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F. No. 6/14/2022-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies 4th Floor, Jeevan Tara Building,
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Dated: 20th December 2023

NOTIFICATION

FINAL FINDINGS
Case No. AD(OI) – 14/2022

Subject: Anti-Dumping investigation concerning imports of “Para-Tertiary Butyl Phenol (PTBP)” originating in or exported from South Korea, Singapore and the United States of America.

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F. No. 6/14/2022-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 Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter referred as the ‘AD Rules’ or the ‘Anti-dumping Rules’ or the ‘Rules’).

A. BACKGROUND OF THE CASE

1. Vinati Organics Limited (VOL) (hereinafter referred to as the “applicant”) filed an application before the Authority seeking initiation of an anti-dumping investigation concerning imports of “Para-Tertiary Butyl Phenol” (hereinafter referred to as the “PTBP”, “subject goods” or “product under consideration”) originating in or exported from South Korea, Singapore and the United States of America (hereinafter referred to as “subject countries”).
2. The Authority, on the basis of *prima facie* evidence submitted by the applicant, issued a public notice vide Notification No. 6/14/2022-DGTR dated 21st December 2022, 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 with regard to the 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 21st December 2022, 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.
 - 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, as made available by the applicant and offered an opportunity to them to make their submissions known in accordance with Rule 6(2) of the Rules:

SN	Exporters
1.	SI Group Inc.
2.	SI Group-Korea Ltd.
3.	Sojitz Corporation
4.	Tasco Chemical 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:

SN	Exporters
1.	SI Group Inc.
2.	SI Group-Korea Ltd.

- viii) DIC Asia Pacific Pte Ltd, an exporter from Singapore, registered as an interested party and later withdrew its participation from the present investigation.
- ix) 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:

SN	Importers/Users
1.	Cardolite Speciality Chemicals India
2.	Chandras' Chemical Enterprises
3.	Dic India Limited
4.	Elantas Beck India Limited
5.	Eternis Fine Chemicals Limited
6.	Hubergroup India Private Limited
7.	J. Kirit & Brothers
8.	Mac Industry
9.	Mangalam Organics Limited
10.	Melog Speciality Chemicals Pvt. Limited
11.	Mrib Chemicals
12.	Polyols & Polymers Pvt. Limited
13.	Privi Speciality Chemicals Limited
14.	Rajsha Chemicals Pvt. Limited
15.	Techno Waxchem Private Limited

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

SN	Importers/Users
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1.	SI Group India Private Limited
2.	Eternis Fine Chemicals Limited
3.	Polymers and Polysols

- xi) The Authority issued an Economic Interest Questionnaire to the Embassies of the subject countries, all the known exporters, importers and the domestic industry. The Economic Interest Questionnaire was also shared with the administrative line ministry. Response to Economic Interest questionnaire has been filed by the following parties:

SN	Importers/Users
1.	SI Group India Private Limited
2.	Eternis Fine Chemicals Limited
3.	Polymers and Polysols

- xii) The period of investigation (POI) for the present investigation is from 1st July 2021 to 30th June 2022. The injury investigation period for the present investigation is 2019-20, 2020-21, 2021-22 and the POI.
- xiii) The petition was filed based on the DGCI&S published import data for the period 2019-20 to June 2022. A request was made by the Authority to the Directorate General of Systems (DG System) to provide the transaction-wise details of imports of the subject goods for the past three years and the period of investigation, which was received by the Authority.
- 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.
- xvii) 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 17th August 2023. 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.
- xviii) 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 document.
- xix) 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.

- xx) The information provided by the interested parties on a 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 a confidential basis were directed to provide an adequate summary of the confidential version in a non-confidential version.
- xxi) A Disclosure Statement containing the essential facts in this investigation which forms the basis of the present final finding was issued to the interested parties on 8th December 2023. The post Disclosure Statement submissions received from the Domestic Industry and other interested parties have been considered, to the extent found relevant, in this Final Finding Notification
- xxii) *** in this Final Finding 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 76.14.
- xxiv) Following abbreviations have been used in this document:

SN	Abbreviations	Full description
a.	DI	Domestic industry
b.	MOF	Ministry of Finance
c.	PUC	Product under consideration
d.	Act	Customs Tariff Act, 1975
e.	Rules	Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995
f.	Other interested parties	Interested parties participating in the present investigation and opposing imposition of anti-dumping duty
g.	Petitioner / Applicant	Vinati Organics Limited (VOL)
h.	SI Group	SI Group Inc., SI Group-Korea Limited and SI Group- India Private Limited
i.	EIQ	Economic Interest Questionnaire
j.	EQR	Exporter's questionnaire response

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

C. 1. Views of the other interested parties

4. No submission has been made by other interested parties with regard to scope of the product under consideration (PUC) and like article.

C. 2. Views of the domestic industry

5. The domestic industry has made the following submission with regard to the scope of the product under consideration and like article:
- i) The product under consideration is Para-Tertiary Butyl Phenol ("PTBP"), also known as 4 tert butylphenol/ p tert butylphenol/ PTBP Chemical / para tert butyl phenol. PTBP is an organic aromatic compound with chemical formula (C₁₀H₁₄O). It occurs in a white crystalline solid form and has a distinct phenolic odour.
 - ii) The product under consideration in the present application is 'Para-Tertiary Butyl Phenol' also known as 'PTBP'.
 - iii) PTBP chemical is usually prepared by the reaction of phenols and isobutylene. It is prepared by incorporating a gaseous of isomer butenes into phenols in the presence of an acid-activated clay as a catalyst. In the process of manufacturing 4- tert, butyl phenols from isobutene and phenols there involve a reaction of the liquid form of phenol with an acid-activated catalyst. Another commonly used method of preparation of PTBP chemicals is by using phenol and tert-butanol in water. The subject goods are classified under Chapter 29 under 29071940.
 - iv) This product is mainly used to manufacture perfumery raw material para tertiary butyl cyclo hexyl acetate (PTBCHA). It is also used in the production to manufacture a range of resins including epoxy, polycarbonate resins and phenolic resins.
 - v) The molten and flaked forms of the PUC are both covered within the scope of this application. Domestic sales happen in both molten and flaked forms. The molten form of the subject goods is converted into flaked form by a simple manufacturing process of drying and reducing the temperature of the product. The subject goods are predominantly sold in flaked form. The usage of both molten and flaked forms is common and can be used interchangeably. The difference in the cost and price of molten form and flaked form is minimal. The density conversion rate is about 0.98%. Some customers buy the PUC in the molten form as a preference in order to not handle the hazardous chemical in the flaked form.
 - vi) There is no difference in the technology adopted by the petitioner and that adopted by the producers in the subject countries. The technology adopted by the domestic industry is comparable with the technology adopted by the producers of the subject goods in the subject countries. However, every producer fine-tunes its production process based on necessities and available facilities.
 - vii) The subject goods produced by the domestic industry and imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and

commercially substitutable. The consumers are using the two interchangeably. The goods produced by the domestic industry are like article to the product under consideration imported from the subject countries.

C. 3. Examination by the Authority

6. The product under consideration (hereinafter also referred to as the “PUC”) as defined at the stage of initiation was as follows:
 3. *The product under consideration (PUC) in the application is “Para- Tertiary Butyl Phenol” or “PTBP.” PTBP is also known as 4 tert butylphenol/ p tert butylphenol/ PTBP Chemical / para tert butyl phenol.*
 4. *The product under consideration is an organic aromatic compound with the chemical formula (C₁₀H₁₄O). It occurs in a white crystalline solid form and has a distinct phenolic odour. PTBP chemical is usually prepared by a reaction of phenols and isobutylene.*
 5. *It is prepared by incorporating a gaseous of isomer butenes into phenols in the presence of an acid-activated clay as a catalyst. This product is mainly used to manufacture a perfumery raw material para tertiary butyl cyclo hexyl acetate (PTBCHA). It is also used in production to manufacture a range of resins including epoxy, polycarbonate resins and phenolic resins.”*
7. The subject goods are classified under Chapter 29 under HS Code 29071940. The scope of the product under consideration includes imports of the product by all descriptions and irrespective of the customs classification. The customs classification is merely indicative and not binding on the scope of the product under consideration.
8. PTBP can be in molten and flaked forms. Both, molten and flaked form of the PUC are covered within the scope of this application. The subject goods are predominantly sold in flaked form. The usage of both molten and flaked forms is common and can be used interchangeably. The difference in the cost and price of molten form and flaked form is minimal.
9. Although the subject goods have been in use in the domestic market since long, the requirements were, however, met entirely by imports. There is no known substitute for the subject goods. As per annual report, the applicant invested around Rs. *** crores and has set up manufacturing facilities for production of Butyl Phenols, specifically *** crores for PTBP. The applicant conceived this product in 2014-15 and started commercial production of the subject goods in July 2020. The subject goods are a new product in the Country in so far as its production in India is concerned.
10. The Authority notes that the goods produced by the domestic industry and imported from the subject countries are comparable in terms of physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing, and tariff classification of the goods. The goods produced by the domestic industry and imported from the subject countries are like articles in terms of the Rules. The two are technically and commercially substitutable. The Authority holds that the subject goods produced by the domestic industry are like article to the product under

consideration imported from the subject countries within the scope and meaning of Rule 2(d) of Anti-Dumping Rules.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D. 1. Views of the other interested parties

11. No submission has been made by other interested parties with regard to scope of the domestic industry and standing:

D. 2. Views of the domestic industry

12. The domestic industry has made the following submissions with regard to scope of the domestic industry and standing:
- i) The applicant started commercial production of the subject goods in July 2020. Prior to this, India had been fully dependent on imports of the subject goods for its domestic demand.
 - ii) 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.
 - iii) 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 the subject goods in India.

D. 3. Examination by the Authority

13. Rule 2(b) of the AD Rules defines domestic industry as under:

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

14. The present investigation has been initiated pursuant to a petition filed by Vinati Organics Limited as the sole producer of the subject goods in India. The applicant started commercial production in July 2020. It is undisputed that subject goods were never produced in the country, the entire demand was being met by imports, and the applicant has for the first-time established facilities to produce the subject goods. The Authority has in detail examined whether the industry is new or nascent industry in terms of AD Rules under Injury Examination.
15. The Authority notes that the present application has been filed contending that dumping of the product under consideration is materially retarding the establishment of the domestic industry in India. The Indian industry for the product under consideration is at a nascent stage and is yet to establish itself in the market. The applicant reported that there is no other producer 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.
16. None of the interested parties have contested the claim of the applicant that it is the sole producer

of the subject goods in India. It is further noted that the applicant has not imported the subject goods from the subject countries nor is it related to any producers/exporters or importers of the subject goods in India. The Authority therefore holds that the applicant company is thus eligible, domestic industry within the meaning of the Rule 2(b) and the application satisfies the criteria of standing in terms of Rule5(3) of the Rules.

E. CONFIDENTIALITY

E. 1. Views of the other interested parties

17. The other interested parties have made the following submissions:

- i) The petitioner has not provided the estimate of normal value for the USA in Annexure 3.1 of the Petition.
- ii) The petitioner has not disclosed the source of the freight considered for adjustment in the CIF price, which is a requirement as per the trade notice.
- iii) The petitioner has not disclosed the export sales quantity and value data.
- iv) The petitioner has not disclosed its project report and the projected economic parameters for the PUC.

E. 2. Views of the Domestic Industry

18. The domestic industry has made the following submissions:

- i) SI Group claimed the entire submission regarding determination of export price as entirely confidential. The argument regarding imports from USA not causing injury was also entirely claimed confidential.
- ii) The project report has business proprietary information that is not amenable to summarization.
- iii) The commodity market price for imported PUC has been incorrectly claimed as confidential.
- iv) The entire basis of the claim that imports from the USA are not causing any injury is unaccepted.

E. 3. Examination of the Authority

19. 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).

20. 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.

The designated Authority may require the interested parties providing information on confidential basis to furnish nonconfidential 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.

(2) 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.”

21. The information provided by the interested parties on a 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 a confidential basis were directed to provide sufficient nonconfidential 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

F. 1. Views of the other interested parties

22. The other interested parties have made the following submissions with regard to the normal value, export price and dumping margin:

- i) Due to the volatile nature of the commodity and the extent of price fluctuations during the POI, a comparison of a weighted average normal value with a weighted average of export prices of PUC for the entire POI will give a distorted comparison of domestic and export prices. Since the prices of the PUC have widely varied during the POI, a transaction-to-transaction or a month-to-month comparison of normal value and export prices will yield a 'fair comparison' under the above provisions considering the nature of market of the PUC and the price fluctuation during the POI.
- ii) The price mentioned on the invoice issued at the time of shipment is merely a reflection of what price was agreed with the end customer on the date when the contract/order was entered into. Hence, a fair comparison will be achieved when the prices of all the shipments made under a domestic contract/order entered into during a particular point in time (say a month) are compared with the prices of all shipments made under a similarly dated contract/order for export market.
- iii) The prices to related importer are not benchmarked with the prevailing market price in India unlike unaffiliated importer/customer. The Authority may apply the relevant adjustments to remove the impact of any affiliation/compensatory arrangements affecting the export prices.
- iv) As per the definition of Export Price in the Act, it is the practice of the Authority not to rely on the prices between producer/exporter and importer when they are associated entities.
- v) The prices at which the exports were made to SI Group India for its internal consumption by SI Group Korea and SI Group USA are not reliable for the calculation of export price as the imports have been invoiced incorrectly and have been undervalued on account of systematic glitches in computing the transfer price.
- vi) Even though the transactions are undertaken at arm's length prices, transfer price at arm's length basis does not necessarily mean that the said prices reflect the market prices. The Authority has to consider the export prices to unaffiliated customers in India to determine the net export price as the export price between an exporter and its associated importer can be unreliable.
- vii) The prices at which the exports of the PUC during POI were made to SI Group India for its own consumption, never intended for sale to the India market. Therefore, these prices are not representative of competitive market pricing of the PUC in Indian market.

