

**To be published in Part-I Section I of the Gazette of India Extraordinary  
No.14/05/2016-DGAD  
Government of India  
Department of Commerce  
Ministry of Commerce & Industry  
(Directorate General of Anti-Dumping & Allied Duties)  
4th Floor, Jeevan Tara Building, 5 Parliament Street, New Delhi -110001**

Dated 4<sup>th</sup> May, 2017

**Preliminary Findings**

**Subject: Anti-dumping investigation concerning imports of “Ceramic Tableware and Kitchenware, excluding knives and toilet items”, originating in or exported from China PR.**

No.14/05/2016-DGAD: - Having regard to the Customs Tariff Act 1975 as amended from time to time [hereinafter also referred to as the Act] and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules,1995, [hereinafter also referred to as the Rules], as amended from time to time, thereof;

2. Whereas All India Pottery Manufacturers Association (AIPMA) and the Indian Ceramic Society (herein referred as petitioners/ petitioner associations) have filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and Rule *supra* for initiation of anti-dumping investigation and imposition of anti-dumping duty concerning imports of Ceramic tableware and kitchenware, excluding knives and toilet items, (hereinafter also referred to as Ceramic tableware and kitchenware or the subject goods), originating in or exported from China PR (hereinafter also referred to as the subject country) alleging dumping of subject goods from subject countries and consequent injury to the Domestic Industry.
3. And whereas the Authority on the basis of prima facie evidence submitted by the applicant, issued a Notification 14/05/2016-DGAD dated 13<sup>th</sup> October, 2016, published in the Gazette of India, Extraordinary, initiating the subject anti-dumping investigation in accordance with the sub Rule 5 of the AD Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the Domestic Industry.

**A. PROCEDURE**

4. The procedure described herein below has been followed by the Authority with regard to the subject investigation;
  - i. The Designated Authority, under the above Rules, received a written application from the Applicants on behalf of the domestic industries, alleging dumping of Ceramic Tableware and Kitchenware products originating in or exported from China PR.
  - ii. The Authority notified the Embassy of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 *supra*.

- iii. The Authority, on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject country. The Authority issued a public notice dated 13<sup>th</sup> October, 2016 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
- iv. The Authority sent a copy of the initiation notification to the Embassy of China PR in India, known producers/exporters from China PR, known importers/users and the Domestic Industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
- v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of China in India in accordance with Rule 6(3) of the Rules supra.
- vi. The Authority sent exporters questionnaires to elicit relevant information to the following known producers/exporters in China PR (whose details were made available by the applicant) and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the AD Rules.
  - a. Kangfu Ceramic Manufacturing Co.
  - b. Changsha Joysaint Dishware Co. Ltd.
  - c. Zibo Timestone International Co. Ltd.
  - d. Shanghai Fine-V Homeware & Gifts Int'l Trade Co. Ltd.
  - e. BRT Industry Co. Ltd.
  - f. Hojiang Ceramic Shenzhen Co. Ltd.
  - g. Shenzhen Goldenwall Ceramic Co. Ltd.
  - h. Qinhuangdao Hdt Trading Co. Ltd.
  - i. Karosa Chinaware (Shenzhen) Co. Ltd.
  - j. Jingdezhen Amtion Porcelain Co. Ltd.
  - k. Handan Fengfeng Shengyuan Ceramic Co. Ltd.
  - l. Leta International Group Co. Limited
  - m. Linton International Co. Ltd. (Rizhao)
  - n. Guangxi Yulin City Jiachao Ceramics Co. Ltd.
- vii. In response to the initiation notification, none of the exporters/producers from China have responded.
- viii. China Chamber of Commerce for Import & Export of Light Industrial Products & Arts-Crafts has filed legal submissions but none of its members filed questionnaire response within the stipulated time. The party sought extension after expiry of the time limits as well as the extended time already given by the Authority. The party had not availed opportunity provided to them in timely manner. The Authority notes that anti-dumping duty investigations being time bound require detailed analysis of information filed by the exporters in order to assist the authority to arrive at a fair determination. Therefore, the request of extension by the party at a belated stage was

not accepted. However, the submissions filed by the party has been considered and duly addressed appropriately in this finding.

- ix. The Authority sent Importers Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules
  - a. K.S. Overseas
  - b. East Coast Distributors Pvt. Ltd.
  - c. Raj Agencies
  - d. YSR Industries Pvt. Ltd.
  - e. Wal-Mart India Private Limited
  - f. Whitegold Trading Co. Pvt. Ltd.
  - g. ICC Realty (I) Pvt. Ltd.
  - h. Future Retail Limited
  - i. Krishna Enterprises
  - j. Karma Trading
- x. In response, only M/s Wal-Mart India Private Limited, an importer, has filed Importer Questionnaire responses & legal submissions.
- xi. Also, the injury submissions have been filed by M/s Hamilton Housewares P. Ltd at a very late stage of investigation. The same have been made available in the public file and also addressed appropriately in this finding.
- xii. Copy of initiation notification was also sent to known Indian producers/Associations of the product under consideration including the petitioners.
- xiii. In response, the following have filed their letters supporting the petition
  - a. Yashvi Enterprise,
  - b. Anil Fine Ceramic,
  - c. Samrat Ceramics,
  - d. Raghuv eer (India) Limited,
  - e. Marvel Ceramics Private Limited,
  - f. Sea Shell Ceramics (India) Private Limited,
  - g. Mudrika Ceramics (I) Ltd.,
  - h. Shan Tablewares Private Limited,
  - i. Feather Touch Ceramics Private Limited,
  - j. Oasis Ceramics Private Limited
  - k. Tata Ceramics Limited.
- xiv. Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. Submissions made by all interested parties have been taken into account in this Preliminary Finding Notification.

- xv. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules.
- xvi. Further information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the Domestic Industry was conducted to the extent considered necessary for the purpose of the investigation.
- xvii. Non-injurious price has been determined based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the Domestic Industry on the basis of Generally Accepted Accounting Principles (GAAP) so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xviii. Investigation was carried out for the period starting from 1st April 2015 to 31st March 2016 (POI). The examination of trends, in the context of injury analysis, covered the period from April 2012-March 2013, April 2013-March 2014, April 2014-March 2015 and the Period of Investigation (POI).
- xix. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the POI. The authority has relied upon import data procured from DGCI&S in the present investigation.
- xx. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this preliminary findings.
- xxi. 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 considered such interested parties as non-cooperative and recorded these findings on the basis of the facts available.
- xxii. \*\*\*in this preliminary finding represents information furnished by an interested party 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 1US\$=Rs. 65.91.

