

**TO BE PUBLISHED IN PART 1 SECTION-1 OF
GAZATTE OF INDIA- EXTRAORDINARY**

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi

Dated the 12th July, 2017

FINAL FINDINGS

Subject: Anti-dumping investigation concerning imports of Styrene Butadiene Rubber (SBR) of 1500 series and 1700 series, originating in or exported from European Union, Korea RP and Thailand.

No. 14/10/2015-DGAD:-Having regard to Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules thereof, as amended from time to time (hereinafter referred to as the AD rules).

A. PROCEDURE

1. The procedure described below has been followed:

a. The Designated Authority (hereinafter referred to as the “Authority”), under the above Rules, received a written application from The Indian Synthetic Rubber Private Limited (‘ISRPL’) and Reliance Industries Limited (“RIL”) (hereinafter referred to as the “petitioner”) as domestic industry of the subject goods, alleging dumping of Styrene Butadiene Rubber (hereinafter also referred to as “subject goods” or “SBR”) originating in or exported from European Union (EU), Korea PR and Thailand (hereinafter referred to as the “subject countries”) and resultant injury to domestic industry and requesting recommendations for imposition of anti-dumping duty on imports of the product under consideration from the subject countries.

b. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the petitioner. The petitioner filed an updated duly documented petition, which was considered by the Authority for initiation of investigation.

c. The Authority, on the basis of sufficient prima-facie evidence submitted by the

petitioner to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject countries.

d. The Authority notified the Embassies of the subject countries in India about the receipt of application before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the AD Rules.

e. The Authority issued a public notice dated 14th January 2016 published in the Gazette of India, Extraordinary, and initiating anti-dumping investigations concerning imports of the subject goods from the subject countries.

f. The Authority forwarded a copy of the public notice to all known exporters (whose details were made available by the Petitioner) and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the AD Rules.

g. The Authority forwarded a copy of the public notice to all the known importers of the subject goods in India and advised them to make their views in writing within forty days from the date of the letter.

h. The Authority provided a copy of the non-confidential version of application to the known exporters and the Embassies of the subject countries in India in accordance with Rule 6(3) of the AD Rules. A copy of the Application was also provided to other interested parties, wherever requested.

i. The Authority sent questionnaires to elicit relevant information to the following known exporters in the subject countries in accordance with Rule 6(4) of the AD Rules:

Kumho Petrochemical Co., Ltd. East Wing 10-14th Floor, Signature Towers Seoul, 100 Cheonggyecheon-ro, Jung-gu, Seoul, Korea	LG Chem Ltd.: 128, Yeoui-daero, Yeongdeungpo-gu, Seoul, Korea
Styron LLC: 1000 Chesterbrook Blvd., Berwyn, Pennsylvania 19312, USA	Synthos SA: ul. Chemików 1, 32-600 Oświęcim, Poland
Versalis SPA: Piazza Boldrini, 1 - 20097 San Donato Milanese (MI), Italy	SIBUR(PJSC SIBUR Holding): 16/1 Krzhizhanovskogo St., Moscow, GSP-7, 117997, Russia
Lanxess AG: Kennedyplatz 1, 50569 Cologne, Germany	Bangkok Synthetics Co. Ltd, 175 Sathorn City Tower, 22 nd Floor South Sathorn Road, Tungmahamek Sathorn, Bangkok- 10120

j. In response to the initiation notification, the following exporters/producers from the subject countries have responded:

- i.M/s Kumho Petrochemicals Co., Ltd, Korea RP
- ii.M/s Daewoo International., Korea RP
- iii.M/s Daewoo International., Singapore
- iv.M/s LG Chem Ltd., Korea RP
- v.M/s LG Chem America Inc, USA
- vi.M/s Wonchem, Ltd., Korea RP
- vii.M/s Heartychem Corp., Korea RP
- viii.M/s Everlite Korea Co Ltd., Korea RP
- ix.M/s Hansuk Chemicals Co Ltd., Korea RP
- x.M/s Synthos Krapuly A.S., Czech Republic
- xi.M/s Synthos Dwory 7 SP.Z. OO, Poland
- xii.M/s Trinseo Pvt. Ltd.

k. Questionnaire was sent to the following known importers/users/associations of subject goods in India calling for necessary information in accordance with Rule 6(4)of the AD Rules:

M/s JK Tyres, Link House, 3, Bahadurshah Zaafar Marg, New Delhi- 110 002	M/s Birla Tyre, Shivam Chambers 53,Syed Amir Ali Avenue, Kolkata-700 019, West Bengal.
M/s Apollo Tyres, Apollo House 7, Institutional Area, Sector-32, Gurgaon -122001 (Haryana)	M/s CEAT Ltd., CEAT Mahal, 463, Dr. Annie Besant Road, Worli, Mumbai 400 030
M/s MRF Ltd., 124 Greams Road, Chennai-06	M/s Ralson, Plot No: 3, New Industrial Area, Mandideep. Distt. Raisen, M.P. – 462046
M/s Poddar Tyre, GT Road Jugiana, Ludhiana (PB) 141420	M/s Oriental Rubber Industries, 525 Koregoan Bima Pune Nagar Road, Pune
M/s Hindustan Rubber, 1 Janki Center	M/s Agarwal Rubber,

OFF Veera Desai Road Andheri(W) Mumbai-53	15-1-503/49/A, Ashok Market, Siddiamber Bazar, Hyderabad 500 01, Andhra Pradesh
M/s Exel Rubber, Flat no. 507, Sai Sadan Apts, Opp. SBI Balkampet, S.R. Nagar, Hyderabad – 500038	M/s Tega Industries,First floor, No 210, 5th Main Road Vijay Nagar 2nd Stage Bangalore 560040
Phoenix Conveyor Belt India Private Ltd. Ideal Plaza, North Block, 4th Floor, 11/1, Sarat Bose Road, Sreepally, Bhowanipore, Kolkata, West Bengal 700020	Hindustan Rubbers 1, Janki Center, Off. Veera Desai Road, Andheri (W), Mumbai – 400 053
Forech India Ltd. Hilton House, S-23, Green Park Extension, New Delhi, India - 110 016	Garware Bestrech Amar Avinash Corporate Plaza, 4th Floor, Bund Garden Road, Pune 411 001 (Maharashtra), India
Paragon Polymer Product Private Ltd. P.B.No.61, Paragon Building, Opp. Bishop Jacob memorial Hall, Sreenivasa Iyer Road, Chalukunnu, Kottayam, Kerala – 686001	Oriental Rubber Industries Ltd. Sharvani Gardens, 20, Viman Nagar, Pune, Maharashtra 411 014
Midas Rubber (P) Ltd. Midas Marketing Building, Varissery Jn., Mariathuruthu P.O, Kottayam, Kerala, India - 686 027	Ralson (India) Ltd. Ralson Nagar, G.T. Road, Ludhiana - 141 003, Punjab, India
Sempertrans Nirlon (P) Ltd. Nirlon Complex, Pahadi Village, Goregaon East, Mumbai - 400063	Metro Tyres Ltd. Metro Tower, C-49, Sector 62, Noida – 201 301, India
Balakrishna Tyres Ltd.	Alliance Tyre Group
M/s Balakrishna Industries Limited BKT House, C/15, Trade World Kamla Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai- 400 013	M/s ATC Tires Pvt. Ltd Unit No. T 6 & 7, 5 th Floor, High Street Phoenix A Wing, Phoenix Mills Compound, 462, Senapati Bapat Marg Lower Parel, Mumbai- 400 013
Goodyear India Ltd, 1 st Floor, ABW Elegance Tower,	Bridgestone India Private Limited, Plot No. A 43, Phase- II, MIDC

Jasola, New Delhi- 110025	Chakan, Village Sawardari, TalukaKhed, Dist. Pune, Maharashtra- 410501
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Automotive Tyre Manufacturers' Association PHD House, 4 th floor, Siri Fort Institutional Area Opp. Asian Village New Delhi-110016.	All India Rubber Industries Association 601, Pramukh Plaza, B Wing, 485, Cardinal Gracious Road, Opp. Proctor & Gamble, Chakala, Andheri (E) Mumbai- 400099.
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m. Following importers/consumers filed questionnaire responses.

- i. M/s Apollo Tyres Ltd.,
- ii. M/s Bridgestone India Pvt. Ltd.,
- iii. M/s CEAT Ltd,
- iv. M/s JK Tyres Ltd.,
- v. M/s MRF Ltd.,
- vi. M/s TVS Srichakra Ltd.

Further a number of other interested parties have offered comments and submission with regard to the present investigation, which have been appropriately taken into account. The said interested parties are as follows:

- i. European Commission (Director General for Trade)
- ii. Government of Korea RP
- iii. All India Rubber Industries Association (AIRIA)
- iv. Automotive Tyres Manufacturers Association (ATMA)
- v. M/s Rishirop Polymers Pvt. Ltd.
- vi. M/s Rishirop Ltd.

n. The Authority has obtained the transaction wise import data for product under consideration during POI from DGCIS and has broadly correlated the data filed by importers with the DGCIS/exporters response to the extent it was feasible for a broad validation.

o. The 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 all

interested parties. The public file was inspected by a number of interested parties a number of times. Interested parties, who requested inspection and copies of the documents from the public file, were provided with the same.

p. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. The Authority accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis, which was made available through public file.

q. Further information was sought from the petitioner and other interested parties to the extent deemed necessary. Verification of domestic industry was conducted to the extent considered necessary for the purpose of present investigation.

r. A spot verification was also conducted at the premises of the following exporters:

- (i) Kumho Petrochemical Co., Ltd., Korea RP
- (ii) M/s Daewoo International., Korea RP
- (iii) M/s LG Chem Co. Ltd., Korea RP to verify direct exports data and the data of associated traders made available in Korea RP

s. The above exporters were issued a report of the verification conducted. Comments offered by the exporters have further been taken into account in this Findings.

t. Investigation was carried out for the period starting from 1st October 2014 to 30th September 2015 (12 months) (hereinafter referred to as the 'period of investigation' or the 'POI'). The examination of trends, in the context of injury analysis covered the period from February 2014 and up to POI, by dividing each financial year in to four quarters.

u. The Non-injurious Price (hereinafter referred to as 'NIP') considering the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry. As M/s RIL declared commercial production in post POI, the information of M/s ISRPL only has been adopted for computing NIP.

v. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority provided

opportunity to the interested parties to present their views orally in an oral hearing held on 14th September 2016. Thereafter a second oral hearing was conducted on 4th November 2016. The parties, who presented their views in oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.

w. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide for details of imports of subject goods for the past three years, including the period of investigation, which was received by the Authority. The Authority has referenced the DGCI&S imports data for computation of the volume & value of imports and injury analysis.

x. The Authority issued a disclosure statement under Rule 16 on 15/6/2017 and provided an opportunity to give comments to the disclosure statement till 23rd June, 2017 which was further extended till 27th June, 2017. Since sending of the disclosure statement to All India Rubber Industries Association was inadvertently missed out, the same was emailed on 9th July, 2017 so as to enable them with an opportunity to respond to it quickly in view of pressing statutory timelines which cannot be extended further.

y. Exchange rate for conversion of US\$ to Rs. is considered for the POI as Rs.63.62 as per customs data.

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

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

1. The product under consideration for the purpose of present investigation is Styrene Butadiene Rubber originating in or exported from EU, Korea (RP) and Thailand.

Views of Exporters, Importers, Consumers and other Interested Parties

2. SBR 1500, 1700 and 1900 were subject to antidumping duty and protection from 1999 till 2001. The remaining domestic producers continued to produce 1900 series, therefore just because the existing producers did not use existing production facilities to produce SBR 1500 and 1700 does not mean that they cannot use these facilities to produce PUC.

3. Specific grades such as 1502NF, 1507, 1507H, 1745, 1763, 1769, 1789, 1793, 1799 should be excluded from the PUC as they are not produced domestically.

4. M/s Luthra & Luthra law offices representing ATMA vide letter dated 24/4/2017 have submitted that ESBR 1739 and 1789 grades be excluded as M/s Reliance Industries has admitted that it cannot currently manufacture ESBR 1789 and M/s ISRPL on its website does not list this grade in their product list.

5. As admitted by the domestic industry, SBR 1500, 1700 and 1900 series can be manufactured interchangeably and it is the prevailing practice in other countries. It is domestic industry's inherent deficiency that it fails to manufacture all grades. Further there are known producers of 1900 series in India.

6. Solution SBR and certain product grades such as 1739 and 1789 which are different from the goods produced by the domestic industry in terms of composition and uses must be excluded.

7. M/s Luthra & Luthra representing ATMA through letter dated 24/5/2017 have responded to DGAD's letter dated 15/5/17 written in response to their earlier dated 30/3/2017 stating that Designated Authority should share the transaction wise import data obtained from DGCI&S as done in the past and as per Rule 6 (7) and legal judgments quoted in support of this request.

8. Foreign manufacturers can manufacture SBR series 1500, 1700 and 1900 interchangeably and therefore the domestic industry can also manufacture.

Views of the Domestic Industry

9. The domestic industry has made the following submissions with regard to the product under consideration: -

a.) The product under consideration in the present investigation is Styrene Butadiene Rubber. Styrene Butadiene Rubber (SBR) describes family of synthetic rubbers derived from styrene and butadiene. These materials have good abrasion resistance and good aging stability when protected by additives. SBR is derived from two monomers, styrene and butadiene. The mixture of these two monomers is polymerized by two processes – from solution (S-SBR) or as an emulsion (E-SBR). The present case is only in respect of emulsion SBR.

- b.) Styrene butadiene rubber or SBR is the largest volume of synthetic rubber produced and consumed globally. Compared to natural rubber, SBR has better process ability, homogeneity, heat aging and abrasion resistance, but is inferior in terms of elongation, hot tear strength, hysteresis, resilience and tensile strength. The majority of SBR is consumed in the manufacture of tyres.
- c.) A number of grades of SBR are produced, which are characterized by the level of copolymer (% of styrene), emulsifier type, nominal mooney viscosity, coagulation, specific gravity and product stain. They are segregated into series 1000, 1500, 1600, 1700, 1800 and, 1900. The present petition pertains to SBR 1500 series and SBR 1700 series only. SBR 1900 series are specifically excluded from the scope of the product under consideration although they are also produced by the foreign producers. SBR 1000, 1600, 1700, 1800 series are also beyond the scope of the product under consideration.
- d.) The difference in grades are due to the difference in composition of Butadiene and Styrene, then the fact that the petitioner can also produce and supply different grades cannot be questioned. No additional manufacturing facilities are required to be added and within the existing facilities, the petitioners can also produce other grades also. The petitioners request the Designated Authority not to exclude any grade of the product.

Examination by the Authority

- a) The product under consideration in the present investigation is Styrene Butadiene Rubber; (SBR) of 1500 and 1700 series only of synthetic rubbers derived from two monomers styrene and butadiene. These materials have good abrasion resistance and aging stability when protected by additives. Solution SBR grades are outside the scope of investigation.
- b) Compared to natural rubber, SBR has better process ability, homogeneity, heat aging and abrasion resistance, but is inferior in terms of elongation, hot tear strength, hysteresis, resilience and tensile strength. The major demand of SBR is in the automotive sector in manufacture of tyres.
- c) The product is classified under Customs Tariff heading No. 400219. However, the said Customs classification is indicative only and in no way binding on the scope of the present investigation.
- d) Rule 2(d) relating to the definition of "like article" specifies that "like article" means an article which is identical or alike in all respects to the article under investigation, or in the

absence of such an article, another article having characteristics closely resembling those of the article under investigation.

e) The petitioner has claimed that the subject goods, which are exported from subject countries into India, are identical to the goods produced by the domestic industry. Styrene Butadiene Rubber produced by the domestic industry and imported from subject countries are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Consumers can use and are using the two interchangeably. The two are technically and commercially substitutable and hence, should be treated as 'like article' under the AD Rules. No specific instances of differences in technical characteristics which affect substitutability of domestic and imported subject goods have been substantiated which warrants a detailed examination. Therefore, for the purpose of the present investigation, the subject goods produced by the petitioner in India are treated as 'Like Article' to the subject goods being imported from the subject countries.

f) The Authority notes that the evidence elucidated by interested parties that M/s RIL is not currently in a position to manufacture the 1739 and 1789 grades need to be seen in context of the injury on account of market retardation examined later for M/s RIL in this disclosure. The current manufacturing status of a grade/grades does not erode the capability of a domestic industry to produce such grades in future when there are orders for the same and also fair play is established. Further M/s RIL has placed on record the license to manufacture these grades depicting its capability to produce these. Further the Authority has evaluated injury to RIL on account of material retardation. The Authority concludes that these two grades cannot be excluded from the scope of Product under consideration.

g) The Authority notes that in order to ensure availability of transaction wise import data of DGCI&S, it has been decided by the concerned authority to provide such data to all bonafide interested parties participating in an Anti-dumping investigation on the basis of an authorization letter issued by DGAD after the bona fide actual use of such data is undertaken and, ensuring non-disclosure and no other use of the same for other than ADD purpose. The Authority has issued authorization to various interested parties on request. The submission of Luthra & Luthra seeking the data used by Domestic Industry is not based on any justified reason as the same approach is being adopted by the Authority to make such data available to all interested parties through an authorisation letter as stated above.

h) The Authority notes that, according to the submission of the domestic industry and the other interested parties, the only difference between various grades belonging to a series of styrene butadiene rubber is the composition ratio of styrene and butadiene content in the rubber and the associated oil content. There exists no reason and evidence to believe that such grades of rubber cannot be produced by the domestic industry with their existing facilities if they should want to produce such grades. The Authority therefore holds that the product manufactured by the petitioner constitutes like article to the subject goods being imported into India from the subject countries. The product under consideration is Styrene Butadiene Rubber of 1500 and 1700 series excluding the solution SBR grades. Since the solution SBR grades are excluded from the scope of PUC and it is the text description of the product under consideration which assumes primacy over the customs tariff head, the Authority holds that with such an explicit exclusion of the solution grades of SBR would not create any ambiguity in levy of AD measures.

C. SCOPE OF DOMESTIC INDUSTRY AND STANDING

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”

Views of Exporters, Importers, Consumers and other Interested Parties

a.) The applicants are not eligible for filing the application on the ground of material retardation. The claim of material retardation can be made only for the new product/new industry. The product is not new and the claim of being materially retarded by the applicant is not tenable since PUC already exists in India and had been subject to antidumping duty till 2010.

b.) Apcotex is another Indian manufacturer still manufacturing SBR 1502 under brand name APCOTEX SR 502. Invoices for such product sold in India have been procured from 2007-08, even before applicants began commercial production in 2014.

Views of the Domestic Industry

10. The domestic industry has made the following submissions with regard to the product under consideration: -

a.) The petition has been filed by M/s Indian Synthetic Rubber Private Limited (ISRPL) and M/s Reliance Industries Limited as a domestic producer of the product under consideration.

b.) ISRPL is a joint venture company, jointly promoted by Indian Oil Corpn.; TSRC, Taiwan and Marubeni Corpn. Japan. Indian Oil, holding 50% of equity share capital in the company. TSRC, holding 30% of equity share capital in the Company, through its wholly owned subsidiary company, Trimurti Holding Corporation (THC). Marubeni Corporation, holding 20% of equity share capital in the Company, through its wholly owned subsidiary company Marubeni Petrochemical Investments B.V. (M.P.I), Netherlands.

c.) Reliance Industries Limited is a well-known producer in the Country in Oil Exploration, Petroleum Refining & Marketing and Petrochemicals. RIL has not begun commercial production till the end of period of investigation.

d.) The petitioners are the only domestic producers of Styrene Butadiene Rubber. The petitioners are not related to any importer or exporter of the product under consideration from the subject country. In any case, there is no such relationship that would attract possibilities of exclusion under Rule 2(b).

Response of the Domestic Industry to Other Parties' submission

11. The domestic industry has made the following submissions in response to the submissions of the other parties:

a.) The authority had conducted the mid-term review in the previous SBR investigation and had discontinued duties on SBR 1500 and 1700 series and continued duties on SBR 1900 on the ground that there was no producer of SBR 1700 and 1500 during the period of review. Therefore the Authority itself concluded that there was no domestic industry for the PUC.

Examination by the Authority

a.) The Authority notes that the application was filed by M/s Indian Synthetic Rubber Private Limited (ISRPL) and M/s Reliance Industries Limited as domestic industry. The

Petitioners are the sole producers of the subject goods in India. Petitioner has not imported the subject goods during the POI. Further, petitioner is not related (either directly or indirectly) to any exporter or importer of product under consideration in the subject countries. The production details are given in table 1 below.

Table 1: Production of Petitioners

Particulars	Unit	2012-13	2013-14	2014-15	POI
Production Volume					
ISRPL	MT	-	***	***	***
Reliance Industries Ltd	MT	-	-	***	***
Total Indian Production	MT	-	6,912	46,657	92,540
Share in Production					
ISRPL	%	-	***	***	***
Reliance Industries Ltd	%	-	***	***	***
Share of Petitioner- Total	%	-	100%	100%	100%

b.) As regards the contention that the domestic industry was already in existence prior to the commencement of operations by the Petitioners that, the Authority notes that during the previous investigation concerning SBR 1900 series there was no producer for SBR 1500 and SBR 1700 series in the country, which form the product under consideration in the present petition.

c.) The Authority however notes that M/s RIL has though declared commercial production only in post POI i.e. October 2016 and it is not feasible and appropriate to compute NIP including their data but it is a part of Domestic Industry and its injury assessment is done in the form of material retardation. The Authority has considered it appropriate to evaluate NIP on the basis of data of M/s ISRPL only for evaluating material injury to ISRPL. Both the producers of domestic industry have therefore been evaluated for injury assessment.

d.) In view of the aforesaid, the Authority holds that the petitioner satisfies the requirements of Rule 2(b) and Rule 5(3) of the AD Rules, i.e. the requirement of standing under the Rules. The petitioners are therefore held to constitute domestic industry within the meaning of Rule 2(b) of AD Rules.

Evaluation of Normal Value, Export Price and Dumping Margin

Under Section 9A(1)(c), 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 subsection (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.

Views of the Domestic Industry

12. The following are the submissions made by the petitioner in respect of normal value:

(a) Efforts were made to get information/evidence of price of subject goods in the domestic market of exporting countries as well as the price lists or quotations of producers of subject goods in subject countries; however these efforts were to no avail. There are very limited number of producers and consumers of the subject goods in the subject countries. Therefore business happens directly between the producers and exporters.

i. Petitioner submits that most of the producers of the subject goods do not have production of styrene and butadiene.

ii. In view of the same, and considering that the producers are in fact selling the product under consideration below cost of production, petitioners have constructed normal value for all exporters/producers from subject countries based on raw material prices and consumption norms, estimates of conversion costs, selling, general and administrative

expenses and reasonable profit margin. The methodology adopted for constructing normal value basis is as follows.

Views of Exporters, Importers, Consumers and other Interested Parties

13. The exporters, importers, consumers and other interested parties made the following submissions:

(a) The submission by the Domestic Industry to calculate DM, price undercutting and injury margin on the basis of information contained in the contract is inconsistent with WTO Agreement and the practices of the DGAD. This practice has only been adopted in cases of high price volatility.

(b) The submission by the Domestic Industry to use the time lag approach to determine normal value having considered input cost at the time of order booking brings to the fore the question of how such information was obtained by the applicant when it is not available in the public domain.

(c) Construction by the Domestic Industry is not correct since the parameters calculated such as consumption factor are presumptive in nature.

