of \*\*\*Kg. The capacity utilization of the domestic industry has remained at near to projected level of \*\*\*% during the POI.

Market share: It is seen that the market share of the domestic industry has started growing after the commencement of the commercial production.

#### Conclusion

After examining the submissions made and issues raised, and considering the facts available on record, the Authority concludes that:

- a) .....
- c) *Manifestation of the aforesaid injury is in the form of material retardation.”*

projected performance shows that the domestic industry has not been able to perform as per the projections.

- y) The Authority has consistently held in other investigations that 22% ROCE is a reasonable rate of return.
- z) The assessment of projections based on 22% ROCE shows that actual domestic sales volume achieved by the domestic industry during the POI falls short by 40-60%.
- aa) The assessment of projections based on the assumption that the applicant would have been able to sell the product concerned at a non-injurious/fair price, would show that actual profit earned by the petitioner during the POI falls short by 100-120%.
- bb) Actual production volume during the POI falls short by 275-325% in comparison to the production expected in project report.
- cc) Actual profits earned during the POI fall short by 550-600% in comparison to the projected profits.
- dd) There was no visible impact COVID-19 lockdown on the annual performance of domestic industry. An analysis of quarter-wise data would reveal that there has been no significant disruption to the business of the petitioner due to COVID -19.

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

69. The Authority has noted the submissions of the interested parties with regard to injury to the domestic industry. The Authority notes that the present application is with respect to material retardation to the establishment of an industry and not of material injury. There is a need to address certain legal aspects regarding the concept of 'material retardation to the establishment of an industry' prior to proceeding with the injury analysis.

#### **G.3.1. Material retardation to establishment of an industry**

70. Regarding the submission of the other interested parties that the initiation notification did not contain the basis on which the domestic industry has been considered as 'unestablished', the Authority notes that there is nothing contained in Rule 6(1) of the Rules which obliges the Authority to disclose the factors regarding established/unestablished status of the domestic industry.

71. The Authority notes the submissions of the other interested parties that the domestic industry in the present case is an established industry and therefore, no case of material retardation is made out. In this regard the Authority notes that there is no definition of 'material retardation' either in the AD Agreement or the Anti-dumping Rules. The Agreement as well as the Rules merely mention it as one of the three forms of the injury which a domestic industry may suffer from as a consequence of dumped imports and provide no further guidance regarding assessment of material retardation.

72. The other interested parties as well as the domestic industry have relied on several previous investigations involving material retardation conducted by the Authority as well as other literature related to material retardation. Such submissions have been considered by the Authority to the extent they were relevant to the present investigation.

73. Regarding the WTO Panel Report in *Morocco — HRC (Turkey)*, the Authority notes that the Panel has neither established any criteria for evaluation of material retardation nor did it confirm the appropriateness in totality of the criteria formulated by the Moroccan investigating authorities but has rather analysed the appropriateness of the assessment done by the Moroccan anti-dumping authorities. The Panel also did not provide any guidance on how national investigating authorities should define a nascent industry and left the discretion to national investigating authorities to use any reasonable methodology for such assessment provided it be based on objective facts and positive evidence.

74. The Authority notes the parameters laid down in the proposal of the WTO Negotiating Group regarding amendment of the Anti-dumping Agreement with respect to material retardation. Even though the proposal has no legal value, the Authority, as in previous investigations<sup>41</sup>, has taken guidance from these factors among other factors in assessing whether the domestic industry is in nascent/embryonic stage or is an established industry.

75. After the perusal of the abovementioned submissions, the Authority holds that an assessment regarding material retardation of an industry may be carried out in cases wherein the domestic industry has either not established itself in the market and has not been in commercial operation for a reasonable period of time or wherein the said industry has not yet begun production, but a genuine and substantial commitment of resources has been made for production a like product which has not been previously produced in the territory of the importing country. Thus, such industries can be categorised into the following types:

- i. Embryonic industry: An industry which has not yet begun commercial production but substantial commitment to commence production has been made;
- ii. Nascent industry: An industry which has although commenced commercial production but has not been in commercial operation for a reasonable period of time and is yet to establish a commercial presence in the market.

### **G.3.2. Material retardation to the establishment of the Domestic Industry in the present investigation**

76. With regard to the submission of the other interested parties that the Authority should examine if the applicant is a new industry or is an existing industry which is benefitting from its existing infrastructure, marketing channels and customer base, the Authority notes that the applicant has set up a new manufacturing facility of EG steel by incurring fresh investment in Valsad, Gujarat. Prior to the commencement of the production by the applicant in July 2019, there was no production of EG steel in India and none of the other

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<sup>41</sup> *Supra* notes 21, 23 and 26.

interested parties have claimed otherwise. In order to ascertain whether the domestic industry is an unestablished industry or an established industry, the Authority has examined the following factors:

**a) When did the domestic industry began its production?**

77. The Authority notes that the domestic industry commenced commercial production of subject goods only in July 2019. The production of the subject goods began only few months prior to the POI, and there is no other domestic producer of the subject goods in India. It is noted that although the production of the subject goods has commenced, the production has not reached substantial commercial volumes. A comparison of the domestic industry's actual and projected production figures reveals that actual production figures in the POI have not even achieved one-fifth of the projected figures which shows that their anticipated commercial presence has been impacted.

**b) Size of production compared to the size of the domestic market as a whole**

78. The applicant is the only Indian producer of the subject goods in India. However, the market share of the applicant during the POI is only in the range of 5-15% and the market share of imports from the subject countries is in the range of 70-80%. The imports from the subject countries are more than 5 times the total domestic production of the subject goods in India.

**c) Stability of production and capacity utilization**

79. The Authority notes that the production of the applicant commenced in July 2019 and the production figures on a quarter-to-quarter basis shows an increasing trend during the POI. Even though the production has increased, the capacity utilization on quarter-to-quarter basis is in the range of \*\*\* % as against the projected performance of \*\*\*%. A few submissions have been raised by the other interested parties commenting that capacity utilisation and production figures of the domestic industry could not be the sole ground for determining the unestablished status of the domestic industry. In this regard, the Authority notes that it is normally expected that an industry which has recently commenced production would gradually increase its capacity utilisation and consequently, its production levels. However, in the instant case, the post-POI data has revealed that both capacity utilisation as well as production figures have actually taken a dip.

80. The Authority has conducted the injury analysis based on the legal position relating to material retardation discussed above. The Authority notes that the domestic industry has not been able to provide the information regarding injury parameters for the past three years since it has been in existence for a very short period of time. The domestic industry has provided injury parameters for the period July 2019 to March 2020 and quarter-wise injury parameters for the POI and post-POI.

81. The domestic industry has requested the Authority to examine the actual performance of the domestic industry during the POI and compare it with the projections made in the

project report to assess whether there has been a material retardation to the establishment of the domestic industry or not.

82. The Authority has also examined the post-POI data of the domestic industry based on the request made by a number of interested parties and also in line with its consistent practice.