- viii) The transfer price of between SI Group USA, South Korea and India is determined according to the agreement between them and is not impacted by the market forces.
- ix) All three entities' accounts are consolidated at group level, therefore intercompany transactions are not recorded in consolidated accounts.
- x) Transfer price policy generally followed by the company is the comparable uncontrolled pricing method. The inter-company price is determined based on similar transactions between manufacturing entity and third-party customers.
- xi) The inter-company transfer price to the affiliate is based on the closest comparable third-party net selling price for the same or similar products delivered into countries located in the same region (country) of the purchasing affiliate.
- xii) There is no statutory requirement in USA for audit of the financial statements of private companies, and therefore the accounts are not audited.

F. 2. Views of the domestic industry

23. The submissions of the domestic industry with regards to the normal value, the export price and the dumping margin, are as follows:

- i) The petitioner has determined consumption price of the product in the domestic market in South Korea and USA using the price at which consumer has bought the product from the petitioner for eventual consumption in Korea and USA. Thus, export price from petitioner to Korea and USA is considered as consumption price for normal value.
- ii) The petitioner has collected information on imports into Singapore from other countries. It is seen that Singapore is importing significant volume of the subject goods. Imports of the subject goods into Singapore is also the consumption price of the subject goods in the domestic market of Singapore and can thus be considered as the normal value prevailing in Singapore. The petitioner has thus adopted a conservative approach and has considered the average price of imports into Singapore as normal value for the PUC. Thus, imports into Singapore have been considered as consumption price.
- iii) Export price must be determined considering volume and value of imports for the proposed period of investigation adopted from the published DGCIS data after due adjustments are made to determine the ex-factory price.
- iv) The respondents have contended that since the exports were made to SI Group India, the sales are related party sales and thus should not be considered for the determination of export price and that Section 9A provides that if there are related party sales, the Authority may construct the export price if the price is unreliable.
- v) The respondents have not established as to how the export price is unreliable as a mere existence of relationship cannot make the price unreliable.
- vi) There is a burden on the party demanding construction of export price to prove that (a) the prices are unreliable (more so when it has already been considered by the custom authorities as reliable), (b) suggest a methodology for construction of export price. If the declaration before the customs authorities has been that the prices are reliable and at arm's length, there is no basis for the prices being unreliable.
- vii) The respondents have submitted that date of contract should be considered as the date of sale which is unsubstantiated. DGTR Manual has stated that generally, the date of the invoice, as

recorded in the exporter's or producer's records kept in the ordinary course of business is considered as the date of sale.

- viii) The dumping margin from each of the subject countries is not only above the *de minimis* levels, but also significant.
- ix) Respondent needs to demonstrate the compensatory arrangement and it impacts calculation of export price and establish that the prices are unreliable. Must establish what claims were made before the customs authorities when these consignments were cleared. Ignoring these export transactions from the calculation of export price determination would be illegal.

F. 3. Examination by the Authority

24. 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. SI Group Inc.
- ii. SI Group-Korea Ltd.

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

26. The SI Group has claimed that the export price to the related importer in India i.e., SI Group India is unreliable and therefore the Authority should exclude the said price from the calculation of the export price. However, as evident from the following provision of the anti-dumping agreement, it is solely the Authority that can determine the reliability of the NEP. The exporters or interested parties can only make a quantified and verifiable claim of unreliability and provide necessary information to construct export price in such cases:

*In cases where there is no export price or **where it appears to the authorities concerned** that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.*

27. The question of unreliability can arise in a case where the exporter denies the dumping allegations claiming high export price. The Authority in such cases, examines the reliability of export prices where there is an association or compensatory arrangement between the exporter and importer and the Authority may find it unreliable. The question of unreliability of the export price can arise when the said prices were unduly low and the exporter provides all relevant information and evidence to construct the export price for those export transactions. The applicant in its petition has alleged that SI Group USA and SI Group Korea are dumping the PUC in the Indian market. The Authority on being *prima facie* satisfied initiated the investigation. The EQR filed by SI Group USA and SI Group Korea confirms that the said producers/exporters are dumping. There is no

question of the unreliability of the low export price to the related importer in India.

28. SI Group laid emphasis on Explanation (b) to Section 9(A)(1) of the Act which defines the export price:

“export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);”

29. It is noted that the reason given by SI Group for the unreliability of NEP is not consistent with the statutory provision given in Explanation (b) to Section 9(A)(1) above. As per the SI Group, the ground for claiming the unreliability of NEP is that the PUC imported from SI Group South Korea and SI Group USA has been invoiced incorrectly and has been undervalued on account of systematic glitches in computing the transfer price. The export price is unreliable not because of association or a compensatory arrangement between the exporter and the importer but on account of systematic glitches in computing the transfer price.
30. It is also be noted that the SI Group in its submissions has declared the exports to related importer in India as sale transactions in its book of accounts and at arm's length price. The SI Group has declared its exports to SI Group India to be unreliable post filing of questionnaire response. The fact was nowhere disclosed in the questionnaire response.
31. It is further noted that explanation (b) to Section 9A(1) states as under:

“export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6).

32. The objective and purpose of the provision relating to construction of export price under Explanation (b) to Section 9A(1) is to ensure that export price to related parties is not manipulated in a manner that actual dumping by the exporter is not captured. This means that when there are exports to related parties in importing country at high price and subsequent resale by such related party is at low price, it is clear that the actual higher export price to related entity could not be considered as reliable ‘because of association or a compensatory arrangement’ for the purpose of determining dumping margin for the exporter. In such a situation, actual export price to related party would be discarded and export price is constructed based on resale price of related entity to

capture the full extent of dumping by the exporter.

33. However, in an opposite situation where the export price to the related entity is lower as compared to export price to unrelated entities, there is no requirement of discarding the actual lower export price to related entity. In this situation, it is not doubted that lower export price to India is actual price and has resulted in dumping. The object and purpose of Explanation (b) to Section 9A(1) is not to provide a second opportunity to the exporter to increase its export price hypothetically for the purpose of investigation after having dumped into India and causing injury to the domestic industry.
34. If this is permitted, the exporter will be able to ensure in all cases that most of its exports to India is to its related entity in India at lowest possible price to capture the market and only some exports are made to unrelated exporters at fair and undumped prices. Thereafter, at the time of anti-dumping investigation, exporter would be able to claim that price to related entity is unreliable and price to unrelated entity should be relied to calculate dumping margin as per Explanation (b) to Section 9A(1), which will show lower or no dumping. It is clear that such practice cannot be permitted, and such cannot be the intention and objective of Section 9A(b). Interpretation of Explanation (b) to Section 9A(1) cannot be done in a mechanical manner and by ignoring its object and purpose. In view of the above, the Authority has proceeded by taking into consideration the prices as reported in the exporter's questionnaire response for all the exports made by SI Group to India.
35. It was argued that the prices at which the exports of PUC during POI were made to SI Group India for its consumption, were never intended for sale to the Indian market. Therefore, these prices are not representative of the competitive market pricing of PUC in the Indian market. However, it is noted that since the consumption by the related importer, i.e., SI Group India is part of total Indian demand, it affects the domestic pricing in India. Further the related importer has purchased the PUC domestically in the injury period and has also sold some quantity of imported PUC in POI in the Indian market.

F. 3. 1. Determination of Normal Value

36. Under Section 9A(1)(c) of the Act, normal value in relation to an article means:
- i. *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
 - ii. *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*
 - (a) *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (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.

A. Singapore

37. DIC Asia Pacific Pte Ltd, an exporter from Singapore, registered as an interested party and later withdrew its participation from the present investigation. 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 applicant claimed that Singapore is importing significant volume of subject goods. Imports of subject goods into Singapore is also the consumption price of the subject goods in the domestic market of Singapore and can thus be considered as the normal value prevailing in Singapore. The applicant had considered the average price of imports into Singapore as normal value for the PUC. It has been observed that imports under the HS code 290719 includes imports into Singapore of non-PUC as well. Therefore, the average price of imports cannot be considered as the consumption price of the PUC and resultantly cannot be considered as the basis for determination of normal value. Alternatively, the applicant had provided information for the normal value on the basis of estimates of the cost of production, after addition for SGA and reasonable profit.
38. The Authority has accordingly determined normal value for all non-cooperative producers/exporters from Singapore, considering the best facts available. The normal value so determined for Singapore producers/exporters is mentioned in the dumping margin table.

B. South Korea

SI Group Korea Ltd

39. The Authority notes that SI Group Korea Ltd., is a producer and exporter of the subject goods in Korea RP. SI Group Korea has exported the subject goods to its related party in India, i.e., SI Group India Pvt. Ltd. and also to unrelated customers in India.
40. SI Group Korea Ltd. has sold *** MT of PTBP in the domestic market during the POI whereas, it has exported *** MT of the subject goods to India. The exports made to related parties in India is *** MT and exports made to unrelated parties in India is *** MT. The Authority notes that the domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the Authority conducts 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 considered for the determination of the normal value and in cases, profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination

of the normal value. In the present case since more than 80% of domestic sales are profitable hence all 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. The Authority also notes that company has claimed that margin be determined on month-to-month basis, however, company has not provided cost on month-to-month basis. The information on cost is available only on quarterly basis. It is seen that the cost does not vary significantly on quarterly basis. Thus, the normal value at ex-factory level for SI Group Korea has been calculated for the POI as a whole and the same is mentioned in the dumping margin table below.

Normal Value for other producers/exporters in Korea RP

41. The Authority notes that no other producer/ exporter from Korea RP have responded to the Exporters Questionnaire in the present investigation in the form and manner prescribed. Therefore, the normal value in their cases has been determined on the basis of best facts available on record which is provided in the Dumping Margin Table herein below.

C. United Stated of America

SI Group Inc

42. The Authority notes that SI Group Inc., is a producer and exporter of the subject goods from Korea RP. SI Group Inc. has exported the subject goods to its related party, i.e., SI Group India Pvt. Ltd. and also to unrelated customers in India.
43. SI Group USA has filed response to the questionnaire. The company has exported *** MT to India. Out of *** MT exported to India, export to unrelated party is ***MT and exports to related party, i.e., SI Group India is *** MT, constituting ***% of total exports. There is a significant difference in the price at which goods have been exported to SI Group India and other unaffiliated parties.
44. SI Group Inc. has sold *** MT of PTBP in the domestic market during the POI whereas, it has exported *** MT of the subject goods 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. More than 80% of domestic sales are profitable hence all 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 SI Group Inc. has been calculated and the same is mentioned in the dumping margin table below.
45. The exporter claimed that the Authority should determine dumping margin by comparing normal value and export price on month-by-month basis. It has been claimed that there is significant difference in the cost of major inputs and price of the PUC. The Authority notes that even when the company have claimed that margin be determined on month-to-month basis, the company has

not provided information on cost on a monthly basis. Hence, the claim lacks factual evidence. The information on cost is available only on quarterly basis. It is seen that the cost does not vary significantly on quarterly basis. Thus, the normal value at ex-factory level for SI Group Inc has been calculated for the POI as a whole and the same is mentioned in the dumping margin table below.

Normal Value for other producers/exporters in the USA

46. The Authority notes that no other producer/ exporter from the USA have responded to the Exporters Questionnaire in the present investigation in the form and manner prescribed. Therefore, the normal value in their cases has been determined on the basis of best facts available on record which is provided in the Dumping Margin Table herein below.

F. 3. 2. Determination of Export Price

A. Singapore

47. DIC Asia Pacific Pte Ltd, an exporter from Singapore, registered as an interested party and later withdrew its participation from the present investigation. In the absence of cooperation from the producers/exporters of the product under consideration in Singapore, the Authority has not determined individual export price for producers/exporters. In view of non-cooperation of the producers/exporters, the Authority has 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 import data made available by the DG Systems data. Adjustments have been made for ocean freight, inland freight, insurance, handling charges, commission and bank charges to determine ex-factory export price. These price adjustments have been carried out on the basis of claim made by the domestic industry in view of non- cooperation of the foreign producers. The export price so determined is mentioned in the dumping margin table.

B. South Korea

SI Group Korea Ltd

48. SI Group Korea Ltd has exported *** MT of PTBP to India during the POI. SI Group Korea Ltd. 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.
49. SI Group Korea has stated that the export price of SI Group Korea should be compared with normal value on a transaction-to-transaction, or month-to-month basis based on contract/order dates. However, as noted above, the exporters have not provided information on cost for comparison on a month-to-month basis. The quarterly information provided does not show significant variation. Further, consistent with DGTR practice in such cases, the Authority has considered the date of the invoice, as recorded in the exporters or producer's records kept in the ordinary course of business is considered as the date of sale. It has not been satisfactorily shown as to why date of invoice should not be considered for the purpose of determining date of sale.

50. The export price for SI Group Korea Ltd. has been determined based on all exports made by the company and considering the volume and value of such exports, after correlating the same with the DG Systems data. The said export price has been adjusted for expenses as claimed by the exporter to determine ex-factory export price. The same is mentioned in the dumping margin table below.

Net export price for other producers/exporters in Korea RP

51. The net export price for non-cooperative producers/ exporters from Korea PR has been calculated based on facts available in terms of Rule 6(8) of the Rules. The net export price so considered is mentioned in the dumping margin table below.

C. United States of America

SI Group Inc

52. SI Group Inc has exported *** MT of PTBP to India during the POI. The Authority has verified the response filed by SI Group Inc. wherein it 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.
53. SI Group Inc have stated that the export price of SI Group Inc should be compared with normal value on a transaction-to-transaction or month-to-month basis based on contract/order dates. However, as noted above, the exporters have not provided information on cost for comparison on a month-to-month basis. The quarterly information provided does not show significant variation. Further, akin to the practice in the past cases, the Authority has considered the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business is considered as the date of sale.
54. The export price for SI Group Inc. has been determined based on all exports made by the company and considering the volume and value of such exports, after correlating the same with the DG Systems data. The said export price has been adjusted for expenses as claimed by the exporter to determine ex- factory export price. The same is mentioned in the dumping margin table below.