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

### **Views of the opposing interested parties**

- 5. The submissions of various interested parties are summarized as follows:

- i. There is a huge quality difference between the product imported and supplied by the Domestic Industry. The quality of the PUC supplied by the domestic suppliers is not upto the mark.
- ii. The product supplied by the Domestic Industry is very basic, whereas, imported products are all machine made and has a far better finishing, there were many rejections on the goods supplied by the domestic supplier, and packing by the Domestic Industry is very poor.
- iii. The domestic suppliers do not supply goods less than a truck which leads to increase in inventories and increases days of handling more than prescribed norms of Walmart.
- iv. Reasons for importing goods from China
  - Quality concerns of the product supplied by Domestic Industry
  - Domestic suppliers do not have the availability of proper machinery
  - Non availability of goods quality cordierite, saggars, setters and nitride bonded silicon carbide kiln furniture.
  - Non availability of cheaper fuel like natural gas.
- v. The product under Consideration is too broad and includes heterogeneous products. As per the transaction wise import data sanitary ware and toilet seat were considered as PUC.
- vi. Spice mills and ceramic grinding parts should be excluded from the product scope because these mills are not used for standard tableware such as cups and plates.
- vii. The Authority should provide a clarification on product scope.
- viii. The domestic supplier are unable to provide Studio Pottery

**Views of the Domestic Industry are as follows:**

6. The Domestic Industry made the following submissions:
  - i. The product under consideration is Ceramic tableware and kitchenware, excluding knives and toilet items, originating in and exported from China PR.
  - ii. Earthen ware, bone china, stoneware and porcelain-ware all constitute ceramic products and therefore the product under consideration includes kitchenware and tableware of ceramics.
  - iii. The various hard, brittle, heat-resistant and corrosion-resistant materials made by shaping and then firing a non-metallic mineral, such as clay, at a high temperature are Ceramics. Bone China is manufactured from calcium phosphate (bone ash), clay, feldspar and quartz powder.
  - iv. Subject goods are classified under Chapter 69 of Customs Tariff Act, 1975 however imports are taking place under various subheadings at 6 and 8 digit level under HS code 6911 & 6912. The customs classification is indicative only and is in no way binding on the scope of the proposed investigations. Study of the import data shows that subject goods have been imported into India under the various Customs sub-headings such as 6911, 691110, 69111011, 69111019, 69111021, 69111029, 69119010, 6912, 69120010, 69120020, 69120030, 69120040

- v. The product has various properties such as powerful hydrophobic and oleo phobic properties, enormous non-stick properties, hygiene protection for ceramic surfaces, strong abrasion resistance, short drying period, can be stored directly after application, resistant to temperature change, drying at room temperature, chemical and abrasion resistant, high efficiency through economical use (consumption: 5-10 ml per m<sup>2</sup>), food safe, environment-friendly, completely frost proof
- vi. The subject goods produced by the Domestic Industry are identical to the product under consideration being imported into India. The Domestic Industry claims that there is no known difference in applicant's product and product under consideration exported from the subject country and the two 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. There is no significant difference in the subject goods produced by the applicant and those exported from the subject country and both are technically and commercially substitutable.
- vii. The claim of exporter regarding their quality being far superior is strongly refuted. There is no difference in the technology employed. Indian industry is fitted with best of the machines viz roller heads, auto cup plants and equipped with latest state of art, fuel efficient and environment friendly kilns. Kiln furniture, seggars, raw materials, China clay etc. of best quality is readily available. In fact, Indian produced Kiln furniture and raw material is so good in quality that it is being exported to various countries. Difference in quality is not a sufficient justification for exclusion of a product as has been held by the Designated Authority and upheld by the Honøble CESTAT in the matter of DSM Idemitsu Limited Versus Designated Authority.
- viii. The scope of the Product under consideration is not broad but similar as other investigations such as Opal Glassware, Melamine products, Ceramic Insulators.
- ix. As per WTO decision the Designated Authority is free to define the Product under consideration in a manner deemed appropriate and proper.
- x. If the imported goods are of better colours and designs or are more innovative, it should certainly have better prices than the domestic producers, but it is not so in the present case.
- xi. The allegation of rejection of domestic products is completely baseless. Walmart still buys Ceramic tableware from the domestic producers.
- xii. Domestic Industry is manufacturing and supplying STUDIO pottery to many Indian Retail chains like Future Group (Big Bazar), Lifestyle, Good earth, Shoppers Stop etc.

**Examination by Authority**

- 7. The product under consideration in the present investigation is defined as "Ceramic table wares and kitchen wares, excluding knives and toilet items" (hereinafter referred to as "subject goods" or PUC).
- 8. It is noted that bone china, stoneware and porcelain-ware all constitute ceramic products and therefore the product under consideration includes kitchenware and tableware of bone china, stone and porcelain. Ceramic tableware and kitchenware products are used for the purpose of eating, drinking and serving food and beverages and for decoration in homes and hotels.

9. The product under consideration is not produced in various grades having any significant difference in the associated cost. Various types of the product, such as spoons, bowls, plates, etc. are produced from the mixture of calcium, quartz, feldspar and china clay. Production of different types merely implies forming this mixture into desired shape. Therefore, it is considered appropriate to classify all these items under a broad heading of "Ceramic Tableware and Kitchenware products". There has been a similar kind of case for the product called "Opal Glassware of all types" and "Melamine Tableware and Kitchenware products".
10. As regards the argument of supply of Studio Pottery by the petitioners, it is noted that the petitioners have provided evidence of supply of studio pottery. The claim of the interested parties is found factually incorrect. The Authority notes that the definition and scope of PUC is clearly provided in the initiation notification and also in this provisional finding regarding the PUC.
11. The Authority has decided that it would be appropriate to express PUC in terms of weights because at import end as well as factory to dealer end the transactions are mainly done in weight terms. Further, it has been seen that more than 50-60% of the cost of the product is on account of raw material and utilities. The cost of the raw material and utilities is in direct proportion to the weight of the product; therefore, the cost of production is quite linear with weight of the product. The majority of DGCIS data is available in weight terms and all the analysis has been done on the basis of weight.
12. Subject goods do not have a dedicated classification and is classified under Chapter 69 of Customs Tariff Act, 1975. It is imported under various subheadings under HS code 6911 and 6912. However, the HS codes are indicative only and product description is the determining factor for the purpose of present investigation.
13. Therefore, the PUC under the present investigation is "Ceramic table wares and kitchen wares, excluding knives and toilet items"

#### **LIKE ARTICLE**

14. Rule 2(d) of the AD Rules defines like article as follows:

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

15. As argued by the other interested parties about the quality, design of the product manufactured by the Domestic Industry and those imported in to India, it is noted that there is no quantified evidence provided by interested parties to show the alleged quality difference between the domestic and imported product. The authority notes that a difference in quality cannot be recognized, unless the differences are quantified and their impact demonstrated. The authority also notes the decision of the CESTAT in the matter of "DSM Idemitsu Limited v. Designated Authority", reported in 2000 (119) E.L.T. 308, where the Tribunal held as follows

*"As the plea of the appellants counsel is not convincing since he did not adduce any evidence/technical literature with reference to process of manufacture to show that product manufactured by the domestic manufacturers was different from that exported into India. .... Difference in quality will not make an article as different and Designated Authority was*

*right in observing that the fact that qualities may be different, does not imply that the imported product and the domestic are not like articles.”*

16. As regards the argument of reasons of importation of goods, it is noted that that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the product to the consumers
17. After considering the information on record, the Authority holds that there is no material difference in product under consideration exported from subject country and the product produced by the Indian industry. Product under consideration produced by the Domestic Industry is comparable to the imported subject product in terms of physical & chemical characteristics, production technology & manufacturing process, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable.
18. Thus, the Authority holds that product under consideration produced by the applicant Domestic Industry is like article to the subject product under consideration imported from subject countries in accordance with the AD Rules

### **C. SCOPE OF DOMESTIC INDUSTRY AND STANDING**

#### **View of the opposing interested parties**

19. The submissions of various interested parties are summarized as follows:
  - i. The anti-dumping application is filed in clear violation of Rule 5 of the Ant Dumping rule.
  - ii. The support letters filed by various domestic producers cannot be relied on because on close perusal of the letters it can be seen that the support letter were filed for different anti-dumping investigation filed by different set of producers. On that account the applicants cannot be said to be the Domestic Industry.
  - iii. The investigation should be terminated on the account that it has no express support from the industry.
  - iv. The applicants collectively constitute only 30% of the domestic producers, hence not eligible for Domestic Industry.
  - v. The Authority could have added other known domestic producers to understand the trend of the Indian producers as a whole.
  - vi. Even if the total production of the applicants is more than 25% but that is relevant with regard to standing of the application and not for the purpose of defining the scope of the Domestic Industry.