### **Assessment of demand**

83. The Authority has determined demand or apparent consumption of the product in India, as the sum of domestic sales of the Indian producer and imports from all sources. The demand so assessed is given in the table below:

<b>Particulars (Quantity in MT)</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>POI (Jan 2020 to Dec 2020)</b>
Imports from Korea RP	44,515	58,789	69,486	62,663
Trend	100	132	156	141
Imports from Japan	67,907	88,442	80,333	71,734
Trend	100	130	118	106
Imports from Singapore	5,313	26,045	20,157	10,964
Trend	100	490	379	206
<b>Total Imports from subject countries</b>	<b>1,17,735</b>	<b>1,73,276</b>	<b>1,69,976</b>	<b>1,45,360</b>
Trend	100	147	144	123
Imports from other Countries	27,494	46,698	35,388	19,216
Trend	100	170	129	70
<b>Total Imports</b>	<b>1,45,229</b>	<b>2,19,974</b>	<b>2,05,364</b>	<b>1,64,576</b>
Trend	100	151	141	113
Domestic Sales	-	-	***	***
Trend	-	-	100	283
<b>Demand/Apparent Consumption</b>	<b>1,45,229</b>	<b>2,19,974</b>	***	***
Trend	100	151	148	132
<b>Share of imports from subject countries in relation to</b>				

Particulars (Quantity in MT)	2017-18	2018-19	2019-20	POI (Jan 2020 to Dec 2020)
- Demand	81%	79%	***	***
Demand Range	80-90	70-80	70-80	70-80
- Total imports	81%	79%	83%	88%
Total imports Range	80-90	70-80	80-90	80-90
- Domestic Sales/Production	-	-	***	***
Domestic Sales/Production Range	-	-	1700-1800	500-600

84. The Authority notes as follows:

- i. Imports from the subject countries have increased in absolute terms in the POI as compared to the base year.
- ii. Imports from the subject countries have continued to occupy a significant portion of the Indian demand (70-80%) during the POI even after the domestic industry has commenced commercial operations.
- iii. Imports from the subject countries occupy a major share (80-90%) in relation to total imports into India during the POI.
- iv. The share of imports from the subject countries is more than 5 times the domestic sales/production during the POI.

### **Cumulative assessment**

85. Article 3.3 of the WTO Anti-Dumping Agreement, Rule 11 and Annexure II (iii) to the Antidumping Rules provide that in case imports of a product from more than one country are being simultaneously subjected to antidumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that:

- a) *The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article; and*

*b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic products.*

86. The Authority notes that the margin of dumping from each of the subject countries is more than the limits prescribed. The quantum of imports from each of the subject countries is more than the de-minimis limits.

87. Cumulative assessment of the effect of imports is appropriate since the exports from the subject countries compete between themselves and also directly compete through comparable sales channel under similar commercial conditions with the subject goods offered by the domestic industry in the Indian market.

88. The Authority therefore has, therefore, assessed injury to the domestic industry cumulatively from the subject countries. The Authority notes that the dumped imports are identical to the goods sold in the domestic market. The dumped imports are entering the Indian market simultaneously from several countries.

### **Volume effect of the dumped imports**

89. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of the injury analysis, the Authority has relied upon the transaction wise import data of DGCI&S. The import volumes of the subject goods from the subject countries and share of the dumped imports during the injury investigation period are as follows:

Particulars	Unit	July 2019 to Sept 2019	Oct 2019 to Dec 2019	POI – Quarterly				POI
				Jan 2020 to March 2020	April 2020 to June 2020	July 2020 to Sept 2020	Oct 2020 to Dec 2020	
Domestic sales of Petitioner	MT	***	***	***	***	***	***	***
	Indexed	100	113	208	239	369	374	
Import from Subject Countries	MT	46,866	30,506	39,502	38,443	23,420	43,995	1,45,360
	Indexed	100	65	84	82	50	94	
Import from Other Countries	MT	12,043	6,797	4,727	5,831	3,570	5,088	19,216
	Indexed	100	56	39	48	30	42	

Particulars	Unit	July 2019 to Sept 2019	Oct 2019 to Dec 2019	POI – Quarterly				POI
				Jan 2020 to March 2020	April 2020 to June 2020	July 2020 to Sept 2020	Oct 2020 to Dec 2020	
<b>Demand (MT)</b>	<b>MT</b>	***	***	***	***	***	***	***
	<b>Indexed</b>	<b>100</b>	<b>65</b>	<b>80</b>	<b>81</b>	<b>58</b>	<b>94</b>	
<b>Market Share</b>								
Share of Petitioner	%	4%	6%	10%	11%	24%	15%	14%
	Indexed	100	173	260	294	639	398	
Share of Subject countries	%	***	***	***	***	***	***	***
	Indexed	100	100	105	101	86	100	
Share of Other countries	%	***	***	***	***	***	***	***
	Indexed	100	87	49	60	51	45	

90. The Authority notes that the volume of imports of the subject goods from the subject countries is significant and caters to around 70-80% of the demand of the subject goods in India.

91. The Authority notes that the volume of imports of the product under consideration from the subject countries have been substantial throughout the investigation period. During the time when the production of the domestic industry commenced, the imports from the subject countries were 70-80% of the total Indian demand and have remained in the same range even during the POI.

#### **Price effect of the dumped imports**

92. In terms of Annexure II (ii) of the Rules, with regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, the Authority has examined price undercutting, price underselling and price suppression/depression due to dumped imports.

##### **a) Price Undercutting**

93. To determine the price undercutting, a comparison has been made between the landed value of the product and the average selling price of the domestic industry, net of all rebates and

taxes, at the same level of trade. The prices of the domestic industry were determined at ex-factory levels.

Price Undercutting	Currency	Korea RP	Japan	Singapore	Subject Countries
Landed Value	Rs/MT	49,295	49,851	42,998	49,095
Domestic Selling Price	Rs/MT	***	***	***	***
Price undercutting	Rs/MT	***	***	***	***
<b>Price undercutting as % of Landed Value</b>	<b>%</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>
Trend	Range	15-25	15-25	30-40	15-25

94. From the table given above, it is seen that the dumped imports from subject countries are significantly undercutting the prices of domestic industry.

#### b) Price depression/suppression

95. In order to determine whether the effect of the imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the costs and prices have been compared with the landed value.

Price depression/suppression	Unit	July 2019 to Sept 2019	Oct 2019 to Dec 2019	POI – Quarterly				POI
				Jan 2020 to March 2020	April 2020 to June 2020	July 2020 to Sept 2020	Oct 2020 to Dec 2020	
Cost of sales	Rs/MT	***	***	***	***	***	***	***
Trend	Indexed	100	95	89	88	94	101	94
Selling price (Net)	Rs/MT	***	***	***	***	***	***	***
Trend	Indexed	100	94	93	90	97	107	98
Landed price	Rs/MT	***	***	***	***	***	***	***
Trend	Indexed	100	112	106	113	110	111	110

96. From the aforesaid table, it is noticed that the landed price of imports from subject countries during each of the quarters of the POI is below the cost of sales of the domestic industry.

#### c) Price Underselling

97. The Authority has determined price underselling by comparing the NIP and landed price of imports during the POI.

Country	Unit	Korea RP	Japan	Singapore	Subject Countries
NIP	Rs/MT	***	***	***	***
Landed price	Rs/MT	49,295	49,851	43,009	49,095
Price underselling	Rs/MT	***	***	***	***
Price underselling	%	***	***	***	***
	Range	NEGATIVE	NEGATIVE	10-20	NEGATIVE

98. It is seen that the landed price of imports from the subject countries during the POI is above the non-injurious price/fair price for the domestic industry which is causing negative price underselling during the POI. It is also noticed that the actual selling price of the domestic industry during the POI is well above the non-injurious price/fair price for the domestic industry.