(d) Constructed normal value can only be adopted when there are no sales of the like article in the domestic market of the exporting country or particular market situation or low volume of sales in the domestic market.

(e) The cost of production of only ISRL has been considered when there is another applicant.

(f) Normal value of developed industries cannot be based on the cost of production of a nascent industry.

(g) Raw material prices of Butadiene from Northeast Asia have been incorrectly considered for the EU.

(h) There is no consistency in the basis of prices adopted for raw materials for the countries involved in the investigation.

(i) Adjustment in raw material (M – 3) to determine constructed normal value has led to an inflated normal value.

(j) Constructed Normal Value did not take into account the fact that the petitioners starting production recently.

(k) Construction on the basis of the petitioner's cost is incorrect because of level of

efficiencies and the various production rates.

(l) EU may have different cost structures due to their size and economies of scale.

Submissions of Domestic Industry in response to submissions by Other Parties

(a) Cost of production of SBR in the POI is comparable for both the applicants. Therefore, constructed normal value of the PUC calculated on the basis of the cost of either of the applicants would be comparable.

(b) While constructing normal value, actual cost of production has not been considered in view of the high fixed cost involved in start-up of the new producers, the fixed cost of production has been considered at 90% capacity utilization.

(c) Butadiene for Northeast Asia prices has been considered for EU because that was the best information available to the petitioners.

(d) The domestic industry has never claimed that the costs are equal for domestic industry and responding exporters. The applicants have considered the best available information to determine the normal value.

Examination by the Authority

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

(a) (i) M/s Kumho Petrochemicals Co., Ltd, Korea RP

(ii) M/s Daewoo International., Korea RP

(iii) M/s Daewoo International., Singapore

(b) (i) M/s LG Chem Ltd., Korea RP

(ii) M/s LG Chem America Inc, USA

(iii) M/s Wonchem, Ltd., Korea RP

(iv) M/s Heartychem Corp., Korea RP

(v) M/s Everlite Korea Co Ltd., Korea RP

(vi) M/s Hansuk Chemicals Co Ltd., Korea RP

(c) (i) M/s Synthos Krapuly A.S., Czech Republic

(ii) M/s Synthos Dwory 7 SP.Z. OO, Poland

(d) M/s Trinseo GmbH, Germany

(e) M/s BST Elastomers, Thailand

While producers/exporters (a) to (c) above filed structured and complete details whereas producers/exporters at (d) and (e) filed partial/limited data.

For evaluating the dumping margin the Authority has undertaken comparisons of weighted average normal value with weighted average exfactory export price during POI separately for 1500 and 1700 series. The Authority notes that there no positive evidence of lag in exports warranting comparison by referencing order/contract date and not the invoice date as normally done.

I. EUROPEAN UNION

a. Cooperative producers/ exporters

A. M/s. Synthos Dwory 7 Spółka z ograniczoną odpowiedzialnością spółka jawna, Poland (“Synthos Dwory”) and Synthos Kralupy A.S., Czech Republic (“Synthos Kralupy”)

15. M/s Synthos Dwory, the producer and exporter of the subject goods, has provided questionnaire response as a producer. Its related entity viz. producer cum exporter i.e. M/s Synthos Kralupy, have also filed questionnaire responses. The submissions are as under:

- a.) The Styrene Butadiene copolymer produced is in cold polymerization process using rosin and fatty acid soaps as an emulsifying system. Other parts are rosin and fatty acids, antioxidant and/or extender oil.
- b.) The main raw materials for production of the Product are monomers: *** and ***.
- c.) The product is sold in the form of bales, weighing ***kg, approximately *** mm.
- d.) The Product is used in production of car tires and inner tubes, conveyor belts, footwear, cables, hosepipes and various technical rubber articles.
- e) Normal value is claimed based on sales in home market.

Examination by the Authority

(i) Normal Value

During the POI, M/s Synthos Dwory has sold *** MT of 1500 series and *** MT of 1700 series and M/s Synthos Kralupy has sold *** MT of 1500 series and *** MT of 1700 series in the domestic market. All sales in the domestic market by both the companies were made

to non-affiliated parties during the POI. 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 cost of production of subject goods for each series. Authority notes that profitable transactions of Synthos Dwory and Synthos Kralupy were more than *** % of the total domestic sales for both 1500 and 1700 series, therefore authority has considered all domestic sales for the determination of the normal value.

Synthos Dwory has claimed adjustment on account of inland and ocean freight, insurance, commission, packing, other sales variables & credit cost to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT and *** US\$/MT for 1500 series and *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT and *** US\$/MT for 1700 series respectively, the same has been allowed by the authority. Accordingly, the normal value for Synthos Dwory at ex-factory level works out to US\$ *** per MT for 1500 series and US\$ *** per MT for 1700 series.

Synthos Kralupy has exported *** MT of 1700 series only to India, therefore Authority has determined normal value for 1700 series only for Synthos Kralupy. Synthos Kralupy has claimed adjustment on account of inland freight, insurance, commission, packing, other sales variables & credit cost to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT and *** US\$/MT respectively and the same has been allowed by the authority. Accordingly, the Normal value for Synthos Kralupy at ex-factory level works out to US\$ *** per MT for 1700 series.

(ii) Export Price

From the response filed by Synthos Dwory and Synthos Kralupy, the Authority notes that Synthos Dwory has exported *** MT of 1500 series and *** MT of 1700 series to India and Synthos Kralupy has exported *** MT of 1700 series to India. All the exports were made to unrelated parties.

Synthos Dwory has claimed adjustment on account of inland and ocean freight, insurance, commission, packing, bank charges, other sales variables & credit cost to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT for 1500 series and *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, ***

US\$/MT, *** US\$/MT & *** US\$/MT for 1700 series respectively, the same has been allowed by the Authority. Accordingly, the net export price for Synthos Dwory at ex-factory level works out to US\$ *** per MT for 1500 series and US\$ *** per MT for 1700 series.

Synthos Kralupy has claimed adjustment on account of inland freight, bank charges, insurance, commission, packing, other sales variables & credit cost to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT & *** US\$/MT for 1700 series respectively and the same has been allowed by the Authority. Accordingly, the net export price for Synthos Kralupy at ex-factory level works out to US\$ *** per MT for 1700 series.

The weighted average dumping margin for 1500 and 1700 series for Synthos Dowry comes to *** US\$/MT. Dumping margin for Synthos Kralupy works out to *** US\$/MT. Overall dumping margin for Synthos Dwory and Synthos Kralupy comes to *** US\$/MT.

b. Non-cooperative producers/exporters

A. M/s Trinseo Europe GmbH

M/s Kanth & Associates representing M/s Trinseo Europe GmbH has filed response through letter dated 28/3/2016 providing details of 1723/1739 ESR grades exported to India. Further it has been stating that M/s Trinseo Europe GmbH has a consignment manufacturing agreement with M/s Trinseo Deutschland GmbH.

Examination by the Authority

A questionnaire was filed by M/s Trinseo Europe GmbH (TEG) which has a consignment manufacturing agreement with M/s Trinseo Deutschland GmbH.

The response filed by M/s TEG was deficient and therefore producer/exporter was requested for completing the data are requesting their consent for onsite data verification, vide email dated 14/10/2016. The Authority in view of the above on account of lack of data sufficiency and consent for onsite verification, has not considered the producer/exporter for individual assessment and treated it under residual category as per rules.

For non-cooperative/residual producers/exporters, the highest dumping margin/injury margin evaluated for either of the two series of product under consideration in the analysis of cooperating exporters has been referenced.

EU							
Producer/ exporter	NV \$/MT		EX-EP \$/MT		DM \$/MT (wt. average)	DM% \$/MT(wt. average)	DM Range (%)
	1500 Series	1700 Series	1500 Series	1700 Series			
(i) Synthos Dwory 7 Sp. Z. Oo, Poland	***	***	***	***	***	***	10 – 20
(ii) Synthos Kralupy A.S., Czech Republic (1700 series only)	***	***	***	***	***	***	0 – 10
Weighted Average- of (i) & (ii) above	***	***	***	***	***	***	10 – 20
Residual Producers/exporters including M/s Trinseo	***	***	***	***	***	***	20 – 30

II. KOREA RP

a. Cooperative producers/ exporters

A. M/s Kumho Petrochemical Co., Ltd. Korea RP (“KKPC”)

16. M/s KKPC has submitted questionnaire response for its normal value computation and total exports to India. The submissions by KKPC are as follows:

a) The product is produced only at its Ulsan Synthetic Rubber Plant. The exports to India in POI have been made directly and indirectly through Daewoo International Corporation.

17. Daewoo International Corporation, Korea RP, the exporter has submitted, that their company is only a trading company which, procures the subject goods from producers/exporters based in Korea RP and resells them to India either directly or through Daewoo International, Singapore.***MT of subject goods in POI has been exported by them to

India. The weighted average CIF is determined as***\$/MT.

18. Daewoo International, Singapore, the exporter has submitted, that their company is only an exporter of the subject goods ***MT of subject goods in POI has been exported by them to India, at a weighted average CIF of ***\$/MT.

Examination by the Authority

(i) Normal Value

19. During the POI, KKPC has sold *** MT of 1500 series and *** MT of 1700 series in the domestic market. All sales in the domestic market by KKPC were made to non-affiliated parties during the POI. 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 cost of production of subject goods for each series. Authority notes that profitable transactions of KKPC were less than *** % of the total domestic sales for 1500 series and more than ****% of the total domestic sales for 1700 series. Therefore authority has considered only profitable domestic sales for 1500 series and all the domestic sales for 1700 series for the determination of the normal value.

20. KKPC has claimed adjustment on account of inland freight, credit cost, packing & level of trade to an extent of *** US\$, *** US\$ and *** US\$ for 1500 series and *** US\$, *** US\$ and *** US\$ for 1700 series. The authority has allowed all the adjustments except level of trade. Accordingly, the normal value for KKPC at ex-factory level works out to US\$ *** per MT for 1500 series and US\$ *** per MT for 1700 series.

(ii) Export price of M/s. KKPC and its trader M/s. Daewoo International Corporation, Korea and M/s Daewoo International, Singapore

21. From the response filed by KKPC, the Authority notes KKPC has made direct exports to India and also through unrelated trader M/s. Daewoo International Corporation, Korea and M/s Daewoo International, Singapore. KKPC has made direct exports of *** MT of

1500 series & *** MT of 1700 series to unrelated parties in India. KKPC has also exported *** MT of 1500 series & *** MT of 1700 series to India through Daewoo International Corporation, Korea and M/s Daewoo International, Singapore.

22. KKPC has claimed adjustment on account of inland freight, ocean freight, insurance, port expenses, bank charges, credit cost, packing & sales commission to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT & *** US\$/MT for 1500 series and *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT & *** US\$/MT for 1700 series respectively. The authority has allowed all the adjustments. Accordingly, the net export price for KKPC at ex-factory level works out to US\$ *** per MT for 1500 series and US\$ *** per MT for 1700 series respectively. While computing the exfactory export price, the Authority after examining the response filed by M/s Daewoo International Corporation, Korea and M/s Daewoo International, Singapore has ensured that exports through them were profitable and that all appropriate adjustments have been considered.

23. The Authority has verified data for post export discounts and has not found any evidence/justification for this or any other adjustments.

24. The Authority notes that the response by the producer/exporter is complete covering total domestic sales and exports to India. The Authority has therefore determined a single weighted average dumping margin for the producer for both its export channels i.e. direct and through Daewoo international and Daewoo International, Singapore.

25. The dumping margin for 1500 series, 1700 series and weighted average of 1500 and 1700 series comes to *** US\$/MT, *** US\$/MT and *** US\$/MT respectively.

B. M/s LG Chem Ltd. (“LG Chem”)

26. M/s LG Chem has submitted the questionnaire response for its normal value

computation data, while the 5 traders have filed separate responses on export prices.

The submission are as follows:

- It has exported through the channels of distribution - Direct exports to the end user in India, exported to Indian customer s through related exporter LG Chem America Inc., and, unrelated exporters Hansuk Chemicals Co. Ltd, Everlite Korea Co. Ltd., Hearty Chem Corp, and Wonchem Ltd.
- LG Chem America Inc. is a wholly owned subsidiary of LG Chem, Ltd. It is responsible only for sales activities of the goods manufactured by LG Chem, Ltd. The Company does not sell the subject goods in the domestic market.
- Hansuk Chemicals Co. Ltd. is 100% owned by Korea Petroleum Ind Co., Ltd. It does not manufacture subject good or any other in particular. As a trading company, specifications of the product is not maintained or differentiated from what was purchased.
- Everlite Korea Co. Ltd. does not manufacture subject good or any other in particular.
- Hearty Chem Corp does not manufacture the subject good or any other goods.
- Wonchem Ltd company does not manufacture the subject good or any other goods. As a trading company, specifications of the product is not maintained or differentiated from what was purchased. No catalogues or brochures in respect to the subject goods is maintained by the Company.

Examination by the Authority

(i) Normal Value

27. M/s LG Chem Ltd., Korea (LG Chem) has sold 1500 series and 1700 series in the domestic market to an extent of *** MT and *** MT respectively during the POI. The sales in the domestic market are in sufficient quantity and the Authority has determined the normal value of the 2 series separately based on domestic sales by LG Chem during the POI. The Authority has applied the ordinary course of trade test by comparing the exfactory domestic selling price with the exfactory cost of production and observes that in case of 1500 series *** % and in 1700 series *** % transactions in the domestic market are in profit. Therefore these profitable transaction have only been considered for determination of the normal value.

28. The producer/exporter has claimed adjustments on domestic selling price for 1500 series on account of freight expenses, credit expense and packing expense which have been considered at *** US\$/MT, *** US\$/MT and *** US\$/MT respectively and for 1700 series which have been considered at *** US\$/MT, *** US\$/MT and *** US\$/MT respectively for computing the normal value.

The normal value comes to *** \$/MT and *** \$/MT for 1500 series and 1700 series respectively.

(ii) Export Price

29. M/s LG Chem has exported *** MT and *** MT of 1500 series and 1700 series respectively during POI to India directly and through traders claiming adjustments on account of inland freight, ocean freight, other expense, credit expense, bank charges, overseas insurance, customs agent fee and packing expense to an extent of *** US\$/MT, *** US\$/MT for 1500 series respectively and to an extent of *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT respectively for 1700 series. M/s LG Chem has exported ***% directly and remaining ***% through 5 traders i.e. M/s Hansuk Chemicals, M/s Everlite Korea Co., Ltd, M/s Hearty Chem Corp, and M/s Wonchem Ltd (unrelated), M/s LG Chem America Inc(related). Since the entire response of domestic sales and exports of PUC during POI has been reported and verified, the Authority has considered a single weighted average dumping margin for the producer for export through both its channels i.e. direct exports and exports through traders. The Authority has considered these adjustments and determined the ex-factory export price as *** US\$/MT and *** US\$/MT for 1500 and 1700 series respectively. For all indirect exports through 5 traders which is even though miniscule the Authority has ensured that such exports are in ordinary course and no warranted adjustment for exfactory export price is missed out.

The dumping margin for 1500 series, 1700 series and weighted average of 1500 and 1700 series comes to *** US\$/MT, *** US\$/MT and *** US\$/MT respectively.

b. NON COOPERATIVE PRODUCERS/ EXPORTERS FROM KOREA RP

30. For non-cooperative/residual producers/exporters, the highest dumping margin/injury margin evidenced at either of the two series of product under consideration in the analysis of cooperating exporters has been referenced.

Korea							
Producer/ exporter	NV \$/MT		EX-EP \$/MT		DM \$/MT (wt. average)	DM% \$/MT(wt. average)	DM Range (%)
	1500 Series	1700 Series	1500 Series	1700 Series			
KKPC (Weighted Average) including – exports through Daewoo International/ Daewoo International, Singapore	***	***	***	***	***	***	0 – 10
LG (Weighted Average)-including 5 traders	***	***	***	***	***	***	0 – 10
Residual Producers/exporters	***	***	***	***	***	***	0 – 10

III. Thailand

A. M/s BST Elastomers (“BSTE”)

31. M/s BSTE has stated in its submission/partial response dated 1/4/16 that their share in exports was less than 5 % of the demand which cannot cause injury to the Domestic Industry. Also the dumping margin for them would be in the range of 0 – 2 %.

Examination by the Authority

32. The Authority notes that M/s BSTE, Thailand filed partial data only on 1/4/2016 that too not as per the structured questionnaire. Subsequent to the oral hearings held on 14/09/2016 and 04/11/2016 they reiterated their submissions filed on 1/4/16 emphasising that BSTE’s share was less than 5% of the demand therefore it could not cause injury.

Further it has been stated that the Dumping margin on the basis of BSTE's cost of production would be 0 – 2 % only but for this some unsubstantiated data has been provided.

The Authority has therefore evaluated the normal value for the subject goods considering optimum consumption norms for the major raw materials and utilities, purchase price claimed by BSTE and correlated with international prices of purchased raw materials, prices of captively produced raw material, including reasonable conversion cost, interest, SGA, and reasonable profit etc. in accordance with the best available information as per Rule 6 (8) to evaluate the Normal value. Data on conversion factor mentioned by BSTE has also been considered, to the extent feasible.

The normal value for BSTE and all producers/exporters of Thailand comes to *** US\$/MT for 1500 series and *** US\$/MT for 1700 series. For the purpose of exfactory export price, the Authority has considered the weighted average CIF import price of 1500 and 1700 series separately as per DGCIS data and allowed adjustments on CIF, ocean freight, marine insurance (0.5 % of CIF), commission (3% of FOB), Bank Charges (0.5% of FOB), Port expenses (0.5% of FOB) and Inland Freight (0.5% of FOB) to an extent of *** US\$/MT, ***US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, and *** US\$/MT for 1500 series and *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT, *** US\$/MT and *** US\$/MT for 1700 series respectively as per the evidence provided by the petitioner. The Exfactory export price comes to *** US\$/MT for 1500 series and *** US\$/MT for 1700 series.

The dumping margin for 1500 series, 1700 series and weighted average of 1500 and 1700 series comes to *** US\$/MT, *** US\$/MT and *** US\$/MT respectively.

The dumping margin as evaluated above has been applied for all producers/exporters of Thailand including BSTE.

Thailand							
Producer/ exporter	NV \$/MT		EX-EP \$/MT		DM \$/MT (wt. average)	DM% \$/MT(wt. average)	DM Range (%)
	1500 Series	1700 Series	1500 Series	1700 Series			
All producers/exporters including BST Elastomers Co. Ltd.	***	***	***	***	***	***	10 – 20

E. INJURY

Submissions made by Domestic Industry

33. The domestic industry has submitted that:

- a.) Since there was no production of subject goods in India up to Jan'14, entire demand of subject goods was being met by imports only. However, after commencement of production, the domestic industry could not get its projected share in demand despite the fact that domestic industry is having significant capacities.
- b.) The demand for the product in the country has increased gradually over the past periods and is also likely to show increase in future. The demand for the product under consideration fully justifies the capacity installed by the ISRPL and Reliance Industries Ltd. As against the above mentioned past, present and potential demand for the product under consideration, combined capacities with the domestic industry are now 2,70,000 MT. However, despite this level of demand, the capacity utilization of the domestic industry is abysmally low so far. Establishment of domestic industry is being retarded by dumping of the product under consideration in the Indian market.
- c.) Imports from the subject countries have increased in absolute terms till 2014-15 and declined thereafter in POI due to commencement of production by the petitioners.
- d.) Imports from the subject countries have remained significant in relation to total imports, consumption and production in India despite sufficient capacities lying with the petitioners.
- e.) Imports from the subject countries have remained so significant that the same has prevented the domestic industry from increasing its production. In fact, so significant were the imports that the domestic industry has been prevented from selling the goods to the extent of its production.

- f.) Domestic industry is not able to utilize capacities because of its inability to sell the product in the market. The low volumes of sales are a result of significant dumping of the product in the Country.
- g.) Domestic Industry is not able to sell its product in domestic market and resultantly inventories are piling up which are further forcing domestic industry to incur carrying cost.
- h.) Domestic industry has to incur significant interest cost on the working capital loan. This has resulted in further injury to domestic Industry. Though the domestic industry's sales volume is increasing, it is much lower than the sales volumes that the industry could have achieved in the absence of dumping.
- i.) Despite curtailment of production, the Inventories with the industry are increasing in view of the inability of the industry to sell the product due to dumping of the subject goods from the subject countries.
- j.) Market share in demand of subject goods is showing positive trend. Further, the domestic industry should have by now achieved a decent market share in the Country. However, significant dumping of the product is very adversely impacting the rise in the market share of the domestic industry.
- k.) The domestic industry had projected that the difference between the selling price of the product and costs on account of raw materials would be at least in the region of US\$ 800 pmt. Any price that is below this delta [delta in the industry is known as the difference between the selling price of the product and costs on account of major/principal raw materials. The term is widely known/understood in petrochemical industry] means a loss to the domestic industry. In fact, given that the domestic industry has introduced an import substitute product, the domestic industry should have got a very good price for the product produced by the domestic industry. The delta however achieved by the domestic industry on the sales made during this period is far lower than the expected delta, as would be seen from the information enclosed with the petition earlier filed. Petitioners submit that the fact that the imports are causing injury gets fully established by this single factor alone.
- l.) Profits, profit before interest, cash profits and return on investment, all have remained very adverse since commencement of production. The primary reason for this adverse profitability is aggressive dumping by the subject countries.
- m.) The domestic industry has short existence so far and these factors are in any case irrelevant for a new company, which commenced commercial production in Feb., 2014.
- n.) Productivity has moved in the same direction as that of production.

- o.) Growth of the domestic industry is adverse, both, in terms of volume and price parameters. Growth with regard to sales, production, profits, return on investments and cash flow was very adverse during the proposed period of investigation, as compared to the projections that were drawn by the petitioner at the time of setting up of the plant.
- p.) Details of investments made during the injury period can be seen in the information on gross & net fixed assets. Despite fresh investments, the performance of the domestic industry is adverse. Significant investment should have resulted in significant revenue and profits. However, domestic industry is not able to produce and sell to the extent it could have because of dumping of the product under consideration in the Country. The domestic industry suffered significant financial losses.
- q.) In the instant case, the ISRPL has commenced the commercial production w.e.f. Feb., 2014 (ISRPL) and Reliance Industries Limited has not yet begun commercial production till the end of POI. Therefore, petitioners submit that the Designated Authority may consider (a) actual performance so far to establish effect of dumping, (b) potential situation in order to establish threat of injury and (c) whether dumping of the product under consideration is materially retarding the establishment of the domestic industry in India.
- r.) Petitioners submit that the past data for three years, in any case, is not relevant for the reason that the petitioners do not have any past history of commercial production and there was no other producer of the product under consideration in India.
- s.) There is no requirement under the law that the domestic industry should have started commercial production to claim material retardation.
- t.) With regard to the approval process, it is a process which is undertaken by the consumers and the producers are not to be blamed for the same. Further, the petitioners were approved by the consumers whose collective demand in POI was in excess of 70% whereas the supply by the domestic industry only accounted for 19%, which is due to dumped imports.
- u.) It is illogical to connect high prices of crude and the profitability of the PUC.
- v.) Rate of return on capital employed is standard and should not be changed on a case by case basis.
- w.) Losses of the Petitioners are not due to a decrease in demand as can be seen if depreciation and interest over the period are removed.
- x.) Utilizing time lag approach is permitted for calculating dumping margin, price

undercutting and injury margin is endorsed under the principles of fair comparison if accuracy demands it.