#### **View of the Domestic Industry**

20. The Domestic Industry made the following submissions:
  - i. The petition is jointly filed by All India Pottery Manufacturers Association (AIPMA) and the Indian Ceramic Society (herein referred as petitioners/ petitioner associations) on behalf of domestic producers of the PUC in India. Some of the Indian Producers i.e. Clay Craft (I) Pvt. Ltd., Bharat Potteries Ltd., Ceramic Tableware Ltd. and U.P.

- Ceramics & Potteries P. Ltd. (referred to as Petitioner/Applicant) for imposition of anti dumping duty on imports of Ceramic tableware and kitchenware, excluding knives and toilet items, originating in and exported from China PR.
- ii. Besides the petitioners, some producers have supported the petition. Letters of support from Yashvi Enterprise, Anil fine Ceramic, Samrat Ceramics, Raghuv eer (India) Limited, Marvel Ceramics Private Limited, Sea Shell Ceramics (India) Private Limited, Mudrika Ceramics (I) Ltd., Shan Tablewares Private Limited, Feather Touch Ceramics Private Limited, Oasis Ceramics Private Limited and Tata Ceramics.
  - iii. The petitioners account for more than 30% of the Indian production. Further they have got support from number of manufacturers taking the total share of production percentage to more than 60%; therefore petitioner companies constitute major proportion in the total Indian production and are covered within the meaning of Rule 2 (b) of the Anti-Dumping Rules as.
  - iv. Petitioners have not made any imports and nor are related (either directly or indirectly) to any exporter of product under consideration in the subject country or importers in India.
  - v. The supporters have consciously supported the petition for imposition of anti dumping duties on imports of Ceramic kitchenware and tableware from China PR as per AD Rules.

#### **Examination by Authority**

21. 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’ may be construed as referring to the rest of the producers”*

22. The petition has been filed by All India Pottery Manufacturers Association (AIPMA) and the Indian Ceramic Society (herein referred as petitioners/ petitioner associations) on behalf of domestic producers of the PUC in India. Some of the Indian Producers i.e. (a) Clay Craft (I) Pvt. Limited, (b) Ceramic Tableware Pvt. Ltd., (c) Bharat Potteries Ltd. and (d) M/s. UP Ceramics & Potteries Pvt. Ltd. (referred as petitioners/ petitioner companies) have provided the necessary costing and financial information. The petition has been supported by a number of other producers, namely, Yashvi Enterprise, Anil Fine Ceramic, Samrat Ceramics, Raghuv eer (India) Limited, Marvel Ceramics Private Limited, Sea Shell Ceramics (India) Private Limited, Mudrika Ceramics (I) Ltd., Shan Tablewares Private Limited, Feather Touch Ceramics Private Limited, Oasis Ceramics Private Limited and Tata Ceramics Limited.
23. The total Indian production has been estimated on the basis of data given by Central Glass & Ceramic Research Institute (CSIR). They have mentioned details of producers of the product in the organized sector as well as in the unorganized sector.

Particulars	MT	Share in Indian Production %
	POI	POI
Petitioner as a whole	8,652	31%
Supporters as a whole	8,650	31%
Petitioner + Supporter as a whole	17,302	62%
Others	10,700	38%
Indian Production	28,002	100%

24. Further, the petitioner companies have certified that they have neither imported the product under consideration from subject country, nor are they related to any exporter of the product under consideration in subject country or to an importer in India.
25. As per the evidence available on record, the production of the petitioner companies accounts for a major proportion in the gross domestic production of the like article. The Authority, therefore, determines that the petitioner companies constitutes eligible Domestic Industry within the meaning of Rule 2 (b) of the Anti-Dumping Rules and the application satisfies the criteria of standing in terms of Rule 5 (3) of the Rules supra.

#### **D. CONFIDENTIALITY**

##### **View of the opposing interested parties**

26. The submissions of various interested parties are summarized as follows:
- i. Excessive confidentiality is claimed by the applicants and has not provided information with regard to Production volume, Domestic Sales volume, Export Sales volume, Inventory in volume, COP per unit in Indexed, Selling price per unit in Indexed (g) Profit/(Loss)per unit in Indexed (h) Employment, Productivity, ROCE in percentage, Proforma IV-B, Costing information and ROC version of financial results.
  - ii. Not providing such information is completely against the confidentiality provisions provided under the Anti-Dumping Rules. Considerable information has been kept confidential without providing any justification for the same.

##### **Views of the Domestic Industry:**

27. The Domestic Industry made the following submissions
- i. The Domestic Industry has claimed confidentiality as per the norms of the AD Rules and in fact the opposite interested parties have claimed excessive confidentiality and made it difficult to make proper comment on their submission.

##### **Examination by Authority**

28. The Authority has examined the confidentiality claims of the interested parties. The Authority made available to all interested parties the public file containing non-confidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

29. With regard to confidentiality of information Rule 7 of Anti-dumping Rules provides as follows:-

*“Confidential information. (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*

*(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*

*(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”*

30. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. Various discussions in this provisional finding are self-explanatory on the other contentions of the Domestic Industry on confidentiality aspect.

#### **E. MISCELLANEOUS ISSUES**

##### **Views of the opposing interested parties**

31. The submissions of various interested parties are summarized as follows:

- i. The petition was filed in January 2016 and the data is provided till March 2016. This clearly shows that the Authority has not examined the adequacy and accuracy of the data provided by the applicants.
- ii. The domestic producers have failed to provide their information despite having notice of the instant investigation, should be treated as non-cooperative under Rule 6 (8) of the Anti-dumping Rule.
- iii. The supporters, who have failed to provide information, show that they have they have only made unsubstantiated claim of injury before the Authority.
- iv. The methodology adopted for conversion of import volume and volume analysis is based on unsupported presumption. The PUC has been measured/quantified in terms of weight whereas the import statics reflects that majority of imports are reported in units/pieces.

- v. The Authority has acted in contravention of Article 12.1 of the Anti-Dumping Agreement because it failed to inform the interested parties before initiation that the Authority is satisfied and there are sufficient evidences to justify the initiation of the investigation.
- vi. The petitioners have failed to provide the sources of information relied upon for dumping and injury determination.
- vii. The DGCI&S data in Excel format both in raw and refined form along with the methodology applied has not been provided.