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

99. Annexure II to the Rules provides 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:

##### **a) Capacity, production, capacity utilization and sales**

100. The performance of the domestic industry with regards to capacity, production, capacity utilization and sales is as follows:

Particulars	Unit	July 2019 to Sept 2019	October 2019 to December 2019	POI – Quarterly				POI
				January 2020 to March 2020	April 2020 to June 2020	July 2020 to September 2020	October 2020 to December 2020	
Installed Capacity	MT	***	***	***	***	***	***	***

Trend	Indexed	100	100	100	100	100	100	
Total production	MT	***	***	***	***	***	***	***
Trend	Indexed	100	113	208	239	369	374	
Capacity Utilization	%	***	***	***	***	***	***	***
Trend	Indexed	100	113	208	239	369	374	
Domestic Sales	MT	***	***	***	***	***	***	***
Trend	Indexed	100	113	208	239	369	374	

101. The Authority notes that the petitioner is the sole producer of the subject goods in India and started commercial production in July 2019. Accordingly, the production & capacity utilization of the petitioner shows an increasing trend during various quarters of the POI.

102. However, the production and capacity utilization of the petitioner has been low keeping in mind the demand for the subject goods in India. The petitioner has been operating at a capacity utilization of only 5-15% during the POI despite a significant demand of the subject goods in India.

#### b) Profitability

103. Profits earned by the domestic industry from sale of the subject goods in the domestic market are as follows:

Profit/ (Loss)	Unit	July 2019 to Sept 2019	Oct 2019 to Dec 2019	POI – Quarterly				POI
				Jan 2020 to March 2020	April 2020 to June 2020	July 2020 to Sept 2020	Oct 2020 to Dec 2020	
Profit/(Loss) per unit	Rs./MT	***	***	***	***	***	***	***
Trend	Indexed	100	68	168	135	154	224	
Profit/(Loss) – total	Rs. Lacs	***	***	***	***	***	***	***
Trend	Indexed	100	77	350	323	568	840	

104. The Authority notes that the petitioner has been able to earn profits on the sale of subject goods in India.

**c) Cash Profits**

105. Cash profits earned by the domestic industry is as follows:

<b>Cash Profits</b>	<b>Unit</b>	<b>July 2019 to Sept 2019</b>	<b>Oct 2019 to Dec 2019</b>	<b>POI – Quarterly</b>				<b>POI</b>
				<b>Jan 2020 to March 2020</b>	<b>April 2020 to June 2020</b>	<b>July 2020 to Sept 2020</b>	<b>Oct 2020 to Dec 2020</b>	
Cash Profits	Rs. Lacs	***	***	***	***	***	***	***
Trend	Indexed	100	100	181	180	302	399	
Cash Profit/MT	Rs./MT	***	***	***	***	***	***	***
Trend	Indexed	100	89	87	75	82	106	

106. The Authority notes that the petitioner has been able to earn cash profits on the sale of subject goods in India.

**d) Return on capital employed (ROCE) and ability to raise investments**

107. The return on capital employed of the petitioner is as follows:

<b>ROCE</b>	<b>Unit</b>	<b>July 2019 to Sept 2019</b>	<b>Oct 2019 to Dec 2019</b>	<b>POI – Quarterly</b>				<b>POI</b>
				<b>Jan 2020 to March 2020</b>	<b>April 2020 to June 2020</b>	<b>July 2020 to Sept 2020</b>	<b>Oct 2020 to Dec 2020</b>	
PBIT	Rs. Lacs	***	***	***	***	***	***	***
Trend	Indexed	100	96	204	197	338	469	
PBIT	Rs/MT	***	***	***	***	***	***	***
Trend	Indexed	100	85	98	83	91	125	
ROCE	%	***	***	***	***	***	***	***
Trend	Indexed	100	93	173	155	181	231	

108. The Authority notes that the petitioner has been able to earn a positive return on capital employed on the sale of the subject goods in India.

**e) Inventories**

109.The Authority notes that the petitioner undertakes production of the subject goods based on confirmed orders and does not maintain any inventory of the subject goods.

**f) Productivity**

110.The number of employees as well as the productivity per employee is as follows:

Productivity	Unit	July 2019 to Sept 2019	Oct 2019 to Dec 2019	POI – Quarterly				POI
				Jan 2020 to March 2020	April 2020 to June 2020	July 2020 to Sept 2020	Oct 2020 to Dec 2020	
Employees on payroll	Nos	***	***	***	***	***	***	***
Trend	Indexed	100	100	100	100	100	100	
Production/ Employee	MT	***	***	***	***	***	***	***
Trend	Indexed	100	113	208	239	370	375	

111.The Authority notes that the production per employee has increased during the POI.

**COMPARISON OF ACTUAL PERFORMANCE WITH PROJECTED PERFORMANCE**

112.The Authority notes that it is a consistent practice of the Authority to compare the actual performance during the POI of the domestic industry with the projected performance of the domestic industry in cases involving material retardation. The table below shows the comparison of actual performance with the projected performance of the domestic industry as per its project report.

Particulars	UOM	Actual Performance	Projected Performance
Capacity	MT	***	***
Capacity Utilisation	%	***	***
Production	MT	***	***
Shortfall in Production	MT	***	-
Shortfall in Production	%	***	-
Trend		275-325	

Profit	Rs Lacs	***	***
Shortfall in Profit	Rs Lacs	***	-
Shortfall in Profit	%	***	-
Trend		550-600	

113. Based on a comparison of actual performance as against the projected performance, the Authority notes as follows:

- i. Actual production volume during the POI falls short by 175-225% in comparison to the production expected in project report.
- ii. Actual profits earned during the POI fall short by 350-400% in comparison to the projected profits as per project report.

### **ANALYSIS OF POST-POI DATA**

114. Several interested parties have raised a common issue during the hearing and in their written submissions that post POI data of the domestic industry should be analysed as the present case is a material retardation case.

115. The Authority in line with its consistent practice has therefore decided to analyse post-POI data of the domestic industry from January 2021 to June 2021. The post-POI data is shown below which is as follows:

Particulars	Unit	POI Quarterly				Post POI Quarterly	
		January 2020 - March 2020	April 2020- June 2020	July 2020- September 2020	October 2020- December 2020	January 2021- March 2021	April 2021- June 2021
Production	MT	***	***	***	***	***	***
Trend		100	115	178	180	138	64
Capacity Utilization	%	***	***	***	***	***	***
Trend		100	115	178	180	138	64
Sales	MT	***	***	***	***	***	***
Trend		100	115	178	180	138	64
PBT per Unit	Rs/MT	***	***	***	***	***	***
Trend		100	81	92	133	62	(33)
PBIT per unit	Rs/MT	***	***	***	***	***	***
Trend		100	84	93	127	70	4
ROCE	%	***	***	***	***	***	***
Trend		100	89	105	133	72	2

116. The Authority notes that the production, domestic sales, capacity utilization, PBT, PBIT and ROCE of the domestic industry have declined in the post-POI period as compared to the POI.

117. The petitioner has been operating at a capacity utilization of only 0-10% during post-POI despite a significant demand of subject goods in India.

