

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

**F.No.7/10/2019 DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
Jeevan Tara Building, 4th Floor
5, Parliament Street, New Delhi-110001**

Dated: 21st February, 2020

FINAL FINDING NOTIFICATION

Subject: Sunset Review of Anti-Dumping Investigation concerning imports of ‘Sheet Glass’ originating in or exported from People’s Republic of China.

F.No.7/10/2019-DGTR: Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as “the Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as “the Rules”), the Designated Authority (hereinafter also referred to as the Authority) had initiated the Sunset Review Investigation vide notification no.7/10/2019-DGTR dated 17th July, 2019 to review the need for continued imposition of Anti-Dumping Duty (ADD) in respect of the Subject Goods, originating in or exported from China PR and to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the Domestic Industry (DI).

A. Background

1. The Authority received an application dated 19th June, 2019 from M/s. Emerge Glass India Pvt. Ltd. (hereinafter also referred to as the Applicant) requesting for the initiation of Sunset Review of Anti-Dumping Duty (ADD) under the Customs Tariff Act, 1975 as amended in 1995 and thereafter (hereinafter also referred as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter also referred as the “Rules”) on imports of ‘Sheet Glass’, (hereinafter also referred to as Subject Goods or Product Under Consideration or PUC) originating in or exported from China PR (hereinafter referred to as Subject Country).
2. The original investigation was initiated on 20th December, 2013 vide File No. 14/22/2013-DGAD to examine the nature and extent of dumping and its injurious effect on the Domestic Industry (DI) with respect to Sheet Glass originating in or exported from China PR. The Authority vide its final finding No.14/22/2013-DGAD dated 19th December, 2014

recommended imposition of ADD against the dumped imports of the Subject Goods from the Subject Country. The duties were imposed by issuance of Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015 for a period of 5 years.

3. In terms of Section 9A (5) of the Act, ADD imposed shall unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition and the Authority is required to review, whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the DI, as to whether the expiry of duty is likely to lead to continuation or recurrence of dumping and injury.
4. The Applicant filed an application dated 19th June, 2019 requesting initiation of Sunset Review of ADD earlier imposed and seeking continuation of duties against imports from China PR. The request was based on the grounds that the expiry of the measure was likely to result in continuation of dumping of the Subject Goods and consequent injury to the DI.
5. The Authority decided to hold a discussion with the Applicant to understand the need for sunset review application. Accordingly, pre-initiation hearing was held on 11th July, 2019.
6. The Applicant accounts for almost 77% share in total domestic production. There is one more producer of the Subject Goods in India, viz. M/s. Bharat Glass Tubes Limited, having around 23% share in total domestic production, which has duly supported the applicant.
7. In view of the duly substantiated application with *prima facie* evidence of likelihood of dumping and injury filed on behalf of the DI and in accordance with Section 9A(5) of the Act, read with Rule 23 of the Rules, the Authority initiated the Sunset Review Investigation vide notification no.7/10/2019-DGTR dated 17th July, 2019 to review the need for continued imposition of ADD in respect of the Subject Goods, originating in or exported from China PR and to examine whether the expiry of the said duty is likely to lead to continuation or recurrence of dumping and injury to the DI.
8. The scope of the present review covers all aspects of the previous investigation concerning imports of the Subject Goods, originating in or exported from the Subject Country.

B. Procedure

9. The review covers all aspects of Final Finding Notification No.14/22/2013-DGAD dated 19th December, 2014 which had recommended imposition of ADD on imports of Subject Goods originating in or exported from the Subject Country.
10. The procedure described herein below has been followed by the Authority with regard to the subject investigation:

- i. The Director General, under the Rules, received a written application from the Applicant on behalf of the DI, requesting for continuation of ADD against the imports of Subject Goods from China PR.
- ii. On the basis of the duly substantiated application, the Authority issued Initiation Notification No.7/10/2019-DGTR dated 17th July, 2019, published in the Gazette of India, Extraordinary, initiating Sunset Review of ADD imposed on imports of the Subject Goods originating in or exported from China PR.
- iii. The Embassy of the Subject Country in New Delhi was informed about the initiation of the Sunset Review investigation in accordance with Rule 6(2) along with the copy of the initiation notification and non-confidential version of the application.
- iv. The Authority forwarded copies of the notification to the known producers / exporters in the Subject Country (whose names and addresses were made available to the Authority by the Applicant) and provided an opportunity to make their views known in writing within 40 days from the date of the letter in accordance with Rule 6(2) and Rule 6(4) of the Rules, i.e. till 4th September, 2019. On a request from producers/exporters from China PR, i.e. M/s. Shandong Guangyao Super-Thin Glass Co. Ltd. and M/s. Zhongwei International Industry Co. Ltd., the last date of submission of response was extended to 18th September, 2019.
- v. The Authority forwarded copies of the notification to the following known producers/ exporters:
 - a) M/s. Xinmei Glass Products Co., Ltd. Jiaozuo City, Henan, China
 - b) M/s. Shandong Guangyao Super-Thin Glass Co., Ltd., Shandong, China
 - c) M/s. Anhui Tongxian New Material Co Ltd., Anhui, China
 - d) M/s. Jiangxi Pingxiang Phoenix Sheet Glass Co Ltd., Jiangxi, China
 - e) M/s. Doungguang Aixin Glass Product Co.Ltd., Zhaowang Town, Hebei Province, China
 - f) M/s. Shandong Yuankai Super-Thin Glass Co.Ltd., Shandong Yuankai, China
- vi. The following producer and exporter from China PR filed a response to the exporter questionnaire:
 - a) M/s. Shandong Guangyao Super-Thin Glass Co. Ltd.
 - b) M/s. Zhongwei International Industry Co. Ltd.
- vii. The Authority forwarded a copy of the Notification to the following known importers/ consumers of Subject Goods in India (whose names and addresses

were made available to the Authority by the Applicant) and advised them to make their views known in writing within 40 days from the date of issue of the letter, in accordance with the Rule 6(4):

- a) M/s. Ajanta LLP, Orpat Industrial Estate, Rajkot Highway, Gujarat
 - b) M/s. Ajanta Manufacturing Pvt. Ltd., Orpat Industrial Estate, Highway, At Morbi, Gujarat
 - c) M/s. Almighty Exports, Plot No. G-2155 Road No. 1H, Kishan, Gate Lodhika Gidc Metoda, Rajkot, Gujarat
 - d) M/s. Alpha Enterprise, Flat No. 603, Labhlaxmi Apartment, Swastik Society, Sanala Road Ahmedabad Gujarat
 - e) M/s. Empire Impex, 2, Lucky Mansion, 46/50, Mirza Galib, Marg, Byculla, Mumbai
 - f) M/s. Empire Industries, 2 Madhu Industrial Estate, Mogra Village, Andheri East, Mumbai, Maharashtra
 - g) M/s. K K Impex, Building No.42, New DLF Industrial, Phase-1, Haryana
 - h) M/s. Nikhil Industries, No.540, T.T.K. Road, Alwarpet, Chennai, Tamil Nadu
 - i) M/s. Panchnath Traders, 1, Parsana Society, 80 Feet Road, Rajkot
 - j) M/s. Q Events Pvt. Ltd., 60-C, K1 pocket-D SFS Flats, Mayur Vihar Phase-III
 - k) M/s. Ramachandra Reddypropram Industries, No.693, Thirupalya, Bommasandra. Post, Bangalore, Karnataka
 - l) M/s. Vylene Glass Works Ltd., 107, Famous Cine Studio Building, ,20, Dr. E. Moses Road, Mahalaxmi Mumbai
- viii. Only one importer/ consumer, named M/s. Ajanta LLP of the PUC, responded to the importer questionnaire of the Authority and requested to be treated as an interested party in the investigation. However, they did not file the importer questionnaire according to the format provided by the Authority.
- ix. The period of investigation (POI) for the purpose of the present investigation is April 2018-March 2019 (12 months). The injury analysis period covers 2015-16, 2016-17, 2017-18 and the POI. The post-POI period may also be considered for the purpose of likelihood analysis.
- x. Transaction-wise imports data for the POI and the preceding three years was procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems (DGS). The Authority has, relied upon data of DGCI&S, DGS and the data of the cooperative producer and exporter for calculating the volume and value of imports of the Subject Goods in India.