**Views of the Domestic Industry:**

32. The Domestic Industry made the following submissions

- i. The Chinese exporters have not cooperated by not filing any information despite given an opportunity after initiation of the investigation. None of the exporters have filled exporter questionnaire.
- ii. Chinese producers/exporters Association, responsible for assisting the exporters in defending their case in anti dumping matters, have also not cooperated by providing detailed information pertaining to costing and exports. The Chinese Association should be considered as non-cooperative
- iii. The petitioners have adopted the DGCI&S import data, the same has been provided in the NCV copy of the petition. A large share of imports is in weight terms and the other units namely numbers/ pieces/sets have been converted into weight terms for effective analysis of whole of import data. Further PUC is transacted in weight terms at factory level. Therefore, the adoption of unit of measure as weight is appropriate and the opposite party has objected to the same without providing any alternative methods.
- iv. The Authority had notified all the interested parties about the initiation of the present investigation by notification.
- v. The necessary costing/financial information has been provided by the petitioner domestic industry as prescribed under the law. The supporters who are also suffering the effects of dumping and have supported the petition are not specifically required to give their costing/financial data.
- vi. The export price from China PR has been determined as per the DGCI&S transaction wise data with due adjustments to the export price as per the market intelligence and standard practices.

**Examination by Authority**

33. Various submissions have been made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed as follows:

- i. The Authority notes that the application contained all information relevant for the purpose of initiation of investigation. The Authority after due examination decided to initiate the present investigation and had also revised the Period of Investigation to April 15-March 16. The revised application was sought, subsequent to initiation, and NCV was made available in public file. The information given by the applicant was verified to the extent deemed necessary.

- ii. The Authority has decided that it would be appropriate to express PUC in terms of weights because at import end as well as factory to dealer end the transactions are mainly done in weight terms. The cost of the raw material and utilities is in direct proportion to the weight of the product; therefore, the cost of production is quite linear with weight of the product. The majority of DGCIS data is available in weight terms and the balanced data available in numbers/sets/pieces has been converted into weight and all the analysis has been done in terms of Kgs.
- iii. The Authority notified the Embassy of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra. Further, the Authority has issued a notification, published in the Gazette of India, extraordinary notifying the initiation of investigation.
- iv. As regards the argument that the other domestic producers have not provided the information or the supporters have filed the limited information, it is noted that as per AD Rules, the injury analysis has to be carried out on the basis of the information provided by the Domestic Industry. In the instant case, once it is determined that the petitioner companies constitute Domestic Industry, there is no legal requirements under the AD Rules to rely on the information of the other Indian producers.
- v. The Authority notes that the DGCI&S transaction by transaction wise data was made available in the public file being a part of the NCV petition. For the analysis data has been duly verified as deemed fit. Further, the various calculations for determination of NEP and landed value as mentioned in the subsequent paras has been carried out after as per the methodology and standard practices followed in the Directorate on the basis of best available information.

**F. MARKET ECONOMY TREATMENT, NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN.**

**Market Economy Treatment and Normal Value**

34. According to Section 9A (1) (c) of the Customs Tariff Act, 1975 "Normal Value" in relation to an article means: -

*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*

*when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*

*(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

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

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

**Views of the Domestic Industry:**

35. The following are the submissions made by the Petitioner:
- i. China should be considered a non-market economy, in line with the position taken by the Authority in previous cases, and by investigating authorities in other countries. Chinese producers' cost and price cannot be relied upon for determination of normal value.
  - ii. Market economy status cannot be granted unless following conditions are fulfilled:
    - a. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity
    - b. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values
    - c. Market economy status cannot be given unless the responding exporter establish that their books are audited in line with international accounting standards
    - d. Market economy status cannot be granted even if one of the parameters is not satisfied
    - e. The onus/obligations to establish market economy status is onto responding Chinese exporters and not onto the Designated Authority.
    - f. Market economy status cannot be granted unless the responding company and its group as a whole make the claim.
    - g. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.
  - iii. According to these Rules, the normal value in China can be determined on any of the following basis:
    - the price in a market economy third country,
    - constructed value in a market economy third country,
    - the price from such a third country to other country, including India.
    - the price actually paid in India, adjusted to include a reasonable profit margin.
    - the price actually payable in India, adjusted to include a reasonable profit margin.
  - iv. Since no questionnaire response has been filed by any of the Chinese companies, the subject country should be treated as non-market economy.

- v. The export price from China PR has been determined as per the DGCI&S transaction wise data with due adjustments to the export price as per the market intelligence and standard practices.

### **Views of the opposing interested parties**

36. The views of the opposing interested parties are summarized as follows:
- i. Methodology adopted by the petitioners and envisaged by DA to determined normal value is in contravention to the provisions laid down under Para 7 of Annexure 1 of the AD Rules.
  - ii. The determination of export price and adjustments therein, done to the export price have been made without any evidence.

### **Examination by the Authority**

#### **Provisions relating to Non- Market Economy countries**

37. The Authority notes that the relevant provisions laid down under Annexure-I to AD rules states as under:

*7. In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

*8. (1) The term “non-market economy country” means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph (3)*

*(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country*

*Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3)*

*(3) The designated authority shall consider in each case the following criteria as to whether:*

*(a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;*

*(b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;*

*(c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and*

*(d) the exchange rate conversions are carried out at the market rate.*

*Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph”*

38. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/ exporters for rebutting presumption of nonmarket economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise the producers/exporters in their country to provide the relevant information. However, none of the Chinese producers/exporters have filed any response.
39. The Authority notes that none of the producers and exporters of the subject goods from the subject country have submitted the exporter's questionnaire response and market economy questionnaire response, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. In view of the above position, the Authority considers it appropriate to proceed with para-7 of Annexure I to the Rules for determination of normal value in case of China PR. As none of the producers/exporters from China PR has submitted MET questionnaire response, the Authority is unable to grant market economy status to Chinese producers for the purpose of proposed determination.
40. In view of the fact that none of the producers/exporters has filed any exporter's questionnaire including MET questionnaire, MET status has not been accorded to Chinese producers. Further, none of the interested parties, including the Domestic Industry, has made available any material fact to the Authority to select an appropriate market economy third country. The Authority has, therefore, determined the normal value in respect of China PR on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules.
41. In view of the above, the normal value for the subject products imported from China PR into India has been determined on the "any other basis" by considering best available information with regard to cost of production and after reasonable additions for selling, general & administrative expenses and reasonable profit margin. The normal value has been constructed

considering consumption of major raw materials conversion cost, interest, SGA, etc. at the levels allowed for the most efficient constituent of the Domestic Industry. 5% of cost of sales excluding interest has been added towards reasonable profit. Accordingly, the ex-works Normal Value of the product under consideration is as shown in the dumping margin table below.

**Determination of Export Price for exporters from China PR**

- 42. The Authority notes that none of the exporters have furnished information to the authority in the form and manner prescribed which could be used for determination of the export price and individual dumping margin. Therefore, the Authority has determined the export price for producers/exporters on the basis of the DGCI&S transaction wise data.
- 43. The export price has been adjusted on account of Ocean Freight, Marine Insurance Commission, Bank Charges, Port Expenses and Inland Freight Charges to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for exports from China PR is as shown in the dumping margin table below.