## **H. MAGNITUDE OF INJURY MARGIN**

118. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the PUC has been determined by adopting the information/data relating to the cost of production provided by the domestic industry and duly certified by the practicing Chartered Accountant for the POI. The NIP has been compared with the landed price of subject goods from the subject countries for calculating injury margin. For determining the NIP, the best quarterly utilization of the raw materials and utilities and best quarterly utilization of production capacity has been considered. Extraordinary or non-recurring expenses and/or assets have been excluded from the cost of production and/or NIP. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. average net fixed assets plus average working capital) deployed for the PUC has been allowed for recovery of interest, corporate tax and profit to arrive at the NIP as prescribed in Annexure III of the Rules.

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

<b>Producer/Exporter</b>	<b>NIP (INR/MT)</b>	<b>Landed Value (INR/MT)</b>	<b>IM (INR/MT)</b>	<b>IM %</b>	<b>Range</b>
<b>Korea RP</b>					
POSCO Group	***	***	***	***	Negative
Dongkuk Steel Mill Co.Ltd.	***	***	***	***	Negative
Hyundai Steel Company	***	***	***	***	Negative
DK Dongshin Co. Ltd.	***	***	***	***	Negative
All Others	***	***	***	***	0-10
<b>Japan</b>					
Nippon Steel Corporation	***	***	***	***	Negative
All Others	***	***	***	***	10-20
<b>Singapore</b>					
Any Producer/Exporter	***	***	***	***	10-20

## **I. NON-ATTRIBUTION ANALYSIS**

120. 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. The factors which may be relevant in this respect include, inter-alia, the volume and prices of the 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, which has resulted in the material retardation to the establishment of the domestic industry:

**a) Volume and price of imports from third countries**

121. The Authority notes that the imports of subject goods from sources other than subject countries are either below *de-minimis* level or are un-dumped/non-injurious.

**b) Contraction of demand**

122. The Authority notes that the demand of subject goods increased during the injury period.

**c) Changes in pattern of consumption**

123. There has been no known material change in the pattern of consumption of the product under consideration.

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

124. The imports of the subject goods are not restricted in any manner and are freely importable in the country.

**e) Developments in technology**

125. The Authority notes that there has been no known material change in the technology for the production of the product under consideration.

**f) Export performance**

126. The Authority notes that the domestic industry has not exported the subject goods to other countries.

**g) Productivity**

127. The Authority notes that the productivity of the domestic industry has improved during the injury period.

## **J. INDIAN INDUSTRY'S INTEREST, PUBLIC INTEREST & OTHER ISSUES**

### **J.1 Submissions of other interested parties**

128. The following submissions have been made by other interested parties:

- a) Imposition of anti-dumping duty in the present case would be against public interest. The domestic industry has already been performing well and therefore, there is no need of imposition of anti-dumping duty.
- b) There is a severe demand supply gap and almost entire demand is being catered through imports.
- c) Imposition of anti-dumping duty will lead to establishment of monopoly of the petitioner.
- d) The imposition of anti-dumping duty would not only increase the cost of user industry but also impact the end user for whom the cost of essential product such as refrigerators, air conditioners shall increase.
- e) The price of primary raw material CR steel has been on rise since November 2019 and imposition of anti-dumping duty would further increase the price of imports.
- f) The Government of India after considering the rising metal prices has recently suspended customs duty<sup>42</sup> as well as discontinued anti-dumping/countervailing duty on several steel products<sup>43</sup> in public interest despite a positive recommendation by the Authority.
- g) The Authority is requested to assess the impact of ADD on the user industry on the basis of the response filed by the user industries.
- h) Government of India has introduced several policies for the benefit and promotion of the domestic steel industry. Some of these programmes are:
  - a. Domestic procurement policy
  - b. Steel import monitoring system (SIMS)
  - c. Quality control orders and mandatory BIS certification
  - d. Steel scrap recycling policy
  - e. PLI scheme
- i) Further, if the applicant is concerned about the import competition it is facing due to non-levy of basic customs duty as result FTAs, then the applicant should seek relief under safeguard measures.
- j) If the Authority recommends imposition of anti-dumping duty, the same should be on a reference price basis which would ensure that imports made at par or above reference

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<sup>42</sup> Straight length bars and rods of alloy-steel, high speed steel of non-cobalt grade, flat-rolled product of steel, plated or coated with alloy of aluminium or zinc and certain hot rolled and cold rolled stainless steel flat products.

<sup>43</sup> Stainless steel, hot rolled and cold rolled products.

price would not attract undue anti-dumping duty and at the same time provide protection to the domestic industry.

k) Since the injury information pertains to only an 18-month period, the Authority may recommend duty for a shorter period of time ranging from 2.5 years – 3.5 years so that end of this period, the Authority would be in a position conduct a review on the basis of 4 years injury information of the petitioner. The Authority had done the same in the case of O-Acid from China PR.<sup>44</sup>

## **J.2 Submissions of the domestic industry**

129. The following submissions have been made by the domestic industry:

- a) It is submitted that there has been minimal participation of user industry and unrelated importers from India which clearly shows that user and downstream industry do not oppose imposition of anti-dumping duty.
- b) While addressing the issue of public interest, the Authority must also consider the interest of the domestic industry which has made substantial investments by setting up manufacturing unit in India and has created employment opportunities for people.
- c) The submission with respect to reference price form of duty has not been made by the user industry but by exporters/producers and therefore, should not be given higher weightage.
- d) The price of the raw material, CR steel has increased after the POI and therefore, a reference price form of duty would become ineffective.
- e) A duty levied for a shorter period of time would not be effective in addressing the material retardation suffered by the domestic industry.
- f) It has been the practice of Authority to recommend imposition of duty for a period of five years and no cogent reason has been provided by the other interested parties to deviate from this practice.
- g) Basic customs duty on import of the subject goods from the subject countries is 0% under respective FTAs with the subject countries. Therefore, no customs duty protection is available to the applicant on imports.
- h) Regarding the schemes for promotion of domestic steel industry run by the Government of India, the following is submitted:
  - a. Domestic procurement policy for government projects: The applicant is not selling the subject goods to the Government or its entities and therefore, a preference for procurement remain inconsequential to the present investigation.
  - b. Steel Import Monitoring System: The programme was introduced for collection of statistical data on steel imports and has no bearing on imports.
  - c. Quality Control Orders and Mandatory BIS certification: The programme is for ensuring standardisation and quality assurance while improving

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<sup>44</sup> *Supra* note 39.

productivity, efficiency and competitiveness of domestic manufacturing. It has no effect on the imports being made except to the extent that such imports comply with the quality control orders.

- d. Steel scrap recycling policy: It is meant for resource conservation and energy saving and is meant for setting up an environmentally sound management system for handling ferrous scrap.
- e. PLI Scheme: The objective of production-linked incentive scheme for 'speciality steel' is to promote manufacturing of specialty steel grades within the country. The PLI incentive is expected to boost the domestic production of specialty steel. This scheme was not operational during the POI and is not yet implemented.

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

130. The Authority issued the initiation notification, inviting views from all interested parties including importers, users and consumers. A questionnaire was also prescribed to the users/consumers to provide relevant information with regard to the present investigation, including the possible effect of anti-dumping duty on their operations. The others interested have made several submissions which has been examined by the Authority in the following paragraphs.

131. The Authority notes that the purpose behind the imposition of anti-dumping duty or any other duty as a consequence of trade remedial investigations, is to establish a level playing field for the domestic industry which has been suffering injury as a consequence of unfair imports making way into the territory of the importing member. The Anti-dumping Rules, 1995 ensures that amount of duty levied is restricted to what is necessary to redress the injury to the domestic industry and prevent the impact of unfair imports on the performance of the domestic industry. The application of lesser duty rule makes it certain that the domestic industry does not receive any undue advantage.