Net export price for other producers/exporters in the USA

55. The net export price for non-cooperative producers/ exporters from the USA has been calculated based on facts available in terms of Rule 6(8) of the Rules. The net export price so considered is mentioned in the dumping margin table below.

F. 3. 3. Determination of Dumping margin

56. Considering the normal value and the export price for the subject goods, the dumping margin for the subject goods from the subject country has been determined as follows:

SN	Producers/Countries	Normal Value	Net Export Price	Dumping margin		
		(US\$/MT)	(US\$/MT)	(US\$/MT)	%	(Range %)
1	Singapore	***	***	***	***	40-50
2	Korea		***	***	***	
I	SI Group Korea	***	***	***	***	40-50
II.	Other producers/ exporters	***	***	***	***	50-60
3	USA	***	***	***	***	
I	SI Group Inc	***	***	***	***	280- 290
II.	Other producers/ exporters	***	***	***	***	380- 390

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

57. 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. Views of the other interested parties

58. The other interested parties have made the following submissions with regards to injury:

- i) The determination of an "established" industry should be based on "positive evidence" and reasonable assumptions derived from credible facts. In the final findings of the Styrene Butadiene Rubber (SBR) investigation, the Authority stated that in the case of a developing or nascent industry, the test of material retardation applies to industries that have not yet fully established themselves in the market.
- ii) The WTO panel held that the introduction of a new product line within an existing industry does not necessarily create a new industry. The degree of overlap with the existing infrastructure is crucial in determining the establishment of a new industry, as also considered by DGTR in DCC case.
- iii) In the case of Vinyl Tiles from China PR, Taiwan and Vietnam- DGTR held that only the manufacturing entity Welspun Flooring Limited (WFL) is a nascent industry and not Welspun Global Brands Limited (WGBL), the selling entity.
- iv) VOL, being an existing player in the chemical business, has chosen to introduce a new product line. It is likely that they utilize existing infrastructure, such as customer contacts and distribution channels, in selling the product. Thus, the introduction of the new product line does not necessarily create a new industry.
- v) The respondent have contended that there is a degree of overlap in the infrastructure used for other product lines and the Para-Tertiary Butyl Phenol (PTBP) line which is important to determine whether PTBP can be regarded as a "new industry.
- vi) Vinati focuses on manufacturing multiple types of butyl phenols, so it should be examined if it has dedicated capacity, investment and whether financing and feasibility studies were made specifically for the PUC.
- vii) No industry can be expected to capture the market as soon as they begin production of a certain product and in a situation when there was worldwide lockdown due to COVID-19. Industry has to go through quality check for 6-9 months. During the period of investigation, Vinati achieved a market share of almost 46% in the fourth quarter of FY 2021-22 and around 40% in the first quarter of FY 2022-23, 39% market share in third quarter of FY 2022-23. The WTO Panel stated that a market share 40% and above indicates stability and establishment.
- viii) These DGTR cases have also held that there is material retardation in cases of low market

share:

- a) Veneered Flooring- imports had significant share in market. DI share 17% (annual)
 - b) PVC Flex-DI market share 15% (annual) 26% max on quarterly basis, Capacity utilization 30%
 - c) Electrogalvanized Steel- 24% share max on quarterly basis
 - d) Non-Woven Fabric -10% market share of DI (annual)
- ix) Although the PBIT of the petitioner has remained positive almost throughout the injury period, the ROI, which is PBIT as the % of capital employed has remained negative throughout the injury period.
 - x) The performance of the petitioner has improved significantly post POI.
 - xi) The project report was for the Butyl Phenol plant and no estimates were given for the individual production line for the PUC. It was drawn up in 2016 and the estimates in the project report were as per the market conditions in 2016.
 - xii) The petitioner has only made appropriate adjustments to the input prices and not volumes of estimated sales which have been affected post 2016 due to COVID.
 - xiii) Adjustments have to be made to project report to account for unexpected events such as the COVID-19 pandemic, increase in raw material prices, and geopolitical factors like the Ukraine war.
 - xiv) There is an impact of lockdown even if the plant was not shutdown which is not acknowledged by the petitioner. No adjustment was made for low-capacity utilizations due to migration of labour.
 - xv) The petitioner faced losses and declines in their total turnover. They cannot expect only the PUC to be profitable.
 - xvi) The petitioner does not have to factor in international freight and import duty costs in its pricing, allowing it to offer lower prices in the Indian market. The freight cost had increased by almost 10 times during the period 2020-21 and 2021- 22.
 - xvii) SI Group has cited the following market research reports to indicate the performance of the domestic industry in butyl phenols:
 - a. Anand Rathi Report: Butyl Phenol plant is mainly captively consumed up to 45% for the production of value-added products (antioxidants).
 - b. ICICI Direct's report - Vinati's exceptional performance in the butyl phenol segment.
 - c. Chola Wealth's report - Vinati's capacity expansion plans were primarily aimed at manufacturing antioxidants.
 - xviii) Exporters have lost business opportunities because they were unable to match the petitioner's lower prices. Sample call transcripts shows customers asking for price matching and the respondents' inability to secure deals due to petitioner's pricing strategy.
 - xix) At the start of 2019, the commodity market price for imported PUC was consistent with sale prices of the imported PUC. Pricing steadily declined when Vinati entered the market in July 2020. By January 2021, import prices began rising considerably due to increased raw material and ocean freight costs.
 - xx) The petitioner's competitors-maintained customers due to product quality, reliability of supply and lowering prices to compete with Vinati's market leading prices.
 - xxi) The petitioner's choice to use Methyl tert-Butyl Ether (MTBE) to produce Isobutylene, which increased in cost due to oil and gasoline demand stemming from the Russia-Ukraine War, added to the higher costs of the PUC production.

- xxii) The petitioner has allocated the common expenses incurred based on the capacities for different products produced. The Authority must evaluate the correctness of the basis of allocation of expenses.
- xxiii) The petitioner manufactures 4 types of butyl phenols which can be manufactured on the same production line by changing the catalyst and altering the molar ratios. With the amalgamation of Vinati with VAPL, Vinati will divert its capacity of butyl phenols to cater to its captive consumption to manufacture further downstream products. This will create a demand-supply gap of the PUC.
- xxiv) Inclusion of WIP in finished goods is a wrong methodology.
- xxv) The petitioner faced internal issues unrelated to the subject imports with their production output, product quality, and qualifying their products with customers. Qualification process with customers typically takes 6 to 9 months. Vinati faced production output issues starting in September 2022, leading to delays in shipments and even a plant shut down for maintenance.
- xxvi) The shutdown is another symptom of Vinati's difficulty in getting its plant up and running acceptably. Vinati's quality and supply issues raise doubts about their ability to meet customers' needs, despite claiming to have the capacity to supply the domestic PUC market.
- xxvii) There were several lockdowns in Maharashtra due to COVID during the POI. There is impact of lockdown even if plant was not shutdown which is not acknowledged by the petitioner.
- xxviii) Vinati has stated in paragraph 9 of the petition that the applicable basic customs duty on PUC is 7.5%. However, in Annexure B of the Petition, Vinati has considered the customs duty as "Nil" when calculating the landed value of PUC from South Korea.
- xxix) Vinati has not provided any methodology adopted to arrive at notional production considering optimum utilization.
- xxx) The benchmark of 80% market share in the first year of operations itself shows that the projections made by the petitioner are unrealistic.
- xxxi) Imports from the subject countries have declined in the POI.
- xxxii) The Authority ought to examine what is the breakeven threshold claimed by Vinati and whether such threshold is reasonable, since the cost of production of the PUC has varied during the injury period.
- xxxiii) The petitioner cannot use the definition of like product in an analysis of whether there is an overlap in production facilities of PTBP and other products manufactured by Vinati. The definition is for the purpose of identifying whether the article being produced by the domestic industry is identical to the article under investigation.
- xxxiv) The Authority cannot examine material injury in case it decides that the petitioner is already well established as according to the initiation notification, the petition in the present investigation alleges material retardation.

G. 2. Views of the domestic industry

59. The following submission were made by the domestic industry with regard to injury and causal link:

- i) The petitioner has set up a new plant in Lote for 4 butyl phenols. PTBP has an allocated capacity of around *** MT out of *** MT.

- ii) The plot of land being used for producing butyl phenol was purchased in 2014-15 for the purpose of expansion or diversification. Thus, the land that is used for the Butyl Phenol is separate and without any overlap from the pre-existing industry that manufactures the other products in the Lote site.
- iii) Prior to the commencement of the production by the applicant in July 2020, there was no production of PTBP in India. The entire demand for the subject good in India was being satisfied by imports, mostly from the subject countries.
- iv) While the production by the petitioner is continuous, the capacity utilisation continues at sub-optimal level. The petitioner has not been able to meet the breakeven point
- v) The petitioner could get sales only to the extent third countries vacated the market and was forced to suffer significant financial losses
- vi) There was a new infrastructure set up for new industry in the already existing area used for other products
- vii) The petitioner established a completely new plant for PTBP which has different HS code, raw materials, plant and equipment, production technology and manufacturing process when compared to existing products
- viii) The petitioner earlier dealt with pharmaceuticals, now also dealing with perfumery and resin. The PTBP plant is a new extension of the existing land and is using different utilities. The customers and distribution channels are different
- ix) The market share was only at ***% in the POI, as against the targeted/ expected/ achievable/ reasonable levels of 80% in this period.
- x) The capacity utilisation declined to ***% immediately after Q1, 22-23. There is no reason why capacity utilisation of a new product would decline after rising
- xi) WTO case refers to market share for the entire one-year period and not for a specific quarter. The panel report also highlighted the importance of the nature of product while examining market share stability.
- xii) The petitioner having regard to the nature of product and business had anticipated significantly high level of production, sales and market share in the very first year of establishment, which was not possible due to imports.
- xiii) The domestic industry has gained volumes almost to the extent of volumes lost by non-subject countries and the subject countries gained volumes almost to the extent of increase in demand.
- xiv) The volume of imports has witnessed an increase and then a slight decline over the injury period. The volume of imports should have declined significantly with the commencement of production by the domestic industry. However, the volume of imports remained significantly high. Thus, the volume of imports is significant in relation to Indian production and consumption.
- xv) The petitioner submits that the price undercutting should be determined considering the target prices and prices that were prevailing when the project was conceived. It was these prices that the domestic industry had considered when deciding on the project. It would show that significant price undercutting is being caused by the imports, forcing the domestic industry not to even target those projected prices.
- xvi) The cost of sales and selling price have increased over the period, however the selling price is even below the level of cost of sales. Landed price of imports are much below the level of cost and selling price of the domestic industry. The imports have thus suppressed the prices of the domestic industry.
- xvii) The capacity built by the domestic industry is sufficient to cater to the demand. However,

- production is at significantly low level and much below the demand capacity established.
- xviii) Dumping of the product prevented the domestic industry from utilising its production facilities to the extent it could have in the absence of dumping.
 - xix) The domestic industry has not been able to sell the material in the market, despite highly injurious sales price offered by the domestic industry.
 - xx) The production and sales have shown an increase as a natural consequence of commencement of production, however, the same is significantly below the optimum level. The domestic industry has not been able to increase its production and capacity utilisation to the optimum levels it had planned at the time of setting up of the plant.
 - xxi) The petitioner had projected to earn profit, cash profits and positive return on investment in its very first year of operations. However, the petitioner is suffering significant financial losses due to dumping in the country.
 - xxii) In ElectroGalvanized Steel case, the domestic industry was also having profits in its first year of operation and the Authority still held that it was facing injury because the actual profits fell short in comparison to the expected profits. Thus, the improvement in the performance of the domestic industry in respect of volume parameters does not amount to the fact that it is not facing injury by imports.
 - xxiii) The actual performance of the domestic industry is far below the level as was projected while setting up the plant. Imports have thus prevented the domestic industry from achieving its targeted result.
 - xxiv) Imports from other countries are below *de-minimis* limits and are thus not causing injury to the domestic industry. In fact, the petitioner has gained the volume lost by other countries.
 - xxv) Demand for the subject goods has increased over the injury period. Though it appears that there was some decline in demand in the most recent period, injury to the domestic industry could not have been due to the same as the production and sale is much below the level of demand.
 - xxvi) The technology adopted by the domestic industry is comparable to the technology being adopted by the producers in the subject countries. There is no significant difference in the manufacturing process.
 - xxvii) The pattern of consumption with regard to the product under consideration has not undergone any material change.
 - xxviii) There is no trade restrictive practice, which could have contributed to the claimed injury to the domestic industry.
 - xxix) The technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of claimed injury.
 - xxx) The injury data provided refers solely to the domestic operations of the domestic industry and the effect of export performance has been segregated.
 - xxxi) The injury information provided relates solely to the performance of the product under consideration. Therefore, the injury claimed is not attributable to the performance of other products.
 - xxxii) Even after the domestic industry began production, the volume of imports has remained high. In normal market situations, the import volumes would have shown a rapid decline with the commencement of production by the domestic industry.
 - xxxiii) Dumping of the product is preventing the domestic industry from producing and selling the subject goods and hence, the domestic industry is unable to utilize its capacity to optimum level.