- x. The Authority made available the non-confidential version of the submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xii. The Authority has examined the information furnished by the domestic producers to the extent possible on the basis of guidelines laid down in Annexure III of the Rules to work out the cost of production and the Non-Injurious Price (NIP) of the Subject Goods in India under normal course of trade based on the information furnished by the DI. The cost to make and sell the Subject Goods in India based on the information furnished by the DI on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if ADD lower than the dumping margin would be sufficient to remove injury to DI.
- xiii. In accordance with Rule 6(6) of the Rules, the Authority provided opportunity to the interested parties to present their views orally in an oral hearing held on 30th September, 2019. The parties were given an opportunity to file written submissions of the views expressed orally by 7th October, 2019, followed by rejoinder submissions by 15th October, 2019.
- xiv. A second oral hearing on 18th December, 2019 was also conducted in this investigation due to the Designated Authority having been changed in compliance of the judgement of the Hon'ble Supreme Court in the matter of *Automotive Tyre Manufacturers Association v Designated Authority*, (2011) 2 SCC 258 dated 7th January, 2011. The parties were given an opportunity to file written submissions of the views expressed orally by 23rd December, 2019, followed by rejoinder submissions by 27th December, 2019.
- xv. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this finding.
- xvi. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of this Final Finding to the extent possible and verified on the spot the data / documents given by the DI and producer/exporter to the extent considered relevant and necessary.
- xvii. A Disclosure Statement was issued on 30th January, 2020 containing essential facts under consideration of the Designated Authority, giving time up to 6th February, 2020 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.

- xviii. The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- xix. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded this Final Finding on the basis of the facts available.
- xx. *** in this Final Findings Notification represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxi. The exchange rate adopted by the Authority for the subject investigation is US\$ 1= ₹69.91.

C. Scope of Product Under Consideration (PUC) and Like Article

Submissions by the Domestic Industry

11. The DI has made the following submissions with regard to the scope of the Product Under Consideration (PUC) and like article:
- i. The PUC for the purpose of the present investigation is the same as in the original investigation, i.e. Sheet Glass. As per the consistent practice of the Authority, the custom classification is indicative only and in no way it is binding upon the product scope or for the imposition of ADD.
 - ii. The PUC is produced by using horizontally lehr. The glass is taken directly from the free surface of the melt and the edges of the sheet are stabilized by driving the glass upward using rotating bodies. The molten glass passes from the glass furnace to a vertical drawing machine to a height of about 1,000 MM from where the formed glass is converted into glass sheet by horizontal flow. Once the sheet has been formed it is bent over a polished metal roll and is carried away horizontally into a lehr. Sheet glass production process is completely different from that of float glass where a sheet of glass is made by floating molten glass on a bed of molten metal, typically tin. This method gives the sheet uniform thickness and extremely flat surfaces.
 - iii. The DI has submitted that since the present investigation is a sunset review investigation, the PUC remains the same as defined in the previously conducted

investigation as no significant developments have taken place over the period. Therefore, the DI refers to and relies upon the previous investigation with regard to the PUC.

- iv. The product scope in an anti-dumping investigation is not bound by the HS codes/ Tariff classifications mentioned in the findings but the same is governed by the definition of the PUC as defined in the relevant finding. It is a matter of record, the Authority while issuing its final findings mentioned two tariff headings i.e., 70042011 and 70042019 in the duty table. However, the duty table also contained a proviso that the tariff classifications are for indicative purpose only and the imports shall be governed by the product scope as defined in the findings.
- v. Ministry of Finance has fully accepted the recommendations of the Authority and the findings have to be read as an integral part of the customs notification. Further, the inclusion of correct tariff headings would not in any way mean that the scope of the investigation has been enlarged so long as the description of the PUC remains the same. It would not be out of place to mention that the Authority has done such amendments with respect to customs classification in the duty table in the past as well. In this regard, reliance is placed upon Anti-dumping investigations involving imports of Sewing Machine Needles, originating in or exported from China PR. [F.No. 15/02/2016-DGAD, dated 23.05.2017] wherein similar amendment in the duty table was made by the Authority.
- vi. Without prejudice to the above, it has been the consistent approach of the Authority to examine all aspects of the original investigation in a sunset review investigation. Further, the initiation notification in the present case also states that the review will cover all aspects of Final Finding Notification No.14/22/2013-DGAD dated 19th December, 2014 recommending imposition of ADD on imports of Subject Goods originating in or exported from the Subject Country.
- vii. The present issue is not where the Authority is broadening the scope of the investigation but it is one where certain HS codes are required to be included in order to cover the product expressly and extensively determined by the Authority. It is submitted that once the Authority determines the product scope, the same cannot be limited by tariff classification as long as an import entry is covered by the product scope defined by the Authority.