132. Some of the other interested parties have claimed that imposition of anti-dumping duty would lead to establishment of the petitioner's monopoly. The Authority notes that the petitioner has begun commercial production in July, 2019 and before this period India's demand with respect to the PUC was being fulfilled through imports. The domestic industry presently occupies merely 15 % of the market share and the rest is being catered by imports. Imposition of anti-dumping duty will not restrict the imports of the PUC and would only ensure that they would enter into the Indian territory at fair price. The anti-dumping duty is meant to only prevent dumped imports and provide breathing space to the domestic industry whose growth has been materially retarded, A substantial share of the market would still be catered by such imports.

133. The Authority, further notes that during the investigation, the scope of the PUC has been narrowed as the domestic industry was not manufacturing the same or did not have the capability to manufacture the same. The anti-dumping duty would be applicable on a very fine subset of the original PUC as notified in the initiation notification. While the user

industry has made several submissions on quality of the PUC, none of those submissions have been substantiated. Further, none of them have submitted any empirical information regarding the impact of the anti-dumping duty.

134. Regarding the submissions made with respect to the existence of certain programmes and schemes of Government of India for the benefit of manufacturers engaged in steel industry, the Authority notes that the existence of such programmes does not change the fact that the domestic industry is facing injury as a result of the injurious imports made by foreign exporters/foreign producers. It has also not been demonstrated as to how the domestic industry is getting benefit from such programmes. Further, even where a domestic industry gets benefit of such programmes, but suffers injury as a consequence of dumped imports, it would make an appropriate case for a trade remedial investigation.
135. The Authority notes that the reference price form of duty is not desirable where major raw materials are liable to significant price fluctuations. For instance, it is possible that the import prices rise mainly on account of the fact that the price of the principal raw material has gone up. In such a case, the domestic industry may not be effectively protected as the rise in the raw material prices will also increase their costs. Conversely, if the price of the principal raw materials have declined, then domestic industry gets extra protection and exporters/importers get unnecessarily penalized even though they may not be indulging in dumping or causing injury. Thus, reference form of duty suffers from the vice of being inflexible inasmuch as this duty becomes ineffective in a rising market and overly protective perhaps punitive in a falling market.
136. The Authority notes the submissions of other interested parties regarding the Government of India's decision to suspend certain countervailing and anti-dumping duties imposed on steel products. The Authority's mandate under the Anti-dumping Rules, 1995 is to assess the dumping of the subject product, injury caused to the domestic industry and whether a causal link exists between the two. If the Authority comes to a positive conclusion on all these three facets, then it recommends to the Central Government for imposition of anti-dumping duty.

## **K. POST – DISCLOSURE COMMENTS**

137. The Authority notes that most of the submissions made by the interested parties in response to the disclosure statement are repetitive in nature and the interested parties have largely reiterated their earlier submissions. The Authority has already examined such submissions in the aforementioned paras and only additional submissions have been examined by the Authority in the following examination to the extent they were found to be relevant.

### **K.1 Submissions made by the other interested parties**

138. The following submissions have been made by the other interested parties:

- a. EG steel of special formability grades (deep drawing quality) with one-side coating i.e., JFE-CE-EZ, JFE-CF-EZ, JFE-CG-EZ, JFE-CGX-EZ, JEC270E, JEC270F, JEC260G, SECE, SECF and SECG (collectively referred to as “Specified Grades”)
  - i. are not *commercially* produced and/or sold by the domestic industry
  - ii. are not *commercially* substitutable/interchangeable with the grades commercially produced by the domestic industry, and
  - iii. do not compete with the domestic industry because of their precise specifications and high quality.
- b. The non-filing should not prejudice the right of JFE Steel to seek an exclusion as it has registered itself as an interested party. Indeed, the Authority in Anti-dumping investigation concerning imports of Flat Rolled Products of Stainless Steel has not only entertained but also granted the request for exclusion sought by a producer from Japan which was not held to be cooperative in the investigation.
- c. One of the major users i.e., Honda of the products produced by JFE has clarified that the petitioner does not commercially produce and/or sell one-sided coating electro galvanized steel.
- d. Despite the same, it has been recorded in the disclosure statement that the petitioner has provided evidence of sales of one-side coated EG steel used in automobiles, which is erroneous.
- e. If indeed the petitioner has provided the relevant evidence of production and sales of one-sided coating electro-galvanized steel, the same ought to have been provided to the interested parties. No invoices have also been placed on record by the domestic industry to show evidence of commercial production and sales of one-sided electro galvanized steel. Given that same, the present Disclosure Statement and the proceedings are in violation of Rule 16 of the AD Rules, due process, and principles of natural justice.
- f. The Japanese Mills submissions on the domestic industry’s filing of the PCN data (in the previous submissions) have neither been recorded nor appear to have been assessed by the Authority in the disclosure statement. Without prejudice that the same is in violation of disclosure of essential facts under consideration prescribed under Rule 16 of the Anti-dumping Rules<sup>45</sup>, the Authority is requested to reconsider the same.
- g. The Authority has proposed to exclude laminated EG steel from the scope of the PUC. LG India submits that all kinds of laminated EG steel must be excluded. Without prejudice, LG India submits that laminated grade is known by different names such as VCM electro galvanized steel sheet, PET coated electro galvanized steel sheet, etc. Hence, VCM and PET laminated grade may also be included in description of laminated EG Steel. Further, as admitted by the domestic industry itself, it does not manufacture laminated grade EG Steel. Accordingly, the domestic industry’s proposal on minimum micron of LDPE film is untenable. Further, it is important to note that laminated EG steel, may be of any microns. Currently, LG India is importing laminated EG steel of 30 microns and may import laminated EG Steel of less than 30 microns in future. Since, laminated EG steel is not manufactured by the applicant, the requirement of minimum 50 microns may be

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<sup>45</sup> The Authority is required to disclose all the “essential facts” under its consideration in the Disclosure Statement. Non-disclosure of the same is a violation of principles of natural justice. - See *Nirma vs. Union of India*, 2017 (358) E.L.T. 146 (Guj.)).

removed from the description of laminated EG Steel provided in para 12 of the disclosure statement. LG India requests for following modified phrase:

*“VCM electro galvanized steel sheet or PET coated electro galvanized steel sheet, which are bare electrogalvanized Steel subjected to a phosphate pre-treatment along with an appropriate primer and / or base coat on Topside and a primer and / or backcoat on bottom side and laminated on top side, with a printed – Vinyl / PET / ALF or LDPE film of any micron.”*

- h. There is no rationale for the inclusion of minimum thickness of 50 microns in the proposed exclusion definition of laminated EG steel. Whirlpool India imports laminated EG steel with a minimum thickness of 25 microns.
- i. Regarding the language proposed for exclusion of printed EG steel, it is submitted that that the backcoat need not necessarily be coloured but can also be transparent as is the case with products produced by Dongkuk. Further, there is no rationale for restricting the colours on topside to three colours as printing is usually done in two colours on top side. The following language is proposed:

*“Bare electrogalvanized steel which is subjected to a phosphated pre-treatment along with an appropriate primer and / or coloured base coat on Topside and a primer and/or backcoat on bottom side and printed in minimum 2 colours on top side.”*