**Determination Of Dumping Margin**

- 44. Based on the methodology explained above, the normal value, export price and dumping margin in respect of all producers/exporters of the subject country is determined as follows.

<b>Particular</b>	<b>POI</b>	
	<b>Rs/KG</b>	<b>\$/KG</b>
Constructed Normal Value		
Net Export Price	***	***
Dumping Margin	86.17	1.31
Dumping Margin - %	***	***
Dumping margin % (Range)	***	***

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

**Views of the opposing interested parties**

- 45. The submissions of various interested parties considered relevant by the Authority are summarized as follows;
  - i. There is no volume injury to the Domestic Industry. The demand of the subject goods have increased by 3% in the Period of investigation however the sale has increased by 12% in the Period of investigation. The industry has performed exceptionally well in terms of domestic sales.
  - ii. The producer whose performance has deteriorated has not assisted the Authority in arriving at a fair determination by not providing the requisite data/information.
  - iii. The applicants have been able to sell 93% of their total production in Period of investigation. Hence suffering no injury.

- iv. The domestic producers are unable to meet the domestic demand for the subject good. The import of the subject good has increased to the extent of decrease of sale of the other domestic producers.
- v. Imports were made to bridge the demand supply gap. The domestic producers are suffering injury due to inefficiency of filling the demand supply gap in the domestic market.
- vi. There is no price injury. The methodology adopted by the applicants to arrive at the weight of the subject good exported in units/pieces and the consequent price of the dumped article is flawed.
- vii. There is no price suppression or depression on account of imports. The net sales realization of the applicant is higher in comparison to the cost of the subject good.
- viii. The applicants have been able to increase their selling price as compare to the increase in the cost of the price.
- ix. Working capitals of the applicants have almost doubled during the injury period. Such increase n working capital is unreliable and unsubstantiated.
- x. There is no causal link between the alleged dumping and injury to the domestic market. The applicants have enhanced capacities anticipating increase in demand but the demand remained constant during the examination of injury period.
- xi. There is no injury to the other producers of the domestic market and they are performing exceptionally well but they have not been included under the list of domestic producers.
- xii. The applicants have failed to provide any evidence to show that the Domestic Industry is suffering injury due to alleged dumping.
- xiii. The material injury or threat of injury to the domestic injury is based only on allegation, statement or conjuncture
- xiv. There is a price hike every six months
- xv. There have been instances where domestic suppliers have delivered good less than what was ordered and were not able to supply goods to Wal-mart within the prescribed period.
- xvi. As per the information provided by the DI in the petition the market shares of the Domestic Industry increased by 24% in the Period of investigation. Demanding anti dumping duty on the ground that increase in demand is slow is completely unwarranted and unjustified.
- xvii. There is price undercutting because the indexed Net sales Realization has increased from 100 /- per Kg in 2012-13 to 106/- per kg during the Period of investigation.
- xviii. The alleged dumped import has no effect on the price of the Domestic Industry. The petitioners have failed to prove price undercutting or price depression or suppression.
- xix. Cost of sales has also increased during the Period of investigation.
- xx. The production of the petitioners has increased steadily during the Period of investigation and domestic sale has also increased.
- xxi. There is slight decline in the capacity utilization but that is not due to the alleged dumping but on account of increased installed capacity.

- xxii. Petitioners have moved from being loss making in 2012-13 to being hugely profitable units from 2013-14 onwards to the Period of investigation.
- xxiii. The wages have increased during the Period of investigation. There are none of economic factors appear to have been adversely affected directly on account of alleged dumping of the PUC in India.
- xxiv. The applicants have not been able to provide evidences for threat of material injury or any of the factors of threat of material injury is present due to alleged dumping.
- xxv. The Authority has discussed in their final findings like Anti-Dumping investigation concerning imports of certain Polyester Staple Fibers originating and exported from Korea R P, Malaysia, Taiwan and Thailand, and Final finding of Floor Glass originating in and exported from People's Republic of China, and Indonesia and the Authority has highlighted the importance of economic parameters and has held that mere existence of dumping is not sufficient for imposing anti-dumping duty. Other known factors must also be examined which are causing injury to the Domestic Industry.
- xxvi. The installed capacity of the applicants was low as compare to the demand in the domestic market. Imports were made to meet the deficit arising out of demand supply gap.
- xxvii. The domestic industry is performing well and earning profits. Mere price undercutting is not sufficient to determine injury to the domestic industry.
- xxviii. The profits of the domestic industry have increased during POI as compared to base year. There is no causal link between the alleged dumped imports and injury to the domestic industry.

#### **Views of the domestic industry**

46. The following are the injury related submissions made by the Domestic Industry in brief;

- i. There has been increase in demand over the injury period.
- ii. The volume of import of the subject goods from the subject country has increased significantly over the injury period. The subject imports have almost doubled from base year to proposed POI. Imports from China have increased significantly in relation to total imports, as well as consumption and production in India over the injury period.
- iii. Market share of Domestic Industry has increased slightly; whereas market share of Indian producers has declined. On the other hand, market share of subject imports has increased significantly over the injury period. The domestic industry could not capitalize the increase in demand.
- iv. The subject imports are undercutting the domestic prices and price undercutting has increased over the injury period. Landed price of imports have remained significantly below the cost of sales of the Domestic Industry over the injury period;
- v. Landed price of imports have increased in 2013-14 and then declined over the injury period, whereas selling price of the Domestic Industry have increased up to 2014-15 and then declined in the POI succumbing to the price depression effect of dumped imports;

- vi. Production and sales of the Domestic Industry have increased over the injury period. However, this increase in production and sales volume is insignificant considering the level of capacities available and demand in the country.
- vii. Capacity has remained under-utilized in the proposed injury period due to significant dumping being resorted by the foreign producers, resulting in lower volume of sales by Indian producers.
- viii. Despite availability of sufficient domestic production capacity, consumers continued to meet their demand with dumped imports from the subject country resulting in sub-optimal performance in terms of volume parameters
- ix. Profitability increased during the injury period. However, there was a significant drop in the Period of investigation as compared to the previous year. Similar trend were followed in performance of the Domestic Industry with regard to profit, cash flow and return on capital employed. However, the inventories increased and the cost of sales increased putting a pressure on the health of the domestic industry.
- x. Market share of imports from other countries has remained very low throughout the proposed injury period whereas market share of subject imports has increased significantly over the injury period. Market share of imports from other countries has remained very low throughout the proposed injury period.
- xi. Productivity of the Domestic Industry, measured in terms of production per employee has increased. The level of employment with the Domestic Industry has increased up to 2013-14 and then declined. Wages have increased up to 2014-15 and then declined in the proposed POI.
- xii. Inventories of the product under consideration with the Domestic Industry increased significantly over the injury period.
- xiii. Growth of the Domestic Industry in terms of volume and price parameters has remained sub-optimal. Both dumping margin and injury margin in the proposed POI are positive and significant.
- xiv. Indian Industry has sufficient capacity to cater to the Indian demand. But Indian industry is unable to improve capacity utilization due to presence of dumped imports. Demand supply gap cannot justify dumping. The foreign producers should not dump the goods in order to meet Indian demand.
- xv. The opposite party is pointing out the demand supply gap and on the other hand raising questions on enhancement of capacity. The capacity was enhanced because the demand increased throughout the injury period.
- xvi. The injury is due to dumped imports because the volume of dumped imports have captured the market share of the Domestic Industry, undercutting prices, price depression, deteriorated profit, has prevented the industry from increasing its production, sales, capacity utilization. Growth parameters have been affected negatively.
- xvii. The marketing channel of the subject good is such that the domestic producers need to sell the product through large network which makes it impossible for them to reduce the price of the good and if the Chinese imports are cheaper then it will obviously attract more consumer resulting into more imports. It is not the eventual consumers who are getting benefitted with so significantly low priced imports.