Submissions made by the producers/exporters/other interested parties

12. The submissions made by M/s. Ajanta LLP with regard to the scope of the PUC or like article are as follows:
 - i. In the original final finding dated 19th December, 2014 issued by the Authority with respect to the investigation, the recommendation for imposition of duties was made

with respect to the tariff items 70042011 and 70042019, with a note that stated as follows:

The subject goods are also being imported under other tariff headings such as 70031290, 70031990, 70033090, 70042099, 70049019, 70049099, 70052110, 70053090, 70091090, 70091010, 70099100, 70119090 etc. However, the customs classification is indicative only and is not binding on the scope of this investigation.

- ii. The Ministry of Finance received various representations from interested parties and imposed duties on two identified customs tariffs, i.e. 70042011 and 70042019.
- iii. The limited scope of the PUC cannot be broadened in the sunset review investigation and must be limited to the scope of the PUC which is subject to ADD. Therefore, the scope of the sunset review investigation and the PUC therein should be limited to the two identified customs tariff items, i.e. 70042011 and 70042019 only, *qua* which duties were imposed as per the Customs Notification No. 07/2015-Customs(ADD) dated 13th March, 2015.
- iv. In the case of *Ajanta Pvt. Ltd. v. Union of India*, the Hon'ble Gujarat High Court observed,

“While it is true that the designated authority in its final findings has below the table put a note stating that the subject goods were also being imported under other tariff headings as detailed thereunder and that the customs notification is indicative only and is not binding on the scope of that investigation. However, the Central Government after considering the recommendations made by the designated authority, has not thought it fit to include the said note in the notification dated 13-3-2015. In so far as the notification dated 13-3-2015 is concerned, the definitive anti-dumping duty is imposed only on sheet glass bearing Tariff Item Nos. 7004 20 11 and 7004 20 19.

[.]

In the light of the above discussion, this Court is of the view that the respondent authorities have no authority in law to demand definitive antidumping duty in relation to the goods imported by the petitioner which do not fall under the Tariff Items mentioned in the Notification No. 7/2015-Customs (ADD), dated 13-3-2015.”

- v. The observation made by Hon'ble CESTAT in *Apar Industries Ltd. v. Designated Authority*, 2006(200) E.L.T. 34 (Tri. Del.) in as follows:

“It seems that the sunset review by its very nature, would be limited to see as to whether conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is no longer justification for continued imposition of duty or ascertain that if such duty is revoked there is imminent

danger of the material injury to domestic industry. The inquiry is limited to the change in the various parameters like normal value; export price, dumping margin, fixation of non-injurious price and injury to domestic industry. The sunset review is undertaken for the purpose of not for imposition of anti-dumping duty but to see whether the revocation of such anti-dumping duty, dumping would increase and whether the domestic industry will suffer.”

Examination by the Authority

13. The PUC in the present sunset review investigation is Sheet Glass.
14. The present investigation being a sunset review investigation, the Authority considers that the scope of the PUC in the present investigation remains the same as that in the original investigation. The PUC as defined in the original investigation is as follows:

“4. The product under consideration in the present investigation is Sheet Glass, originating in or exported from China PR. It is produced by using horizontally lehr. The glass is taken directly from the free surface of the melt and the edges of the sheet are stabilized by driving the glass upward using rotating bodies. The molten glass passes from the glass furnace to a vertical drawing machine to a height of about 1000 MM from where the formed glass is converted in to glass sheet by horizontal flow. Once the sheet is formed, it is bent over a polished metal roll and carried away horizontally into a lehr. Float glass, figured and wired glass are not covered within the scope of Product under Consideration.