- j. LG India submits that there is no material retardation to the applicant as the trend of various economic parameters of the domestic industry shows improvement.
- k. The domestic industry is not suffering any injury on account of alleged dumped imports as the production, capacity utilization, profitability, cash profits, ROCE, and productivity per employee have increased throughout the injury period.
- l. The project report relied upon by the petitioner and considered by the Authority appears to have been prepared in 2019 and contains certain projections on the economic parameters of the domestic industry (with no anticipation of the COVID-19 pandemic). Admittedly, the domestic industry set up a plant and commenced commercial production of the PUC in July 2019. At the same time, it had prepared a project report with certain financial projections. However, on account of the COVID-19 pandemic coupled with COVID-19-related preventive measures imposed by the Government of India in the POI, the domestic industry could not achieve its projections, much like several other Indian and global industries. Hence, the Authority must reject the project report and limit its analysis of the actual performance over the injury period.
- m. Without prejudice, it is unclear why the Authority has limited its comparison of the actual performance and projected performance of capacity utilization and production. This only seems to suggest that a comparison of other parameters may reveal that there is no shortfall in the actual performance in comparison to the projected performance.
- n. There are various other factors as listed below that have potentially impacted the performance of the domestic industry.
  - i. Lack of product approvals from end-users / buyers, which lowered the sales and prices of the domestic industry – the petitioner has admitted that same

in paragraph 70 of its written submission.

- ii. Low-grade sales by the domestic industry at low prices.
- iii. Change in market conditions between the planning stage and stage of commencement of plant and new capacity additions.
- iv. Increased marketing expenses coupled with higher discounts.
- v. Admittedly, the petitioner is offering prices that are about 30% higher than that offered in the market.

- o. The Authority is requested to confirm the said individual dumping and injury margin for NSC in the final findings.

## **K.2 Submission by the domestic industry**

139. The following submission have been made by the domestic industry:

- a. The Authority should confirm its observation regarding scope of the PUC, rejection of exclusion requests and standing of the domestic industry in the final findings.
- b. The exports made by producers/exporters Dongkuk Steel Mill Co., Ltd. and Nippon Steel Corporation through non-cooperating unrelated trader cannot be ignored for the purpose of determining export price and landed value. The Authority should adopt adverse facts available for exports made through non-cooperating unrelated trader as per the consistent practice of the Authority.
- c. With respect to exports made by Dongkuk Steel Mill Co., Ltd and Hyundai Steel Company, Korea RP to its related parties in India, the Authority should examine if such related importers have re-sold the goods to other related parties in India and whether such other related parties have participated and provided their resale price information.
- d. With respect to exports by Dongkuk Steel Mill Co., Ltd and Hyundai Steel Company, Korea RP, if related importers have re-sold the goods to unrelated parties in India, the Authority should examine if related importers have resold at a profit or at a loss. The Authority should make adjustments to the export price and landed value if related importers have re-sold the subject goods to unrelated parties at a loss.
- e. In case of Hyundai Steel Company, Korea RP, the Authority has allowed adjustment on account of ocean freight while determining the normal value. However, the company will not incur any ocean freight for selling the subject goods within Korea RP and therefore, no adjustment for ocean freight should have been provided.
- f. The claim of POSCO regarding absence of comparable sales in the domestic market is unreliable and requires further examination.
- g. Even if there are no comparable domestic sales, the normal values should be computed on the basis of comparable representative price of the like article when exported from the exporting country or territory to an appropriate third country as it is based on market realities and is more representative than the hypothetical price based on cost of production and reasonable profit.

- h. With respect to exports made by POSCO SteeLeON Co., Ltd to India, no adjustment for ocean freight has been made for export price determination as has been done by the Authority for other producers/exporters from Korea RP.
- i. With respect to normal value of Nippon Steel Corporation, the Authority has noted that the domestic sales made to non-cooperative related parties are insignificant in terms of total domestic sales and the Authority has accordingly determined the normal value based upon the total domestic sales. However, it is a settled position in anti-dumping investigations that all related parties of producer/exporter involved in domestic sales and/or export sales to India are required to participate in the investigation. Even if the sales made to any related party/ies are insignificant in volume in comparison with the total sales, non-participation of related parties cannot be excused. The Authority should treat Nippon Steel Corporation as non-cooperative producer/exporter and reject the information provided in the questionnaire response and Authority should proceed to determine dumping margin and injury margin on adverse facts available.
- j. Even if normal value is determined for Nippon Steel Corporation based on actual selling price information, the Authority has wrongly allowed adjustment of warranty for determining normal value at ex-factory level. Warranty is an inherent cost of the product, which is part of the ex-factory price. The Authority has also not allowed any adjustment of warranty for the purpose of determining ex-factory export price.
- k. The determination of the country-wise price underselling and weighted average price underselling from subject countries and comparison of landed price with non-injurious price/fair price at para 99 and 100 of the disclosure statement is not appropriate. There is no legal requirement for the Authority to examine country-wise price underselling and weighted average price underselling for subject countries in terms of the provisions of the Customs Tariff Act, 1975 or the Anti-dumping Rules, 1995.
- l. It is the consistent practice of the Authority to not determine country-wise price underselling and weighted average price underselling for subject countries for assessment of price effect of dumped imports. Also, in all recently concluded investigations, the Authority has not undertaken such examination of country-wise price underselling and weighted average price underselling for subject countries. Some relevant examples are:
  - a. Sunset review investigation concerning imports of Aluminium Foil 5.5 Micron originating in or exported from China PR. - final finding dated 14th March 2022
  - b. Anti-dumping investigation concerning imports of clear float glass from Bangladesh and Thailand. - final finding dated 29th June 2022
  - c. Sunset review investigation concerning imports of Toluene Di-isocyanate originating in or exported from China PR, Japan and Korea RP. - Final finding dated 24th June 2022
  - d. Anti-dumping investigation concerning imports of certain rubber chemicals viz. TDQ originating in or exported from China PR, European Union and Russia, PVI originating in or exported from China

PR, and CBS originating in or exported from China PR and European Union. - final finding dated 30th March 2022

- e. Sunset review of anti-dumping duty imposed on imports of Ammonium Nitrate originating in or exported from Russia, Georgia and Iran. - final finding dated 10th June 2022.
- m. The Authority is only required to determine injury margin for cooperating producers/exporters and for the remaining “all others” category of producers/exporters because of lesser duty rule. There is no requirement to determine country-wise price underselling and weighted average price underselling.
- n. The comparison of country wise average landed price with NIP is irrelevant for determining the existence of injury and imposition of anti-dumping duty. Reliance is placed on *Honest Enterprises Ltd. vs. Designated Authority*<sup>46</sup>.
- o. The observation that actual selling price of the domestic industry (NSR) is higher than the non-injurious price (NIP) of the domestic industry is not mandated by Anti-dumping Rules and is not relevant for the purpose of assessing injury to the domestic industry and recommending the imposition of anti-dumping duty. Reliance is placed on the Hon’ble Tribunal decision in case of *All India Glass Manufacturers Federation vs. UOI*<sup>47</sup>.
- p. The domestic industry has earned profits during the POI because the entire project of the domestic industry has been self-financed and therefore there is a savings on account of low interest cost. Also, majority of the sales of the domestic industry have been in sectors where there is less competition from imports.
- q. Even though the domestic industry is earning profits, the profitability is much below the expected levels given the fact that the petitioner is the sole producer of subject goods in India and there is a significant demand for the subject goods in India. Total profit of the domestic industry is low in absolute terms and is not sustainable in the long run.
- r. The domestic industry has been operating at very low-capacity utilization during the post-POI despite a significant demand of the subject goods in India.
- s. The injury margin determined by the Authority is lower due to incorrect determination of non-injurious price.
- t. The Authority should consider the best achieved capacity utilisation among all four quarters during the POI for determining the NIP and not best utilization of production capacity as per the Detailed Project Report (DPR). Reliance is placed on anti-dumping investigation concerning imports of N, N'-Dicyclohexyl Carbodiimide (DCC) from China PR.
- u. The applicant purchases major raw material, CR steel for production of EG steel. There is no production loss during the production of EG steel. Raw material cost cannot be normated in the present investigation by adopting a formulaic approach, which is devoid of business realities.