- xxxiv) Imports are undercutting the prices. The price undercutting has prevented the domestic industry from raising prices to the extent of cost and reasonable profits.
- xxxv) The imports are suppressing the prices of the domestic industry.
- xxxvi) The landed price of subject imports from the subject countries is below current and projected cost of sales of the subject goods.
- xxxvii) Even though the domestic industry has capacity sufficient enough to meet the demand of the product in the country, imports are holding majority share in the market, and the domestic industry holds minority share.
- xxxviii) The pre-feasibility report was provided for getting the Environmental Clearance in 2016 which was later revised. Pre-feasibility report numbers should not be considered as basis for costs and project timelines. The environmental clearances were expected to be obtained faster. However, it was received only in March 2018, post which petitioner obtained the Consent to Establish in March 2019, and then the Consent to Operate in March 2020. The investment projected for the butyl phenol plant has been apportioned to the PTBP plant based on the capacity installed.
- xxxix) Any increase in raw material, utility price because of Covid 19 would have been a global phenomenon. Should have led to corresponding increase in selling price but low-priced imports prevented it.
- xl) The other interested parties have stated that the petitioner was suffering decline in turnover and profits due to COVID and then cites market reports to show that the petitioner was earning profits in Butyl Phenols and other products. The parties are contradicting their own statements on petitioner's performance.
- xli) The freight increasing import prices should have benefitted the petitioner but it was still facing losses. The domestic industry should have ideally been able to perform better as it catered to the demand with the benefit of close proximity. However, it was still not able to find its place in the market due to the dumped and injurious imports in the market.
- xlii) Being a new producer, customers would not buy from the petitioner if they do not benchmark its price to imports. The prices are highly market driven. Akin to the general practice, the customers compare the prices quoted by the domestic industry and the exporters, and after considerable negotiations, they ask the domestic industry to reduce the prices to match those of the exporters.
- xliii) The reference is to market prices not to a price of a party. Information cannot be claimed confidential. Respondents admits that pricing declined when Vinati entered the market. This itself shows that the prices were lowered in order to prevent Vinati from making a footing in the domestic market.
- xliv) VOL is forced to set prices based on prevailing price in the market, i.e, based on the landed price of the imports, even when the petitioner attempts to set the prices based on basic raw material and have a contract based on formula pricing.
- xlv) On one hand, the interested parties contend that the subject countries maintained the volumes and customers, and on other hand they contend that the petitioner was driving out the subject countries and was undercutting them.
- xlvi) The claimed injury is not due to start-up operations. The domestic industry has not reported price parameters based on actual costs.
- xlvii) There is apparently one case of higher impurity material supplied by the petitioner to one customer. This is due to different segments of consumers require different level of impurity and the petitioner has produced and supplied the impurity levels desired by different customer

segments.

- xlviii) The price movement of both, Methyl tert-Butyl Ether (MTBE) and tert-Butyl alcohol [(CH₃)₃COH] follows same trend. The Designated Authority may determine cost of production of PTBP considering market price of Isobutylene. This would take away any cost related issues in Isobutylene.
- xlix) Expenses are rightly allocated on this basis, as the petitioner has not even achieved optimum production. Apportioning expenses on actual production and then dividing the same with targeted production would be highly unfair.
 - l) WIP is part of inventories.
 - li) The petitioner has set up new production lines and have dedicated the same for individual products. It is not possible to use production line of one butyl phenol product for producing different butyl phenol. All these 4 products have 3 separate/independent reactors. The distillation columns are designed based on product characteristics, purity level & impurity profile & are dedicated for each product.
 - lii) The petitioner had considered imports into India as the potential demand. The demand increased but the petitioner did not stop production during the entire period of lockdown. The raw material prices considered in the project report have been revised as per actual raw material prices incurred by the petitioner. Thus, the Authority must consider principal factors that impacted the performance and not inconsequential factors as contended by the interested parties.
 - liii) Further, the shutdowns were for extremely short periods of time and have not impacted ability to cater to demand. The petitioner produces against stocks and sells from stocks and had sufficient inventories throughout the period.
 - liv) The product approval on average takes around 3-6 months and not 6-9 months as contended by the respondents. The petitioner has provided evidence of email communications to the Authority wherein the product was approved by the customers in 3 months.
 - lv) The petitioner had taken the customs duty as “Nil” for calculating the landed value of the PUC from South Korea which has been amended to 7.5%. However, even when landed value is calculated with the applicable customs duty of 7.5%, the landed price of the PUC is not only lesser than selling price of the petitioner but is lesser than even cost of production of the domestic industry. Thus, the undercutting continues to remain positive and significantly high.

G. 3. Examination by the Authority

60. 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. Thus, prior to undertaking detailed injury examination, the Authority has examined whether the domestic industry, was an established industry to such an extent that the same permitted assessment of injury in the form of material injury, or the domestic industry was an embryonic or nascent industry, in the process of establishment, and not having sufficient past history to permit assessment of material injury as the form of injury.

G. 3. 1. Material retardation to establishment of an industry

61. 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. The Authority has also taken note of the past findings concerning material retardation of industry issued by the DGTR, in this regard.

62. The Authority notes that the AD Agreement or the AD Rules does not define what is a new industry. “Material retardation to the establishment of the domestic industry” has also not been defined. Footnote 9 to Article 3 merely states as follows:

Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

63. The concept of "material retardation" is intimately connected to the definition of the concept of "industry in the process of establishment".

64. Regarding the proposal at the WTO for amendment of the Anti-Dumping Agreement, which provides clarity on the meaning of ‘material retardation’ and ‘unestablished industries,’ the relevant portion of the draft proposal is as under. Even though the said provision has not been incorporated in the Agreement so far, the Authority has considered the same as well for making the present determination:

“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.”

65. While the proposal suggests various parameters that can be taken into consideration in the determination of whether an industry is in establishment, it does not state anything about parameters to be considered when the industry is new and has recently started producing the subject goods.

66. The Authority also notes that WTO Appellate Body Report, *Russia – Commercial Vehicles* which was further reiterated by the WTO Panel in the matter of *Morocco - Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey* held that Article 3.1 does not prescribe a particular methodology that an investigating Authority must follow in assessing whether a domestic industry is established.

67. The Authority has examined the following parameters while examining whether the case is fit to examine material retardation:

- a. Does the domestic industry constitute a "new" industry for the product under consideration, or whether production of the product under consideration merely constitutes an extension of existing established operation of the domestic industry. The Authority examined the degree of overlap between existing product lines of the company and the new product.
- b. When did the domestic industry began its production.
- c. Operations of the domestic industry as achieved in the POI and as compared to the operations that were projected while setting up the plant. In case the domestic industry has not achieved projected levels of operations, whether the same is due to presence of dumped imports in the country, or due to any other reason.
- d. Size of production, capacity utilisation and domestic sales as compared to the size of the domestic market as a whole. If domestic sales, market share, and consequently production & capacity utilisation are well below the levels projected levels, whether the same is due to presence of dumped imports in the country, or due to any other reason. The Authority has also examined stability of production and capacity utilization. The Authority has also considered the level of capacity utilisation that the domestic industry should have achieved in the POI and compared the same with level of capacity utilisation that the domestic industry has achieved.
- e. Since the domestic industry has commenced commercial production only during the present injury period, whether the domestic industry has been prevented from producing the product due to any technical reasons or product acceptance by the customers, or any other regulatory requirements in the country. The Authority has also examined the level of inventories of the product and reasons for the same.
- f. Did the domestic industry reach a reasonable level of profitability? If not so, whether the reasons for the same are linked to dumping of the product or any other commercial or technical reasons.

68. The above referred parameters have been examined in detail below:

G. 3. 2. Material retardation to the establishment of the domestic industry in the present investigation

69. The Authority notes that the applicant has set up a new manufacturing facility of the subject goods by making significant investment in a plant at Lote, Maharashtra. Prior to the commencement of the production by the applicant in July 2020, there was no production of PTBP in India and none of the other interested parties have claimed otherwise.

a. Whether the petitioner is a “new” industry or it is merely an extension of an already established operation?

70. It is noted that PTBP is a new product and has been produced in the country for the first time by the domestic industry. Information on record and verification undertaken has demonstrated that the production of the subject goods was not significantly aided by the existing and established

product operations of the petitioner. The petitioner set up a new plant in Lote for four types of butyl phenols with a total annual capacity of *** MT. These products include Para Tertiary Butyl Phenol (PTBP), Ortho Tertiary Butyl Phenol (OTBP), 2,4 Di-Tertiary Butyl Phenol (2,4 DTBP), 2,6 Di-Tertiary Butyl Phenol (2,6 DTBP). During the physical verification, it was seen that there are four different types of butyl phenols, and these have different capacities, different production facilities and different production lines. Out of these capacities, PTBP has a capacity of *** MT. It was explained by the domestic industry that the applicant has dedicated production facilities to individual butyl phenols and has been using the same on dedicated basis only. However, the production facilities are such that a producer can stop the production of one butyl phenol and convert the production facilities into production of other butyl phenol. This can be done over a short duration, and without incurring any significant expense. It was explained that it was not possible to switch over production of one butyl phenol product to another product on a daily basis. The reactors have been dedicated for each product for their optimum use and are not expected to be used interchangeably as a matter of routine. It was demonstrated that the distillation columns have been designed based on product characteristics, purity level & impurity profile, and are dedicated for each product. Therefore, any such switchover would require efforts and even some additional investment.

71. The petitioner has established a new plant for Butyl Phenol in Lote, without any material overlap with the pre-existing production facilities. It has established a new product, and not a mere addition of a new production line to the existing facilities. Interested parties have contended that there is significant degree of overlap between PTBP, and the existing products being produced by the petitioner. It is noted in this regard that the raw material of the subject good, Isobutylene (IB), has been produced by VOL since 2010. However, it is not produced in the same plant as that of the PUC. Isobutylene is produced at a different plant whereas PTBP production facilities have been set up Lote. Following differences have been noted between PTBP and the other products produced by the petitioner in its old plant (pre-existing facility), from the information on record:
- i) The HS code of PTBP falls under a different customs sub-heading 29071940 under Chapter 29 of the Customs Tariff Act, 1975
 - ii) The plant and equipment deployed for the production of PTBP entails different reactors, catalysts, distillation columns and construction materials. These are different from the plant and equipment deployed by the petitioner for producing other products in the preexisting facility.
 - iii) The raw materials for producing the PUC are isobutylene and phenol, which are entirely different from raw materials being used for producing other products in the preexisting facility.
 - iv) Isobutylene is captively produced by the company. However, isobutylene is not the major raw material in total costs on account of raw materials. The cost on account of phenol is more than cost on account of isobutylene.
 - v) Production of the PUC involves butylation of Phenol which entails a different manufacturing from the other products produced in the preexisting facility.
 - vi) The PUC broadly performs the function of intermediate in phenolic resins and perfumery industries, which is different from the other products produced in the preexisting facility.
 - vii) The land that is used for the Butyl Phenol is separate and without any overlap from the pre-existing industry that manufactures the other products in the Lote site.

- viii) The utilities being used in PTBP are not by and large benefiting from existing products in the plant. The main operations involved in the Butyl Phenol plant are reaction, extraction, distillation & flaking. Utilities required for Butyl Phenol, i.e., steam, chilled water, DM water, process water, electricity, and coal for hot oil TFH (thermic fluid heater). All these utilities were newly established except steam and air. Steam is only 25% of the total utility cost. Air is an insignificant amount. While the electricity supply is also from the same grid, it is with a dedicated newly set up transformer for Butyl Phenol Plant.
- ix) VOL earlier dealt with products meant for pharmaceutical industry, Agro - Pharma, water treatment, oil field drilling, construction, personal care industries. The new production line of PTBP deals with products for perfumery and resin.
- x) Further, the domestic industry has submitted that almost ***% of the domestic sales by the petitioner are to the new customers of PTBP. Further, the majority of sales are through a new trader appointed for the perfumery and resin industries.

b. When did the domestic industry began its production?

72. The Authority notes that the domestic industry commenced commercial production of the subject goods only in July 2020. The production of the subject goods began only few months prior to the POI. There was 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 the levels projected by the domestic industry and commercial scales of the plant. Further, the domestic industry has not got a price in consonance with the projections made (with adjustments for material changes in prices of inputs involved in production of the product under consideration). A comparison of the domestic industry's actual and projected production and sales figures reveals that actual production and sales figures in the POI have not achieved the projected levels, which shows that their anticipated commercial operations have been impacted.

c. Operations achieved vs operations projected.

73. The performance achieved by the domestic industry in respect of various macro- economic parameters, such as production, domestic sales, capacity utilisation, market share, profits, cash profits, ROI is materially below the levels projected by the domestic industry. The domestic industry had projected profits in its very first year of operations. But the domestic industry has not been able to recover its costs and is suffering significant financial losses. Further, the difference between the projected performance and actual performance achieved is too significant.

d. Size of production, capacity utilisation and domestic sales as compared to the size of the domestic market as a whole

74. The applicant is the only Indian producer of the subject goods in India who has established production facilities for the PUC. The demand for the product under consideration in India was *** MT during the present POI. As against this, the domestic industry has set up a production capacity of *** MT. Thus, the domestic industry was in a position to achieve 100% market share in the country and could have achieved a capacity utilisation of more than 80%. However, the market share of the domestic industry during the POI was around 24%, where the subject imports held

about 74%. The imports from the subject countries are more than four times the total domestic production of the subject goods in India.