- y.) There are no other factors leading to injury to the domestic industry apart from the imported goods.
- z.) The three forms of injury can coexist, in cases of injury, as the rules do not state that 3 forms of injury cannot be co-claimed, but only implies that if one form of injury is not found, other form may be examined.
- aa.) The decline in capacity utilization is not owing to addition of capacity as capacity has not been increased by the domestic industry over the injury period.
- bb.) Actual cost of production not considered owing to high fixed cost involved in the starting period for new entrants in the market.
- cc.) The performance of the applicants is not impacted due to normal start up conditions of a company entering in market. Performance is impacted by dumping. Further, the performance of the domestic industry is worse than what could reasonably be expected. Comparison of projected performance with the actual performance will readily establish the same.

Submissions made by importers, exporters, users and user associations

34. The importers, exporters, users and user associations and other interested parties have submitted as follows:
- a.) Adjustments made by domestic industry for export price are abnormally high.
 - b.) No guidelines have been evolved for determination of “material retardation” under Indian law and thus, the initiation of the subject investigation is bad in law.
 - c.) Data merely indicates normal startup conditions and the Petitioner cannot expect immediate achievement of sales and market share.
 - d.) A materially retarded Petitioner would not be able to expand capacities.
 - e.) The alleged injury is due to the lack of product approvals from end-users/buyers which lowered sales and prices of the DI, ‘off-grade’ sales by RIL at low prices, change in market conditions between the planning stage and stage of commencement of plant, new capacity

additions and weakened demand for SBR, startup costs in lieu of delayed commercial production, increased trade with Korea and Thailand due to India-Korea CEPA and India-ASEAN FTA; other factors as listed in ISRPL's annual report such as significant cost overruns, delayed start of commercial production, significant fall in natural rubber prices influencing price and sales of SBR, locational disadvantage of ISRPL.

f.) The costs and losses of the domestic industry show a declining trend which indicates stabilization, and lack of alleged material retardation and alleged injury.

g.) The petitioner has calculated normal value on the basis of inflated cost and has wrongly claimed confidentiality over the constructed normal value. In this regard, *Birla Ericsson Optical vs Designated Authority* 2004(167) E.L.T. 163 (Tri. - Del.) was cited.

h.) Petitioner's inventories are declining which shows that its performance is improving

i.) The Respondent's capacities have increased, and so have imports coming from Korea RP.

j.) The Authority should consider planned costs of the Petitioners and not their actual costs.

k.) Related Party transactions must be readjusted for reflecting fair prices of Petitioner as it is critical to examine whether the transactions with Marubeni and IOCL have been done at arm's length.

l.) The adjustments made by the Petitioners with respect to export price are abnormally high.

m.) SBR 1700 series imports rose from 1495 MT to 70787 MT from '12-13 to the next year which raises doubts over the authenticity of the import data.

n.) Return on Capital Employed gives undue advantage to domestic industry and 41% profit margin on equity is not reasonable, actual profit must be adopted.

o.) The Petitioner has taken Q1 of 2014-2015 as the base period of indexation instead of February 2014. Indexation of indices such as demand and market share is illogical. The base taken must have been the POI and not the previous financial year. Non-confidential indexed data provided is contrary to established methodology.

- p.) Petitioner has not provided the figure for the injury indicators separately for the sub product grades falling under 1500 and 1700 series manufactured by the domestic industry.
- q.) Injury data of DI clearly establishes no adverse impact on the DI whereby installed capacity increased from 100 MT in Apr-Jun '14 to 225 in POI, Production increased from Apr-Jun '14 to Jul-Sept '15 by 365%, Domestic sales volume increased by 408% from Apr-Jun '14 to Jul-Sept '15. Volume of imports declined by 15% to 148,104 MT in POI from 173,323 MT in '14-15, Market share increased as imports fell by 15%, price suppression does not exist, Lack of profits on account of other factors such as interest compound and start up cost.
- r.) The Petitioner cannot claim both the injury suffered due to material retardation and material injury as the law does not allow this.
- s.) The alleged injury is due to lack of product approvals from end-users/buyers which lowered the sales and the prices of the domestic industry, off grade sales, stage of commencement of plant, new capacity additions and weakened demand for SBR, start up costs in lieu of delayed commercial production.
- t.) ISRL's annual report contains factors which have affected their operations such as significant cost overruns, delayed start of commercial production, significant fall in natural rubber prices influencing price and sales of SBR and locational disadvantage of plant.
- u.) WTO proposed amendments are not legally binding.
- v.) The decline in capacity utilization is on account of capacity addition and not imports.
- w.) The claim of suffering losses should be attributed to weak demand as accepted by one of the petitioners in their annual reports.
- x.) 22% Return on Capital Employed gives undue advantage to DI and 41% profit margin on equity is not reasonable, actual profit must be adopted. ROC must not be hypothetical and should be revisited.[*Bridge Stone Tyre Manufacturing & others vs. DA*] This reflects EU practice accurately. *EFMA V Council [1999] ECR II-3291*
- y.) DI has not provided the figure for the injury indicators separately for the sub product grades falling under 1500 and 1700 series manufactured by the DI.

- z.) DI argued that it is getting materially retarded on account of Korean imports and therefore there is no basis for including imports from EU and Thailand.
- aa.) Post POI Situation clearly indicates that domestic industry is performing well and not suffering injury.
- bb.) No price based injury or volume injury as per petition and information available.
- cc.) Planned costs of the Petitioner should be considered and not their actual costs.
- dd.) Related Party Transactions involving the Petitioners should be examined for determining whether they have been done at a fair price and at arm's length.
- ee.) Import data is incorrect as Non-PUC goods are included in the import statistics supplied by domestic industry.
- ff.) Provisional duties cannot be imposed in cases of material retardation.
- gg.) No guidelines exist for determining material retardation under Indian law.
- hh.) Data provided by domestic industry merely indicates normal start-up conditions.
- ii.) Capacity utilization has increased since April-Jun '14 from 100 MT to 225 MT in the POI. Due to this there is expected to be a decline in capacity utilization.
- jj.) DI's claims that its operating rate is 90% are contradicted by its own annual report that provides globally it is 70% and in Korea it was 40%-50%.
- kk.) The oral submission by the DI that the delta has improved by 53% is baseless and must be attributed to decline in global consumption, decline in operating rates, increase in interest payment and depreciation.
- ll.) DI admitted that there is negative price undercutting.
- mm.) Arbitrary adjustment on the basis that exporters receive interest free credit at the rate of 12% for 90 days is not permitted by the law. No evidence has been submitted.
- nn.) The domestic price of SBR 1502 and 1712 is INR 93,400 and 86,000 whereas landed price is much higher.
- oo.) The DI is not suffering any injury since the landed values of the imports are higher than the NIP of the domestic industry. The IM has to be determined by considering the average weighted price and not the lowest price reported in India. The positive injury margin is not

in accordance with the law by inflating and submitting the incorrect data and therefore liable to be rejected.

pp.) Steep decline in import price as well as domestic industry prices owing to the globally declining prices of Butadiene and Styrene which have a correlation with crude.

qq.) Initiation based on normal values constructed upon the domestic industry's cost of production is not consistent with Article 5.2 of the WTO Anti-dumping Agreement.

rr.) RIL cited weak demand in its annual report as being the cause of their shortcomings and therefore it is not due to imports.

ss.) RIL has not started commercial production and the domestic industry is claiming material retardation when it is not eligible to supply PUC commercially.

tt.) Projections in the domestic industry's project report cannot be accurate as in 2012-13, the market was optimistic owing to high crude which have more than halved since.

uu.) DI cannot claim material injury, threat of material injury and material retardation simultaneously.

vv.) The performance of domestic industry does not indicate any injury on account of imports from the subject countries. There are other factors which lead to the break in the causal link between the claim of material injury and the imports from the subject countries.

ww.) Material injury, threat of material injury and material retardation cannot be claimed simultaneously.

xx.) Exporting countries cannot be blamed if the Indian industry is lacking in infrastructure or cannot meet the demand of the market.

yy.) M/s LKS representing M/s KKPC, M/s Rishiroop Polymers Pvt. Ltd. and M/s Rishiroop Pvt. Ltd. through letter dated 24/5/2017 submitted that in post POI i.e. Oct15- Sep 16 the share of imports from Korea have declined by 27% and petitioners market share have also increased substantially as users have increased procurement from Domestic Industry, due to the approval process by users. Therefore, post POI data is highly relevant for material retardation examination.

zz.) M/s All India rubber industry association (AIRIA) has submitted that it has requisite

legal basis as per 6(6) and 6(5) to make submissions. They have stated that the initiation is faulty and premature, historical rate of return be considered for NIP and users industry interest be also considered. Further the purchase of raw material by ISRPL is not a fair price.

aaa.) M/s Luthra & Luthra representing ATMA have submitted that claim of domestic industry in Normal value and adjustment is frivolous. There is no material retardation and initiation is erroneous. The quantum of procurement has increased for domestic industry. Material retardation and material injury cannot be considered together and there is no causal link. Investigation be only restricted to Korea.

bbb.) The Government of Korea has stated that the Authority should examine factors other than dumping (i.e. non-attribution) regarding injury to domestic industry viz. start-up costs of Domestic industry, delayed start, locational disadvantage, fall in natural rubber prices and the fact that approval process by user industry generally takes long. Further imports from Korea have reduced. The petition is premature and other factors are the reasons for injury. The sales of domestic industry have increased quarter to quarter. There is negative price undercutting reported and that Authority should disclose the methodology on material retardation.

ccc.) European Commission, Director General of trade has mentioned that the Authority should investigate dumping margin on the basis of established practice without deviating to order/contract date, examine injury as per WTO Article 3.4 and that reference not to be made to any amendment proposal in as WTO as mentioned by domestic industry. Further there is no case of material retardation to the domestic industry. The domestic industry is impacted by start-up costs. The other factors like duty reduction of imports from subject countries. Project report projected performance be considered and the case terminated.

ddd.) M/s WTC representing M/s LG Chem and its five traders stated that the MTR conducted on Anti-Dumping duties levied on the basis of final finding dated 2/6/98, were revoked on 1500 and 1700 series and those condition still continues. Domestic industry non-confidential petitions violate requirement of Rule 7 as it is grossly deficient. There is

no evidence of injury and causal link and import data is manipulated. The claim of material retardation is misplaced as both companies have started production and have attained 40% capacity utilization. The injury to the domestic industry is due to high start-up cost, off grade material produced by them due to which heavy discount are to be given. The fall in import price is due to fall of crude prices and consequently the prices of styrene and Butadiene and is not a phenomenon of dumping.

eee.) Methodology of NIP should be revised especially with regard to Return of 22% keeping in view the CESTAT's ruling in Bridgestone tyre manufacturing case and also EU's practice pronounced in an order off European Fertilizer manufacturing association wherein court held that normal profit achieved in normal situations of no dumping be adopted should be considered in this case.

fff.) M/s LKS representing Synthos Dwory and Synthos Kralupy have submitted that initiation is faulty and claim of simultaneous injury of 3 forms material, threat of injury and material retardation is untenable. Grades ESBR 1739 and ESBR 1789 be excluded. The claim of domestic industry on lag period for dumping margin, material retardation are not faulty and not tenable. The post POI data needs to be examined to evaluate material retardation claim. The injury to domestic industry is due to non-tyre sector market where the two domestic industry producers are hitting each other. Further losses are due to off grade material produced by the domestic producers. Further domestic industry has not honoured the orders placed by user industry. Factors other than dumping like cost over runs, India-ASEAN FTA, delayed commercial production, locational disadvantage, lack of approvals, weakened demand of SBR, and fall in natural rubber prices have caused injury to domestic industry.

Examination by the Authority

35. The Authority has taken note of submissions made by the interested parties. The Authority has examined the injury both material and material retardation to the

domestic industry in accordance with the Anti-dumping Rules and considering the submissions made by the interested parties. For the material injury, ISRPL's data has been referenced who had declared commercial production prior to POI while for material retardation, the data of M/s RIL has been examined who declared commercial production in post POI.

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

Cumulative Assessment

38. Annexure II (iii) of the Anti-Dumping Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti-dumping 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/ territory is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;
- b) Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

39. In the present case, the margin of dumping from each of the subject countries have been found to be more than the de minimis limit prescribed; the volume of dumped imports from each of the subject countries is more than the limits prescribed; and the exports from the subject countries directly compete inter se and with the like goods offered by the domestic industry in the Indian market. 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 product. The Authority has therefore cumulatively assessed the effect of dumped imports.

Economic parameters of the domestic industry

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

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

41. It is not necessary that all parameters of injury need to show deterioration. Some parameters may show deterioration; while some may show improvement. The Authority has considered all injury parameters and thereafter has concluded injury to the domestic industry due to dumping.

42. The Authority has therefore examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions.

Assessment of Demand

43. The demand for the subject is total of domestic sales and imports of subject goods from all countries. For the purpose of present injury analysis, the Authority has relied on the transaction-wise import data procured from DGCI&S with appropriate correlation with responses filed by producers/exporters and importers. The Authority notes that demand for the subject goods increased significantly over the injury period as depicted in the table below.

Table 2: Demand of subject goods

Period	Unit	Subject countries	Other Countries	Total Imports	Indian Production	Indian Demand
2012-13	MT	1,18,468	37,357	1,55,825	-	1,55,825
2013-14	MT	1,58,567	18,838	1,77,405	-	1,78,031
2014-15	MT	1,57,514	9,196	1,66,710	46,657	1,93,234
Q1 14-15	MT	27,807	1,886	29,693	5,168	32,616
Q2 14-15	MT	49,452	3,683	53,135	5,977	57,053
Q3 14-15	MT	40,948	2,981	43,930	19,601	49,465
Q4 14-15	MT	39,307	645	39,952	15,911	54,100
Q1 15-16	MT	35,436	1,077	36,513	32,985	60,583
Q2 15-16	MT	33,040	2,626	35,666	24,043	54,397
POI	MT	1,48,732	7,329	1,56,061	92,540	2,18,546
POI (quarterly)	MT	37,183	1,832	39,015	23,135	54,636
Post POI-6 months	MT	53,465	2,284	55,749	56,784	1,14,517
Post POI-3 months	MT	26,732	1,142	27,875	18,928	57,258

44. It is seen from the above table that the demand for the product in the country has increased significantly over the period on an annual basis.

Volume Effect of Dumped Imports on Domestic Industry's Import Volumes and Share of Subject Country

45. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. The volume of imports of the subject goods from the subject countries are as under:

Table 3: Absolute Imports from the subject countries

Volume of Imports	Unit	2012-13	2013-14	2014-15	POI
EU	MT	41,276	39,626	27,695	32,523
Korea RP	MT	74,735	1,04,994	1,11,133	1,02,034
Thailand	MT	2,456	13,947	18,686	14,175
Subject Countries	MT	1,18,468	1,58,567	1,57,514	1,48,732
Other Countries	MT	37,357	18,838	9,196	7,329
Total Imports	MT	1,55,825	1,77,405	1,66,710	1,56,061
Indian Production	MT	0	6,912	46,657	92,540
Indian Demand	MT	1,55,825	1,78,031	1,93,234	2,18,546
Imports from subject countries in relation to:					
Indian Production	%	-	2294.01%	337.60%	160.72%
Indian Consumption	%	76.03%	89.07%	81.51%	68.06%
Imports in India	%	76.03%	89.38%	94.48%	95.30%

46. The analysis of the above indicates the following:

a. Imports from the subject countries have increased in absolute terms till 2014-15 and declined in POI because of commencement of the production by the petitioners.

b. Imports from the subject countries have remained significant in terms of total imports as well as in relation to consumption and production in India in spite of the sufficient capacity available with the petitioners.

c. Imports from the subject countries have remained significant and has prevented the domestic industry from increasing its production and sales. The imports have been significant enough to prevent Domestic Industry from selling the goods to an optimal extent.

Production, Capacity, Capacity Utilization and Sales

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

Table 4 (a)

Period	Import from Subject countries	Import from Other Countries	Capacities with Indian Industry	Indian Demand	Production of ISRPL	Sales of ISRPL	Production of RIL	Sales of RIL
	MT	MT	MT	MT	MT (Indexed)	MT (Indexed)	MT (Indexed)	MT (Indexed)
2012-13	1,18,468	37,357	-	-	-	-	-	-
2013-14	1,58,567	18,838	-	-	-	-	-	-
2014-15	1,57,514	9,196	50,000	-	100	100	-	-
Q1 14-15	27,807	1,886	30,000	32,616	75	467	-	-
Q2 14-15	49,452	3,683	30,000	57,053	86	625	-	-
Q3 14-15	40,948	2,981	65,250	49,465	88	756	100	100
Q4 14-15	39,307	645	65,250	54,100	106	1,322	63	736
Q1 15-16	35,436	1,077	65,250	60,583	299	2,694	91	902
Q2 15-16	33,040	2,626	65,250	54,397	168	1,736	92	985
POI	1,48,732	7,329	2,61,000	2,18,546	165	1,627	87	681
POI (quarterly)	37,183	1,832	65,250	54,636	165	1,627	87	681
Post POI-6 months	53,465	2,284	1,30,500	1,14,517	192	2,064	112	2,063
Post POI-3 months	26,732	1,142	65,250	57,258	192	2,064	42	2,063

Table 4 (b): production and capacity of ISRPL

Period	Installed capacity	Production	Capacity Utilization	Domestic Sales	Average Inventory	Exports
	MT	MT	%	MT	MT	MT
Q1 14-15	100	100	17%	100	100	100
Q2 14-15	100	116	20%	134	112	189
Q3 14-15	100	117	20%	162	108	220
Q4 14-15	100	142	24%	283	83	157
Q1 15-16	100	399	69%	577	74	270
Q2 15-16	100	224	39%	372	75	174
POI	100	221	38%	349	91	205
POI (quarterly)	100	221	38%	349	91	205
Post POI-6 months	100	257	44%	442	85	26
Post POI-3 months	100	257	44%	442	85	26

48. It is seen from the above table that:

- The domestic industry installed capacities to cater to the existing demand in the country.
- The demand for the product under consideration in the country has increased over the

injury period.

- c) Production of the domestic industry has though increased but not to an optimal level.
- d) Capacity utilization has though increased considerably over 2014-15 and the POI. However, there are significant unutilised capacity with the domestic industry.
- e) Sales of domestic industry increased in 2014-15 and in the POI due to new units commencing their production and sales.

49. It is thus noted that production, domestic sales and capacity utilization of the domestic industry increased due to the fact that 2 new units commenced their production, on account of which an upward trend in domestic production and sales is expected. However the upward trend is not significant which can be construed as growth of the domestic industry.

Market Share

50. The effects of the dumped imports on the market share of the domestic industry have been examined as below:

Table 5 (a)

Period	Sales of DI	Subject Countries	Other Countries	Total Demand
	MT	MT	MT	MT
Q1 14-15	2,923	27,807	1,886	32,616
Q2 14-5	3,918	49,452	3,683	57,053
Q3 14-15	5,535	40,948	2,981	49,465
Q4 14-15	14,148	39,307	645	54,100
Q1 15-16	24,070	35,436	1,077	60,583
Q2 15-16	18,731	33,040	2,626	54,397
POI	62,485	1,48,732	7,329	2,18,546
POI (quarterly)	15,621	37,183	1,832	54,636
Post POI- 6 months	58,767	53,465	2,284	1,14,517
Post POI- 3 months	29,384	26,732	1,142	57,258

Table 5 (b)

Period	Share in Demand %			
	DI	Subject Countries	Other Countries	Total
Q1 14-15	9%	85%	6%	100%
Q2 14-5	7%	87%	6%	100%
Q3 14-15	11%	83%	6%	100%
Q4 14-15	26%	73%	1%	100%

Q1 15-16	40%	58%	2%	100%
Q2 15-16	34%	61%	5%	100%
POI	29%	68%	3%	100%
POI (quarterly)	29%	68%	3%	100%
Post POI- 6 months	51%	47%	2%	100%
Post POI- 3 months	51%	47%	2%	100%

Table 5 (c) - Share of ISRPL in Demand on indexed basis

Period	Share
Q1 14-15	100
Q2 14-5	78
Q3 14-15	111
Q4 14-15	167
Q1 15-16	311
Q2 15-16	222
POI	211
POI (quarterly)	211
Post POI- 6 months	256
Post POI- 3 months	256

Table 5 (d)

Period	Subject countries Imports in relation to		
	Indian Production	Indian Consumption	Imports in India
Q1 14-15	538%	85%	94%
Q2 14-5	827%	87%	93%
Q3 14-15	209%	83%	93%
Q4 14-15	247%	73%	98%
Q1 15-16	107%	58%	97%
Q2 15-16	137%	61%	93%
POI	161%	68%	95%
POI (quarterly)	161%	68%	95%
Post POI- 6 months	94%	47%	96%
Post POI- 3 months	94%	47%	96%

51. It is seen from the above table that the market share of the domestic industry has increased since its establishment in 2014-15. However, the gain in market share of the demand, despite their being the only producers of the subject goods in the Country is not significant. The share of imports from subject country which are evaluated to be dumped remained significant over the period.

Price Effect of the Dumped Imports on the Domestic Industry

52. 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.”

53. It has been examined whether there has been a significant price undercutting by the price of the dumped imports 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 with reference to the price undercutting, price underselling, price suppression and price depression is as under.

Price Undercutting

54. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared the landed price of imports with net sales realization of the domestic industry. The Authority has separately worked out undercutting for SBR 1500 and SBR 1700 series. In this regard, a comparison has been made between the landed value of the product from each of the subject countries 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 level. The table below shows the level of price undercutting

Table 6: Price Effect

Priceundercutting	Unit	Q1 14-15	Q2 14-15	Q3 14-15	Q4 14-15	Q1 15-16	Q2 15-16	POI	Post POI
SBR-1500 Series									
Net Sales Realisation	Rs/MT	***	***	***	***	***	***	***	***
Subject Countries as a whole									
Landed Price	Rs/MT	1,08,428	1,21,842	1,23,795	96,541	82,305	96,101	1,01,164	83,431
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(0-10)	(15-25)	(20-30)	(30-40)	(0-10)	(20-30)	(20-30)	(0-10)

EU									
Landed Price	Rs/MT	1,25,906	1,28,748	1,29,711	1,07,549	82,436	96,031	1,08,783	82,035
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(20-30)	(30-40)	(25-35)	(40-50)	(0-10)	(20-30)	(30-40)	(0-10)
Korea									
Landed Price	Rs/MT	1,07,953	1,20,423	1,22,067	95,532	82,349	96,202	99,901	83,762
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(0-10)	(15-25)	(20-30)	(30-40)	(0-10)	(20-30)	(20-30)	(0-10)
Thailand									
Landed Price	Rs/MT	1,10,493	1,17,700	1,19,755	82,165	81,256	94,084	91,228	82,183
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(10-20)	(10-20)	(20-30)	(10-20)	(0-10)	(10-20)	(15-25)	(0-10)
SBR-1700 Series									
Subject Countries as a whole									
Net Sales Realisation	Rs/MT	***	***	***	***	***	***	***	***
Subject Countries as a whole									
Landed Price	Rs/MT	1,02,806	1,12,377	1,15,378	91,890	81,464	95,757	96,086	81,620
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(0-10)	(15-25)	(25-35)	(30-40)	(0-10)	(30-40)	(20-30)	(25-35)
EU									
Landed Price	Rs/MT	1,26,072	1,20,287	1,21,526	98,545	81,705	97,172	98,225	82,659
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(30-40)	(25-35)	(30-40)	(40-50)	(0-10)	(30-40)	(20-30)	(25-35)
Korea									
Landed Price	Rs/MT	1,02,801	1,10,259	1,15,631	95,704	84,414	95,339	98,753	85,059
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(5-15)	(15-25)	(25-35)	(35-45)	(5-15)	(25-35)	(25-35)	(30-40)
Thailand									
Landed Price	Rs/MT	98,778	1,09,361	1,07,149	77,154	75,513	89,698	84,646	70,128
Price undercutting	Rs/MT	***	***	***	***	***	***	***	***
Price undercutting %	%	(0-10)	(15-25)	(15-25)	(10-20)	0-10	(20-30)	(5-15)	(5-15)

55. In case of Korea while price undercutting was positive in Q1 of 15-16, it has otherwise been negative. The Authority notes that price pressure on domestic industry which has just entered into the market, a negative price undercutting indicates that industry has aggressively matched the import prices to ensure its presence in the market.