15. After considering the information on record, the Authority holds that there is no known difference in the PUC exported from the Subject Country and the product being produced by the Indian industry. The Subject Goods produced by the DI is comparable to the PUC in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers use the two interchangeably.
16. The Authority holds that the product produced by the Applicant is like article to the PUC as mentioned in the paragraphs above, in accordance with the Rules. The Subject Goods produced by the Applicant are treated by the Authority as like article to the Subject Goods imported from the Subject Country, within the meaning of Rule 2(d) of the Rules.
17. With regard to the submission by the importer that the scope of the investigation should not exceed the original imposition of duties which was only limited to customs tariff items, i.e. 70042011 and 70042019, the Authority notes that in an anti-dumping investigation the duties are imposed vis-à-vis a product or Subject Good, instead of on particular customs headings. For this reason, the Authority invariably in all cases makes a specific mention

that the “customs classification is indicative only and is not binding on the scope of the investigation”.

18. However, In the matter of *Ajanta Pvt. Ltd. v. Union of India* quoted above, the Hon’ble Gujarat High Court had stated that in the absence of the customs notification containing specific tariff headings, the department concerned had no authority in law to demand or collect ADD with respect to such goods which do not fall under the Tariff Items mentioned in the Notification No. 7/2015-Customs (ADD), dated 13-3-2015. The Authority notes that neither the DI nor the Department of Revenue had challenged this order.
19. The PUC in the Original Investigation and the present sunset review remains sheet glass. The PUC is classified under the heading “Glass and Glassware” in Chapter 70 and further under 7004.20. The Authority further notes that in the initiation notification of the present sunset review, the PUC was considered as per the original investigation. However, based on the submissions of the interested parties and the facts available on record, the Authority notes that the present investigation is only a sunset review of the ADD actually imposed on the imports of Subject Goods from Subject Country vide Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015. Hence, the classification of the Subject Goods for the purpose of this sunset review at 8-digit level is 70042011 and 70042019.

D. Domestic Industry and Standing

Submissions by the domestic industry

20. The DI made the following submissions with regard to eligibility of the DI and standing:
 - i. The Applicant is not related to any exporter or importer of the Subject Goods in the Subject Country and importers in India either directly or indirectly.
 - ii. The Applicant accounts for “a major proportion” of Indian production. The applicant satisfies the requirement of standing to file the present application and constitute “Domestic Industry” within the meaning of the Rules. This is without prejudice to the legal position that standing is not required to be examined at the stage of sunset reviews.
 - iii. The Applicant accounts for almost 77% share in the total domestic production. There is one more producer of the Subject Goods in India viz. M/s. Bharat Glass Tubes Limited, having around 23% share in the total domestic production which has duly supported the applicant.
 - iv. The Applicant, along with the supporter, accounts for 100% of the domestic production, thereby constituting eligible DI, as defined in Rule 2(b) of the Rules.

Views of the opposing interested parties

21. If the original investigation took into account Bharat Glass Tube Limited's data, the sunset review must also be based on its data for comparison of the two time periods.

Examination by the Authority

22. The application has been filed by M/s. Emerge Glass India Pvt. Ltd. along with the supporter M/s. Bharat Glass Tubes Limited. Later, the Authority directed the Applicant to file relevant data for M/s. Bharat Glass Tubes Limited. The relevant data was filed by the Applicant as directed.
23. It is noted that M/s. Emerge Glass India Pvt. Ltd. started production in the year 2016. M/s. Emerge Glass India Pvt. Ltd., along with supporter, accounts for 100% of the total Indian production. The Applicant has certified that they are not related to any exporter or importer in India.
24. In view of the above and after due examination, the Authority holds that the Applicant satisfies the standing requirements for the Subject Goods and constitutes DI under Rule 2(b) and Rule 5(3) of the Rules.

E. Issues relating to Confidentiality

Submissions by the domestic Industry

25. The DI made the following submissions with regard to confidentiality:
 - i. Only such information has been claimed as confidential, the confidentiality of which has been permitted under the Rules and as per consistent practice of the Authority.
 - ii. The Applicant has provided sufficient non-confidential version of the application and that none of the interested parties has been able to point out any specific instance of information which has been claimed confidential and confidentiality of which is not justified under the Rules.
 - iii. Information such as volume of exports to India, gross volume of sales in domestic market, production, sales, average price for exports to India have been provided in an indexed version as the information is business proprietary information.
 - iv. The responding exporters have resorted to excessive and unwarranted confidentiality by claiming confidentiality even on the quantities exported to India, total production of the Subject Goods and their disposal in the domestic market and

exports to other countries in the non-confidential version of the exporters' questionnaire response.