75. Quarterly movement of market has also been analysed and it is seen that the maximum market share achieved by the domestic industry is up to 49% as can be seen from the table below:

Demand / Market share	Units	POI Q1	POI Q2	POI Q3	POI Q4	POI
Subject Countries	MT	3,447	3,357	1,435	1,182	9,420
Korea Rp	MT	1,635	2,000	1,149	796	5,579
Singapore	MT	1,512	937	126	126	2,701
U S A	MT	300	420	160	260	1,140
Other Countries	MT	-	304	-	-	304
Total Imports	MT	3,447	3,661	1,435	1,182	9,724
Sales of the domestic industry	MT	***	***	***	***	***
	Index	100	251	776	583	100
Sales of Other Domestic Producers	MT	-	-	-	-	-
Demand/Consumption including Captive	MT	***	***	***	***	***
	Index	100	113	78	61	100
Market Share						
Subject Countries	%	95	82	51	53	74
Other Countries	%	-	7	-	-	2
Total Imports	%	95	89	51	53	76
Domestic industry	%	5	11	49	47	24
Other Domestic Producers	%	-	-	-	-	-
Demand/Consumption including Captive	%	100	100	100	100	100

76. Other interested parties have contended that the domestic industry was able to capture 46% market share in the fourth quarter of FY 2021-22 and almost 40% market share in the first quarter of FY 2022-23. It has been argued that the Panel report in in the matter of *Morocco - Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey* suggested that if the market share achieved by the domestic industry is significant, then the fact that such market share has been attained after incurring loss does not necessarily preclude a finding of stabilisation. It is however seen that (a) the actual market share and capacity utilisation projected by the domestic industry was significantly higher than what is actually achieved, (b) the market share achieved by the domestic industry is at the cost of financial losses, (c) the domestic industry has not been able to sell to the extent of production, (d) the market share of the domestic industry declined in the last quarter, whereas the same should have increased (considering that new production facilities were set up in the country), (e) the market share achieved by the domestic industry is the market vacated by the other country imports. In so far as the subject imports are concerned, these have shown an increase, rather than showing a decline, despite new production facilities set up by the domestic industry. Thus, the production, capacity utilisation and market share achieved by the domestic industry in one quarter was insufficient to

conclude stability of the industry in the market.

77. The volume of subject imports has in fact increased over the injury period, before reducing in the POI, despite the domestic industry starting commercial production, as can be seen from the table below. It is seen that in fact the domestic industry gained volumes that have been vacated by non-subject countries. Thus, the domestic industry has been able to establish itself in respect of production and sales to some level only because of the market vacated by non-subject countries. As far as subject imports are concerned, these have by and large maintained their levels:

Parameters	Unit	2019- 20	2020-21	2021-22	POI
Subject Countries	MT	8,421	10,250	11,118	9,420
Other Countries	MT	3,719	2,142	1,163	304
Sales by DI	MT	NA	***	***	***
	Index	NA	100	4,447	6,466
Demand	MT	***	***	***	***
	Index	100	102	118	105
Change over base year					
Subject Countries			1,830	2,697	1,000
Other Countries			-1,577	-2,555	-3,415
Sales by DI			***	***	***
Demand			***	***	***

78. It is seen that the domestic industry has gained volumes almost to the extent of volumes lost by non-subject countries and the subject countries gained volumes almost to the extent of increase in demand from the base year.

Particulars	Units	2019-20	2020-21	2021-22	POI
Installed Capacity	MT	NA	***	***	***
Index		NA	100	133	133
Production	MT	NA	***	***	***
Index		NA	100	1,743	2,321
Capacity Utilization	%	NA	***	***	***
Index		NA	100	1,307	1,740
Domestic Sales	MT	NA	***	***	***
Index		NA	100	4,347	6,361
Export Sales	MT	NA	NA	***	***
Index		NA	NA	100	128

79. In terms of level of production and sales, it is normally expected that an industry which has recently commenced production may face instability in production owing to new production facilities and would be able to gradually increase its production levels and consequently capacity utilisation. It was therefore examined whether the low level of production and capacity utilisation of the domestic industry was due to instability in production and new production facilities. It is seen that the domestic industry had projected a capacity utilisation of more than 80% whereas the actual capacity utilisation achieved is only ***. It is also noted that the utilisation achieved by the

domestic industry was *** for the POI as a whole, while the domestic industry achieved a capacity utilisation of *** in the fourth quarter of 2021-22. It is seen that the domestic industry was not able to achieve capacity utilisation as projected within the POI and suffered underutilisation of production capacities. Further, the domestic industry was able to improve its capacity utilisation till Q4, 2021-22 and suffered decline in capacity utilisation thereafter. Further, the capacity utilisation of the domestic industry was quite low as compared to projected levels and the same was not due to some possible technical constraints. It is noted that the demand had declined in the POI, however, the demand did not decline significantly so as to prevent the domestic industry from utilising its capacity to optimum level.

e. Whether the domestic industry has been prevented from producing the product due to reasons other than imports

80. It has been examined if other parameters, such as product approval, product quality, technical glitches in new plant, etc. have been a reason for low production and sales. Interested parties have argued that the approval time for the products takes around 6- 9 months. It is also noted from the information on record, by way of sales negotiation with sampled customers, that an approval for the sale of the product under consideration usually takes around 3- 6 months for the domestic industry. However, the subject imports increased with the commencement of production by the applicant, whereas ideally it should have declined. The non-subject imports declined, whereas subject imports increased. The domestic industry gained sales volumes to the extent of market vacated by the non-subject imports. The domestic industry has been able to export significant volumes and at a price higher than the domestic prices. It is thus evident that reasons for low production are not any such reason stated by the interested parties.

81. Other parties have also argued that the quality of the product is sub optimal and have been a reason for producers not opting to purchase from the domestic industry. In this regard, it was submitted by the domestic industry and noted by the Authority that PTBP produced has impurity in it. While some customers specify the maximum level of impurity, others are not concerned with impurities. The customers of the subject goods using it for production of resin does not have a threshold for impurity level. However, customers using PTBP for perfumery industry have permissible level of impurities. The domestic industry has been able to produce and sell subject goods of desired specifications to customers in both the segments. The domestic industry submitted that there was one instance of concern raised on the impurity level (during post POI period) by one of the responding interested party, which was as per evidence brought on record, was later resolved. It was seen during verification that the entire manufacturing process has been automated & being controlled through the Distributed Control System (DCS) in control room of the factory. It is also seen that the domestic industry has sold the subject goods to all major customers of the subject goods and thus the product quality has been established and accepted by the customers. This has also not been disputed by the other parties. The domestic industry has been exporting the product, that too at a higher price. Further, the domestic industry has been able to get the market vacated by the non-subject imports. In any case, alleged concern of quality on one sale in the post POI does not address the increase in imports upto POI.

f. Did the domestic industry reach a profitability/break-even point?

82. The Authority notes that the production of the applicant commenced in July 2020 and the production figures on a quarter-to-quarter basis shows an increasing trend during the POI. However, production declined in Q1, 22-23 after increasing till Q4, 21-22. The petitioner has not been able to meet the breakeven point. The information provided by the domestic industry and considered by the Authority for the purpose of profit assessment is after considering cost of production at optimum level of capacity utilisation. Even such normatted cost shows that the domestic industry suffered financial losses in sale of the PUC. The losses determined at actual costs are in fact significantly higher.
83. The above analysis indicates that the production of PTBP is a newly established industry which has no significant degree of overlap with the existing manufacturing facilities of the petitioner. The petitioner has not been able to stabilize its production and has not achieved the breakeven point. The increase in production and sales is at the cost of incurring losses.
84. The Authority has thus conducted the injury analysis, herein below, based on the established understanding with regard to material retardation. The Authority notes that the domestic industry does not have operations in respect of various injury parameters for the entire injury period.
85. The Authority has also examined the actual performance of the domestic industry during the period and compared it with the projections made to assess whether dumping of the PUC has materially retarded establishment of the domestic industry in the Country. Since both the product and the input prices were based on the prices that were prevailing in the period when projections were made, and there have been significant changes in the input prices, the Authority has considered the projections by appropriately adjusting changes in the input prices. The Authority notes that prices of the product were decided based on a price for the inputs while drawing the projections. Further, the same prices of inputs and product have been considered over the entire period of projection. The petitioner submitted that the projections are drawn considering that any change in the prices of inputs shall be appropriately reflected in the prices of the finished product. It is clearly understood that if the input prices increased, the finished product prices would increase to the extent of increase in costs on account of inputs, and vice-versa. The petitioner further submitted that the prices of inputs have significantly increased since the projections were drawn and therefore prices of both input and finished product are required to be appropriately adjusted for the increase in the cost of inputs.
86. The Authority notes that the domestic industry has insignificant captive consumption [*** MT]. The same has been included in the domestic sales made by the domestic industry.

G. 3. 3. Cumulative assessment

87. 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 account 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.*

88. 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.
89. 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 like articles offered by the domestic industry in the Indian market.
90. The Authority 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 all the subject countries.

G. 3. 4. Assessment of Demand/Apparent Consumption

91. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the domestic industry and imports from various sources as per transaction wise import data received from the DG Systems. The same was analysed and imports of the PUC have been quantified.

Demand	Units	2019-20	2020-21	2021-22	POI
Sales of Domestic Industry	MT- Indexed	NA	100	4,447	6,466
Sales of Other Indian Producers	MT	-	-	-	-
Imports from Subject Countries	MT	8,421	10,250	11,118	9,420
Korea	MT	5,676	5,665	6,174	5,579
Singapore	MT	1,925	3,468	4,004	2,701
USA	MT	820	1,117	940	1,140
Imports from Other Countries	MT	3,719	2,142	1,163	304

Demand/Consumption (including captive)	MT- Indexed	100	102	118	105
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92. It is seen that the demand has increased from the base year to 2021 – 22 and declined by 13% in the POI as compared to the previous year. However, overall demand for the product has increased in the POI compared to the base year.

G. 3. 5. Volume Effect of Dumped Imports on the Domestic Industry

a. Imports in absolute and relative terms

93. 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. 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	2019-20	2020-21	2021-22	POI
Import Volume					
Imports from Subject Countries	MT	8,421	10,250	11,118	9,420
Korea	MT	5,676	5,665	6,174	5,579
Singapore	MT	1,925	3,468	4,004	2,701
USA	MT	820	1,117	940	1,140
Imports from Other Countries	MT	3,719	2,142	1,163	304
Total Imports	MT	12,139	12,392	12,282	9,724
Sales of Domestic Industry	MT- Indexed	NA	100	4,447	6,466
Sales of Other Indian Producers	MT	-	-	-	-
Demand/Consumption	MT- Indexed	100	102	118	105
Subject imports in relation to					
Total imports	%	69	83	91	97
Indian production	%- Indexed	NA	100	6	4
Indian demand	%- Indexed	100	119	112	107
Changes in subject and non-subject imports as compared to base year					
Subject countries			1,830	2,697	1000
Non subject countries			-1,577	-2,555	-3,415

94. It is seen that:

- a. Imports from the subject countries increased till 2021 – 22 and declined in the POI. The demand for the product also increased till 2021-22 and then declined in the POI. The decline in imports in POI is as a result of decline in demand of the subject goods.
- b. Whereas demand for the product increased by *** MT over the injury period, the imports from the subject countries increased by 999 MT. Thus, increase in subject imports was slightly more than the increase in demand. In other words, entire increase in demand was taken away by the subject imports.
- c. Share of the subject countries in total imports into India has increased significantly over the injury period, from ***% in the base year to ***% in the POI, whereas share of non-subject countries declined steeply. Subject imports constitute almost 97% of the total imports into India in the POI.
- d. Subject imports in relation to production and consumption declined after commencement of commercial production in India. However, share of subject imports was significant even after commencement of commercial production by the domestic industry. The subject imports were catering to around ***% of the demand of the subject goods in India when the domestic industry has established capacities sufficient to cater the demand in the country.

G. 3. 6. Price Effect of Dumped Imports

95. 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.
96. Accordingly, the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject countries has been examined with reference to price undercutting and price suppression/depression, if any. For the purpose of this analysis, the cost of sales and the net sales realization (NSR) of the domestic industry have been compared with the landed price of the subject imports from the subject countries.

a. Price undercutting

97. 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, after reducing the selling price for all post ex-factory expenses.

Particulars	Unit	Korea	Singapore	USA	Subject Countries
Landed Value of Imported Product	Rs/MT	1,42,600	1,54,942	83,757	1,39,018
Net Sales Realisation	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***

Price Undercutting	%	***	***	***	***
Price Undercutting	Range	0-10	0-10	80-90	10-20

98. It is seen that the landed price of imports is below the level of selling price of the domestic industry. The imports, barring Singapore, were significantly undercutting the prices of the domestic industry in the market.
99. The other interested parties have argued that the exporters from other countries have lost business opportunities because they were unable to match domestic industry's lower prices. The petitioner explained its pricing mechanism wherein it was stated that the petitioner quotes the prices to the customers based on current prices prevailing in the market. It refers to the import data and prices being quoted by foreign producers to evaluate the landed price of imports, which are driving the prices in the Indian market. It has been submitted by the petitioner that it tends to match the price prevailing in the market since it is a new producer. The petitioner showed evidence of proposal made to customers on a pricing strategy on a cost-margin basis [to customers such as Eternis and Privi], to ensure a more transparent pricing. The pricing policy suggested by the petitioner was one of formula-based pricing, based on the prices of Phenol and Isobutylene, for the previous month. However, it as been claimed that this written proposal fell through, because even though the formula pricing was decided, the customers ultimately fell back on the import prices.

b. Price Suppression or Depression

100. For the purpose of analysing price suppression and depression in the domestic market, the Authority has considered information on (a) unit cost of sales, (b) domestic selling price.

Particulars	Unit	2019-20	2020-21	2021-22	POI
Normated Cost of sales	₹/MT	NA	***	***	***
	Index	-	100	139	148
Selling price	₹/MT	NA	***	***	***
	Index	-	100	143	151
Landed price of imports	₹/MT	1,19,024	1,04,913	1,32,457	1,39,018
	Index		100	126	133

101. The normated cost of sales, selling price and landed price of imports have increased over the period. However, the selling price is below even the normated level of cost of sales throughout the injury period. It is further seen that the landed price of imports are much below the level of cost and selling price of the domestic industry. Further, the increase in the landed price of imports was much lower than the increase in the cost of sales and selling price of the domestic industry. The imports were thus suppressing the prices of the domestic industry in the market.
102. It has been argued that landed price of imports have increased over the injury period. The

Authority therefore analysed the trends in major raw materials prices and impact of the same on the costs of the subject goods. It was seen that prices of major raw materials involved in production of the product have increased significantly. However, import prices have not increased commensurate with the increase in cost of raw materials. Whereas, raw material cost increased by ***, import price increased only by 33% between 2020-21 and the POI. This is without considering the increase in costs on account of increase in the prices of utilities.