Price Suppression/Depression

56. In order to determine whether the dumped imports are depressing the domestic prices

or whether the effect of such imports is to suppress prices to a significant degree and prevent price increases which otherwise would have occurred to a significant degree, the Authority notes the changes in the costs and prices over the injury period. The position is shown as per the Table below:

Table 7: Price effect cost of sales and sales price

Period	Cost of Sales	<i>Trend</i>	Selling Price	<i>Trend</i>	Landed Price	<i>Trend</i>
	Rs/MT		Rs/MT		Rs/MT	
Q1 14-15	***	100	***	100	92,730	100
Q2 14-15	***	94	***	102	1,04,576	113
Q3 14-15	***	95	***	101	1,11,899	121
Q4 14-15	***	68	***	73	85,034	92
Q1 15-16	***	47	***	83	72,162	78
Q2 15-16	***	60	***	82	93,063	100
POI	***	60	***	83	99,003	107
Post POI	***	54	***	79	82,612	89

57. The Authority notes that there is price suppression and depression with selling prices being lower than the cost of sales. The price underselling evaluation in the following para quantifies the extent attributable to the phenomena of dumping.

Price Underselling

58. The Authority has also examined price underselling suffered by the domestic industry on account of dumped imports from the subject countries. For this purpose, the NIP determined for the domestic industry by considering data of ISRPL only has been compared with the landed price of imports. For determining the injury margin the Authority has evaluated the landed value of SBR 1500 and 1700 series separately. The landed value has been computed by adding applicable basic custom duty and cess on the assessable value of imports. In case of KKPC in respect of exports made through DWI /DWISG the CIF price of DWI/DWISG have been referenced, while for the direct exports by KKPC, the CIF prices of M/s KKPC have been adopted. Similarly in case

of LG Chem the CIF price of direct export by LG Chem have been adopted. While for exports through traders the CIF price from traders data have been adopted. The export made by M/s Synthos Dwory and M/s Synthos kralupy are direct whose CIF prices have been adopted for landed value. In case of M/s Trinseo the response has been partial and producer did not consent for verification. The authority has not considered their response for individual determination of either dumping margin or injury margin. The highest injury margin amongst the cooperative producers of EU has been adopted for all other residual and cooperative producers. For M/s BSTE Thailand, the weighted average CIF price during POI has been referenced on the basis of DGCI&S data. The injury margin on the basis of the above methodology for various producers/exporters is as below:

Table 8

Korea									
Producer/ exporter	CIF \$/MT		LV \$/MT		NIP \$/MT		IM \$/MT (wt. average)	IM% (wt. aver age)	IM Range(wt. average)
	1500 series	1700 series	1500 series	1700 series	1500 series	1700 Series			
KKPC (Weighted Average) including – exports through Daewoo International/ Daewoo International, Singapore	***	***	***	***	***	***	***	***	10 – 20
LG (Weighted Average)-including 5 traders	***	***	***	***	***	***	***	***	10 – 20
Residual Producers/exporters	***	***	***	***	***	***	***	***	20 - 30
EU									
(i)Synthos Dwory 7 Sp. Z. Oo, Poland	***	***	***	***	***	***	***	***	10 – 20
(ii)Synthos Kralupy A.S., Czech Republic (1700 series only)	***		***		***		***	***	10 – 20

Weighted Average- of (i) & (ii) above	***	***	***	***	***	***	***	***	10 – 20
Residual Producers/exporter s including M/s Trinseo	***	***	***	***	***	***	***	***	20 – 30
Thailand									
All producers/exporters including BST Elastomers Co. Ltd.	***	***	***	***	***	***	***	***	20 – 30

Profits, profitability, return on investment and cash profits

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

Table 9

Particulars	UOM	Q1 14-15	Q2 14-15	Q3 14-15	Q4 14-15	Q1 15-16	Q2 15-16	POI	Post POI
Cost of Sales	Rs/MT	***	***	***	***	***	***	***	***
Trend	Indexed	100	94	95	68	47	60	60	54
Selling Price	Rs/MT	***	***	***	***	***	***	***	***
Trend	Indexed	100	102	101	73	83	82	83	79
Profit/loss	Rs/MT	***	***	***	***	***	***	***	***
Trend	Indexed	(100)	(86)	(90)	(62)	(12)	(38)	(38)	(29)
Total Profit/(loss)	Rs.lacs	***	***	***	***	***	***	***	***
Trend	Indexed	(100)	(115)	(145)	(176)	(70)	(141)	(133)	(126)
Cash Profits	Rs.lacs	***	***	***	***	***	***	***	***
Trend	Indexed	(100)	(119)	(136)	(226)	(48)	(145)	(139)	(118)
PBIT-Domestic	Rs.lacs	***	***	***	***	***	***	***	***
Trend	Indexed	(100)	(119)	(150)	(171)	(46)	(124)	(123)	(95)
ROI	%	***	***	***	***	***	***	***	***
Trend	Range	(0-20)	(0-20)	(20-30)	(20-30)	(0-10)	(15-25)	(15-25)	(15-25)

60. The Authority notes that:

a) Both, the cost of sales and the selling price, declined over the period. The cost of production, despite sharply declining in the POI was still considerably higher than the

selling price which resulted in a loss. The decline in cost is due to decline in raw material prices and overhead cost. The overhead cost per unit has come down due to some increase in production.

b) The domestic industry had suffered increased loss, despite increase in the demand, production and sales in the POI as compared to the previous year.

c) Return on investment over the injury period has shown the same trend as that of loss, while it slightly improved in the POI.

d) Profit before interest and taxes (PBIT) was negative in this period

e) Cash losses showed sharp increase in POI while the loss suffered was almost doubled in the POI and was significant.

61. Since the domestic industry has just started production, these factors are likely to be on the decline until the domestic industry manages to gain a foothold in the market. However it still shows that the domestic industry suffered losses since their establishment.

Employment, Productivity and Wages

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

Table 10

Period	Productivity per employee	Employment	Wages
	MT/No	Nos.	Rs Lacs
Q1 14-15	100	100	100
Q2 14-15	110	105	107
Q3 14-15	111	106	101
Q4 14-15	129	110	111
Q1 15-16	368	109	104
Q2 15-16	213	105	93
POI	203	109	102
Post POI	122	105	126

63. It is noted that employment with the domestic industry increased over the POI. However the per unit wages have declined.

Inventories

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

Table 11

Period	Average Stock
	MT
Q1 14-15	100
Q2 14-15	112
Q3 14-15	108
Q4 14-15	83
Q1 15-16	74
Q2 15-16	75
POI	91
Post POI	85

65. It is seen that inventories with the domestic industry declined modestly during in the period of investigation, but remained significant.

Ability to raise capital investments

66. The Authority notes that given rising demand of the product in the country, the domestic industry has made investments in setting up fresh capacity. However, despite these investments, the performance of the domestic industry has deteriorated adversely affecting its ability to raise funds.

Level of dumping & dumping margin

67. It is noted that imports from each of the subject countries are entering the country at dumped prices and that the margins of dumping are above de-minimis limits.

Factors Affecting Domestic Prices

68. The examination of the import prices from the subject countries, 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 shows

that the landed value of imported material from the subject countries is below the non-injurious price of the domestic industry, causing price underselling in the Indian market. The Authority notes that the prices of the product under consideration in general should move in tandem with the prices of key raw materials and the domestic industry has been fixing its prices considering these input prices and landed price of imports. The landed value of subject goods from the subject countries is an important factor for determination of domestic prices.

Material Retardation of Establishment of an Industry in India

69. The Authority notes that M/s ISRPL had commenced the commercial production w.e.f. Feb., 2014 (ISRPL) and Reliance Industries Limited has declared commercial production on 30th September, 2016. The Authority has analysed the trend of 6 months Post POI data. The Authority notes that submission on improvement of sales in post POI due the approval accorded by the user industry to DI is an indication of only one aspect of market condition for domestic industry. The establishment of fair playing field also requires mitigating the extent of injury due to dumping evaluated during the POI. The Authority therefore notes of both the aspects in determining injury to domestic industry comprehensively. The Authority therefore notes actual performance so far to establish effect of dumping, potential situation in order to establish threat of injury and whether dumping of the product under consideration is materially retarding the establishment of the domestic industry in India.

70. Section 9B of the Customs Tariff Act provides as follows:

9B - the Central Government shall not levy any countervailing duty or anti-dumping duty.

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organization or from a country with whom Government of India has a most favored nation agreement (hereinafter referred to as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

Rule 11 of the Anti-Dumping Rules provides, inter-alia, as follows –

11. Determination of injury. - (1) *In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.*

(2) *The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to the establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.*

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

- (i) *in case of “developing industry” which has not yet begun commercial production but substantial commitment to commence production has been made;*
- (ii) *in case of “nascent industry” whose commercial production although has begun but the industry has yet to find its place in the market.*

72. The Authority notes the submission made by the domestic industry that the data of the past three years are not relevant in this case as the domestic industry in a nascent industry and did not have any past history of commercial production.

73. The Authority notes the guideline of WTO Committee on Anti-dumping Practices which states that the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation.

74. The Authority notes the WTO’s proposed amendment to the Anti-Dumping Agreement on this issue. The WTO member countries have proposed following amendment to the Agreement to address the injury in the form of material retardation to establishment of domestic industry.

3.9A 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.

75. The above indicates that the member countries consider that material retardation to establishment of domestic industry is an important provision under the law. While this may not be legally binding, it still serves as a guiding factor for the purposes of determining material retardation of a domestic industry. This provision indicates that even if a company has not commenced commercial production, the company is entitled to seek protection under the rules. The proposal also guides the authority to consider the following parameters in such a situation.

- a. a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in India;
- b. production has not yet begun or has not yet been achieved in commercial volumes.

76. To analyse the above the Authority has analysed the following volume and price parameters of M/s RIL.

Table 12

Particulars	Unit	Q3 (2014- 15)	Q4 (2014- 15)	Q1 (2015- 16)	Q2 (2015- 16)	POI	Post POI (01/10/2015 to 31/03/2016)
Installed capacity	MT	100	100	100	100	100	100
Production	MT	100	63	91	92	87	112
Capacity Utilization	%	100	63	91	92	87	112
Domestic Sales	MT	100	736	902	985	681	2,063

Table 13

Particulars	Unit	Q3 (2014 - 15)	Q4 (2014-15)	Q1 (2015 - 16)	Q2 (2015 - 16)	POI	Post POI (1/10/2015 to 31/03/2016)
Cost of Sales	Rs/MT	***	***	***	***	***	***
<i>Trend</i>	Indexed	100	30	20	20	26	18
Selling Price	Rs/MT	***	***	***	***	***	***
<i>Trend</i>	Indexed	100	74	78	76	77	68

Table 14

Particulars	UOM	Q3 (2014 - 15)	Q4 (2014-15)	Q1 (2015 - 16)	Q2 (2015 - 16)	POI	Post POI (1/10/2015 to 31/03/2016)
Cost of Sales	Rs/MT	***	***	***	***	***	***
Indexed	Trend	100	30	20	20	26	18
Selling Price	Rs/MT	***	***	***	***	***	***
Indexed	Trend	100	74	78	76	77	68
Profit/loss	Rs/MT	***	***	***	***	***	***
Indexed	Trend	(100)	(18)	(5)	(4)	(12)	(5)
Total Profit/(loss)	Rs.lacs	***	***	***	***	***	***
Indexed	Trend	(100)	(135)	(41)	(39)	(79)	(96)
Cash Profits	Rs.lacs	***	***	***	***	***	***
Indexed	Trend	(100)	(135)	(41)	(39)	(79)	(95)
PBIT- Domestic	Rs.lacs	***	***	***	***	***	***
Indexed	Trend	(100)	(135)	(41)	(39)	(79)	(93)
ROI	%	***	***	***	***	***	***
Indexed	Trend	(100)	(134)	(41)	(39)	(78)	(92)

Table 15

Particulars	Unit	Q3 (2014-15)	Q4 (2014-15)	Q1 (2015-16)	Q2 (2015-16)	POI	Post POI (01/10/2015 to 31/03/2016)
Average Stock	MT	100	213	214	185	84	113

77. M/s RIL declared commercial production only on 30.09.2016. In the post POI, though the capacity utilisation of M/s RIL increased the sales did not increase in proportion to the increase in production leading to increased inventory. The cost of sales has been declining over the POI and post POI but the selling price continues to be lower than the

cost of production. Even though M/s RIL has declared commercial production only on 30.09.2016, the selling price in post POI is much below the fair threshold level of NIP determined for M/s ISRPL which is also an indicator for M/s RIL. Therefore, there is an evidence of price suppression and depression along with retardation on production, and attaining optimal capacity utilisation level. The adverse price impact has led to decline in profitability parameters like cash flow, PBIT and ROI.

Causal Link

78. Article 3.5 of the Anti-dumping Agreement and Annexure-II to the Indian Rules deals with injury to the domestic industry and is stated as under: -

“3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports, which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter-alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.”

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

79. The Authority has noted submissions on the likely causes of injury to domestic industry

and evaluated the causal link between dumping and consequential injury on account of this only in accordance with relevant AD Rules and its consistent practice. The Authority has examined if there is a causal relationship between dumping and injury below.

a) Volume and value of imports not sold at dumped prices: - The domestic industry is facing injury from dumped imports entering into the country from the subject countries. Imports of product under consideration from other countries are insignificant in volume. Imports from other countries have not caused injury to the domestic industry in the POI.

b) Contraction in demand: - The demand of the product under consideration has shown a positive growth throughout the injury period. Hence, contraction in demand is not a possible reason, which could have contributed to injury to the domestic industry.

c) Changes in the patterns of consumption: - The pattern of consumption with regard to the product under consideration has not undergone any change. Change in the pattern of consumption is unlikely to contribute to the injury to the domestic industry.

d) Developments in technology: - Technology for production of the product has not undergone any change nor there are any likely changes in coming future. In fact, petitioner has set up a new plant, which is the most recent technology available for the product under consideration. Developments in technology are, therefore, not a factor of injury.

e) Trade restrictive practices of and competition between the foreign and domestic producers: - There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

f) Export performance - The domestic industry has exported the product under consideration. The domestic industry has however segregated information with regard to sales and price parameters for the domestic operations.

g) Performance of other products produced and sold by the domestic industry:- This has been discussed earlier with regard to the product under consideration.

80. The Authority notes that if there is a volume and price effect from dumped imports under paragraph (ii) of Annexure II of the Rules, and the effects of injury caused by dumped imports are demonstrated in terms of the parameters set out in paragraph (iv) of Annexure II of the Rules, then, the next step to ensure that the injury is not caused by the dumped imports is through non-attribution analysis, i.e., those other factors have

caused the injury. As demonstrated in the preceding paragraphs, listed known other factors do not establish that injury has been caused by these other factors. It is therefore concluded that the injury to the domestic industry has also been caused by the dumped imports from the subject countries. Following parameters show causal link: -

- a) The dumped imports from the subject countries are available in large volume at prices lower than prices in India.
- b) Since the domestic industry has started offering the product under consideration in the market from Feb., 2014, the prices fixed by the domestic industry are benchmarked to the import prices.
- c) Presence of dumped imports is preventing the domestic industry to fully utilize their capacity and maximize its production and sales.
- d) Profitability of the domestic industry is also suffering over the injury period.
- e) Dumping of the product under consideration is not allowing the domestic industry to fully establish itself.

81. The Authority therefore notes that there does exist a causal relationship between the dumping and the injury.

Factors establishing causal link

82. Analysis of the performance of the domestic industry over the injury period shows that the performance of both M/s ISRPL and M/s RIL of domestic industry has also deteriorated due to dumped imports from subject countries on account of material injury and material retardation respectively. Causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- a) The domestic industry is fixing its selling prices based on the import price from various subject countries. The imports of the product under consideration are causing price suppression and are preventing the domestic industry from raising the prices. The selling prices continue to be lower than the cost of production. Consequently, profits, cash flow and ROI has declined.
- b) The subject imports are also resulting in price underselling in the market, when compared with the non-injurious price.
- c) The growth of the domestic industry became negative in terms of various price and

volume related economic parameters. While negative growth in volume parameters could somewhat be due to initial years of production, the negative growth in the price parameters is essentially due to dumping of the product.

- d) While examining the material retardation of M/s RIL, the post POI parameters evidence suppression of production, non-optimality in capacity utilization, price underselling and overall price suppression/depression adversely affecting profitability indices.

83. The Authority has determined non-injurious price on the basis of M/s ISRPL's data by considering best consumption norms of the raw materials & utilization. The Authority has considered fixed expenses by considering optimum production volume of *** MT with best capacity utilization which the industry has projected in the project report. The Authority has also segregated and excluded various expenses considering the provisions of Annexure-III to the Rules. Capital employed of the domestic industry has been determined on the basis of provisions of Annexure III of the Rules and the return on capital employed has been computed at the optimum level of notional production. The non-injurious price of the domestic industry so determined has been compared with the landed values of the subject imports from each of the responding exporters from the subject countries and for residual producers/exporters to determine injury margin. The methodology of 'NIP' in this case to a large extent addresses the non-attribution analysis as submitted by various interested parties.

Post disclosure comments

84. Submissions made by the domestic industry

The petitioners requested disclosure of pertinent facts vide their emails dated 16th June 2017 and 17th June 2017. Petitioners received reply vide emails dated 19th June 2017.

Petitioners submit that the Authority has provided further disclosure with regard to NIP. No further information has been disclosed to the petitioners. Further, petitioners filed a detailed submissions vide email dated 20th June 2017 to highlight the need for such disclosure in the facts and circumstances of the present case. However, no further disclosure has been made to the petitioners.

In view of the above, the petitioners were unable to offer their comments effectively. Accordingly, petitioners requested additional time of one week to offer their comments.

However, the petitioners received no reply to the request for extension of time made by the petitioners.

In view of the foregoing, the present submissions may kindly be considered as an interim submission on behalf of the petitioners.

It is evident from the disclosure statement that the facts that different grades of styrene butadiene rubber constitute one article and it would not be appropriate to exclude any grade. Since the petitioners are new entities in the market (one of the petitioner companies has not even commenced commercial production), it is natural that the petitioners have not started full scale production of all the grades these companies can produce. The petitioners have first focus on grades commanding majority consumption. The petitioners shall commence commercial production of remaining grades in due course. The grade wise capacity of producing different grades of petitioners are as under

Grades	ISRPL	RIL
1502	Produced & supplied	Produced & supplied
1507	No capacity	Have capacity to produce
Subtotal		
1705	No capacity	Have capacity to produce
1712	Produced & supplied	Produced & supplied
1721	No capacity	Have capacity to produce
1723	Produced & supplied	Produced & supplied
1732	No capacity	Have capacity to produce
1737	No capacity	Have capacity to produce
1739	No capacity	Have capacity to produce
1778	Have capacity to produce	Have capacity to produce
1783	No capacity	Produced & supplied
1789	No capacity	Have capacity to produce

The subject product produced by the applicant domestic industry is like article to the Product under consideration, in accordance with the AD Rules;

Petitioners disagree that the NIP can be determined only in respect of a company who has commenced commercial production in the facts of the present case, where injury is evidently in the form of material retardation to establishment of domestic industry in addition to the injury already inflicted on the domestic industry in respect of actual production and sale. The petitioner submits that the NIP is required to be determined in respect of all the constituents of petitioning companies. The interpretation drawn by the authority shall imply that a company who has not commenced commercial production is not entitled to protection under the law. It is, however, without any legal basis for the reason that the mere fact that a company who is establishing itself in the market is entitled to seek protection implies that the company need not have commenced commercial production. The petitioners stresses on the legal requirement that injury to the domestic industry may be in the form of “material retardation to the establishment of domestic industry”. Further, the authority has relied upon the project report in such situations and therefore the fact of actual production is of little consequences. In any case, RIL produced and supplied significant volumes of the product. Merely because production was declared as

trial production does not mean that there is insufficient information for the determination of NIP.

Above all, the rules have not differentiated and distinguished between trial production and commercial production. Rule merely refers to "production". The company has not only produced but also sold a significant volume of SBR in the market.

Domestic industry has suffered injury in the form of material injury (to the extent of its production and sale in the market) and material retardation to establishment of the industry;

Material injury and material retardation to the domestic industry is due to dumped imports from subject countries.

The dumping margin and injury margin are quite significant.

The Authority has rightly defined the product under consideration. The Petitioner is in agreement with the Authority over the decision to not exclude product grades such as 1739 and 1789 as the domestic industry has the capability to produce such grades when such orders come and the market is a fair playing field. The domestic industry has the technical capability to produce various grades as different grades are only determined by a difference in the amount of styrene and butadiene present in their composition. The current manufacturing status of grades does not erode such capability of the Petitioner.

Petitioner further submits that while capability of production may not be so relevant in a situation where a domestic producer has been in operation for quite some time now and had produced over the entirety of injury period, in a situation where domestic industry has commenced commercial production only recently and has a history of 20 months as against the injury period of four years, evidently, capability to produce becomes more relevant and appropriate parameter.

The Petitioner reaffirms that there was no domestic industry for the product under consideration in India during the injury period. Producers of SBR 1900 grade exist but are unable to produce SBR 1500 & 1700 grade, which is the product under consideration in the present investigation.

The project report given by the two petitioning companies make it evident that the petitioners have considered absence of production in the country while setting up plant. Further, as far as production of SBR by Apcotex is concerned, the company has produced only 1900 series SBR. The company does not produce SBR 1700 and 1500 series. The petitioner submits that production facilities for SBR 1900 series cannot be used for production of SBR 1700 and 1500.

Since the customs classification is indicative only, the Designated Authority may kindly specify in duty table that the product under consideration should attract duty regardless of the customs classifications under which goods are being cleared by the importers. Further, the authority may kindly specify in duty table that the customs classification is indicative only. Petitioner submits that only the duty table contents are relevant in this regard. Anything mentioned in the para relating to "product under consideration" but not stated in duty table is likely to get ignored while issuing notification by the Ministry of Finance. Further, the Customs authorities at the port consider and rely upon the notifications issued by the MOF. The customs authorities do not take cognizance of the notification issued by the DGAD as final findings. It is, therefore, utmost important that the duty table itself includes all these clarifications.

The petitioners are unable to understand as to how an exporter be selling the product type at a price significantly higher than other exporters.

Petitioners have earlier raised their concerns about low quantum of dumping margin determined in the disclosure statement and have requested disclosure of pertinent documents/information/details. A copy of the communications sent to the Designated Authority is relied upon and are not being repeated for sake of brevity. Petitioners submit that unless adequate details are disclosed to the petitioners, the petitioners are unable to offer their comments on the dumping margin determined by the authority.