- xviii. The opposing interested parties have not pointed out other reasons which can cause injury to the Domestic Industry.
- xix. The allegation of price hike is baseless. The question is how many time price hikes are accepted by Walmart. The Domestic Industry claimed price increase based on inflationary trend of varied cost factors and exchange rate fluctuations in prices of raw material, that too, once in a year or two years.

**Examination by the Authority**

- 47. The Authority has taken note of the arguments and counter-arguments of the interested parties on injury. The issues raised by various interested parties have been dealt with in the relevant paras of this disclosure.
- 48. The injury analysis made by the Authority hereunder *ipso facto* addresses the various submissions made by the interested parties.
- 49. As regards the contention that the Domestic Industry does not have sufficient capacity to meet the demand of product under consideration in the country, the authority notes if there is a demand supply gap in the country, the foreign producers can certainly fill the gap in the country by bringing the product at a fair price. Demand supply gap does not justify dumping of the product.
- 50. For the purpose of injury analysis the Authority has examined effect of dumped imports of the subject goods on the Domestic Industry and its effect on all relevant economic factors and indices having a bearing on the state of industry to evaluate the existence of injury and causal links between the dumping and injury, if any.

**i. Volume Effect Of The Dumped Imports On The Domestic Industry**

**a. Import volumes**

- 51. The authority has relied upon import data procured from DGCI&S in the present investigation. The Authority has considered weight as an appropriate unit of measurement. The examination of data received from DGCIS revealed that about 46% of the total transactions in POI are those where import volumes have been reported on weight basis. However, the balance imports are in various other units namely numbers, sets, dozens, pieces and Kgs. The import transactions on weight basis have been adopted as it is for analysis. The per unit average import price has been determined by considering the import value and volume of the transactions reported on weight basis. The per unit average import price, so determined is considered while converting those transactions which are reported in units other than weight, into weight thereby 100% of the reported import transactions have been considered for analysis. Imports volume from subject country were as under:-

Imports	Unit	2012-13	2013-14	2014-15	2015-16
China	MT	5,519	6,596	9,114	10,160
Other Countries	MT	849	972	810	836
Total Imports	MT	6,368	7,568	9,924	10,996

52. It is seen that imports from subject country have increased significantly in absolute terms over the injury period.

b. **Demand and market share**

53. The demand/apparent consumption of subject goods has been determined by adding domestic sales and import of subject goods from all countries.

<b>Demand</b>	<b>Unit</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Sales of Domestic Industry	MT	7,791	7,870	7,948	8,375
Sales of Other Indian Producers	MT	19,752	18,361	16,795	15,269
Sales of Indian Producers	MT	27,543	26,231	24,743	23,644
Imports from China	MT	5,519	6,596	9,114	10,160
Other Countries ó Imports	MT	849	972	810	836
Demand/consumption	MT	33,911	33,799	34,667	34,640
<b>Market Share in Demand</b>					
Domestic Industry	%	23%	23%	23%	24%
Other Indian Producers (including supporters)	%	58%	54%	48%	44%
Indian producers as a whole	%	81%	78%	71%	68%
China	%	16%	20%	26%	29%
Other Countries	%	3%	3%	2%	2%

54. The Authority notes that the demand for the product under consideration has increased during POI as compared to the base year and also showing an overall positive trend over the entire injury period. Whereas the demand for the product under consideration increased by 2% from base year, imports from China increased by 84% over the same period.

55. It is thus seen that share of imports from subject country in Indian demand increased from 16% to 29% over the injury period. The market share of Domestic Industry has remained constant but the market share of the Indian industry as a whole has declined significantly.

ii. **Share of dumped imports in relation to production**

56. Authority observes that the imports from subject country have increased in relation to production in India as shown below:

Particulars	Unit	2012-13	2013-14	2014-15	2015-16
Imports from China	MT	5,519	6,596	9,114	10,160
Total Imports	MT	6,368	7,568	9,924	10,996
Production of the Domestic Industry	MT	8,128	8,313	8,364	8,652
Indian Production	MT	30,510	30,069	28,283	28,002
<b>Share of subject country imports in relation to</b>					
Domestic Industry Production	%	68%	79%	109%	117%
Indian Production	%	18%	22%	32%	36%

**a. Imports in relation to total imports**

57. Imports of the product under consideration from subject country have increased in relation to total imports into India.

Imports	Unit	2012-13	2013-14	2014-15	2015-16
China	MT	5,519	6,596	9,114	10,160
Other Countries	MT	849	972	810	836
Total Imports	MT	6,368	7,568	9,924	10,996
Share in Total Imports					
China	%	87%	87%	92%	92%
Other Countries	%	13%	13%	8%	8%

58. It is, thus, concluded that the share of imports from subject country have captured the market share and increased both in absolute terms and in relation to production and consumption in India

**H. PRICE EFFECT OF DUMPED IMPORTS ON THE DOMESTIC INDUSTRY**

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

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

60. It has been examined whether there has been a significant price undercutting by the dumped imports 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. The impact of dumped imports on the prices of the Domestic Industry has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any.

**Price Undercutting**

61. In order to determine whether the imports are undercutting the prices of the Domestic Industry in the market, the Authority has compared landed price of imports with net sales realization of the Domestic Industry. In this regard, 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 the ex-factory level.

Particulars	Unit	2012-13	2013-14	2014-15	2015-16
Landed price of imports	Rs./KG	119	120	115	102
Net Sales Realization	Rs./KG	***	***	***	***
Price Undercutting	Rs./KG	***	***	***	***
Price Undercutting (%)	%	***	***	***	***
Price undercutting	%(Range)	20-30	30-40	40-50	60-70

62. The Authority notes that the landed price of imports from the subject country was lower than the selling price of the Domestic Industry, thus resulting in significant price undercutting.

### **Price Underselling**

63. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been determined considering the cost of production of the Domestic Industry for the product under consideration during the POI, in accordance with Annexure III of the Anti-dumping Rules.

Particular	2015-16	
	Rs/KG	\$/KG
Non Injurious Price (NIP)	***	***
Landed Price	102.45	1.55
Price underselling	***	***
Price underselling-%	***	***
Range	65-75%	65-75%

64. The Authority notes that the landed price of the subject goods from the subject country is significantly lower than the NIP determined for the Domestic Industry showing price underselling effects.