Particulars	Unit	2019-20	2020-21	2021-22	POI
Phenol Price	Rs/MT	NA	***	***	***
IB Price	Rs/MT	NA	***	***	***
Phenol Cost	Rs/MT	NA	***	***	***
IB Cost	Rs/MT	NA	***	***	***
RM Cost	Rs/MT	NA	***	***	***
RM Cost	Trend	NA	100	140	151
Import Price - Subject Countries	Rs/MT	1,09,953	96,918	1,22,362	1,28,423
Import Price	Trend		100	126	133

G. 3. 7. Economic parameters of the domestic industry

103. 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 and the ability to raise capital investments. Accordingly, various injury parameters relating to the domestic industry are discussed herein below:

a. Capacity, production, capacity utilization and sales

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

Annual Movement

Particulars	Units	2019-20	2020-21	2021-22	POI
Installed Capacity*	MT	NA	***	***	***
Index		NA	100	133	133
Production	MT	NA	***	***	***
Index		NA	100	1,743	2,321

Capacity Utilization	%	NA	***	***	***
Index		NA	100	1,307	1,740
Domestic Sales	MT	NA	***	***	***
Index		NA	100	4,347	6,361
Export sales	MT	NA	NA	***	***
		NA	NA	100	128

Quarterly movement

Particulars	Units	POI Q1	POI Q2	POI Q3	POI Q4
Installed Capacity*	MT	***	***	***	***
Index		100	100	100	100
Production	MT	***	***	***	***
Index		100	262	370	333
Capacity Utilization	%	***	***	***	***
Index		100	250	358	317
Domestic Sales	MT	***	***	***	***
Index		100	261	850	640
Export sales	MT	***	***	***	***
Index		100	83	86	92

105. The Authority notes that the petitioner is the sole producer of the subject goods in India and started commercial production in July 2020. Further, the petitioner projected a capacity utilisation of ***% in its very first year of operations. While production & capacity utilization of the petitioner shows an increasing trend over the period, however, the production and capacity utilization is quite low considering the demand in India and level of capacity utilisation projected while setting up the plant. The petitioner was operating at a capacity utilization of only ***% during the POI, as against ***% projected and despite significant demand of the subject goods in India. The Authority has considered ***% capacity utilisation as reasonable capacity utilisation for the domestic industry in the POI for the purpose of NIP determination and considers that the same is the level of capacity utilisation that the domestic industry would have achieved in the absence of dumping. The actual capacity utilisation was much below projected levels. Dumping of the product in the country has prevented the domestic industry from achieving the level of capacity utilisation considered reasonable.
106. The interested parties contended that the domestic industry has already achieved a capacity utilisation of ***% in one of the quarters of the POI. The Authority however notes that (a) the same was still materially below the level of capacity utilisation that was found appropriate and reasonable for the domestic industry, (b) the capacity utilisation declined sharply to ***% in the subsequent quarter. Thus, even this level of ***% capacity utilisation was not sustained by the domestic industry and (c) the domestic industry has exported about ***% of its production.

b. Market Share in Demand

107. The yearly market share is as shown in table below.

Particulars	Units	2019-20	2020-21	2021-22	POI
Subject Countries	%-Indexed	100	119	112	106
Korea	%	***	***	***	***
Singapore	%	***	***	***	***
USA	%	***	***	***	***
Other Countries	%	***	***	***	***
Domestic Industry	%-Indexed	-	100	3,826	6,266

108. Quarterly movement of market share is as follows:

	Subject Countries	Korea	Singapore	USA	Other Countries	DI
21-22 Q2	***	***	***	***	***	***
21-22 Q3	***	***	***	***	***	***
21-22 Q4	***	***	***	***	***	***
22-23 Q1	***	***	***	***	***	***

109. It is seen that:

- The market share of the domestic industry increased upto Q4, 21-22 and declined thereafter.
- The market share of the subject imports declined till Q4, 21-22, and once again increased in Q1, 22-23.
- The market share of the non-subject imports declined steeply and significantly over the entire injury period.

c. Profitability, Cash profits, and Return on Capital Employed

110. The profit, profitability, cash profits, profit before interest (PBIT), and return on investment of the domestic industry over the injury period has been analysed and found as shown in table below. Further, since the domestic industry has commenced production in a new production facility, the Authority has analysed the trends in profits, cash profits and return on capital employed – once on the basis of actual production and sale during the period, and once considering normated cost of production in order to eliminate the effect of low-capacity utilisation of the new production operations. The Authority considers in this regard that price parameters considering actual cost of production, may show adverse position considering that the domestic industry has commenced commercial production on a new production line and has achieved low-capacity utilisation. Therefore, the Authority has additionally assessed price parameters by considering a capacity utilisation of ***%.

On the basis of actual cost of production:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Profit before tax	₹ Lacs-Indexed	NA	-100	-154	-193
Cash profit	₹ Lacs-Indexed	NA	-100	-136	-173
ROI	% - Indexed	NA	-100	-170	-225

On the basis of normated cost of production:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Normated Cost of sales	₹/MT	NA	***	***	***
Index			100	139	148
Selling price	₹/MT	NA	***	***	***
Index			100	143	151
Profit/(Loss) per unit at normated costs	₹/MT	NA	***	***	***
Index			(100)	(22)	(33)
Profit/(Loss) - total	Rs. Lacs	NA	***	***	***
Index			(100)	(963)	(2,113)
Profit before Interest	Rs. Lacs	NA	***	***	***
Index			(100)	(1,542)	(3,767)
Cash profit	Rs. Lacs	NA	***	***	***
Index			100	5,324	9,885
Return on Capital Employed-NFA	%	NA	***	***	***
Trend			(0-10)	(0-10)	(0-10)

111. It is seen that:

- The domestic industry started selling the product at a price below actual and normated cost of sales. Resultantly, the domestic industry suffered significant financial losses. Even when the domestic sales increased over the injury period, the losses suffered by the domestic industry also increased over the period.
- Even when the selling price increased over the injury period, the same were still not sufficient to permit recovery of all costs. The domestic industry has suffered financial losses through the injury period and even at normated costs.
- The domestic industry suffered cash losses throughout the injury period, extent of which increased over the injury period.
- The return on investment earned in the domestic sales has been negative throughout the injury period. Further, the ROI deteriorated over the injury period. Further, the selling prices were

insufficient to earn positive return on capital employed, even at the levels of normated cost of production.

d. Inventory

112. The data relating to inventory position of the domestic industry over the injury period and POI is given in the table below:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Opening Inventory	MT	NA	NA	***	***
Closing Inventory	MT	NA	***	***	***
Inventory	MT-Indexed	NA	100	166	219

113. It is seen that level of inventories with the domestic industry increased significantly over the injury period. The level of inventories are despite curtailed production and exports undertaken by the domestic industry, and significant demand for the product in the Country. The domestic industry was holding quite a low share in Indian market and therefore held significant opportunity for disposing off its stocks.

e. Employment, Wages and Productivity

114. The position with regard to employment, wages and productivity of the domestic industry is as follows:

Particulars	Unit	2019-20	2020-21	2021-22	POI
No of employees	Nos.	-	***	***	***
Index			100	115	118
Salaries & Wages*	₹ Lacs	-	***	***	***
Index			100	167	186
Productivity Per Day	MT/Day	-	***	***	***
Index			100	1743	2321

*Figures as per actual cost.

115. The Authority notes that the employment, wages and productivity has improved over the injury period.

f. Ability to raise capital investments

116. The domestic industry has made fresh investment in the PUC. However, the domestic industry has been unable to achieve optimum level of production and capacity utilisation for the PUC, despite significant capacities in the Country. The domestic industry is incurring financial losses, and losses

in cash profits. The ROI has been negative.

g. Growth

Growth Actual	Unit	2019-20	2020-21	2021-22	POI
Capacity	MT	NA	-	33%	-
Production	MT	NA	-	1,643%	33%
Sales	MT	NA	-	4,247%	46%
Average inventory	MT	NA	-	66%	32%
Market Share	MT	NA	-	14%	9%
Profit (Loss)	Rs Lacs	NA	-	-54%	-26%
Cash Profit	Rs Lacs	NA	-	-36%	-27%
ROI	%	NA	-	-69%	-33%

117. While increase in production, sales and utilisation is normal for a new industry, the actual performance compared with projected performance shows that growth in terms of these volumes parameters is materially below the projected level of operations. The growth in price parameters is also significantly negative and adverse.

G. 3. 8. Comparison of Actual performance with projected performance

118. Since the domestic industry commenced commercial production only July 2020 and the data for the three previous years of POI is not available, the Authority considers that it is necessary to compare the actual performance achieved by the domestic industry with the performance projected while undertaking investment. The table below shows the comparison of actual performance with the projected performance of the domestic industry.

Parameters	Projected/ Actual	Unit	2020-21	2021-22	POI
Capacity Actual	Projected	MT	***	***	***
	Actual	MT	***	***	***
<i>Capacity Actual</i>	<i>Projected</i>	<i>Index</i>	<i>100</i>	<i>100</i>	<i>100</i>
	<i>Actual</i>	<i>Index</i>	<i>100</i>	<i>133</i>	<i>133</i>
Production	Projected	MT	***	***	***
	Actual	MT	***	***	***
<i>Production</i>	<i>Projected</i>	<i>Index</i>	<i>100</i>	<i>133</i>	<i>142</i>
	<i>Actual</i>	<i>Index</i>	<i>100</i>	<i>1,743</i>	<i>2,321</i>
Capacity Utilisation	Projected	%	***	***	***
	Actual	%	***	***	***
<i>Capacity Utilisation</i>	<i>Projected</i>	<i>Index</i>	<i>100</i>	<i>133</i>	<i>142</i>
	<i>Actual</i>	<i>Index</i>	<i>100</i>	<i>1,307</i>	<i>1,740</i>
Domestic Sales	Projected	MT	***	***	***
	Actual	MT	***	***	***
<i>Domestic Sales</i>	<i>Projected</i>	<i>Index</i>	<i>100</i>	<i>133</i>	<i>142</i>

	<i>Actual</i>	<i>Index</i>	100	4,347	6,361
Export Sales	Projected	MT	***	***	***
	Actual	MT	-	***	***
<i>Export Sales</i>	<i>Projected</i>	<i>Index</i>	100	133	142
	Actual	Index	-	100	128
Cost of Sales	Projected	₹ /MT'	***	***	***
	Actual	₹ /MT'	***	***	***
<i>Cost of Sales</i>	<i>Projected</i>	<i>Index</i>	100	97	97
	Actual	Index	100	139	148
Applicant's Selling Price	Projected	₹ /MT'	***	***	***
	Actual	₹ /MT'	***	***	***
<i>Applicant's Selling Price</i>	<i>Projected</i>	<i>Index</i>	100	100	100
	Actual	Index	100	143	151
Profit/Loss (PBT)	Projected	₹ /MT'	***	***	***
	Actual	₹ /MT'	***	***	***
<i>Profit/Loss (PBT)</i>	<i>Projected</i>	<i>Index</i>	100	139	145
	Actual	Index	-100	-22	-33
ROI	Projected	%	***	***	***
	Actual	%	***	***	***
ROI	Projected	Index	100	188	217
	Actual	Index	-100	-1,701	-4,394

119. It is seen that the performance achieved by the domestic industry in respect of various macro-economic parameters, such as production, domestic sales, capacity utilisation, market share, profits, cash profits, ROI is materially below the levels projected by the domestic industry. Further, the difference between the projected performance and actual achieved is too significant. The domestic industry provided details of exports made by the company. The company has claimed that it has undertaken exports to a number of countries such as EU, Brazil, Columbia, Mexico, Turkey, Malaysia etc. Further, it is seen that the exports are at a price higher than the price realised in the domestic market.
120. The interested parties argued that project report is not exclusively for PTBP and it was drawn in 2016. It is noted in this regard that the project report referred to by the interested parties is the pre-feasibility report used by the company for getting Environmental Clearance in 2016. The project report has investment projected for the butyl phenol plant as a whole. This is however appropriate and natural considering a situation where a company has decided to invest in four products (none of which were produced in the country before) and which fall in the same family of products (i.e., butyl phenols), involving high degree of similarities in plant & equipment. Further, the Authority has considered investment in the PUC on proportionate basis based on the capacity installed for all the four types of butyl phenols being produced by the domestic industry. It is also seen that the project report deals with the market situation and projected performance for all the four types of butyl phenols separately. Further, the input prices considered in the project report are based on the then prevailing prices. However, the same has been appropriately adjusted for the actual input prices incurred by the petitioner during the injury period.

121. It has also been contended that unexpected events such as the COVID-19 pandemic, extraordinary increases in raw material prices, and geopolitical factors like the Ukraine conflict should also be adequately adjusted in the project report. The interested parties have however not established how have these factors specifically impacted the present domestic industry and have not impact both the foreign producers and producers of other commodities in India and globally. Factors such as COVID-19 pandemic, increases in raw material prices, and geopolitical factors like the Ukraine conflict should have rather provided additional protection to the domestic industry from low priced imports. Further, it is seen that the dumping margin in respect of cooperative exporters are as high as ***%. Thus, it appears that whereas foreign producers protected their own domestic markets and continued to charge remunerative and much higher prices in their own domestic market, they resorted to aggressive dumping in the Indian market. The Authority also notes that non- consideration of COVID-19 pandemic has not affected the reliability of the project or operations of the domestic industry. The domestic industry has one input captively sourced, whereas other major input (phenol) is not only available in significant volumes within the Country, but also there are significant imports thus ensuring competitive pricing. Further, any increase in raw materials and utility price because of Covid 19 or Ukraine Russia conflict would have been a global phenomenon and not solely impacting the domestic industry. It has not been shown that such factors, if any, had affected only the petitioner.