Without prejudice, the petitioners have done their own independent research with regard to various situations and have following submissions.

Suppression of facts by LG Chem – Petitioners find that LG Chem has resorted to suppression of vital facts from the authority. The petitioners have written a detailed letter to the Designated Authority, a copy of which is enclosed with these submissions also. Since LG Chem has resorted to suppression of vital facts, has not truthfully come before the authority and willfully withheld information, the authority should reject the entirety of questionnaire response. Petitioners further submit that it is not a case where the authority should make modifications to the dumping margin earlier determined. It is a case of vital concealment of facts and suppression of relevant information from the authority. Modification to the dumping margin shall actually imply condoning such kind of offenses by an exporter who has resorted to dumping the product in the Country. Petitioners submit that if the exporters have withheld such vital information with regard to the facts which somehow became known to the petitioners in India, there is no guarantee that the information provided by the producer with regard to their domestic sales or cost of production is credible enough. The credibility of the exporter should be a huge question mark and the questionnaire response should be rejected on this account.

The disclosure statement does not clarify whether the starting price adopted for determination of export price has been considered as CIF export price to India or the same is export price of producer. If the authority has considered CIF price to India, it follows that the export price is based on a combination of invoices raised by the producer and several traders, as the authority has found that some portion of the exports were made directly and some portions of sales were made through some related or unrelated traders. Thus, if the starting export price is the CIF export price to India, it follows that the authority has determined such export price on the basis of invoices raised onto the Indian consumers which were raised by the following parties:-

- (a) (i) M/s Kumho Petrochemicals Co., Ltd, Korea RP
- (ii) M/s Daewoo International., Korea RP
- (iii) M/s Daewoo International., Singapore

- (b) (i) M/s LG Chem Ltd., Korea RP
- (ii) M/s LG Chem America Inc, USA
- (iii) M/s Wonchem, Ltd., Korea RP
- (iv) M/s Heartychem Corp., Korea RP
- (v) M/s Everlite Korea Co Ltd., Korea RP
- (vi) M/s Hansuk Chemicals Co Ltd., Korea RP

In the alternative, the authority has considered the export volume and export value in the books of the producer concerned (i.e., LG Chem and Kumho Petrochemicals). If so, then, the export price has been determined on the basis of export value reported by the producer concerned. In that case, it follows that the entirety of the questionnaire response by the traders had become redundant. In that case, it is required to be examined whether the independent traders have kept

a margin which was sufficient to meet their expenses and earn a reasonable profit. The traders might have kept huge margins or inadequate margins. Petitioners submit that under either situation, the margin kept by the traders become relevant to examine whether the same was sufficient and was neither lower nor higher than the expenses incurred by such traders and reasonable amount for the profit. Further, in case of invoicing through related party, the authority is required to consider the resale price of such trader's and construct backward price of the producer (the authority has in the past considered the resale price of the related trader and has deducted all expenses and reasonable profit of such related trader). It is however not clear whether the same has been done in the facts of the present case.

Valuation of captive raw materials and utilities – Petitioners had earlier submitted that the number of captive raw materials and inputs have been sourced by these producers. In a situation where a producer has a captive raw material or utility, the authority is required to consider whether valuation of such raw material or utility reported to the authority is reasonable and appropriate for the purpose of determination of cost of production. The authority has already found that significant sales in the domestic market by both the producers were below cost of production. Further, given positive dumping margin determined by the authority, it follows that significant exports by the two producers were below cost of production. Petitioners assume that the exporters have claimed their captive consumption on the basis of record and have claimed that the same is reasonable for the present purposes. However, the mere fact that the producer has claimed their captive input cost on the basis of records is insufficient for the present purposes. It does not appear from the questionnaire response or disclosure statement or any other documents disclosed to the petitioners that the exporter have provided complete details of such captive raw materials and the authority could have satisfied itself with regard to appropriateness of the valuation of such captive input by the producer.

Utilities – Both Kumho and LG Chem have significant portion of utilities getting captively generated out of production process of other product. There is nothing in the disclosure statement or questionnaire response which deals with the valuation of captive utilities.

Both Kumho Petrochemicals and LG Chem have significant captive utilities. Further, they are engaged in production of few products, some of which are listed below. Production of these products generates energy which is then converted into some form of utilities and then consumed in production of other products. It is unclear whether this fact has been disclosed to the authority; and, if so, how the value of such inputs has been charged to the cost of production of the PUC.

SGA Expenses – the authority has in the past rejected cost apportionment by Kumho Petrochemicals on account of SGA expenses and has adopted a different methodology than the one claimed by the company. The company had in fact agitated this issue before the CESTAT. Relevant decision is enclosed as Annexure 3. It is unclear whether the company has continued with its incorrect apportionment methodology and whether the authority has accepted the same. It is, however, pointed out that even the US authority have rejected the apportionment methodology adopted by LG Chem and has reapportioned their SGA expenses. Relevant extracts from the decision memorandum of the US authorities are enclosed with these submissions as Annexure 4.

Interest cost – Kumho Petrochemicals has been reporting interest expense after adjusting the same for interest income earned by the company (for different operations). Interest expenses incurred on funds taken for production of various goods and interest income generated from investment activity cannot be compared. Such interest income generated from financing activities cannot be adjusted against the interest expenses incurred. The authority has in the

past in fact rejected such reduction of interest income from interest expense and has apportioned the costs to the PUC. It is however unclear how the authority has determined COP at this time.

The turnover ratio – Kumho Petrochemicals has typically in the past determined turnover ratio by considering sales turnover (to apportion expenses on the basis of turnover ratio). However, considering that sales turnover are influenced by the relative profits of different products and therefore are unrepresentative of the expense incurred, more appropriate ratio is COGS ratio and not the turnover ratio. The COGS ratio directly show the impact of costs incurred on different accounts. It is, however, unclear whether the authority has adopted turnover ratio or COGS ratio.

Cost of production reported by TSRC completely ignored – TSRC has provided detailed information not only with regard to its own cost of production but also their estimates of cost of production of the Korean producers. TSRC is one of the world's leading producer of SBR and one of the world's most cost competitive producer of the PUC. It is, however, found that all the information provided by TSRC has been completely rejected. It does not even appear that the same has been considered as of any reference values for the present purposes.

Date of sale – Petitioners earlier contended heavily that a preliminary issue in the present case is establishing the relevant date of sale for the purpose of determining dumping margin. From the disclosure statement, the petitioners are unable to understand the basis adopted by the authority for determining relevant date of sale adopted for the determination and justification for the same given by the exporter. The date of sale could be date of contract, date of invoice, date of offer, date of arrival of goods in India, whichever forms material terms of sales. Petitioners had requested authority to determine when the material terms of sales were frozen by the exporters and the importers. Petitioners had specifically highlighted the fact that the product had been imported at materially different prices at around the same point in time. Relevant extracts from the written submissions are enclosed. The disclosure statement does not contain anything about the criteria used for establishing date of sale and the verification report has not been disclosed to the petitioners thus leading to a situation where petitioners are unable to offer their comments.

Comparison methodology – the petitioner had determined normal value, export price and dumping margin by undertaking month by month analysis. The disclosure statement however does not clarify whether the present dumping margins are based on month by month comparison or quarterly or annual comparison for the POI and appropriateness of the same.

The IHS trade journal has clearly reported that a Korean producer had negative margins in the relevant period. Further, the trade journal has quantified US\$ *** as the conversion costs of Korean producers. It is unclear how the fixed cost established by the authority compares with the estimates of IHS. It is clarified in this regard that the margins reported in IHS are not based on all fixed expenses such as SGA and interest. Thus, the actual cost of the exporter must at least be significantly higher than this cost.

The NIP has been determined by considering two alternative situations – capacity utilization of ***% and capacity utilization of ***%. Thereafter, the Authority has adopted ***% capacity utilization for the purpose of NIP determination.

Since the petitioner has set new production facilities, it is not a case where petitioner is already incurring full costs in the entire period. The concept of optimum utilization has been brought under the law only to adjust the costs for lower capacity utilization, when the company is already incurring all fixed expenses. However, in a situation where petitioner is not incurring

full fixed cost (as the case is at present) that the petitioner would be incurring at such high capacity utilization, it would not be appropriate to consider a higher capacity utilization. For example, the table below gives production and fixed expenses in POI, 2015-16 and 2016-17.

Particulars	Unit	POI	2015-16	2016-17
Production at 90% capacity utilisation	MT	***	***	***
Salaries & Wages	Rs/MT	***	***	***
Other expenses	Rs/MT	***	***	***
Depreciation	Rs/MT	***	***	***
Finance Overheads	Rs/MT	***	***	***
TOTAL	Rs/MT	***	***	***

We had earlier submitted that the Designated Authority should reject questionnaire response in its entirety in case the exporter has not truthfully made all disclosures to the authority. Considering the way investigations are conducted, it is highly appreciated that the authority has to proceed on the basis of faith and thrust and all parties are expected to truthfully disclose all facts to the authority. We, however, now have got evidence that LG Chem, the exporter in the present case, has not truthfully disclosed all facts to the authority and has suppressed vital information from the authority.

LG Chem has not reported to the authority that it is having an office in India [namely, LG Chemicals India Pvt. Ltd.] which is involved with production or sale of the product under consideration. This office is responsible for procurement of orders and various business activities like Sales Forecasting, Strategic/Economic Planning, Personnel Training/Exchange, Engineering Services, Advertising, Sales Promotion, Distributor/Dealer Training, Procurement/Sourcing Services, Packing, Inventory Maintenance, Order Input/Processing, Direct Sales Personnel, Sales/Marketing Support, Market Research, Technical Assistance, Provide Rebates, Provide Cash Discounts, Pay Commissions, Provide Warranty Service, Provide Guarantees, Provide After-Sales Services, Perform Repacking, Provide Freight and Delivery and Provide Post-Sale Warehousing.

LG Chemicals India Pvt. Ltd. is a whole owned subsidiary of LG Chem., Korea.

In a situation where such vital business activities are being performed by a subsidiary company in India, the established legal position is to deduct overhead expenses and reasonable profit as price adjustment for the purpose of determination of ex-factory export price.

Since LG Chem has not reported that its Indian office is engaged in sales function, nor has reported price adjustments on this account, it should be considered that LG Chem has resorted to suppression of vital facts from the authority.

In a situation where an interested party provides misleading information or otherwise suppresses relevant fact, the questionnaire response is required to be rejected and dumping margin determined on the basis of Rule 6(8), i.e., facts available.

In support of the above, enclosed the relevant extracts from the questionnaire response filed by the producer where the producer has declared only its US subsidiary and has not declared Indian subsidiary; website information showing details about LG Chemicals India Pvt. Ltd.; email from petitioner company giving details about the business activities of LG Chemicals Pvt. Ltd.; relevant extracts from the questionnaire response showing price adjustments claimed by LG Chem.; relevant extracts from the disclosure statement showing the price adjustments made by the Designated Authority in the disclosure statement; relevant extracts from the final findings of the Designated Authority in the matter of Circular Weaving Machines, wherein the Designated Authority adjusted SGA and profit of the Indian arm; income statement of LG Chemicals India Ltd. showing therein details of income and expenses of LG Chemicals India Ltd. and Questionnaire response of LG – America INC showing marketing being done by them.

Some of these group companies are involved in providing services to various LG group companies, which clearly implies services being provided of the producer of SBR as well. Many group companies who are not engaged in any of manufacturing operations and are instead involved in providing some services –technical or commercial. This fact has also been suppressed by LG Chemicals and the questionnaire response is required to be rejected additionally on this account.

Subsidiaries are LG Chem HK Ltd., Hong Kong; LG Chem America, Inc., USA; LG Chem Europe GmbH Germany; LGC Petrochemical India Private Ltd., India; Haengboknuri, Korea; LG CHEM TK Kimya SANAYI VE TIC. Ltd. STI, Turkey; LG Chem Japan Co., Ltd., Japan; Associates are LG Holdings (HK) Ltd., Hong Kong; TECWIN Co., Ltd., Korea; Lg Chem Brasil Intermediacao De Negocios Do Setor Quimico Ltda, Brazil; LG Chem Malaysia SDN.BHD.12, Malaysia; LG Fuel Cell Systems Inc., Usa; Joint Venture is SEETEC Co., Ltd., Korea; LG Corp Korea; Subsidiaries/ Joint Ventures of LG Corp. are Serveone Co. Ltd, LG CNS Co., Ltd., LG Siltron Inc., LG Management Development Institute, LG SPORTS Ltd., LG MMA Corporation

The onus for truthful disclosure is onto the responding exporter. The domestic industry cannot undertake a spying operation and provide relevant information to the authority. It has been time and again stated by the authority that the investigations are conducted on trust and faith. However, in a situation where this kind of suppression has been resorted by the exporter, the authority should hold then the trust and faith has been shattered by the exporter and exporter response is required to be rejected.

Submissions made by the exporters, importers and Other Interested Parties/ other Parties

85. M/s Luthra & Luthra law offices representing M/s Automotive Tyres Manufacturing Association has filed various submissions:

- S-SBR grades are not covered within the scope of the investigation and the same has admitted by the DI in its submissions. Therefore, it is imperative that S-SBR grades be explicitly excluded from the scope of the PUC. In view of the same, the respondent submits that in the initiation notification, DA has given the product HSN code as 4002.19 (at 6 Digit level). However, it must be noted that at HSN 6 digit level,

all SBR grades such as Emulsion SBR (E-SBR) and Solution SBR (S-SBR), are covered.

- Therefore, in order to ensure that the description of the PUC in the final findings appropriately reflect that S-SBR is excluded from its scope, the respondent respectfully requests that the description of the PUC in the final findings be provided at HSN 8 digit level. This would ensure that there would be no case for any ambiguity considering the scope of the PUC in the present investigation. Lastly, it should be noted that this request on behalf of respondent is without prejudice to its argument that the factual and legal position in the present investigation does not warrant imposition of anti-dumping duty which has been elucidated in this written submission.
- Further, it may be noted that this written submission is without prejudice, and in addition, to our submissions dated 21 March 2016, 23 September 2016, 11 November 2016, 16 November, 2016 and 03 April 2017 and letters dated 01 September 2016, 30 March 2017 and 24 May 2017. In the following paragraphs, the respondent provides its written response to the disclosure statement issued by the DA vide email dated 15 June, 2017.
 - (1) It has been the consistent submission of the respondent that a simultaneous claim of material injury/ threat of material injury and material retardation cannot be examined and arrived at in an anti-dumping investigation. This is on account of the fact that both the concepts, i.e. material injury to the DI and material retardation to the DI are completely opposite to each other. For e.g. pursuant to a claim of material injury, the DA examines the existing injury or threat of injury to the DI in accordance with Annexure II of the *Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995* ('Indian AD Rules').
 - (2) On the other hand, pursuant to a claim for material retardation to the DI, the DA examines whether the imports of the dumped article have resulted in retarding the establishment of the domestic industry in India. It is to be noted that the fundamental requirement for a claim under material retardation is the non-existence of the DI for the product under investigation. This is because if the DI is already established, a claim for material retardation cannot be sustained. In fact this has also been the position of the DI in the present investigation and the following observation of the DI is noteworthy :-

“In case petitioners had been in production for long period, it could be contended that material retardation provision should not be invoked and the case should be examined either in under material injury or under threat of material injury provisions.

- (3) Further, the above proposition is also supported by the WTO Agreement on Anti-Dumping ('ADA'). Footnote 9 of the ADA provides 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

- (4) The footnote clearly implies that ‘injury’ will either mean material injury/ threat of material injury or material retardation and not both. Footnote 9 of the ADA has been incorporated in Section 9B(1)(b)(ii) of the Custom Tariff Act, 1975 (‘Act’) which provides as follows:

No levy under section 9 or section 9A in certain cases. – (1) Notwithstanding anything contained in section 9 or section 9A

(b) the Central Government shall not levy any countervailing duty or anti-dumping duty –

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India;

- (5) In view of the above legal position, a claim for injury can be either material injury/ threat of material injury or material retardation. This position also implies that if an investigating authority finds that there exists a case for material injury/threat of material injury, the claim related to material retardation becomes unsustainable as the DI for that product already exists.
- (6) In spite of the legal position being that ‘injury’ will mean material injury/ threat of material injury or material retardation and not both, the DA in the disclosure statement has concluded that there exists material injury as well as a case for material retardation. In this respect, attention is drawn to paragraph 35 of the disclosure statement wherein the DA has observed as follows:

“The Authority has examined the injury both material and material retardation to the domestic industry in accordance with the Anti-dumping Rules and considering the submissions made by the interested parties. For the material injury, ISRPL’s data has been referenced who had declared commercial production prior to POI while for material retardation, the data of M/s RIL has been examined who declared commercial production in post POI.”

- (7) DA has come to a factual conclusion that for one of constituents of the DI, i.e. ISRPL there exists material injury and for the other constituent of the DI, i.e. RIL there exists material retardation. The respondent strongly disagrees with this observation of the DA because it results in an anomaly not contemplated in law. If ISRPL has suffered material injury, it implies that there exists an established industry for SBR series 1500 and 1700 and therefore, in such circumstances a case for material retardation cannot be made out.
- (8) In view of the above it can be concluded that there can either be a finding of material injury or material retardation and not both. In view of the same, the respondent respectfully submits that the conclusion of the DA in paragraph 35 with respect to existence of material injury for ISRPL and material retardation for RIL is legally untenable. The respondent respectfully requests the DA to take into account the above arguments and accordingly, reject the findings concerning material retardation while issuing the final findings.
- (9) DA in the disclosure statement has concluded that ISRPL and RIL constitute the DI within the meaning of Rule 2(b) of the Indian AD rules. Therefore, in order to determine material injury or material retardation, ‘injury’ data of the domestic industry as a whole needs to be taken into consideration. In other words, in order to establish ‘injury’ to the DI, whether material injury or material retardation, ‘injury’ data of both the applicants should be taken together to establish the same. This proposition is supported by Footnote 9 of the ADA as well as Section 9B(1)(b)(ii) of the Act. In this respect, the observation of the Hon’ble Supreme Court is noteworthy:

In our opinion, the DA has clearly erred in law because the Authority was required to carry out the determination of injury and computation of NIP for the domestic industry as a whole, and not in respect of any particular company or enterprise The provisions relating to injury analysis in Annexure II to the Anti-dumping Rules are also clear that the injury determination is always for the domestic industry as a whole and not for individual companies.

- (10) It is clear that a determination of ‘injury’ would be for the domestic industry as a whole and not for one individual company. Instead, the DA for the purpose of determination of material injury has considered the data of ISRPL whereas for determination of material retardation, the data of RIL has been considered. Thus, DA has created two separate category of domestic industry in this investigation. However, if ISRPL is already an established industry then the question of material retardation to RIL does not arise.
- (11) Moreover, the above analysis has resulted in an anomaly which is not permitted in the ADA as well as in the Indian legal provisions. Article 4.1 and Footnote 9 of the ADA which is reflected in Rule 2(b) of the Indian AD rules and Section 9B(1)(b)(ii) of the Act respectively does not envisage that ‘injury’ data of the applicants be considered separately to establish material injury or material retardation as there cannot be two distinct categories of domestic industry in one anti-dumping investigation. This legal

principle has also been upheld by the Hon'ble Supreme Court as highlighted above.

- (12) The conclusion of the DA in the disclosure statement to have a separate 'injury' analysis for ISRPL and RIL is legally untenable and also contradicts the conclusion with respect to the standing of the DI. In conclusion, the respondent requests the DA to reject the 'injury' determination concerning material retardation in the final findings.
- (13) DA in the disclosure statement has observed that with respect to transaction wise import data of DGCI&S, the Authority had issued authorization letter to various interested parties including Luthra & Luthra and therefore, the submission by respondent in this regard is misplaced and devoid of rationale.
- (14) At the outset, the respondent would highlight that the above explanation provided by the DA does not represent the correct factual situation. It should be noted that the respondent had sought the non-confidential version of the import data as provided by the DI and also the soft copy of the non-confidential version of the DGCIS&S import data as relied upon by the DA vide its letters dated 30 March 2017 and 24 May 2017. In response, the respondent was simply informed that it can get the transaction wise import data by directly approaching the DGCI&S.
- (15) The respondent has not been provided with the transaction wise import data provided by the DI and the transaction wise import data of the DGCIS&S that was relied upon by the DA. It should be noted that there is a distinction between the transaction wise import data available with the DGCI&S and the transaction wise import data from DGCI&S relied upon by the DA as there can be certain differences between the two.
- (16) It is an accepted legal position that the functions of the DA are quasi-judicial in nature and the DA is therefore bound to act judicially and follow the principles of natural justice. In view of the fact that the respondent has not been provided with the relevant import data as highlighted above, the respondent respectfully submits that the due process right of the respondent to adequately defend itself has been violated resulting in gross violation of principles of natural justice during the course of this investigation.
- (17) The respondent in spite of repeated requests was not provided with the transaction wise import data provided by the DI and the transaction wise import data of the DGCIS&S and relied upon by the DA.
- (18) The respondent submits that one of the cardinal principles of natural justice is that an adjudicating authority should provide access to the documents on which it has relied upon in its conclusion so that the opposing party can get an opportunity to provide a meaningful response to the case made out against it. In the current factual matrix, the DI has claimed that a transaction wise listing of imports was enclosed with the DI petition in a CD-ROM in view of large file size. Thus, if the DI had provided the transaction wise import data, it was incumbent upon the DA to ensure that the non-confidential version of such import data is made available to other interested parties.

- (19) The above proposition is supported by Rule 6(7) of the Indian AD Rules which provides as follows:

“the designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation”

- (20) The use of the word ‘shall’ in the above provision clearly establishes that the DA is obligated to make available the evidence presented to it by one interested party to the other interested party participating in this investigation. Accordingly, the non-confidential version of the import data provided by the DI as evidence for increased imports should be made available to the other opposing parties in excel format.

- (21) The above argument by the respondent is supported by the existing practice of the DA. For e.g. in the final findings dated 09 December 2016 in the anti-dumping investigation concerning import of *Seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel originating or imported from China PR*, the following was observed:

Some interested parties have contended that DGCI&S transaction wise data should not have been claimed confidential. It is, however, noted that DGCI&S transaction wise data has been made available by the petitioners for placing in the public file. The petitioners made available both the segregated data for PUC alone the data for product considered as well as product not under consideration. Further, the petitioners had provided soft copy in excel file and the same was also made available through public file.....However, the authority has placed DGCI&S transaction wise data in public file and the same was made available to the interested party through the public file (Final Findings concerning imports of Seamless tubes, pipes & hollow profiles of iron, alloy or non-alloy steel originating or imported from China PR dated 09 December 2016, para 120(d)).

- (22) The non-confidential version of the DGCI&S data in excel format was placed in public file and was made available to other opposing parties. In view of the same, the respondent respectfully submits that the non-confidential version of the import data as provided by the DI in the present investigation be made available so that it can be analyzed and comments can be provided against the same.