#### **a) Price suppression/depression**

##### Price suppression/depression

65. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority examined the changes in the costs and prices over the injury period as below:

Particulars	Unit	2012-13	2013-14	2014-15	2015-16
Landed price of imports	Rs./KG	119	120	115	102
Trend		100	101	97	86
Net Sales Realization	Rs./KG	***	***	***	***
Trend		100	108	117	114
Cost of Sales	Rs./KG	***	***	***	***
Trend		100	104	112	112

66. It is seen that landed value of imports have remained significantly below the level of cost of sales and selling price of the Domestic Industry throughout the injury period. Low priced dumped imports forced the Domestic Industry to reduce its prices despite increase in cost of sales in period of investigation as compared to 2014-15. Thus the imports are depressing the prices of the Domestic Industry throughout the injury period

### **ECONOMIC PARAMETERS OF THE DOMESTIC INDUSTRY**

67. Annexure II to the Anti-dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. The Rules further provide that the examination of the impact of the dumped imports on the Domestic Industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on

investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. The various injury parameters relating to the Domestic Industry are discussed below.

**a. Capacity & Capacity Utilization**

68. Capacity and capacity utilization of the Domestic Industry over the injury period is given in the following table:-

Particulars	Units	2012-13	2013-14	2014-15	2015-16
Capacity	MT	17,120	17,120	17,120	19,220
Production	MT	8,128	8,313	8,364	8,652
Capacity Utilization	%	47%	49%	49%	45%
Domestic Sales	MT	7,791	7,870	7,948	8,375

69. It is observed that:

- i. Domestic Industry has enhanced its capacity during period of investigation, in view of the increase in demand. Demand for the product under consideration increased over the injury period. It is thus seen that the enhancement in capacities by the Domestic Industry was commensurate with the increase in demand for the product in the Country.
- ii. Production and sales of the Domestic Industry increased over the injury period, however, the petitioner is suffering significant unutilized capacities.
- iii. Capacity utilization of the Domestic Industry has suffered as a result of the inability of the Domestic Industry to increase its market share.

**b. Inventories**

The position of inventories noted as average stock with the Domestic Industry moved as follows;

Particulars	Units	2012-13	2013-14	2014-15	2015-16
Average Inventory	MT	***	***	***	***
Trend		100	102	110	125

70. It is noted that inventories with the Domestic Industry have increased significantly over the injury period. The rate of increase in inventories was more than the rate of increase in production.

**c. Profit/Loss**

71. The profitability of the Domestic Industry is given in the following table:

Particulars	Units	2012-13	2013-14	2014-15	2015-16
Cost of sales	Rs/KG	***	***	***	***
Trend		100	104	112	112
Selling price	Rs/KG	***	***	***	***
Trend		100	108	117	114
Profit/( Loss)	Rs/KG	***	***	***	***

Trend		-100	719	1,029	97
Profit/( Loss)	Rs.Lacs	***	***	***	***
Trend		-100	525	857	523
Cash Profit	Rs.Lacs	***	***	***	***
Trend		100	265	355	216
Profit before Interest and Tax	Rs.Lacs	***	***	***	***
Trend		100	183	240	160

72. It is seen from the above information that:

- a. The profitability of the Domestic Industry with respect to domestic sales of the product concerned increased till 2014-15 but deteriorated significantly during POI. The decline in profits of the Domestic Industry is very significant.
- b. Low priced dumped imports forced the Domestic Industry to reduce its prices despite increase in cost of sales during the period of investigation as compared to 2014-15. Thus the imports are depressing the prices of the Domestic Industry throughout the injury period
- c. The production and sales increased over the injury period but the profitability declined.
- d. **Return on capital employed**

73. The returns on investment, PBIT and cash flow have followed the same trend as that of profitability

	Unit	2012-13	2013-14	2014-15	POI
Return on Capital Employed	%	***	***	***	***
Trend	Indexed	100	184	211	107

e. **Factors affecting domestic prices**

74. The examination of the import prices from the subject country, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the Domestic Industry in the domestic market, etc. shows that the landed value of imported material from the subject country is below the selling price and the non-injurious price of the Domestic Industry, causing significant price undercutting as well as price underselling in the Indian market. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, it can be concluded that the principal factor affecting the domestic prices is the dumped imports of subject goods from subject countries.

f. **Employment and Wages**

75. The employment and wages are below:

Particulars	Units	2012-13	2013-14	2014-15	2015-16
No of Employees	Nos.	***	***	***	***
Trend		100	107	101	100

Wages	Rs. Lacs	***	***	***	***
Trend		100	104	110	121
Wage per unit	Rs/MT	***	***	***	***
Trend		100	101	107	111

76. It is seen that the employment has remained at the same levels. Wages paid have increased during period of investigation.

**g. Growth**

77. The Authority notes from the table below that growth of the Domestic Industry was positive in terms of sales and production on year to year basis. However, growth of the Domestic Industry was however negative in respect of profits, cash profit and return on investment on year to year basis.

<b>Growth (Year by Year)</b>	<b>Units</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Production	%		2%	1%	3%
Domestic Sales Volume	%		1%	1%	5%
Cost of sales	%		4%	7%	1%
Selling price	%		8%	8%	-3%
Profit/Loss per unit	%		819%	43%	-91%
Cash Profits	%		165%	34%	-39%
Return on Capital Employed	%		5%	2%	-6%

**h. Ability to raise capital investment**

78. The Authority notes that the Domestic Industry enhanced capacities during period of investigation and made fresh investments. The Domestic Industry contended that given the level of demand and number of producers of the product under consideration in the market, it is evident that there is significant scope for further investment in the product in the Country. However, the existing producers are staying away from significant capacity addition and new players are not joining for the reason that the existing capacities itself are remaining unutilized.

**i. Level of dumping & dumping margin**

79. The Authority noted that the imports from the subject country are far above the de minimis level of dumping margin. The dumping margin for subject country is quite significant. With such high magnitude of dumping margin, dumped imports are causing material injury to the Domestic Industry.

**I. CONCLUSIONS ON INJURY**

80. Based on the above, the Authority provisionally concludes that the dumped imports of the subject goods from the subject country have increased in absolute terms as well as in relation to production and consumption of the subject goods in India. Imports of the product are undercutting the prices of the Domestic Industry in the market. Further, the imports were depressing the price of the Domestic Industry. It is observed that the demand for the product increased significantly and consequently production and sales of the Domestic Industry also

increased, however, performance of the Domestic Industry deteriorated in respect of capacity utilization, inventories, profits, cash flows and return on investments.

81. The Authority noted that the Domestic Industry has suffered injury on account of volume as well as price effect of dumped imports, as a result of which the profitability of the Domestic Industry has declined. Return on capital employed and cash profits followed the same trend as that of profits. Growth of the Domestic Industry in respect of most of the parameters such as profits, cash profits, returns on capital employed, etc. was negative. Thus, Authority concluded that the Domestic Industry has suffered material injury.

## **J. CAUSAL LINK AND OTHER FACTORS**

82. The Authority has examined whether other factors listed under the Anti-dumping Rules could have contributed to injury to the Domestic Industry. The examination of causal link between dumping from subject countries and material injury to the Domestic Industry has been done as follows:

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

83. The imports from the countries other than the subject country are not significant in volume terms so as to cause or threaten to cause injury to the Domestic Industry. Imports from other countries accounted for less than 10% in total imports and 2% of total demand/consumption in India. Thus, it cannot be said that imports from other countries are causing injury.