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<sup>46</sup> 2016 (341) ELT 263

<sup>47</sup> 2016 (342) ELT 563.

- v. The value addition for producing EG steel from CR steel as % of total cost is much higher than conversion cost allowed by the Authority. EG steel is specialized product which requires significant amount of investment and technology.
- w. While determining the NIP, the applicant requests that the Authority should not restrict itself to the actual investment made by the applicant for allowing 22% ROCE but should also consider the planned capital investment i.e. the amount allocated as short term liquid funds for downstream production activity.
- x. The Authority has not provided breakup of disallowed SGA expenses and details regarding disallowed working capital while calculating NIP.
- y. Facts disclosed in the disclosure statement clearly indicates that there is material retardation to the establishment of domestic industry due to dumping of imports from the subject countries.

### **K3. Examination by the Authority**

140. The Authority notes the submission made by JFE Steel Corporation regarding non-acceptance of their exclusion request. It is noted that JFE Steel Corporation has not filed questionnaire response which has prevented the Authority from ascertaining whether JFE Steel Corporation has even exported those grades to India for which it is seeking exclusion. The Authority also notes that in Flat Rolled Products of Stainless Steel the participating exporters from Japan had duly filed their questionnaire responses and some were held to be non-cooperative only due to specific deficiencies in their responses, a position which is completely different for JFE Steel in the present investigation where the exporter questionnaire response has itself not been filed. Therefore, the Authority is not in a position to accept the said product exclusion request.

141. The Authority notes the submissions made by the other interested parties with respect to production of one side coated EG steel. The domestic industry has submitted evidence with respect to supply of one-side coated EG steel and the same has been verified by the Authority. However, the same has been considered as confidential information.

142. The Authority notes the submissions of the other interested parties with respect to the improvement in certain economic parameters of the domestic industry. In this regard, the Authority notes that the domestic industry had commenced commercial production in July 2019 and therefore, due to the base year effect the economic parameters would show a rising trend. However, the analysis of post- POI data shows that the domestic industry's performance in several parameters has declined. Other issues related to injury analysis and material retardation have already been dealt in relevant paras above.

143. The Authority notes the submissions of the other interested parties regarding the non-consideration of the effect of COVID-19 in the project report submitted by the domestic industry. The Authority has in consonance with its past practice relied on the project report considering that the examination of injury is regarding material retardation to the establishment of the domestic industry. The Authority notes that non-consideration of COVID-19 pandemic has not affected the reliability of the project report submitted by the domestic industry. At the same time, the Authority has taken into account the post-POI data as well as the actual performance of the domestic industry for the purpose of its analysis.

144. Regarding the comments on the proposed definition for exclusions by the other interested parties, the Authority notes that such definition contain several technicalities which have not been substantiated by documentary evidence. Accordingly, the Authority has made generic exclusions to the scope of PUC as mentioned in paras 22-23.

145. Regarding the domestic industry submissions with respect to adjustments accorded to Hyundai Steel Company on account of ocean freight, the Authority notes that during verification it was found that Hyundai Steel Company had made some domestic sales to its customers through the ocean route as they were located near ports. Accordingly, due adjustments on account of ocean freight for those transactions were given to the exporter. On the contrary POSCO SteeLeON Co., has not made any of its domestic sales through ocean route and therefore, no such adjustments have been allowed.

146. With regard to the comments made by the applicant on the computation of the non-injurious price and the disclosure thereof, the Authority notes that non-injurious price has been determined in accordance with Annexure III of the Rules and as per the consistent practice of the Authority.

- a. With regard to the applicant's suggestion to consider the best achieved capacity utilisation among all four quarters during the POI for determining NIP, the following may be noted:
  - i. The applicant has started commercial production of the subject goods from July 2019. Accordingly, the applicant has provided the details of quarterly capacity utilisation for all six financial quarters including the POI (i.e., from July-2019 or start date of the commercial production to Dec-2020).
  - ii. It is further noted in this regard that the DPR envisages an investment of Rs. \*\*\* crore in July-2019 aiming for a capacity utilisation of \*\*\*% during the POI. While the assets actually deployed as per the Format-K in the beginning of the POI (Jan-2020) is only Rs. \*\*\* Crores and the balance money has been kept in the interest-earning "Cash Equivalent Liquid Funds".
  - iii. Since it is a fact that normal cost of a product takes some time after the start of the commercial production and the initial costs may be high, the DGTR's consistent practice with regard to the cases of material retardation may be noted as under:  
*"The data in cases of material retardation may not be available for all the four years. Therefore, the optimization of capacity shall be done based on the available data read with projections in the project report and the data from technology/capital equipment supplier. Reports submitted with the long-term loans and suppliers may also be called for this purpose."*
  - iv. Accordingly, the optimum capacity utilisation for NFA and fixed expenses of the PUC for the POI has been considered to be \*\*\* MT to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities in terms of Clause 4(iii) to Annexure – III of the Rules read with para 9.6.48 of the SOP manual. Thus, the contention of the domestic industry in this regard cannot be accepted.

b. With regard to the optimisation of raw material cost, it is noted that Clause 4(i) to Annexure-III of the Rules is applicable for all raw material cost which includes “chemicals” as well apart from CR steel. The CR steel consumption norm has been optimised as claimed by the applicant. Apart from this, the applicant did not optimise the “chemicals” in its Format-B which has been duly optimised by DGTR in terms of Clause 4(i) to Annexure-III of the Rules, especially when domestic industry is producing only one of the PCNs. Thus, the contention of the domestic industry in this regard is misplaced and hence not accepted.

c. With regard to the contention of the domestic industry relating to the higher value addition for producing the PUC requiring significant amount of investment and technology, the following may be noted:

- i. The return on capital employed to be allowed has been calculated as per Annexure-III of the Rules and as per the consistent practice of the Authority. Such return allowed (towards interest/finance-cost, corporate tax and normal profit) crossed the minimum return threshold to be ensured in the present case and thus allowed.
- ii. As per the Annexure-III to the Rules, the consistent practice of the Authority and as per the Generally Accepted Cost Accounting Principles (GAAP), the return is to be provided on actual investment made in the business for the PUC and not for the planned/parked-in-interest-bearing-deposits/notional investment.
- iii. As the NFA for PUC (value in Rs. Lacs) have been claimed on actual basis (not allocated) for separate dedicated new plant for the PUC in Valsad-Gujarat, the same has been accepted and allowed. However, the same has been divided by the optimum production as determined by DGTR as mentioned above (\*\*MT) to calculate NFA per unit for the purpose of return on capital employed.
- iv. The applicant has claimed Cash Equivalent Liquid Fund (CELF) of Rs. \*\*\* Crores as on 31.12.2020 (in closing working capital of POI) and Rs. \*\*\* Crores as on 31.12.2019 (in opening working capital of POI) treating it as trading item of current asset along with crediting its interest received of Rs. \*\*\* lacs in cost of sales treating it as trading income. While as per the practice of DGTR, any interest-bearing cash/bank balance (like fixed deposit, etc.) are not to be considered as trading items (both in current asset and other income). The applicant was specifically asked in the RCC documents for justification for treating it as trading item. However, the applicant in this regard could not provide any reasonable justification with evidence that these CELF funds were not invested throughout the POI and were invested only for a smaller period of the POI which resulted in much lower interest received as compared to the CELF so invested. Therefore, as per the DGTR practice in this regard, such interest bearing CELF and the interest earned thereon (part of other income) has been considered as non-trading item for the calculation of NIP and thus disallowed. That is, the CELF as claimed in Format-K has been disallowed as part of current asset along with the disallowance of credit of its interest received in cost of sales, for the purpose of NIP calculation in the present investigation.