- (23) The Hon’ble Supreme Court has observed the following :

“It is no doubt true that natural justice often requires the disclosure of the reports and evidence in the possession of the deciding Authority and such reports and evidence relevant to the subject matter of the inquiry may have to be furnished unless the scheme of the Act specifically prohibits such disclosure.” (Kanwar Natwar Singh v. Director of Enforcement & Anr. (2010) 13 SCC 255, paragraph 26)

(24) Similarly, the Hon'ble Supreme Court in the matter of *North Bihar Agency & Ors. v. State of Bihar* quashed the order of cancellation of license of the appellant on the ground that proper opportunity was not provided to the appellant as the additional material which was relied upon while cancelling the license was not provided to the appellant which was in violation of the principles of natural justice. Also, the Hon'ble Supreme Court in the matter of *Sterlite Industries* has also explained the rationale for providing access to the relevant material to the other opposite parties as the same allows the affected party to file an effective appeal while non-disclosure of the relevant material makes the opposite party handicapped in filing an effective appeal.

(25) In addition to the above, the respondent also draws attention to the fact that the DA did not provide the non-confidential version of transaction wise import data received from the DGCIS&S data in spite of repeated requests as highlighted above. In this respect, the respondent submits that pursuant to Rule 7 of the Indian AD Rules, the DA cannot claim confidentiality on the data/information received from sources other than interested parties. This proposition has also been accepted by the Hon'ble Supreme Court wherein it has observed as follows:

In our opinion, Rule 7 does not contemplate any right in the DA to claim confidentiality. Rule 7 specifically provides that the right of confidentiality is restricted to the party who has supplied the information, and that party has also to satisfy the DA that the matter is really confidential (Reliance Industries Ltd. vs Designated Authority and Ors., (2006) 10 SCC 368, paragraph 22)

(26) The above observation in *Reliance Industries* has also been upheld by the Hon'ble Supreme Court in *Union of India v. Meghmani Organics Ltd.* Thus, it is clear that the DA cannot claim confidentiality on the data/information received from sources other than interested parties. Accordingly, the decision of the DA to not share the transaction wise DGCI&S import data as relied upon by the DA is legally untenable.

(27) The above practice of non-disclosure of data to other interested parties is also in violation of the principles espoused by the WTO agreement. Article 6.4 of the ADA provides that authorities should provide opportunities for all interested parties to see all information that is not confidential and that is used by the authorities in an anti-dumping investigation. The WTO Appellate Body while interpreting Article 6.4 of the ADA has observed as follows:

We note the European Union's view that the term 'information' in Article 6.4 'concerns facts and raw data rather than factual determinations and conclusions by the investigating authorities'. In our view, there is no textual basis in Article 6.4 for limiting information 'relevant to the presentation of [parties'] cases' and 'used by the authorities' to facts or raw data unprocessed by the authorities. Indeed, the broad range of information subject to the obligation under Article 6.4 may take various forms, including data submitted by the interested parties, and information that has been processed, organized, or summarized by the authority. We do not see why only facts and raw data would be relevant to the parties' presentation of their cases. (Appellate Body Report, EC-Fasteners, WT/DS397/AB/R, paragraph 480)

The interested parties' right under Article 6.4, therefore, is to see all non confidential information relevant to the presentation of their cases and used by the investigating authority. Article 6.4 thus applies to a broad range of information that is used by an investigating authority for purposes of carrying out a required step in an anti-dumping investigation....”.

- (28) The respondent submits that the conclusion of the DA in paragraph (g) on page 12 of the disclosure statement is inconsistent with the legal provisions and the judgments of the Hon'ble Supreme Court highlighted above. Accordingly, the respondent has not been able to adequately defend its interest as the respondent has not been able to analyze the relevant import data relied upon by the DA and provide its comments to the same. In view of the above, the respondent submits that the DGCI&S transaction wise import data and the import data provided by the DI must be shared with the opposing interested parties and adequate time must be provided to the respondents to comment on the same.
- (29) The DA vide paragraph 47 of the disclosure statement has analyzed the performance of the DI with respect to production; capacity, capacity utilization and sales. However, the entire injury data pertaining to ISRPL has been kept confidential and even the indexed version of the injury data has not been provided. In this respect, the respondent submits that injury data pertaining to production; capacity, capacity utilization and sales cannot be considered as confidential and the actual injury data should be made available to the opposing interested parties.
- (30) An analysis of numerous preliminary and final findings issued by the DGAD clearly establishes that the DGAD as a practice does not allow confidentiality with respect to indices such as capacity, production, domestic sales and capacity utilization even when such figures may not be in public domain. Thus, if the DA did not grant confidentiality to such indices in the previous investigations, the same indices cannot be considered to contain confidential information in the present investigation. In other words, the nature of information cannot change from non- confidential to confidential if the information pertains to the same criteria. In fact, even the basis on which the figures pertaining to the above indices have been kept confidential has not been divulged in the initiation notification or the petition.
- (31) It should be noted that even the indexed version of the data pertaining to the above indices has not been provided in the disclosure statement so that opposing interested parties can analyze the trend and comment upon the same. In this respect, attention is drawn to paragraph (iii) of Trade notice no. 01/2013 dated 9 December 2013 which provides that the non-confidential version of the data should be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on a confidential basis. However, the injury data pertaining to the above indices have been kept confidential and even the indexed version of the injury data has not been provided.

- (32) The grant of confidentiality by the DA to the injury data pertaining to the above indices is inconsistent with the Trade notice 01/2013. Further, the non-disclosure of the injury data has also resulted in violation of the principles of natural justice as the respondent has not been able to provide any comments concerning the injury data and thus, has not been able to defend its interest adequately.
- (33) In paragraph 75 the DA has laid down the guidelines for evaluating a case on material retardation. While this clarifies the legal ambiguity pertaining to evaluation of the claim concerning material retardation as highlighted by the respondent in its previous submissions, it should be noted that these criteria have been laid out to the opposing interested parties for the first time in the disclosure report, after all the pertinent data and information of the interested parties has been evaluated by the investigating authority. This late disclosure has resulted in depriving ATMA of its right to provide a meaningful rebuttal to the claim of the material retardation based upon the criteria laid down by the DA.
- (34) One of the fundamental features of rule of law is the predictability in the application of law. This stand is supported by the observation of the Hon'ble Supreme Court in the matter of *S.G. Jaisinghani v. Union of India & Ors* wherein it was observed as follows:
- “In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is.”*
- (35) It is clear from the above judgment that generally a decision should be predictable meaning thereby that there should be consistency in the application of law and practice followed by an investigation authority, especially if it happens to be a quasi-judicial body. In view of the same, ATMA submits that since the criteria was not elucidated earlier and the principles that were considered by the DA were not known by the interested parties, the evaluation of the claim concerning material retardation is in violation of the principles of natural justice, and in view of the same, the claim concerning material retardation must be rejected.
- (36) The DA in the disclosure statement has stated that “M/s Luthra & Luthra law offices representing ATMA vide letter dated 24/4/2017 have submitted that ESBR 1739 and 1789 grades be excluded as M/s Reliance Industries has admitted that it cannot currently manufacture ESBR 1789 and M/s ISRPL on its website does not list this grade in their product list.” Further, the DA vide paragraph (f), page 12 of the disclosure statement has concluded that since RIL has the capability to manufacture the product grades E-SBR 1739 and E-SBR 1789, the same is included within the scope of the PUC.
- (37) The respondent would submit that the above statement in the disclosure report does not reflect the actual argument put forth by the respondent. The respondent in its

letter had presented evidence that not only RIL has not manufactured the E-SBR grades 1739 and 1789, these product grades are also not *like article* to the other product grades manufactured by the DI on account of several factors such as chemical composition; usage; pricing; customer perception etc. Accordingly, the respondent argued that E-SBR grades 1739 and 1789 should be excluded from the scope of the PUC.

(38) However, the DA has not excluded the E-SBR grades 1739 and 1789 from the scope of the PUC on the ground that RIL had the capability to manufacture these products, despite the self-admission by RIL. With respect to the issue of *like article*, the DA has simply observed that “*the only difference between various grades belonging to a series of styrene butadiene rubber is the composition ratio of styrene and butadiene content in the rubber*”. As mentioned above, the respondent had highlighted multiple reasons in support of its argument that E-SBR grades 1739 and 1789 are not *like article* to the products manufactured by the DI which is not even reflected in the disclosure report. Thus, the factual basis on which the DA has arrived that these E-SBR grades are *like article* is erroneous and misplaced and thus, should be discarded.

(39) The above conclusion of the DA is also legally erroneous and is inconsistent with its own existing practice which is reflected in multiple final findings. Firstly, with respect to the issue of *like article* it has been the practice of the DA to ascertain whether the DI has actually manufactured and supplied the disputed product grades during the POI. Attention is drawn to the final findings issued in the *Anti-Dumping duty investigation concerning imports of Cold Rolled Flat Products of Stainless Steel from China PR, Japan, Korea, European Union, South Africa, Taiwan (Chinese Taipei), Thailand and USA* wherein it was observed as follows:

The Authority has adopted certain broad principles for the purpose of exclusion of products of certain grades/specifications from the scope of the PUC. One such principle is whether the specification/grade/production process/production technology pleaded by the interested parties results in a different product in terms of physical characteristics and chemical composition whereby the distinctiveness of the product can be established with clarity and precision. The second principle is whether the domestic industry claimed through their product broacher as manufacturer of these grades and is manufacturing/supplying such distinctive items at all during the POI or prior to the POI. Thirdly, whether the product grades supplied by the domestic industry during the POI and are claimed to be equivalent to the grades proposed/considered for exclusion and in such a case whether any evidential scientific literature or any other technical evidence has been established by the domestic industry.

(40) Based upon the above criteria, the DA concluded in the final findings that the scope of the PUC in the investigation be restricted to 1250 mm as “*no evidence of actual supply of width beyond 1250mm has been provided by the domestic industry*”. Similarly, in the present investigation, it is an undisputed fact that RIL has not

manufactured and supplied E-SBR grades 1739 and 1789 in the POI as well as during the post-POI. Therefore, based upon its past practice, the DA should have excluded these E-SBR grades from the scope of the PUC.

- (41) Secondly, it also cannot be argued that E-SBR grades 1739 and 1789 are *like articles* to the other E-SBR grades manufactured by the DI. The respondent in its previous submission has provided detailed arguments wherein it has been highlighted that these E-SBR product grades are used in high speed tyres wherein other E-SBR product grades cannot be used and therefore, there is a significant difference on account of factors such as chemical composition; usage, pricing; customer perception etc. For the sake of brevity, the respondent is not reproducing its previous submission and instead relies on the same.
- (42) The above principle has also been upheld and applied by the CESTAT in other cases such as *Indian Refractory Makers Association vs Designated Authority* and *Magnet Users Association vs Designated Authority*. In both these cases, it was held that the grades of the PUC with different product characteristics cannot be considered as *like article* and therefore, cannot be the cause of injury to the domestic industry. In view of this observation, these grades were excluded from the scope of the PUC.
- (43) It should be noted that the disclosure statement contains no statement from the DI arguing that E-SBR product grades 1739 and 1789 are *like article* to the product grades manufactured by the DI. Thus, it is an undisputed fact that the DI itself has impliedly admitted that E-SBR product grades 1739 and 1789 are not *like article* to the product grades manufactured by them. In view of the same, the conclusion of the DA with respect to inclusion of these E-SBR grades within the scope of the PUC is factually and legally untenable.
- (44) The respondent submits that in view of the above paragraphs, E-SBR grades 1739 and 1789 must be excluded from the scope of the PUC.
- (45) The safety of the products used in this sector is of primary importance. Due to this reason, it is only after the major inputs used in their applications have undergone the approval process/trials, can the user industry procure such inputs for usage. The trails/approval process consists of various stages such as laboratory evaluation, factory trials, bulk trials, field trials, factory audit etc. which approximately takes up to 1-2 years depending on the material.
- (46) ISRPL commenced production in February 2014 and RIL in September 2016. This implies that the product trails/approvals with the user industry of the grades manufactured by the DI would have lasted at least two years pursuant to the commencement of production. In view of the same, it is apparent that the domestic off take of the DI could not have been high as is also reflected in the data during the POI. However, pursuant to ISRPL completing its trial process with the user industry, the domestic off take has increased remarkably and the same is also evident from the Post-

POI data as highlighted in the respondent's letter and also elucidated below. In fact, there has been an increase in the domestic procurement in quantity as well as in the domestic procurement prices. This significant increase in domestic procurement in quantity and prices is pursuant to the PUC manufactured by the DI receiving the requisite approvals from the user industry after extensive trials during the POI.

(47) The analysis concerning material injury and material retardation it is highlighted that confidentiality has been granted to figures for key economic indicators such as capacity, production, domestic sales and capacity utilization and not provided the actual figures for the same. In fact, even the indexed figures of the aforementioned important economic indicators have not been provided and this has deprived the respondent of the opportunity to properly analyze the data and adequately defend itself.

(48) The respondent has provided detailed submissions previously rebutting all the claims of the DI on material injury, the recurrence of material injury and existence of the causal link and will place reliance on the same for the sake of brevity. However, the respondent in addition to the previous submissions, will highlight certain findings of the DA the subsequent paragraphs which are not consistent with the facts and data as reflected in the disclosure statement and require reconsideration by the investigating authority:-

a) The DA in paragraphs 43-44 of the disclosure statement concerning the assessment of demand of subject goods has observed that *"the demand for the product in the country has increased significantly over the period on annual basis"*. The respondent objects to this observation because it is clear from the table in paragraph 43 of the disclosure statement that the demand for the subject goods has increased during the injury period as well as the POI. However, the increase in demand is not significant by any stretch of imagination over the period on annual basis. Moreover, at the same time, the imports of the subject goods have declined from the subject countries over the period on an annual basis and the production of the DI has significantly increased over the period. Thus, the DA is requested to reconsider this finding at the time of issuance of the final findings.

b) With regard to the volume of the dumped imports, the DA has stated in paragraph 46 the following –

Imports from the subject countries have increased in absolute terms till 2014-15 and declined in POI because of commencement of the production by the petitioners.

Imports from the subject countries have remained significant in terms of total imports as well as in relation to consumption and production in India in spite of the sufficient capacity lying with the petitioners.

Imports from the subject countries have remained significant and has prevented the domestic industry from increasing its production and sales. In fact, so significant were the imports that the domestic industry has been prevented from selling the goods to the extent of its sub-optimal production.

The respondent submits that the above observation provides a one-sided view which does not reflect the current factual matrix accurately. The imports from the subject countries in relation to the Indian production has declined from 337.60% in 2014-15 to 160.72% whereas the imports from the subject countries in relation to Indian consumption has declined from 81.51% in 2014-15 to 68.06% in the POI. The production of the DI has increased from 6,912 MT in 2013-14 to 46,657 MT in the 2014-15 and 92,540 MT in the POI (i.e. an increase of 675% in the year 2014-15 and 1238% in the POI over the year 2013-14).

The respondent submits that that RIL had started the commercial production in September 2016 and other applicant of the DI i.e. ISRL had started commercial production in February 2014. Considering these facts, the significant decline in import of the PUC from the subject countries in the period October 2014-September 2015 (POI) clearly establishes that the DI has immediately been able to capture the domestic market. Thus, the DI has achieved the significant share of the domestic demand in such a short span of time.

The product approval process of the user industry for the DI was completed for other grades in the POST-POI, its production has increased significantly. Therefore, the respondent humbly submits that the DI was facing normal startup difficulties and as soon as, it completed its product approval process with the user industry, its production as well as sales have significantly improved in the POST-POI. Even in the POI, the share of DI in total production is quite significant. This is demonstrative of the fact that when the DI did not have the requisite approvals, imports were inevitable but pursuant to getting the requisite approvals from the user industry, the DI has been able to improve its performance on all important economic indicators. Thus, the respondents humbly submit that there is no volume effect of imports on the DI.

- c) The finding of the DA in clause (c) of the paragraph 48 of the disclosure statement that *“the production of the DI has increased but not to an optimal level”* is vague and incorrect. In this respect, it should be noted that it is a standard practice across industries that products produced by new manufacturers are first tested and once they satisfy the technical and the quality requirements, the user industry procures such products. The phase of testing and approval can often take from 1-2 years and even in the present investigation, the products manufactured by the DI are being tested and evaluated by the user industry from 2014-2016. Therefore, it is obvious that production would take time to reach the optimum level. In view of the same, an increase in production pursuant to getting product approvals is a favorable indicator. Therefore, the respondent submits that such an analysis requires reconsideration before issuance of the final finding.
- d) The DA in paragraphs 50-51 of the disclosure statement concerning the market share has stated that *“the gain in market share of the demand, despite being the only*

producers of the subject goods in the Country is not significant. The share of imports remained significant over the period". The respondent objects to this finding as it is factually incorrect. As per the data available in the disclosure statement, the share of the DI was 29% of demand in the POI whereas the share of imports was 68% of demand during the same period. Further, the share of DI in the POST-POI (6 months) has increased to 51% while the share of imports in the POST-POI (6 months) has declined to 47% as compared to POI. These figures clearly demonstrate that the jump in the market share of the DI from the POI to the POST-POI is significant and the same could be attributed to the completion of the product approvals of the DI from the user industry. During the same period, the imports too reflect a marked decline. Thus, the aforementioned observation of the DA is not consistent with the facts and data available on record and requires reconsideration.

- e) In paragraphs 54-55 of the disclosure statement the DA has stated concerning the claim of price undercutting that *"this comparison shows that during the period of investigation, there have been instances where the subject goods originating in the subject countries were imported into the Indian market at prices lower than the selling prices of the domestic industry."* The respondent objects to the above assertion as the table given in the price undercutting analysis in the same paragraph shows that price undercutting is negative for all the grades from the subject countries. Therefore, this self-contradictory finding which does not reconcile with the data provided in the disclosure statement is demonstrative of the inaccuracy of the price undercutting analysis.

The respondent objects to the finding of the DA in the paragraph 55 of the disclosure statement that *"price pressure on domestic industry which has just entered into the market, a negative price undercutting indicates that industry has aggressively matched the import prices to ensure its presence in market."* This is because the data does not warrant this understanding of negative price undercutting as provided in the disclosure statement. Negative price undercutting simply implies that the prices of the DI are higher than that of the imports such that an imposition of the ADD is not required. Hence, the respondent humbly requests the authority to reconsider this issue before the issuance of the final findings.

- f) The profit figures provided in the disclosure statement in paragraph 59 pertain only to the ISRPL. Therefore, the observation of the DA that *"the domestic industry suffered severe losses since their establishment"* is not based on facts as the profit figures of RIL have not even been accounted for in the disclosure statement. Moreover, the respondent's argument in its letter is reiterated that the financial position of ISRL has been divulged in the annual reports of the Indian Oil Corporation which has a 50% shareholding in ISRPL. As per the financial data disclosed in the annual reports of the Indian Oil Corporation, ISRL has earned total revenue of INR 242.64 crores in the year 2015-16 (a growth of about 95 % over the year 2014-15) and has a net cash flow of INR 43.63 crores in the year 2015-16 (a growth of about 194% over the year 2014-15). This data clearly establishes that ISRL has been in positive cash flow during the POI. Since Reliance was not in commercial

production and ISRL only produces SBR, it therefore, implies that the DI had positive cash flow during the POI. This directly rebuts the claim of the DI that it has suffered loss during the POI and subsequently, any claim of material injury to the DI.

The observation of the DA pertaining to the losses, it must also be noted that losses suffered, if any, are on account of repeated shut down of the plants of the DI companies which clearly establishes that there exists inherent deficiencies within the DI and therefore, the claim of material injury by the DI cannot be sustained as it is self-inflicted. This issue was also flagged in the respondent's letter wherein it was highlighted that the Hazira plant of the RIL which produces SBR and PBR was closed for the period 24 March 2017 to 20 April 2017. Due to the same, the user industry was facing severe issues concerning the supply of the PUC. In view of the same, the respondent respectfully requests the DA to take into account the inherent deficiencies of the DI which may have contributed to the injury. Therefore, the claim of material injury suffered by the DI is not sustainable.

- g) The DA in Annexure 4(j) of the disclosure statement, pertaining to the methodology for determination of Non-injurious price ('NIP'), has stated that "*RIL's financial data has been adopted for analysing material retardation injury to them*". The respondent strongly objects to this and submits that any new factory/enterprise takes time to overcome the start up difficulties and procure market share and volume. As noted in the disclosure statement, RIL has started commercial production much later in comparison to ISRPL (ISRPL had commenced the commercial production from February, 2014 and RIL has declared commercial production on 30th September, 2016) and therefore, it is not possible for RIL to be perform sub par to ISRPL. It is expected that RIL will take time to stabilise operations since it has commenced commercial production from 2016. Moreover, as highlighted earlier in this submission, the simultaneous claims of material retardation and material injury cannot be examined separately in the same investigation.
- (49) DA is requested to reconsider these issues and analyze the claims in light of the above mentioned grounds before issuance of the final findings.
- (50) The DA has concluded in paragraph 81 that "*there exists a causal relationship between dumping and injury*". The respondent has provided a detailed rebuttal to this claim in the previous submissions. The respondent reiterates that there exist other factors like injury due to high interest payment, increase in domestic sales, no price suppression/depression and the inherent deficiencies of the DI which have led to a break in the causal link between the claim of injury and import of the PUC from the subject countries.
- (51) DI has been able to perform significantly well on almost all of the economic parameters and, therefore, the import of the PUC from the subject countries has not caused any injury to the DI. Any injury/material retardation to the DI, if at all, is on

account of factors listed above and cannot be attributed to the import of the PUC from the subject countries.

86. M/s WTC representing M/s LG Chem Ltd., Korea and its traders filed its submissions as under:

As per the said Disclosure Statement, DGAD has worked out a Dumping Margin of 2.07% in respect of exports by LG Chem. We strongly raise our concerns against such computation. As per confidential version of the Disclosure Statement provided to us, we understand that main reason for such high dumping margin assessment is adoption of very high cost of production of SBR at LG Chem by DGAD. We are tabulating the same as under:

Cost of Production (US\$/MT)	1500 Series	1700 Series
As claimed by LG Chem	***	***
As Considered by DGAD in Disclosure Statement	***	***

We understand that DGAD has used the price of BD and SM based on some arbitrary/hypothetical premise and not based on the actual cost data submitted by LG Chem and duly verified by the team of officers at the premises of LG Chem in Korea.

There are two main raw materials namely Butadiene and SM used for manufacturing SBR. It is submitted that LG Chem is mainly sourcing both the raw materials from Lotte Chemical with its plant located next door to the plant of LG Chem for manufacture of SBR. Both LG Chem and Lotte Chemical are unrelated companies. Screenshots from websites of LG Chem and Lotte Chemical indicating their past histories are enclosed. This is a sufficient clarification that there is no compensatory arrangement between Lotte Chemical and LG Chem to lower the price of the two raw materials, BD and SM.

Both LG Chem (earlier named as LG Daesan Yuhwa) and Lotte Chemical (earlier named as Honam Daesan Yuwha) are unrelated companies and have entered into a long-term agreement way back in 2005 for purchase of number of items/products manufactured by Lotte Chemical (earlier names as Honam Daesan Yuwha). Copy of such agreement is enclosed herewith (Copy of the same was provided to the investigation team during the on-site verification). BD is sold by Lotte Chemical to LG Chem based on a formula.

It is submitted that how can DGAD conclude that the purchase price of raw material is unreliable due to the reason that the same is lower than others due to locational advantage. Difference in price of BD and SM between Lotte Chemical and KKPC is due to high transportation. It may please be seen that cost of transportation of BD is very high. BD is a highly inflammable product and hence needs special tankers and facilities to transport the same from one place to another.

Alteration in the cost of a participating exporter which was duly verified is in violation of Article 2.2.1.1 and para 1 of Annexure -1 to the Anti-Dumping Rules.