H. NON-ATTRIBUTION ANALYSIS

122. 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

123. The Authority notes that there were significant imports from non-subject sources. However, with dumping from the subject countries, imports from sources other than the subject countries declined significant in absolute terms and in relation to consumption in India. Further, these were at *de-minimis* level in the POI.

SN	Particulars	POI
A	Import volumes	
1	Subject countries	9,420
2	Non subject countries	304
B	Average import price	
3	Subject countries	1,28,423

4	Non subject countries	1,44,836
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b. Contraction of demand

124. The demand for the subject goods increased over the injury period, with some decline in the POI. It is seen that the demand increased significantly in 2021-22 and then declined in POI. However, demand has shown an increase over the injury period with respect to the base year. Further, subject imports were still catering to the majority (***) of the demand in the POI, despite commencement of production by the petitioner. Further, the domestic industry holds a capacity of *** MT against established demand of *** MT in the POI.

c. Changes in pattern of consumption

125. 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

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

e. Developments in technology

127. 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

128. The information provided has been considered only for domestic operations of the domestic industry.

I. MAGNITUDE OF INJURY MARGIN

129. 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. The NIP has been compared with the landed price of the 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.

130. 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:

SN	Producers/Countries	NIP	Landed price	Injury margin		
		(INR/MT)	(INR/MT)	(INR/MT)	%	(Range %)
1	Singapore	***	***	***	***	10-20
2	Korea					
	SI Group Korea Ltd	***	***	***	***	10-20
	Other producers/exporters	***	***	***	***	20-30
3	USA					
	SI Group Inc	***	***	***	***	50-60
	Other producers/exporters	***	***	***	***	70-90

J. POST DISCLOSURE COMMENTS

J.1 Views of the other interested parties

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

- i. The proposed determination with regard to reliability of export price is inappropriate for the reasons give below.
 - a. The Authority's observations and interpretation, that only the Authority can decide whether the NEP is unreliable, and the exporter cannot claim the same; the aspect of unreliability will be examined by the Authority only in the cases where the exporter claims higher export price is incorrect. The Indian legislature deemed it fit to not restrict the rights of any other interested party from claiming that their export prices are unreliable, instead of making it completely the Authority's prerogative.
 - b. It is the practice of the Authority not to rely on the prices between producer/exporter and importer when they are associated entities unless otherwise proved by the foreign producer/exporter.
 - c. The law does not state that the prices would be unreliable only when the dumping margin is negative.
 - d. The claim of unreliability of export price being advanced only after the oral hearing is not correct. The respondents in its submissions dated 25th April 2023 submitted that the prices to related importer are not reliable and should not be considered for the purpose of export price calculations.
 - e. Error in the transfer pricing due to technical glitch in the systems was discovered and immediately Special Valuation Branch ("SVB") was intimated vide a letter dated 26th September 2023. SVB will prepare its Investigation Report and share the same with Port Customs Authorities. Subsequently, the Port Customs Authorities will undertake the final assessment of the bills of entry and will raise the demand of additional duties along with the interest as per their understanding. This process generally takes 6 to 8 months. SI Group has taken the

necessary step to correct the transfer pricing. It is the custom authorities which will take the necessary steps to conclude this issue.

- f. Even if the Authority constructs the export price to affiliate customer based on the pricing to unaffiliate customer, the dumping margin is positive. Therefore, it cannot be said that the respondents have malafide intentions not to show dumping. The question which arises is whether the injury margin is more than the dumping margin or lower than the dumping margin after adopting the construction of export price.
- g. No prudent exporter will indulge in such practices to avoid the incidence of the anti-dumping duty. There are heavy penalties and interest demands are raised by the custom authorities for such practices.
- h. By the time the Authority initiates the investigation, any exporter has already exported the PUC to both related and unrelated customer in India which pertains to the POI. Therefore, the observation of the Authority that the exporter in general will start misusing the Explanation (b) to Section 9A (1) is practically not possible.
- i. The error in the transfer pricing for the PUC did not occur only in the POI but started 3 years prior and also impacted 3 other products exported by SI Korea and SI USA.
- j. SI Group has even made the provision for the payment of the duties along with the interest in their accounting books. SI Group India will pay the demand raised by the customs authorities once the assessment of BOEs gets finalized.
- ii. The Authority must construct the export price for the transactions between affiliated party based on the price to unaffiliated customers.
- iii. The transfer pricing policy of SI Group for PTBP is also based on the comparable uncontrolled pricing method which is nothing but the price to unaffiliated customer. Had there been no error, the transfer price would have been the same price to affiliated customer as the price to unaffiliated customer.
- iv. The landed price, along with the export price must be constructed in the present situation. It has been consistent practice of the Authority to adjust the loss on resale by the related importer not only in the export price but also in the landed price, in spite the fact that there is no provision in the law and the Rules to adjust the landed value.
- v. The market share of the domestic industry has improved to the extent that in the post POI period, in the 2nd Quarter of Financial Year 2023-24, their market share had reached to 79% (excluding the internal transfer within SI Group) and 48% including the internal transfer within SI Group.
- vi. The Authority is requested to kindly carry out a post POI data examination, especially for the period of July 2022 to June 2023 to reach a conclusive decision with respect to material retardation.
- vii. The productions lines for the 4 butyl phenols can be used interchangeably. This proves that in case the demand of other 3 butyl phenols increase, and it is more profitable for Vinati to sell these butyl phenols, they can shift their focus to their production instead of catering to the demand of PTBP in India. This also proves that the respondents' contention that with the amalgamation of Vinati with VAPL, Vinati will divert its capacity of butyl phenols to cater to its captive consumption to manufacture further downstream products if it is more profitable for them in the future leading to demand supply gap.
- viii. The Authority has not examined the submissions made by the respondents and other interested parties that as per Vinati's annual report for FY 2019-20, it has been manufacturing PTBP.
- ix. The Authority has not provided any examination with respect to the sanctity of the project

report which is crucial in the present investigation since Vinati may have shown a high profitability in the project report on an assumption of higher-than-normal selling price realization. As project reports are generally prepared for attracting higher valuations and investments into the company.

- x. The Authority has not stated if any adjustments were made to the projected estimates to account for unforeseen circumstances such as COVID-19 pandemic, extraordinary increase in raw material prices, Ukraine war scenario etc.
- xi. No adjustment has been made by the Authority on account of the volumes of estimated sales of the PUC in the project report.
- xii. Vinati themselves claimed that the impact of the anti-dumping duty, if imposed is 0- 5% on the end-users. It is unclear how the Authority has arrived at the conclusion that the impact on end-users will be less than 1%.
- xiii. The subject goods are used in various end applications and all applications requires different specifications and due to this the price also differs significantly.
- xiv. PTBP exported to affiliated company and to unaffiliates are of different specs and therefore prices are different.
- xv. The inability to produce and sales is directly linked to the technological constraint faced by the domestic industry, and therefore, making imports responsible for low production and sales is complete unacceptable proposition.
- xvi. Till the time the requested information / analysis is not carried out and fresh non-confidential version of the disclosure statement is not issued, the whole analysis and purpose of issuance of disclosure statement become frustrated.

J. 1. Views of the domestic industry

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

- i) The Authority should not reject the price of the export sales to related party. The exporter has not established how the prices are unreliable and have not even suggested an appropriate alternate methodology. Instead, the exporter has pleaded ignoring those export transaction.
- ii) The export price under the rules must be determined for cumulative exports made by the exporter and no volume can be ignored for the purpose. Ignoring volume of sale to affiliated party in the present case shall imply adopting negligible export volumes of the company, which can itself be *de-minimis* in terms of the total imports into India. This is all the more important in the situation where the company concerned is the sole exporter of the PUC into India.
- iii) NIP determined is too low. The basis of allocation considered for allocation of fixed expenses and net fixed assets have not been disclosed. It transpires that expenses turnover has been considered on the basis of actual sales volume and sales value and the expenses reported by the domestic industry have been disregarded.
- iv) It was explained during the course of verification that the DGTR should either consider all data from actual production & sale, or the DGTR should consider sales volume and sale values from the project report (after due adjustment for changes necessary due to raw material prices).
- v) The imports have retarded the establishment of the domestic industry.
- vi) Imposition of duty is in public interest and the duties does not have an adverse impact on the

consumers. The end customers of both the perfumery and resin industries are mostly consumed by the upper sections of the society. Even if the miniscule effect of the consumers is to be considered, it only affects a small section in the Indian economy who has much higher spending.

- vii) It is a known fact that SI group imports the subject goods for captive use and thus the low-priced imports by SI group was making them extremely and unfairly competitive in the downstream industry vis-à-vis other downstream producers.
- viii) The domestic industry is yet to utilize its production capacity to the optimum levels. With the imposition of duties on the subject countries, the domestic industry would be able to achieve its optimum capacity level and cater to the Indian market better. The importers will be able to switch suppliers in case of imposition of duties on the PUC. There are other countries which are producing the subject goods and are also exporting to India, namely, Taiwan, China and Russia.
- ix) The PUC consumption is in both the perfumery and resin segments, where the downstream producers are facing unfair competition from SI Group India. SI Group India is getting the product at highly dumped prices. SI Group India is producing both fragrance and resin products and selling them in the market causing competition to those producers who are sourcing PTBP from either domestic industry, or other countries or from SI Group at a higher price.
- x) Imposition of anti-dumping duty would take away the unfair advantage that was available to SI Group India and would create fair market conditions not only in the PTBP market but also in the downstream market.
- xi) Having a domestic source of supply is a step towards making India self-reliant and *Atma-Nirbhar*. It is very important for the customers to have a stable domestic supply available to maintain a healthy and reliant source of supply.
- xii) Large section of the perfumery segment is exporting the downstream product, i.e., fragrance/perfume and these producers are importing subject goods under the advance license.
- xiii) There be no monopolist situation for the domestic industry. The domestic industry is producing and selling several products where they are the sole producer and anti-dumping duty was in place on imports of several such products in the country. The non-imposition of duty would make the country solely dependent on imports which harms the interest of the consumers. Imports are also coming from non-subject companies who had been supplying significant volumes in the market. Further, anti-dumping duty does not restrict the imports from subject countries and merely regulate the imports.
- xiv) Duty should be imposed for five years in US dollars. Indian Rupee has depreciated significantly which has impacted the costs of the raw materials, utilities and other costs.

J.3 Examination by the Authority

133. The Authority has examined the post disclosure submissions made by the other interested parties and notes that much of the comments are reiterations which have already been examined suitably and addressed adequately in the relevant pages of the findings. Issues raised in the disclosure statement which have already examined, have not been examined now.

134. As regards the contention that the practice of the Authority is not to rely on the prices between

producer/exporter and importer when they are associated entities, the Authority notes that the argument tantamount to a claim that the Authority shall invariably construct export price when the exporter and importer are affiliated. However, there is no basis for such an interpretation of Section 9A(b).

135. As regards contention that the exporter in its submissions dated 25th April 2023 submitted that the prices to related importer are not reliable and should not be considered for the purpose of export price calculations, the Authority notes that even when the exporter made submission on 25th April, 2023, no steps whatsoever were taken by the exporter and the importer to correct the irregularity till 26th September, 2023.
136. As regards the contention that the Special Valuation Branch (“SVB”) was intimated vide letter dated 26th September 2023, the Authority notes that inordinate time has elapsed first between the alleged error and its reporting to DGTR, and, thereafter, secondly between finalising questionnaire response & submissions before the DGTR and reporting to SVB. The exporter has not provided the relevant SVB documents and the Authority is unaware of the claims made by the importer with regard to the price at which imports should be assessed. The Authority notes that there were various prices in the investigation period and therefore it cannot be considered that export price to the unaffiliated customers alone might be considered as appropriate price by the SVB. The Authority is still unaware of the price that the customs authorities will eventually decide. While the plausible corrections to the export price in future may partially address the degree of dumping, in so far as the question of injury to the domestic industry and injury margin is concerned, the same stands caused by the exports already made. It was these export prices based on which the Indian industry for the PUC and the downstream industry suffered because of exports made by the exporter. Therefore, in any case, it is not established why the Authority should not consider the prices reported by the producers in their exporter’s questionnaire response.
137. The Authority notes that the exporter has admitted that the dumping margin is quite significant even if determined based on export price to affiliated customers. In so far as injury margin is concerned, in any case, such injury has occurred by the price at which goods were invoiced to the Indian importer. The domestic industry is not expected to get a better price from its customers, by contending that the prices reported by the exporters to the importer were unreliable because of affiliations, and same might be corrected after elapse of such significant time.
138. The statement that the error in the transfer pricing occurred not only in the POI but started 3 years prior and also impacted 3 other products exported by SI Korea and SI USA shows that the Indian producers and consumers of the products concerned and the downstream products have indeed suffered based on these prices at which goods have been imported during relevant period.
139. As regards the contention that SI Group has even made the provision for the payment of the duties along with the interest in their accounting books, the Authority notes that no such information is on record of the Authority.
140. As regards the contention that the transfer price would have been the same price to affiliated customer as the price to unaffiliated customer, the Authority notes that the injury to the domestic industry occurred by the prices that were reported during the relevant period. Such injury cannot be remedied by such belated correction of import transactions valuations.
141. As regards the argument that post POI data should be examined to determine material retardation, it is noted that the injury information for the POI itself adequately shows the adverse impact of imports on the domestic industry.
142. As regards the argument that the capacity of 4 butyl phenols can be used interchangeably, the

Authority notes that such interchangeability of production capacities by the applicant cannot be a routine activity. Further, in any case the present capacity of the domestic industry in itself is utilised, and is largely sufficient to meet the demand of the product in the country. The domestic industry can cater to the existing demand. Further, even assuming that there could be a potential situation of demand supply gap, it is noted that there are other non-subject country sources of supply available to the consumers and thus availability of the product will not be a concern for the consumers. It is also noted that there are review provisions under the rules, which can be invoked by the interested parties.