- d. With regard to the contention of the domestic industry relating to non-providing the breakup of disallowed SGA expenses and details regarding disallowed working capital while calculating NIP, it may be noted that the Authority has disclosed the NIP and its calculations as per the consistent practice of DGTR in this regard being followed for the other investigations as well. In any case, the SGA claimed forms merely less than two percent of the NIP claimed.
- e. As regards the submission of the applicant referring to the earlier findings of the Authority, the same cannot be taken as guiding principle since the facts and circumstances of each case are different and have to be assessed and analysed on case-to-case basis.

## **L. CONCLUSION**

147. Having regard to the contentions raised, submissions made, information provided and facts available before the Authority as recorded above and on the basis of the above analysis of dumping and consequent injury to the domestic industry, the Authority concludes that:

- a. The applicant is an eligible domestic industry within the meaning of Rule 2(b) of the AD Rules, 1995. The application satisfies the criteria of standing in terms of Rule 5(3) of the AD Rules, 1995.
- b. The product produced by the domestic industry is like article to the product under consideration imported from the subject countries and is the sole producer of the subject product in India.
- c. The application contained all information relevant for the purpose of initiation of the investigation and also contained evidence to justify initiation of the present investigation.
- d. The present case was of material retardation to the domestic industry. The domestic industry is the sole producer of the PUC and started production in July 2019. The domestic industry is still in nascent stage and is in the process of establishing itself. The capacity utilization has been in the range of 5-15%. Further, the market share of the importer is also in the same range as against the subject imports which capture 70-80 % of the domestic market.
- e. Considering the normal value and export price for the subject goods, dumping margin for the subject goods from the subject countries for residual exporters has been determined, and the margin is positive and significant.
- f. During the investigation, it was found that DCM Co. Ltd., Korea RP, Samyang Steel Co., Ltd., Korea RP and BN Steel Co. Ltd., Korea RP did not export the PUC during the POI. In the event they export the PUC, they may file for a new shipper review.
- g. The domestic industry has suffered material retardation in view of the following:
  - i. The volume of dumped imports has increase and is significant enough.
  - ii. The imports from the subject countries are undercutting the price of the domestic industry.
  - iii. The production of the applicant has shown improvement over the POI; however, its capacity utilization has been very low despite of significant demand in the country. However, this is due to the zero base year effect. In

the post-POI period, the capacity utilization of the domestic industry has significantly declined.

- iv. A comparison of the actual performance as against the projected performance of the domestic industry shows that its actual production and profits have fallen short by 175-225 % and 350-400% respectively during the POI.
- h. There are no other factors which could have caused injury to the domestic industry.
- i. The domestic has suffered material injury as a result of the dumped imports.
- j. The imposition of anti-dumping duty would not have any significant adverse impact on public interest.

## **M. RECOMMENDATION**

148. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, Embassies of the subject countries, exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and causal link in terms of Rules and having established positive dumping margin as well material retardation to the domestic industry caused by such imports, the Authority is of the view that imposition of anti-dumping duty is necessary.

149. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, the anti-dumping duty equal to the amount indicated in Col. No.7 of the table below is recommended to be imposed on all imports of the subject goods originating in or exported from the subject countries.

### **DUTY TABLE**

S. No.	Heading/Subheading	Description of Goods	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	7210, 7212, 7225, 7209, 7211 and 7226	Electrogalvanized Steel**	Korea RP	Any country including Korea RP	POSCO Group consisting of: POSCO Co., Ltd. or POSCO SteeLeON Co., Ltd.	NIL	MT	USD

2.	-do-	-do-	Korea RP	Any country including Korea RP	Dongkuk Steel Mill Co. Ltd.	NIL	-do-	-do-
3.	-do-	-do-	Korea RP	Any country including Korea RP	Hyundai Steel Company	NIL	-do-	-do-
4.	-do-	-do-	Korea RP	Any country including Korea RP	DK Dongshin Co., Ltd.	NIL	-do-	-do-
5.	-do-	-do-	Korea RP	Any country including Korea RP	Any producer other than S. No. 1 to 4 above	16.05	-do-	-do-
6.	-do-	-do-	Any country other than subject countries	Korea RP	Any	16.05	-do-	-do-
7.	-do-	-do-	Japan	Any country including Japan	Nippon Steel Corporation	NIL	-do-	-do-
8.	-do-	-do-	Japan	Any country including Japan	Any producer other than S. No. 7 above	64.08	-do-	-do-
9.	-do-	-do-	Any country other than subject countries	Japan	Any	64.08	-do-	-do-
10.	-do-	-do-	Singapore	Any country including Singapore	Any	79.73	-do-	-do-
11.	-do-	-do-	Any country other than subject countries	Singapore	Any	79.73	-do-	-do-

\*\* The product under consideration ('PUC') is 'Flat rolled products of hot rolled or cold rolled steel continuously electrolytically plated or coated with zinc, with or without alloying elements'. The product under consideration is commonly known as Electrogalvanized steel.

*The product under consideration may be either of alloy or non-alloy steel, whether or not of prime or non-prime quality. The product under consideration may be in coils or not in coils form. The product under consideration includes all types of Electrogalvanized steel whether or not coated, passivated, pre-treated, pre-painted, colour coated, thin organic coated, chromated, phosphated, printed, whether or not corrugated or profiled, and whether or not having anti-fingerprint treatment.*

*The following are excluded from the scope of product under consideration:*

- i. Flat rolled steel products that are plated or coated with alloy of aluminium and zinc.*
- ii. Flat rolled steel products that are plated or coated with alloy of zinc and nickel with nickel content being a minimum 9%.*
- iii. Hot-dip galvanized flat rolled steel products.*
- iv. Tin-mill flat rolled steel products*
- v. Laminated electrogalvanized steel.*
- vi. Printed electrogalvanized steel.*

*The intended end use of the product under consideration is for protection from corrosion and is majorly used in the manufacturing of electronic appliances, auto applications, consumer electronics, furniture, HVAC, roofing and siding, ceiling grid, construction, office equipment etc.*

*The product under consideration is classified under HS Codes 7210, 7212, 7225 and 7226 of Schedule I of the Customs Tariff Act, 1975. However, imports of the product under consideration have also been made under HS Codes 7209 & 7211 of Schedule I of the Customs Tariff Act, 1975.*

## **N. FURTHER PROCEDURE**

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



Anant Swarup  
(Designated Authority)