Para 1 of Annexure -1 to the Anti-Dumping Rules states that *“The elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or producer under investigation, provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records reasonably reflect the cost associated with production and sales of the article under consideration.”*

For the purposes of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.

This issue has been duly addressed by the Appellate Body in its Report No. WT/DS473/AB/R dated 6th October 2016 (European Union-Anti-Dumping Measure on Biodiesel from Argentina.)

Paragraph 6.41 of the Appellate Body report states “We do not subscribe to the European Union's reading of the Panel Report. We note that, to the Panel, the second condition in the first sentence of Article 2.2.1.1 of the Anti-Dumping Agreement requires a comparison between the costs in the producer's or exporter's records and the costs incurred by such producer or exporter. The Panel emphasized that "the object of the comparison is to establish whether the records reasonably reflect the costs actually incurred, and not whether they reasonably reflect some hypothetical costs that might have been incurred under a different set of conditions or circumstances and which the investigating authority considers more 'reasonable' than the costs actually incurred." In this connection, the Panel explained that its understanding of this condition does not imply that "whatever is recorded in the records of the producer or exporter must be automatically accepted.” To the Panel, an investigating authority is "certainly free to examine the reliability and accuracy of the costs recorded in the records of the producers/exporters" to determine, in particular, whether all costs incurred are captured; whether the costs incurred have been over- or understated; and whether non-arms-length transactions or other practices affect the reliability of the reported costs. The Panel further stated that "Article 2.2.1.1 does not involve an examination of the 'reasonableness' of the reported costs themselves, when the actual costs recorded in the records of the producer or exporter are otherwise found, within acceptable limits, to be accurate and faithful." In light of these statements, we consider the Panel's interpretation of Article 2.2.1.1 to be more nuanced than the European Union's argument suggests.”

The above findings of Appellate Body clearly show that in case cost claimed is reasonably reflected in the cost records of the company concerned, investigating authority cannot reject the cost and arbitrarily adopt some other costs. It is submitted that all cost data of LG Chem was duly verified by the officers during the course of verification at the premises of LG Chem in Seoul, Korea RP.

Cost claimed by LG Chem was duly supported by the records maintained as per records of the company. The verification team even examined the SAP system of the company thoroughly and collected copies of all necessary records as verification exhibits.

LG Chem has reported actual and true cost of production of SBR in its questionnaire response and the same has been duly verified by the verification team.

- Cost claimed by LG Chem reasonably reflects the cost of production and is not distorted due to sourcing of raw materials from supplier due to relation or otherwise.
- All books of accounts are maintained by LG Chem as per Korean GAAP.

- Any modification of cost of production as claimed by LG Chem and verified by the Designated Authority is in violation of Article 2.2.1.1 of WTO Agreement.
- For applying ordinary course of trade test, DGAD shall adopt the cost of production of SBR based on records maintained, reported and as verified by the Investigating Team.
- Cost of BD and SM sourced from Lotte Chemical is very low due to locational advantage.
- Lotte Chemical is located next to plant of LG Chem where SBR is manufactured. No transportation cost is involved for transporting BD and SM sourced from Lotte Chemical.
- In case adjustment on account of transportation cost is made, prices of BD and SM from Lotte Chemical will be almost similar to other companies in Korea RP.
- While adopting prices of BD and SM as reflected and claimed by other producers of SBR in Korea RP, it shall be duly adjusted for transportation cost which is not applicable for material sourced from Lotte Chemical.

87. M/s Lakshmikumaran & Sridharan representing M/s KKPC, Synthos Group, M/s Rishiroop Polymers Pvt. Ltd and M/s Rishiroop Ltd. had filed various submissions as under:

Illegality of the Investigation pertaining to Material Retardation:

- KKPC has submitted that the subject proceedings are illegal as Section 9 B of the Customs Tariff Act, 1975 does not lay down any guidelines for the determination or conduct of an investigation pertaining to material retardation of the domestic industry. KKPC's participation in the present proceedings is without prejudice to their stance on the illegality of the same.
- KKPC submitted that since "injury" and "domestic industry" are not defined under the Customs Tariff Act, 1975, their meaning must be strictly interpreted, as is the norm for tax legislations.
- KKPC further alleged that the DGAD's authority to conduct the investigation is the result of illegal exercise of sub-delegation and cannot be held to be validly exercised.

Calculation of Normal Value, Export Price and Dumping Margin with respect to KKPC

- KKPC received the confidential Annexure pertaining to Calculation of Normal Value, Export Price and Dumping Margin with respect to KKPC along with the Disclosure Statement dated 15 June, 2017.
- KKPC has claimed that the Authority should not have disregarded the actual costs reported by KKPC in Appendix 8B and requested the DA to adopt the same. KKPC submitted that its data in the EQR was based on the actual costing and was duly verified by the DGAD investigative team.

The Injury Analysis conducted by the Authority is flawed

- KKPC claimed that it is not possible, legally, for the Petitioners to claim (i) material injury; (ii) threat of material injury; and (iii) material retardation to the establishment of an industry, simultaneously as the standards are mutually exclusive.
- It is submitted that consideration of these standards as the same or interchangeable renders the legal provisions *non-est*. Moreover, citing Section 9B(1)(b) of the Customs Tariff Act, 1975, KKPC claimed that usage of the word “or” between the three injury bases indicates disjunctive, separate legal bases. In such a case, the Authority cannot read “or” to mean “and”.
- KKPC argues that it is not possible to bifurcate the injury analysis, on the bases of material injury for ISRPL and material retardation to the establishment of RIL. This is because the existence of material injury precludes the existence of material retardation, as it presumes the existence of an ‘established’ industry. KKPC submitted that the Authority must determine a singular Domestic Industry (DI) and whether the DI, as a whole, is established or not. KKPC seeks the Authority’s analysis regarding whether it is possible that a new-entrant in an established market can claim material retardation.
- KKPC claimed that conduct of the present investigation is illegal as no legal guideline exists for the same. Paras. (i) and (vii) of Annexure II of the Anti-Dumping Rules provide the principles for determination of injury and threat of material injury, respectively. However, no such principles exist for the determination of material retardation.
- KKPC submitted that the Authority’s bifurcated analysis has created an anomalous situation by carrying out an examination for both, material injury and material retardation such that there is a presumption that the industry is both, established and *not* established, at the same time.

The Authority’s Material Injury analysis pertaining to ISRPL is flawed

- The Authority in its material injury analysis for ISRPL, has failed to disregard the production and supply figures pertaining to RIL. It has cited various examples of such inclusion of RIL figures. E.g., the capacity under consideration of the Authority is very high, at 2,61,000 MTPA which is the combined capacity of the Petitioners.
- There is no volume injury as import volumes from the subject countries declined in absolute terms between 2014-15 and the POI, and also in relation to Indian production and consumption. KKPC also submitted that “imports from the subject countries have remained significant in terms of total imports” is not a criteria for analysis under the AD Rules
- ISRPL has gained substantial market share and singularly held 29% of the market share at the end of one year of production, i.e., POI. Thus, the Authority’s conclusion that ‘the performance of the DI is not significant’ is baseless. KKPC also noted that within 6 months after the POI, the market share of the DI has escalated to 51%.

- The “*price undercutting*” is misguided and requested the Authority to record reasons as to why one instance of price undercutting, from one of the subject countries, in one quarter of the POI at 0-10% is sufficient basis to conclude that there have been instances where the subject goods originating in the subject countries were imported into the Indian market at prices lower than the selling prices of the domestic industry.
- KKPC also claimed that the Authority’s conclusion that “*a negative price undercutting indicates that industry has aggressively matched the import prices to ensure its presence in market*” is arbitrary as the negative margin of undercutting is substantial, establishing that DI prices were 20-30% below import prices from the subject countries. KKPC also cites *Indian Spinners Association v. Designated Authority*, [2004 (170) E.L.T. 144 (Tri. - Del.), paragraph 15] wherein, CESTAT noted that the DI prices being about 11% higher than the prices of the allegedly dumped imports established the independence of the two. KKPC also submitted that negative undercutting establishes only that import prices are higher than DI prices and no other conclusion may be drawn from an analysis of price undercutting alone.
- With respect to the Price Underselling analysis of the Authority KKPC submitted that the calculation of injury margin should follow conclusions on injury. The same is not a ‘factor’ to assess injury. In this regard, it cited the findings of the Gujarat High Court in *Nirma Ltd. v. Union of India* [Special Civil Applications No.16426/2016 & 16427/2016]. KKPC also raised this issue with respect to the examination of “Factors affecting Domestic Prices”.
- KKPC cites inter-se competition between the Petitioners as an injury factor to the Petitioners as it is evident that the cost of sales of RIL are far lower than that of ISRPL. ISRPL’s injury is caused due to the low selling price of RIL. KKPC also reiterated its submissions pertaining to ‘other factors’ which have caused injury. We note KKPC’s submission that injury to the Petitioners is caused by the following reasons:
 - Lack of Product Approvals from end-users / buyers and resultant inability to supply in the domestic market.
 - Off-Grade Sales made by RIL at low prices.
 - Change in market conditions between the planning phase (when the market had been experiencing unprecedented boom and was very optimistic) and the stage of commencement (when the market crashed and prices of the raw material almost halved, leading decline in end-product prices)
 - Locational Disadvantage of ISRPL, located in Northern India when the main consumers are in West and South India.
 - Factors listed by the Petitioner-ISRPL in its Annual Reports, such as significant cost over-runs in the execution of ISRPL’s project, delayed start of commercial production, significant fall in natural rubber prices influencing price and sales of SBR.
 - Factors listed by the Petitioner-RIL in its Investor Related Documents, such as, new capacity additions and weakened demand for SBR.

- Impact of the FTAs with Korea and ASEAN (Thailand). The reduction in customs duty has led to resultant reduction in the landed values from these countries and the same must be duly adjusted in consideration of injury.

The Authority's Material Retardation analysis pertaining to RIL is flawed

- The Authority's reliance on a WTO proposal as the basis for its material retardation analysis is completely unfounded as the WTO negotiations have stalled due to disagreement amongst Members. It is also submitted that the cited proposal may not be reflective of India's stance at the WTO and would undermine the negotiation process therein.
- KKPC has claimed that injury, if any, to RIL is attributable to the high entry barriers in the SBR industry-customer stickiness and lengthy approval processes.
- RIL injury is incomprehensible as the cost of sales of RIL have reduced 82% while selling price has only declined by 32%. Concurrently, imports from the subject country have also declined substantially. Thus, the prices and profitability of the Petitioner move independent of the imports from the subject countries and the correlation regarding the injury suffered by RIL has not been established.
- Injury caused by other known factors, such as inter-se domestic competition, declining raw material prices, suppressed demand in the auto sector, lack of product-approvals by user industry, etc. must be segregated and excluded from the Authority's analysis.

The Authority has not established a clear and untarnished causal link between the alleged injury suffered by the Petitioners and the allegedly dumped imports from the subject countries

- KKPC has submitted that "*any known factors other than dumped imports*" have not been analyzed. It was reiterated that for ensuring that injury caused by these other known factors is not attributed to the injury caused by the allegedly dumped imports, the Authority must necessarily isolate and segregate injury caused by each factor and exclude the same from the overall injury suffered by the Petitioners.
- Authority's observation regarding export sales of the Petitioners is incomplete. It was submitted that the Authority has failed to note that parameters pertaining to export market performance have been completely excluded, such as profitability and cash profit / loss. In this regard, it was reiterated that the Petitioner-RIL sold off-Grade products in the export market at substantial losses and the same has impacted its profitability.
- The analysis under "(g) *Performance of other products produced and sold by the domestic industries*", should have analyzed the financial status of other products produced by the DI. It was submitted that since RIL is a backward-integrated unit, and it produces many petrochemical products, its transfer pricing at each intermediate level up to SBR production must be factored in the analysis under this head.
- KKPC submitted that post-POI data has been inappropriately analyzed. It individually analyzed each ground such as Post-POI data evidencing suppression of production,

Post-POI data evidencing non-optimality in capacity utilization, Post-POI data evidencing price underselling and overall price suppression / depression.

Non-Injurious Price Calculations merit reconsideration

- KKPC has raised certain issues with respect to the NIP calculation of the Authority, these are:
 - The viability of using a non-injurious price (NIP) calculated for an established industry- ISRPL for a new entrant like RIL.
 - With respect to “raw material cost” and “cost of utilities”, the Authority cannot use the “higher” of *the best achieved norms of raw material / cost of utilities by the domestic producer, over various quarters of POI or standard consumption norms*” as “best achieved norms” refers to the lowest achieved value. Moreover, the usage of “standard consumption norms” is not permitted under Annexure III of the AD Rules.
 - The Authority’s reliance on confidential project reports of the DI is unwarranted as no non-confidential summary has been provided to KKPC despite repeated requests.

Procedure and Excessive Confidentiality

- KKPC alleged excessive confidentiality exercised by the Petitioners and the Authority with respect to the following:
 - Project Reports of the Petitioners
 - The data of ISRPL concerning installed capacity, production, capacity utilization, domestic sales, inventory and exports.
 - Volume, inventories and price parameters of RIL, as reproduced by the Authority at Tables 12, 13, 14 and 15 at pages 55-56 of the Disclosure Statement.
- AD Rules definition of “domestic industry refers only to active producers of the like article there is no justification for the inclusion of an entity like RIL, which was not undertaking any commercial production and did not contribute to the domestic output of the like article during the period of investigation.
- Authority cannot include under PUC those products which are not being currently manufactured by the DI, based on established CESTAT jurisprudence. Thus, the claims for exclusion of Grades 1739 and 1789 needs to be reanalyzed. Moreover, the Authority has failed to consider our submissions for exclusion of Grades 1502NF (NF denotes nitrosamine free which is not produced in India), 1507, 1507H, 1745, 1763, 1769, 1789, 1793 and 1799.
- PUC should be defined to exclude both Solution SBR and Styrene-Butadiene-Styrene.
- With respect to the import statistics under consideration, it had pointed out certain transactions of forms of styrene-butadiene which are not under consideration in the present investigation but were included in the import statistics by the Petitioners.

The Authority has inappropriately “bifurcated” the injury analysis for ISRPL and RIL

- Based on the Disclosure Statement, it appears the Authority has determined that ISRPL, an established domestic industry merits a “material injury” analysis and RIL, an embryonic domestic industry merits a “material retardation” analysis. However, since there can only be a singular domestic industry, identified as a whole- such bifurcation is impermissible.
- Authority has inappropriately included capacity and related parameters of RIL for analyzing “material injury” vis-à-vis ISRPL.
- “Material retardation” analysis is based solely on a WTO proposal and is thus, misguided. The Authority has not conclusively established any “material retardation” based on its analysis of the post-POI data of RIL and the market. In fact, the post-POI data shows an overwhelmingly positive picture of the SBR domestic industry in India.

The Petitioners are not under any “threat of material injury”

- The Petitioners claimed (i) material injury; (ii) threat of material injury; and (iii) material retardation of the establishment of an industry, simultaneously. However, these standards are mutually exclusive and cannot co-exist.
- The Petitioners have claimed “threat of material injury” but failed to substantiate the claim in terms of Article 3.7 of the ADA. The Petitioners have provided no factual evidence that the threat is clearly foreseen and imminent. The prices of import do not undercut or suppress the domestic prices and volume of imports have consistently declined from subject countries (particularly, EU).

The Petitioners have not suffered any “material retardation”

- The AD Rules do not provide any guidelines for the conduct of an investigation pertaining to the standard of “material retardation”.
- The Petitioners relied on a “proposal” at the WTO to establish the standard of “material retardation”. Such proposals are subject to the outcome of negotiations at the WTO, and have no legal or binding value.
- Based on established standards in other jurisdictions, the Petitioners are not suffering any material retardation. Applying the “market stabilization” test (as laid down in *Benzyl Paraben from Japan* and *PVC battery covers from Germany*), the Petitioners have not established that the “injury” apparent from its data is not merely indicative of normal start up conditions or that its performance is worse than what can be expected in an industry with high entry barriers.
- During the POI, only ISRPL has been commercially producing the subject goods and it was performing at 80% capacity utilization. Based on the Disclosure Statement, we note that ISRPL achieved 30% market share in the POI. Within 6 months post-POI, with RIL joining commercial production, the DI gained 51% of the market share.
- Both ISRPL and RIL expressed intentions to expand capacities in 2013 and 2015, respectively. The same shows the expected profitability of the sector once the Petitioners are established.

The data of the Petitioners do not indicate any injury or material retardation

- The data provided in the Petition and the data available for the post-POI period do not indicate any injury to the Petitioners as:
 - There is no price injury: there is no price undercutting (even as per the disclosure statement) and evidently, the DI prices are substantially lower than the import prices- showing there is no suppression or depression.
 - The Petitioners' losses and costs are showing a declining trend, indicating stabilization of their production and sales.
 - There is no volume injury: Imports are declining in absolute terms and relative to domestic production and consumption.
 - The Petitioners' inventories show a declining trend.
 - Post-POI data shows overwhelming decline in combined cost of sales of the DI, as well as stabilized selling prices. Capacity utilization, production and market share are also positive indicators. Even the losses of the Petitioners have become negligible compared to POI.

There is no causal link between the imports from the subject countries and the alleged injury of the Petitioners

- The Petitioners' injury, if any, is attributable to various other factors, apart from the imports from subject countries. These include:
 - Lack of product approvals from end-users
 - Loss making sales of 'Off-Grade' subject goods by RIL at low prices
 - Change in market conditions between the planning stage, when SBR market was optimistic, and stage of commencement of plant, when the SBR market crashed
 - Other factors as listed in ISRPL's Annual Reports
 - Significant cost overruns in the execution of project by ISRPL
 - Delay in start of commercial production
 - Significant fall in natural rubber prices influencing price and sales of SBR
 - Locational disadvantage of ISRPL leading to higher costs for inland freight
 - New capacity additions and weakened demand for SBR
 - Start-up costs incurred by the Petitioners
- While the PUC is clearly demarcated as Emulsion Styrene Butadiene Rubber (E-SBR), the import statistics provided by the Petitioners include forms of styrene-butadiene which are not subject goods.
- ESBR 1739 and ESBR 1789 should be excluded from the scope of the subject goods since these grades are not manufactured by the DI.

88. Submissions filed by M/s BST Elastomers are as under:

- The Authority is requested to re-evaluate the dumping margin of SBR 1700 series from Thailand to India by using only SBR 1712 price to be best and correct facts as 95 % of SBR 1700 Series exported by BSTE to India during the POI period are SBR1712.
- BSTE share in India was less than 5% which cannot cause injury.

- Additional information on our domestic price both SBR 1712 and 1500 is being attached to evaluate domestic market as per WTO agreement.
- Both normal value and export price be evaluated at ex-factory level i.e. at same level of trade.

89. Submissions by M/s Kanth & Associates representing M/s Trinseo Europe GmbH is as under:

- M/s Trinseo has provided data to the extent possible and therefore it should not be treated as non-cooperative but rather in residual category.

90. Submissions filed by European Commission are as under:

Demand has increased by 40% over the period of analysis. It is also noted that demand continued to rise in the 6 months following the POI to reach an overall increase of 47%.

Over the period of analysis, imports from the subject countries have increased by 26% thus allowing the domestic industry to settle in the domestic market and to reach a market share of 29% in the POI. The market share of the domestic industry continued increasing afterwards and almost doubled in the 6 months following the POI to reach 51%. In such circumstances, the Commission fails to understand how the investigating authority can claim that the gain in market share of the domestic industry is not significant.

When taking a closer look at the imports from the subject countries, it appears that, contrary to the other subject countries, imports originating in the EU have decreased both in relative (-8.753 MT) and absolute terms (-11 percentage points market share). Bearing in mind that consumption increased significantly, this questions the impact that EU imports could have had on the domestic industry over the period of analysis.

The situation of the petitioner appears to reflect a situation of a newly-established producer. Indeed, the petitioner has been able to increase its production volume steadily since the start of operations. The sales volume on the domestic market also shows a very positive trend, whereby in a very short period of time of 2 years, the domestic industry achieved a sizable share of around 50% of the Indian market. Furthermore, the domestic industry did not only benefit from the increase in consumption, it also gained very significant market share to the detriment of historical players such as the EU.

As far as causal link is concerned, the Commission fails to see how imports from the subject countries and from the EU in particular could have caused injury to the domestic industry. The investigation has evidenced that imports from the subject countries have lost over 10% market share over the period of analysis and even 45% when extending this period by 6 months after the POI. Furthermore, imports from the subject countries also decreased in absolute terms whereas consumption has increased by over 40%. The decrease in market share for the subject countries has taken place to the entire benefit of the domestic industry.

It appears that the situation of the domestic industry has been improving continuously and the establishment of the industry is not retarded in any manner. As a matter of fact, production and

sales have increased steadily and the domestic industry could even double its domestic sales between the POI and the 6 months following the POI. The latter period coincides with the beginning of the commercial activities of the second producer on the domestic market. This fact demonstrates on its own that the establishment of the domestic industry was not retarded.

The Commission notes that the investigating authority has relied on proposed amendments to the ADA in order to guide its assessment with regard to material retardation. As the investigating authority rightly points out and as the Commission had indicated in its submission following the initiation of this proceeding, such proposed amendments are however not legally binding. On the contrary, Article 3.4 of the WTO ADA is applicable in this proceeding and the economic factors and indices that it lists should have been analyzed in order to reach meaningful conclusions.

91. Submissions filed by All India Rubber Industries Association are as under:

- 1) With respect to the Disclosure Statement under issue, we submit that the same does not consider the submissions made by us during this investigation. We adopt all the submissions made during this investigation in the present comments and request that findings may be given by the Designated Authority accordingly.
- 2) The present comments are limited to issues pertaining to the Disclosure Statement issued by the Authority on 10 July, 2017. For the sake of brevity, our submissions before this Authority contained in our Written Submissions and Rejoinder Submissions are not being reproduced; though the same may be treated as part and parcel of these comments.
- 3) The Authority appears to have split the injury analysis in the present case. It appears that the Authority has considered that instead of a singular domestic industry, each producer in the Indian industry can be separately considered for the purposes of determining injury to the DI. This is completely baseless and the Authority has not provided any rationale for such an analysis.
- 4) We note that our submissions have been altogether overlooked in the Authority's determinations. The Authority has failed to note that given the situations of ISRPL and RIL, and the lack of product approvals with the DI for sale of the subject goods, the present case claiming material retardation was highly premature. In fact, even the Authority's own data regarding the post-POI period lends evidentiary support to this claim. We request the Authority to reconsider the propriety of the initiation of the present investigation.
- 5) In any case, we find it eludes logic to consider the domestic industry players individually to determine "material injury" for ISRPL as an "established" domestic

industry even though it is the first entrant into the Indian market and to consider the same domestic industry as “unestablished” for RIL, another producer entering production more than a year after ISRPL has been established and attained commercial performance. The Authority must justify such distinction and determination. We submit that such a determination is illegal and merits rectification.