143. As regards the submission that Vinati's annual report for FY 2019-20 indicates that it had started production of subject goods much earlier, it is noted from the excerpts of annual report of 2019-20 that it stated that the company is focusing on developing new process for production of butyl phenols. Further, annual report of 2020-21 categorically stated that butyl phenol was introduced in financial year 2021.
144. As regards the argument that price realisations projected could be for higher valuation, the Authority notes that the price realisations had been projected based on cost of goods, utilisation of capacity etc. Further, it is also noted that the company has primarily funded the investment in butyl phenol products internally, without relying on external sources like investors or banks.
145. As regards the argument that volume of sales has not been adjusted, the Authority notes that the projected sales were based on the utilisation that can be achieved by the domestic industry. The projected sales are below the level of demand in the POI. Thus, there was no need for adjusting the projected sales of the domestic industry. Further, even when demand declined from Q3 POI to Q4 of POI, the market share of subject countries increased. Thus, the domestic industry has not been able to increase its market share despite sufficient capacity and production.
146. As regards the argument that there are various different specifications of subject goods leading to difference in cost and price, it is noted that the interested parties have not provided any evidence for the same.

K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

K. 1. Views of the other interested parties

147. The following submissions have been made by other interested parties:
 - i) Imposition of anti-dumping duty in the present case would be against public interest. The domestic industry has already been performing well and has secured a significant market. Therefore, there is no need of imposition of anti-dumping duty.
 - ii) Increase in costs of PUC cannot be easily passed on to end consumers. The downstream industry is sensitive to price, and any increase in costs would directly affect the cost of production of downstream products, potentially leading to market loss and manufacturing difficulties.
 - iii) The imposition of anti-dumping duty would not only increase the cost of user industry but

also impact the end user.

- iv) The downstream products are sold at prices that generate low margins. Any increase in costs could result in loss of market as well as the ability to continue manufacturing of downstream products.
- v) The imposition of anti-dumping duty would create a monopoly for the domestic industry.
- vi) The impact of the duty was calculated by the user industry to be around 6-8%
- vii) SI Group India's plant has been boosting employment in India from its inception. The construction and establishment of the plant provided employment to hundreds of skilled and unskilled labours.
- viii) Request the Authority to recommend the imposition of anti-dumping duty for a maximum period of 2 years if material retardation is established in the present investigation.

K. 2. Views of the domestic industry

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

- i) The consumers should have demonstrated that the cost increases were not passed on and rather absorbed.
- ii) The impact of the anti-dumping duty on the end users is very negligible
- iii) PTBCHA is largely exported and thus PTBP procured for PTBCHA is generally procured under advance license and thus the imposition of duty will not have any impact on such sales. The consumers of PTBPCCHA are big players who can easily absorb any impact of increase in duty. Similarly, PTBP constitutes significant part of Resin and thus they pass on the impact of increase in cost to downstream products.
- iv) The imposition of anti-dumping duty is to ensure that the imports enter the country at a fair price. There be no monopolist situation for the domestic industry. The non-imposition of duty would make the country solely dependent on imports which harms the interest of the consumers.
- v) Any increase in cost of fragrance/perfume is passed on to soaps, shampoos and detergent manufacturers who are part of FMCG sector and cost of perfumery in their cost is minimal. The impact calculated is between 0.05% on the perfumery industry and 3.38% on resin industry.
- vi) SI Group sought repeated protection from the Government on phenol, acetone and nonyl phenol. It is really double standard that is being preached by the company – one as a domestic producer and one as a consumer.
- vii) The Authority should not consider the present case as an exception and should recommend duty for 5 years. The petitioner is facing significant losses and the imports are undercutting the prices of the domestic industry. A duty levied for a shorter period of time would not be effective in addressing the material retardation suffered by the domestic industry.

K. 3. Examination by the Authority

149. The Authority issued the initiation notification, inviting views from all interested parties including importers, users and consumers. A questionnaire was also prescribed to allow various stakeholders,

including domestic industry, the users/ consumers and upstream input suppliers to provide relevant information with regard to the present investigation, including the possible effect of anti-dumping duty on their operations. It is noted that only SI Group India Private Limited, Eternis Fine Chemicals Limited, and Polymers and Polysols filed response to the EIQ. Barring these three, none of the consumers of the PUC have made any submissions. It is noted in this regard that consumer industry is not a small industry, and the present investigation is deemed to be within their knowledge.

150. PTBP is used in the perfumery and resin industry. The consumption of PTBP is ***% in the perfumery industry and ***% in resin industry. The table below shows consumption profile of the PUC in the downstream industry.

SN	Particulars	Unit	Soaps & detergents	Resins
1	Consumption of PTBP	MT/MT	***	***
2	Price increase in PTBP	Rs/MT	***	***
3	Increase in cost of end product	Rs/MT	***	***
4	Price of end product	Rs/MT	***	***
5	Impact of anti-dumping duty	%	<1%	<1%

151. The other interested have made submissions which have been examined by the Authority in the following paragraphs.
152. The Authority notes that the purpose of imposition of anti-dumping duty is to remedy the situation of dumping causing injury to the Indian industry, and establish a fair level playing field for the domestic industry. The Rules provide 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 thus ensures that the remedy to the Indian industry is limited.
153. Some of the 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 2020 and before this period, India's demand with respect to the PUC was being fulfilled through imports. Whereas about ***% of the demand for the product was being met by non-subject imports during the base year, the domestic industry presently occupies merely ***% of the market share and the rest is being catered by imports.
154. 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 antidumping duty is meant to only prevent dumped imports and provide remedy to the domestic industry whose growth has been materially retarded. A substantial share of the market would still be catered by such imports.
155. The Authority notes that trade remedial measures are intended to restore equal competitive opportunities in the domestic market by ensuring level playing field to domestic producers through imposition of appropriate duties against unfair imports of the subject goods. At the same time, the

Authority is cognizant of the fact that the impact of such duties, in general, are not limited to only the domestic producers of the PUC but can also affect the users as well as consumers of the PUC. Further, imposition of duties may also lead to competition issues within the country and the Authority takes note of the same.

156. The Authority notes that the impact of duties on the end-users and consumers of the like product in India shall be minimal. The downstream industry which uses the subject goods are:
 - a. PTBCHA which is used by the perfumery industry to produce fragrance.
 - b. Resin which is used in the coating/ink/adhesive industry.
157. It is noted that the subject goods as such have no direct application/use and they are transformed to have an application. The eventual end-product of PTBP in the perfumery industry is in soaps, detergent, and shampoo.
158. PTBP is used in the production of PTBCHA (4-tert-Butyl Cyclohexyl Acetate). The petitioner has claimed that the approximate consumption of PTBP in PTBCHA is around 78%. The only use of PTBCHA is in perfumery industry. The petitioner also submits that PTBCHA is largely exported and thus PTBP procured for PTBCHA is generally procured under advance license and thus the imposition of duty will not have any impact on such sales. The same has not been disputed by the other parties.
159. The Authority notes that the producers of PTBCHA pass on the changes in cost to their customer, i.e., producers of the next product, i.e., fragrance/perfume, which is used by soaps, shampoos and detergent manufacturers who are part of FMCG sector. However, the product is not used in all kinds of soaps, shampoos and detergent manufacturing. The product is used only in premium or high-end segment of soaps, shampoos and detergent manufacturing. Further, the FMCG sector in India has been registering healthy growth. The calculations provided by the domestic industry (other interested parties have not quantified impact of the proposed measures on the eventual end product) shows that cost on account PTBCHA constitutes hardly ***% of the cost of production of soaps, shampoos and detergent. Thus, even if the price of PTBP and consequently PTBCHA increase by the quantum of anti-dumping duty (i.e., ***%), the same shall imply an increase in the cost of production of soaps, shampoos and detergent by an amount in the region of ***%. Thus, imposition of measures will not impact the cost of production of eventual end product and therefore would not adversely impact relative competitiveness of the eventual end product.
160. In case of the resin industry, the petitioner claimed and the Authority notes that the approximate consumption of PTBP in resin is around ***%. The consumption of resin is in production of Coating, ink and adhesive. PTBP resin consumption in Coating, ink and adhesive is very minimal. Thus, there shall be no adverse impact of increase in cost of resin on these end products.
161. It is also been submitted by the domestic industry that a large section of the perfumery segment is exporting the downstream product, and these producers are importing subject goods under the advance license. The imports for export purposes in anyway will not attract anti-dumping duty.

162. The applicant is the sole and new producer of subject goods. Consumers were reliant only on imports prior to the establishment of production capacities by the applicant. Having a domestic source of supply would make the country self-reliant will give the customers a healthy and reliant source of supply.

L. Conclusion and recommendation

163. Based on the submissions made, substantiated information provided by the interested parties and the facts available before the Authority as recorded and examined in the aforementioned paragraphs and on the basis of determination of dumping and consequent injury to the domestic industry in the form of material retardation of the establishment of the domestic industry, the Authority concludes the following:

- i) The product under consideration is “Para-Tertiary Butyl Phenol” or “PTBP.” PTBP is also known as 4 tert butylphenol/ p tert butylphenol/ PTBP Chemical / para tert butyl phenol
- ii) The applicant started commercial production of the subject goods in July 2020. The subject goods are a new product in the country in so far as its production in India is concerned.
- iii) The subject goods exported from the subject countries and the article manufactured by the domestic industry are ‘like article’ to each other in terms of Rule 2 (d) of the AD Rules, 1995.
- iv) The petitioner is the sole producer of the product and accounts for 100% of the Indian production. The petitioner satisfies the requirements stipulated under Rule 2 (b) of the AD Rules, 1995 and the petition satisfies the standing requirements under Rule 5(3) of the AD Rules, 1995.
- v) The present case is of material retardation to the domestic industry. The domestic industry is the sole producer of the PUC and started production in July 2020. The capacity utilization has been in the range of 25-35%. There is no major overlap between the earlier established plant and the new plant. The domestic industry is still in nascent stage and is in the process of establishing itself.
- vi) The dumping margin of the subject goods from the subject countries and by responding producers/exporters is positive and significant.
- vii) The volume of imports from subject countries increased till 2021 – 22 and declined in the POI following the movement of demand. Imports increased despite commencement of production by the domestic industry. The market share of the domestic industry during the POI has increased, but the domestic industry has captured the market share that was vacated by non-subject country imports.
- viii) The landed price of imports is below the level of selling price of the domestic industry and is undercutting the prices of the domestic industry. Further, the selling price is even below the normated level of cost of sales throughout the injury period. The increase in the landed price of imports was much lower than the increase in the cost of sales and selling price of the domestic industry. The imports were thus suppressing the prices of the domestic industry in the market.
- ix) As regards the effect of such dumped on the economic parameters of the domestic industry, the following conclusions were reached:

- a. The performance of the domestic industry in terms of production, installed capacity, sales volumes has improved during the POI as compared to the base year, however, remains significantly below the levels projected.
 - b. The petitioner is suffering significant financial losses in its profit/loss, PBIT, and ROI. Even when the domestic sales increased over the injury period, the losses suffered by the domestic industry also increased over the period.
 - c. The average inventories of the applicant have increased during the POI as compared to the base year.
 - d. The salary and wages, productivity per day, and productivity per employee has improved during the POI as compared to the base year.
 - e. 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 during the POI.
- x) The domestic has suffered injury as a result of the dumped imports. The injury margin is significant.
 - xi) The Authority has examined the submissions made by other parties on any other factors which could have caused injury to the domestic industry. No other factor appears to have caused injury to the domestic industry. The Authority concludes that the injury in the form of material retardation to the establishment of the domestic industry has been caused by the dumped imports from the subject countries.
 - xii) The antidumping duty is in the public interest. Establishment of the domestic industry will make the country self-reliant and will give an alternate domestic supply to the consumers. The Authority has quantified the impact of anti-dumping duty on the users. It is seen that the impact of the measures will be <1% considering the nature of the PUC being consumed. The Authority has additionally examined the impact on the eventual downstream product, and it is seen that even if the user industry passes on the cost of anti-dumping duty, the impact on the eventual end consumers will be insignificant. None of the user industry has participating, indicating the user industry is not impacted. The imposition of anti-dumping duty would not have any significant adverse impact on public interest.
164. 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 establishment of the domestic industry caused by such imports, the Authority is of the view that imposition of antidumping duty is necessary.
165. Having regards to the lesser duty rule followed, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of the anti-dumping duty on the imports of subject goods originating in or exported from the subject countries, for a period of 5 years, from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Column 7 of the duty table

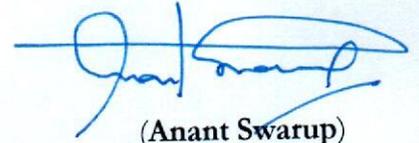
appended below.

Duty Table

Sl. No.	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	29071940	Para-Tertiary Butyl Phenol (PTBP)	Korea RP	Any country, including Korea RP	SI Group-Korea Ltd.	208	MT	USD
2	-do-	-do-	Korea RP	Any country including Korea RP	Any producer other than (1)	357	-do-	-do-
3	-do-	-do-	Any country other than Korea RP, USA and Singapore	Korea RP	Any	357	-do-	-do-
4	-do-	-do-	USA	Any country including USA	SI Group Inc.	790	-do-	-do-
5.	-do-	-do-	USA	Any country including USA	Any producer other than (4)	881	-do-	-do-
6.	-do-	-do-	Any country other than Korea RP, USA and Singapore	USA	Any	881	-do-	-do-
7.	-do-	-do-	Singapore	Any country including Singapore	Any	349	-do-	-do-
8.	-do-	-do-	Any country other than Korea RP, USA and Singapore	Singapore	Any	349	-do-	-do-

M. FURTHER PROCEDURE

166. An appeal against the determination of the Designated Authority in this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.



(Anant Swarup)
Designated Authority