### **(b) Trade restrictive practices and competition between the foreign and domestic producers**

84. It is noted that there is a single market for the subject goods where dumped imports from the subject countries compete directly with the subject goods supplied by the Domestic Industry. It is also noted that the imported subject goods and domestically produced goods are like article and are used for similar applications/end uses. There is no evidence of trade restrictive practices and competition between the foreign producers and domestic producers causing injury to the Domestic Industry.

### **(c) Contraction of demand or Changes in the pattern of consumption**

85. The Authority notes that demand for the product showed increase during the injury period and also during the POI as compared to base year. Thus, it can be concluded that the injury to the Domestic Industry was not due to contraction in demand.

### **(d) Development in Technology**

86. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the Domestic Industry.

**(e) Export performance of Domestic Industry;**

87. The Domestic Industry is primarily for sale of goods in the domestic market. However, the domestic sales and export performance has been separately analysed. It is clear that claimed injury to the Domestic Industry is not on account of any significant change in export performance of the Domestic Industry.

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

88. The Authority notes that the deterioration in productivity has not caused injury to the Domestic Industry.

**(g) Performance of the Domestic Industry with respect to other products**

89. The Authority notes that the performance of other products being produced and sold by the Domestic Industry has not affected the Domestic Industry's performance. The information considered by the Authority is with respect to the product under consideration only.

**K. FACTORS ESTABLISHING CAUSAL LINK**

90. Analysis of the performance of the Domestic Industry over the injury period shows that the performance of the Domestic Industry has materially injured over the injury period and during the POI. The causal link between dumped imports and the injury to the Domestic Industry is established on the following grounds:
- i. Imports of the subject goods have increased in absolute terms over the entire period of investigation. Imports of the PUC from the subject countries have increased in absolute terms. Also, the landed price of imports has been declining significantly over the injury period and through the POI.
  - ii. Imports of the subject goods have increased relative to production and consumption in India.
  - iii. Market share of dumped imports in India remained at about 50% during the POI which is a significant percentage and that too when the demand for the subject goods has been rising in India. This is due to the reason that imports have aggressively captured the robust demand in India.
  - iv. The Domestic Industry has not been able to increase its production and sales commensurate with the increase in demand. The Domestic Industry had significant unutilised capacity in the POI even though the demand had increased.
  - v. Inventories of the Domestic Industry have been on the rise, as the Domestic Industry has not been able to increase its sales despite increase in demand. Imports have been aggressively capturing the demand in India.
  - vi. There is significant price suppression and depression due to low priced dumped imports coming in to India.
  - vii. The Domestic Industry's profitability and return on capital employed have been drastically affected. This is evident from the fact that the Domestic Industry was earning decent profits and return on capital employed till 2013-14. However, especially during the POI, the profits and returns have turned into huge losses and negative situations.

91. The above analysis indicates that the Domestic Industry is suffering material injury due to increasing dumped imports of PUC into India from subject countries. There exists a strong causal relation between the increase in dumped imports of the subject goods originating in or exported from subject countries and the material injury suffered by the Domestic Industry.

**L. MAGNITUDE OF INJURY AND INJURY MARGIN**

92. The Authority has determined non-injurious price for the Domestic Industry on the basis of principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject country. The injury margin so determined is significant.

Particulars	Rs/Kg	USD/Kg
Non Injurious Price (NIP)	***	***
Landed Price	102.45	1.55
Injury Margin	***	***
Injury Margin-%	***	***
Injury Margin (Range)	65%-75%	65%-75%

**M. CONCLUSIONS**

93. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority provisionally concludes that:

- i. The product under consideration has been exported to India from the subject country below its normal value, resulting in dumping.
- ii. The Domestic Industry has suffered material injury due to dumping of the product under consideration from the subject country.
- iii. The material injury has been caused by the dumped imports from the subject country.

**N. INDIAN INDUSTRY’S INTEREST & OTHER ISSUES:**

94. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. It is recognized that the imposition of anti-dumping duties might affect the price levels of the downstream products and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti- dumping duty is restricted to an amount necessary to redress the injury to the Domestic Industry. On the contrary, imposition of antidumping measures would remove the unfair advantages

gained by dumping practices, would prevent the decline of the Domestic Industry and help maintain availability of wider choice to the consumers of the subject goods. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

## **O. RECOMMENDATION**

95. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:
- i. The product under consideration has been exported to India from subject countries below their normal values.
  - ii. The Domestic Industry has suffered material injury.
  - iii. Material injury has been caused by the dumped imports of subject goods from subject countries.
96. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted a preliminary investigation into dumping, injury and causal links in terms of the provisions laid down under the Anti-dumping Rules and having provisionally established positive dumping margin as well as material injury to the Domestic Industry caused by such dumped imports, the Authority is of the view that imposition of provisional duty is required to offset dumping and injury, pending completion of the investigation. Therefore, Authority considers it necessary and recommends imposition of provisional anti-dumping duty on imports of subject goods from the subject country.
97. Having regard to the lesser duty rule, the Authority recommends imposition of provisional anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the Domestic Industry. Accordingly, the Authority recommends imposition of provisional anti-dumping duties on the imports of the subject goods, originating in or exported from the subject country, from the date of notification to be issued in this regard by the Central Government, equal to the amount indicated in Col No.9 of the duty table appended below. The landed value of imports for this purpose shall be the assessable value as determined by the customs under Customs Tariff Act, 1962 and applicable level of custom duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

## DUTY TABLE

S.N	Tariff Item*	Description of Goods**	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount (in USD)	Unit of measurement
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	392410	Ceramic Tablewares and Kitchenwares	Any specification	China PR	China PR	Any	Any	1.04	KG
2	392410	Ceramic Tablewares and Kitchenwares	Any specification	China PR	Any	Any	Any	1.04	KG
3	392410	Ceramic Tablewares and Kitchenwares	Any specification	Any	China PR	Any	Any	1.04	KG

\*Custom classification is only indicative and the determination of the duty shall be made as per the description of PUC.

\*\* **Description of the Product** under consideration is "Ceramic table wares and kitchen wares, excluding knives and toilet items" as detailed in para 13 above.

### N. FURTHER PROCEDURE

98. The procedure as below would be followed subsequent to notifying the preliminary findings:
- i. The Authority invites comments on these provisional findings from all the interested parties and the same, considered relevant by the Authority, would be considered in the final findings.
  - ii. Exporters, importers, the applicant and other interested parties known to be concerned are being addressed separately by the Authority, who may make their views known, within forty days from the date of the publication of these preliminary findings.
  - iii. Any other interested party may also make known its views within forty days from the date of publication of these findings.
  - iv. The Authority would conduct further verification to the extent deemed necessary.
  - v. The Authority may hold oral hearing to hear the interested parties orally before notifying the final findings.
  - vi. The Authority would disclose the essential facts as per the Anti-dumping Rules before announcing the final findings.

**(Dr. Inder Jit Singh)**

**Additional Secretary & Designated Authority**