- 6) The Authority has claimed to split the injury analysis into two parts- analysis of material injury for ISRPL and material retardation for RIL. Without prejudice to our primary claim that such a division is not legally tenable, we note that the Authority has even failed to completely exclude RIL from its material injury analysis. We note that time and again, throughout the Disclosure Comments, the Authority has included the capacity of both ISRPL and RIL in its analysis for material injury. We submit that such an approach is without any basis. Inclusion of the RIL capacity in the total capacity of the Indian industry, for a consideration of material injury, leads to a situation where capacity utilization is unduly suppressed. This is because, during the POI, RIL had not begun commercial production and its capacity and production should both be excluded.
- 7) On the material injury analysis, since the Authority claims to have only considered data for ISRPL, then it should refer to ISRPL alone in its conclusions, instead of referring to “domestic industry”. Such categorization would clarify whether data of ISRPL or RIL or both is being considered.
- 8) There is excessive confidentiality exercised by the Authority in the Disclosure Statement evidenced through redaction of data that is generally provided to the interested parties. We request the Authority to provide us with the rationale for such redaction.
- 9) The existence and examination of Material Injury of ISRPL precludes a separate material retardation analysis. This is because the existence / possibility of existence of material injury presumes the existence of an established industry. We submit that the Authority must clarify whether it is establishing jurisprudence that a claim of material retardation may exist where an established industry already exists. Otherwise, the segregation of analysis as done in the present case appears to be null.
- 10) The Authority’s reference and reliance on “WTO’s proposed amendment” to determine material retardation is completely unfounded and without any justification. Such a

reliance is based on information that is not available with us, and has not been made available to us throughout the investigations. We submit that the proposal to the WTO must be rejected, without even holding it as having any persuasive value, as the cited proposal is not India's proposal before the WTO. In fact, WTO negotiations have been stalled for some years now due to high level of variances in members' opinions. Thus, the Authority's reliance and subsequent analysis based on the "proposal before the WTO" is without merit.

11) Moreover, based on the indexed data supplied by the Authority, it is evident that the cost of sales of RIL have reduced 82% while selling price has only declined by 32%. Even with cost of sales becoming a fifth of its initial value, and selling price declining by a mere 30%, the Petitioner (RIL) is still experiencing substantial losses. Concurrently, imports from the subject country have also declined substantially. Thus, we submit that Authority must establish the correlation between the prices & profitability of the Petitioner and the imports from the subject countries. We submit that the correlation regarding the injury suffered by RIL has not been established by the Authority.

12) In the causal link analysis, the Authority has neglected to analyze "*any known factors other than dumped imports*" despite many of them having been listed by the interested parties. We reiterate that for ensuring that injury caused by these other known factors is not attributed to the injury caused by the allegedly dumped imports, the Authority must necessarily isolate and segregate injury caused by each factor and exclude the same from the overall injury suffered by the Petitioners.

13) Moreover, other factors' causing injury to the Petitioners listed in the Petitioners' Financial records, such as Annual Reports and Investor presentations must necessarily be addressed. We submit that when the Annual Reports of the Petitioners provide reasons other than imports as the cause for injury suffered, then the Authority must fully consider the value of the same. The Annual Reports of the Petitioner are important documents that ensure transparency in the Petitioner's process and the same cannot be ignored. In this regard, we place reliance on *Andhra Petrochemicals Ltd. vs. Designated Authority* [(2006) 201 ELT 481] wherein it was held that Designated Authority must take into consideration Annual Reports of the company, where the injury projected are

not due to imports but other reasons. This finding of the CESTAT is binding on the Authority herein.

14) We submit that the Authority's conclusions, as contained in the Disclosure Statement are without any basis and merit reconsideration. Considering the foregoing, and the fact of decreased imports in the period post-POI, no causal link or conclusion thereof may be derived from the data supplied by the Authority. We request the Authority to reanalyse the data before them in light of the foregoing submissions.

15) With respect to the Authority's Annexure 4 of the Disclosure Statement, we raise the following issues:

- a. The Authority must clarify how a non-injurious price (NIP) calculated for an established industry- ISRPL can be used for a non-established, new entrant like RIL.
- b. With respect to the Authority's consideration (at page 61 of the Disclosure Statement) regarding "raw material cost" and "cost of utilities", the Authority has considered "the best achieved norms of raw material/cost of utilities by the domestic producer, over various quarters of POI or standard consumption norms, whichever is higher at POI rates". In this regard, we submit that there is no basis for considering the "higher" value. We submit that the AD Rules provide for usage of the "best achieved norms" and that implies, necessarily, the lowest consumption norms. Thus, the consideration of "higher" norms is against the letter and spirit of the Annexure III of the AD Rules. Further, there is no provision for considering "standard consumption norms". The Authority has also failed to share the standard consumption norms under discussion here.
- c. Under "Production", the Authority has relied on the project reports of the DI. We reiterate our submissions pertaining to the non-reliability of the Petitioners' project reports, as pressed in our Written Submission. We reiterate that the We submit that a non-confidential version of the same should be shared with the us. We also submit that without such provision, and opportunity of comment, the Authority's reliance on the same is illegal and violative of principles of natural justice.

- d. The Authority has not addressed our submissions pertaining to the rate of return on capital employed for the DI. We reiterate that while commissioning its plant, ISRPL has secured a long-term loan in foreign exchange at interest rate of LIBOR + 0.72% which is approximately 2.5%. It is submitted that even if the historical rate of return is neglected, the rate of return cannot be taken as 22% as per the standard practice of the authority. This is also supported by the decision of the Hon'ble CESTAT in the matter of *Bridge Stone Tyre Manufacturing v. Designated Authority* wherein it questioned the rationale of using 22% rate of return for determining the NIP of the applicant without providing the historical rate of return in the industry concerned.

We urge the Authority to consider our submissions. We also pray that, if the proceeding is not terminated and if there is any change in the essential facts under consideration then, the DA must issue another Disclosure Statement intimating of the same, another opportunity may be provided to us to make comments and another public hearing should be granted by the Designated Authority.

Examination by the Authority

92. The Authority has examined submissions made by various interested parties in response to the disclosure as under:
 - i. The Authority notes submissions on faulty and premature initiation of investigation submissions by various interested parties including All India Rubber Industries Association who besides this have also raised impact of AD measure on user industry. The Authority holds that as Material Retardation is one of the forms of injury, and the petition filed by Domestic Industry for initiation fulfilled prima facie the requirements of relevant AD Rules based on which, the Authority initiated the same on merits and as per rules.
 - ii. The Authority notes submission of Domestic Industry on methodology to evaluate the cost of production of producers/exporters and also those of the concerned producers/exporters from South Korea and clarifies that the cost of production of product under consideration for domestic sales of both the producers cum exporters from South Korea has been validated from the data reported in Appendices 5, 6 and 7. The Authority has noted variance in raw material consumption between appendix 5 and appendix 8 in the information provided by these producers/exporters which has been appropriately addressed and the final cost of production was disclosed to both the producers/exporters in the disclosure statement. The methodology adopted was also discussed with the concerned producers/exporters when the variance in various appendices was noted at the time of onsite verification and the verification report issued thereafter.

- iii. Specifically for M/s LG Chem, the company has sourced Butadiene (BD) and Styrene material (SM) from own production as well from M/s Lotte Chemicals. The raw materials required for the production of BD (mix C4) and SM (Benzene) are sourced from Lotte Chemicals. These inputs are procured under some agreement which do not truly reflect the costs as such prices are not benchmarked to international prices of respective commodities. The comparison between international prices, another cooperative producer in Korea and LG's purchase prices from Lotte shows that LG's purchase prices were significantly lower. Since the prices of key inputs were not demonstrating the true cost, the average purchase prices of BD and SM of the other cooperative producer during POI in Korea has been referenced.
- iv. Further the Authority holds that it is the cost of production data of the cooperating producers/exporters and the market conditions of the subject country which are relevant for determination of normal value and not any other data specific for another producer in a non-subject country as contested by the Domestic Industry for referencing such data.
- v. As regards, LG Chem India Pvt. Ltd., the Authority notes that it has not exclusively been set up for handling activities related to product under consideration. The contribution of product under consideration in overall sales of the company comprises less than 5% of its share. The expenses incurred by LG Chem India booked under SGA have been appropriately proportioned on PUC and considered while computing dumping margin.
- vi. The Authority notes that domestic petitioners have stated that many holding, subsidiary companies of LG group exist whose information has been suppressed by the exporter. The Authority notes these submissions of the petitioner and holds that as far as the PUC is considered, the producer has provided information of all its exports to India during POI. The information of the entities related to exports to India has been evaluated by the Authority.
- vii. Further as regards determination of ex-factory export price of subject goods, the same has been computed after ensuring that the non-direct exports by the producer i.e. through Daewoo International / Daewoo International Singapore by KKPC and through LG Chem America Inc., Hansuk Chemicals Co. Ltd, Everlite Korea Co. Ltd., Hearty Chem Corp, and Wonchem Ltd. by LG Chem Ltd. are in ordinary course and not sold at a loss. Adjustment warranting this has been considered. The Authority has therefore considered all adjustments to evaluate the dumping margin. The CIF prices of these non-direct entities have however been considered for computing weighted average landed value.
- viii. The Authority notes the submissions made by M/s BST Elastomers, Thailand and some additional data provided by them at a belated stage and holds that as the

producer/exporter had not filed the relevant information in the structured format in timely manner, no further data at this stage can be considered. The Authority thereby confirms the evaluation already done for all producers/exporters of Thailand as per the best available information.

- ix. As regards submissions by M/s Trinseo, the Authority holds that as the producer/exporter did not file complete information therefore no individual dumping Margin has been granted to them on account of the aforesaid as also stated in the disclosure and the producer/exporter is being considered under the residual category.
- x. As regards submissions by various interested parties that the material injury, threat of injury and material retardation cannot be simultaneously evaluated, the Authority holds that the injury is examined and evaluated for Domestic Industry as a whole which comprises of eligible domestic producers in accordance with the Rule 2 (b) of the AD Rules. The macro assessment of material injury done for Domestic Industry as a whole may contain variation in incidence of injury parameters for different domestic producers. A part of Domestic Industry may suffer volume injury while another part may suffer price injury. An overall assessment of Domestic Industry as a whole cumulates and averages such impacts. While this happens for material injury assessment at parameter level, a similar phenomena can happen in terms of different injury forms to different parts of Domestic Industry. Therefore it is likely that a producer which is part of Domestic Industry may face material injury while another may face material retardation. The Anti-Dumping Rules do not prevent simultaneous examination of both these forms. It cannot be held that the 3 forms of injury are mutually exclusive. The Authority holds that both ISRPL and RIL have made genuine commitment by setting up production facilities of SBR. Both are nascent and new industry as ISRPL started commercial production only in February 2014 while RIL announced this after POI. Both are facing challenges in their establishment and progress. The Authority has therefore evaluated both material injury and material retardation separately for the two producers of Domestic Industry and drawn conclusion on an overall basis for Domestic Industry as a whole.
- xi. For the purpose of considering overall demand, production and capacity, the data of all producers is relevant and therefore have been considered. For specific analysis of capacity utilisation, trend of production, sales, inventory and exports, data of ISRPL has been considered for the purpose of analysing material injury.
- xii. In the analysis of material injury to ISRPL, while specific injury parameters have been considered exclusively for ISRPL, the import from subject countries have been analysed with reference to total demand in the country. The trend of market share of sales by ISRPL follows the same trend as that of Domestic Industry.
- xiii. As regards price undercutting being negative, the Authority holds that the case under investigation is peculiar in which even the commercial production by ISRPL has only commenced in February 2014 whereas the POI is October 2014 to September 2015.

The company is a new entrant and has to aggressively match the import prices which leads to a reasonably high negative price undercutting when the net sales realization (NSR) of ISRPL is compared with the Landed Value of dumped imports. It would therefore need to be interpreted along with the injury margin computed for the domestic industry.

- xiv. Specific data of a cooperating entity is treated confidential on a claim by the concerned interested parties. The same has been considered for ISRPL as well. As regards the fallacy in interpretation of trend of imports from subject countries, the Authority reiterates and clarifies that in the disclosure it has stated that imports from subject country increased till 2014-15 and have declined in POI but remained significant. The relevance of imports being significant as a parameter of assessing injury is relevant in context of evaluating the injury form of material retardation in particular.
- xv. The premise of the respondents that the evaluation of injury be prior to determination of Injury Margin therefore needs to be seen in context of the fact that the concept of injury subsumes Injury Margin intrinsically and is inseparable.
- xvi. The Authority holds that in an ideal situation of no injury, the Injury Margin should be negative as it is a surrogate qualification of manifestation of various injury parameters. The concept of Lesser Duty Rule which requires computation of NIP not only strengthens non-attribution but also quantifies the extent of injury. In any case, the Authority has in the disclosure stated that ISRPL has suffered injury on account of profitability, which was reflected in table 9 of the disclosure. As regards post POI data analysis the Authority has undertaken the same for Reliance Industry Limited in particular. As regards the high fixed expenses of ISRPL, the Authority has while computing the NIP adopted the highest achievable capacity utilization as per the project report rather than best achieved capacity utilization keeping in view the peculiar circumstances of a new entrant company.
- xvii. As regards the trend of cash profit, all quarters of POI show losses with varying intensity which needs to be appreciated as prevalence of losses rather than its mere variation in quantum.
- xviii. In order to address the aspect of companies being new entrants, the Authority has evaluated NIP for ISRPL for a capacity utilization in a prospective period which would be maximally attained and raw material/utilities compared with standards given in project report and adopting the best. Therefore the non-injurious price has been determined with most optimistic efficiency of the company. Also keeping the new entrant aspect in view, the Authority has evaluated RIL on material retardation parameters.
- xix. As regards wages, employment, productivity and inventory indices for ISRPL, the Authority has included the same after appropriate indexation.

- xx. As regards inter se competition amongst two new entrants of DI, the Authority holds that both the new entrants are benchmarking themselves primarily against the imports from subject countries though within the market share of Domestic Industry as a whole there could be a dynamic change of market shares of the two entrants. However, the two new entrants are not in a commanding position to dictate market prices.
- xxi. The Authority notes various factors like start-up costs, non-approval of petitioners products, fall in demand etc. being cited as possible causes of injury to Domestic Industry. The Authority has evaluated the material injury for ISRPL on parameters of profitability which do not contain any off grade sales. The long gestation period of approval process done by end users who themselves are beneficiary of dumped material cannot be considered as a rational and fair argument as a factor of injury to Domestic Industry. The inefficiencies prevalent in domestic industry's production cost and high abnormal costs have been appropriately normated while computing NIP to ensure a fair protection to mitigate injury caused due to dumped imports. The Authority has compared the best achieved norms of raw material and utilities further with standard consumption norms and adopted the lower amongst the two to eliminate the impact of startup costs, besides the methodology on capacity utilization stated in sub para xvi above.
- xxii. As regards impact of FTA between India and Korea, the Authority has evaluated the Landed Value as per the applicable custom duties. The Authority notes that on the one hand the FTA provisions might lower the landed value, but at the same time the exporters could leverage this to increase their export realization by factoring the zero import duty advantage in export price as compared to other competitors which would though increase the landed value to some extent on the one hand and also decrease the dumping margin due to increase in export price. Therefore these aspects may also warrant an adjustment. Therefore the Authority has adopted its consistent practice of evaluating the landed value with applicable custom duties.
- xxiii. As regards the analysis of cost and price trend lines of indexed numbers of RIL, the Authority holds that during POI the trial production had only began in October 2014 which included high start-up costs with low sales. The analysis of cost and price trend during POI which was the phase of trial production for RIL is therefore not realistic, on indexed terms. The Authority has analysed the actual absolute numbers and has noticed that during POI the prices of RIL are lower than the NIP determined for ISRPL which also surrogates as fair price for RIL who has declared commercial production.
- xxiv. As regards the causal link analysis, the Authority keeping in view that the petitioners are new entrants has computed NIP on best achievable capacity utilization rather than best achieved capacity utilization to ensure that injury is not attributed to any abnormal startup costs. As regards export sales, the Authority has undertaken the cash profitability exclusively for domestic sales.

- xxv. As regards injury assessment to RIL, the same has been undertaken with regard to material retardation alone. Since the commercial production of RIL was declared post POI, therefore the NIP for domestic industry has been considered on the basis of ISRPL's data. While the petitioners have stated that there is no bar to include RIL for NIP computation, the Authority does not consider this as feasible as the NFA during POI in the book of accounts of RIL but is captured as CWIP.
- xxvi. The Authority while examining material retardation to RIL has evaluated the same on facts and not conjectures. The proposal on WTO examining material retardation being considered in WTO has been considered as a reference. The lower market share of RIL's sales in POI with relatively longer gestation period than ISRPL to declare commercial production and unable to enhance capacity utilization in post POI even beyond 50% despite availability of demand indicates that RIL has suffered injury on account of material retardation, due to dumped imports. Though their sales have increased in post POI, the profitability is negative.
- xxvii. To compute the cost of sales of RIL the Authority has adopted the established principle of transfer pricing and as stated above, since RIL was not in commercial production during POI, the comparison of net sales realization (NSR) has been done with NIP computed for ISRPL to ensure a fair comparison.
- xxviii. As regards confidentiality, the Authority following its consistent practice and as per AD Rules has not disclosed individual companies' data of any interested party, where even confidentiality has been claimed.
- xxix. Further the Authority holds that any Interested Party can request for an authorization letter from DGAD to obtain non-confidential transaction wise import data from DGCIS. However once such a data is provided by DGCIS to any of the Interested Party, they are obliged to use the same as per terms and conditions of DGCIS. The Authority has not placed such a transaction wise data of DGCIS in public file which would only circumvent the policy of providing transaction wise data by DGCIS to bonafide users on specific undertaking. Therefore the Authority in no way has constrained availability of such data to any Interested Party. The submissions by M/s. Luthra and Luthra are therefore misplaced and not appropriate both in context of facts of the case and law.
- xxx. The Authority through letter dated 15th May, 2017 to M/s Luthra & Luthra Law Offices had assured for authorisation to them to obtain transaction wise import data from DGCIS after their undertakings on bonafide use of such information as being followed with all interested parties involved in the investigation.
- xxxi. As regards raw material purchase prices by Indian Synthetic Rubber Private Limited (ISRPL) being at arm's length raised by one of the interested party earlier, the Authority has evaluated NIP by considering the actual purchase price and appropriately applying principles of annexure 3 of AD Rules. In any case downward computation of NIP due to preferential treatment in supply of raw material to ISRPL does not adversely impact

the interest of importers or the user industry. Further the Authority has allowed rate of return as per existing rules/principles.

- xxxii. In response to the post disclosure comments of one of the interested party regarding normation in costs for NIP evaluation, the Authority confirms that best consumption norms of raw material have been considered. Further best achievable capacity utilization in prospective POI period has been considered keeping in view that DI has started operations in 2014 only but stated to achieve higher capacity utilization in their project report from 3rd year onwards. Also one of the injury forms being examined is material retardation wherein post POI performance has also been analysed.
- xxxiii. The Authority has considered and addressed the submissions made by All India Rubber Industries Association (AIRIA) to the disclosure which was inadvertently missed to them in appropriate paras in this finding. The key submissions on undertaking both material injury and material retardation in the same investigation separately for ISRPL and RIL respectively has been addressed in sub para x. While the Authority has addressed material injury on the stipulated parameters contained in Annexure II of AD Rules, for material retardation parameters like growth in share, optimal level of production and profitability of new entrant has been considered.
- xxxiv. As regards NIP, the Authority has though allowed rate of return on capital employed as per its consistent practices. The normation has been done by adopting project standards as per the project report or the best achieved as stated in sub para xxi. This has been done to specifically address the situation of abnormal high costs of startup keeping in view the fact that companies are new entrants. RIL's data has not been included to ensure that NIP is reasonable and fair, which otherwise would have been higher.
- xxxv. As regards examination of causal link keeping in view decrease in imports in post POI from subject countries, the Authority holds that in post POI the profitability of RIL has been considered as an index of injury and reported in injury analysis.

Indian industry's interest & other issues

93. As regards the submissions regarding impact on user industry the Authority holds 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. Imposition of antidumping measures is not to restrict imports from the subject countries in any way, and, to affect the availability of the products to the consumers.
94. The Authority also holds that though in the event of imposition of anti-dumping duties the price level of product in India may be affected but fair competition in the Indian market will not be reduced by such anti-dumping measures. On the contrary, the anti-dumping measures may mitigate the unfair advantage gained by dumping practices, which would arrest the decline of the domestic industry both material injury and its retardation and would help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or even more sources of supply.

Conclusions

95. Having examined the contentions of various interested parties and analysis undertaken above, the Authority concludes that:

- i) There is dumping of product concerned from the subject countries.
- ii) The dumped imports from the subject countries are suppressing the prices of the domestic industry, impacting profitability.
- iii) Manifestation of the aforesaid injury is both in form of material injury as well as material retardation

Recommendations

96. Having concluded as above the Authority considers it necessary to recommend following definitive Anti-dumping duty on imports of subject goods from the subject countries in the form and manner as described in the duty table given below.

97. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, antidumping duty equal to the amount mentioned in Col. 8 of the table below is recommended to be imposed by the Central Government, on imports of the subject goods originating in or exported from the subject countries.

DUTY TABLE

No.	Heading/ Subheading	Description of goods *	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	4002 19	Emulsion Styrene Butadiene Rubber (E-SBR) of 1500 Series and 1700 Series	European Union	European Union	Synthos Kralupy A.S., Czech Republic	Synthos Kralupy A.S., Czech Republic	207.49	MT	US\$
2.	-do-	-do-	European Union	European Union	Synthos Dwory 7 Sp. Z. Oo, Poland	Synthos Dwory 7 Sp. Z. Oo, Poland	207.49	MT	US\$
3.	-do-	-do-	European Union	European Union	Any combination other than S. No. 1 & 2		266.00	MT	US\$
4.	-do-	-do-	European Union	Any	Any	Any	266.00	MT	US\$

5.	-do-	-do-	Any country other than those subject to anti-dumping duty	European Union	Any	Any	266.00	MT	US\$
6.	-do-	-do-	Korea RP	Korea RP	Kumho Petrochemical Co., Ltd	Kumho Petrochemical Co., Ltd	33.95	MT	US\$
7.	-do-	-do-	Korea RP	Korea RP	Kumho Petrochemical Co., Ltd	i. Daewoo International Corporation, Korea RP ii. Daewoo International, Singapore	33.95	MT	US\$
8.	-do-	-do-	Korea RP	Korea RP	LG Chem Ltd, Korea RP	LG Chem Ltd, Korea RP	28.68	MT	US\$
9.	-do-	-do-	Korea RP	Korea RP	LG Chem Ltd, Korea RP	i. LG Chem America Inc.; ii. Hansuk Chemicals Co. Ltd; iii. Everlite Korea Co. Ltd.; iv. Hearty Chem Corp.; v. Wonchem Ltd	28.68	MT	US\$
10.	-do-	-do-	Korea RP	Korea RP	Any combination other than S. No. 6, 7, 8 & 9		64.00	MT	US\$

11.	-do-	-do-	Korea RP	Any	Any	Any	64.00	MT	US\$
12.	-do-	-do-	Any country other than those subject to anti-dumping duty	Korea RP	Any	Any	64.00	MT	US\$
13.	-do-	-do-	Any	Korea RP	Any	Any	64.00	MT	US\$
14.	-do-	-do-	Thailand	Thailand	Any	Any	243.60	MT	US\$
15.	-do-	-do-	Thailand	Any	Any	Any			
16.	-do-	-do-	Any country other than those subject to anti-dumping duty	Thailand	Any	Any			

*Note: Styrene Butadiene Rubber of 1900 Series and Solution SBR are excluded from the scope of the Product Under Consideration

98. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

Further Procedure

99. An appeal against the order of the Central Government arising out of this Final Findings Notification shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Dr. Inder Jit Singh
Additional Secretary & Designated Authority