- v. The cooperating exporter has not filed the non-confidential version of the application adhering to the guidelines of Trade Notice No. 10/2018.

Views of the opposing interested parties

26. No submissions were made by the other interested parties with regard to confidentiality.

Examination by the Authority

- 27. Submissions made by the interested parties with regard to confidentiality and considered relevant by the Authority was examined and addressed accordingly. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- 28. The Authority made available the non-confidential version of the information provided by various interested parties to all interested parties through the public file containing the non-confidential version of evidences submitted by various interested parties for inspection as per Rule 6(7) and Trade Notice No. 10/2018.

F. Miscellaneous Submissions

Submissions by the domestic industry

- 29. The DI made the following submissions:
 - i. Despite the imposition of duties, the PUC is still being exported to India at dumped prices from the Subject Country.
 - ii. The DI has been able to perform well only on account of the duties imposed by the Authority.
 - iii. The Applicant has established its plant in 2015-16 and came into commercial production in 2016-17. The Applicant has been able to acquire satisfactory market share only because of the protection provided by the Authority in the form of ADD.
 - iv. Cessation of duties would lead to substantial loss in terms of market share and revenue to the DI.

- v. Chinese exporters have strategically increased their prices while decreasing their exports to India in last two years to affect the outcome of the present proceedings.
- vi. The Chinese producers have already started exporting the Subject Goods at substantially low prices in the post-POI period. Further, there has been an increase in the volume of imports from China in the same period.
- vii. The likely dumping margin and injury margin computed on the basis of the commercial invoice of a Chinese producer is quite significant and shows the kind of injury DI would suffer in case the duties are revoked.
- viii. The participating exporters have not filed Appendices 5, 6, 7, 8 and 10, duly signed by the practising accountant as per Trade Notice No. 5/2018 dated 28th February, 2018.
- ix. It is a settled position of law that causal link analysis is not mandatorily required to be done in sunset review investigations. The test for extension of the period of duties under Section 9A (5) is only to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.
- x. It is absolutely not necessary that dumped imports must be the sole or even the principal cause of injury.
- xi. M/s Ajanta LLP has neither filed a questionnaire response nor have they made any request to the Authority for getting registered as an interested party in the format and timeline prescribed in Trade Notice No. 11/2018. Therefore, the submissions made by M/s Ajanta LLP should be ignored.

Submissions made by the producers/exporters/other interested parties

30. The producer and exporter have made the following submissions:

- i. The producer and exporter have submitted that the present sunset review investigation should be terminated due to following reasons:
 - a. The imports from China PR have taken a drastic fall from 40,847 MT in 2015-16 to 4,160 MT in the POI. The Applicant's claim that the imports have been reduced as a finely crafted strategy of the Chinese exporters is flawed and baseless. Trade Notice No. 02/2017 dated 12th December, 2017, which provides a timeline for the application of a sunset review before 270 days of the expiration of the original duty was notified in December 2017, while the fall in imports started from the beginning of April 2017. The Applicant was fully aware of when it would file the application and has wilfully chosen to lower its sales price in the last two years to show injury in profit parameters.

- b. Economic data represents glowing health of the DI. The Applicant's capacity, production, capacity utilization, sales value and sales realization per unit have increased over the injury period. Since buffer inventory maintained by an enterprise is increased to meet the increasing sales volume, the same is not an indicator of injury. The DI's employment levels, wages paid out and productivity have increased in the POI. Thus, there is no injury on this account. The landed value of the imports, without the addition of the ADD has been rising consistently, while the decrease in cost and increase in selling price of the Applicant is giving it the benefit of profitability.
- c. The data submitted by the Applicant is inconsistent and must be treated with utmost caution and strict scrutiny. Losses are the highest when the cost is at its lowest, and the selling price is substantially high. No data pertaining to the post-POI period has been brought out by the Applicant. The landed value of the imports, without the addition of the ADD, has been rising consistently. The price underselling is also negative. There has been active closure of existing plants in China PR and there are no excessive capacities. The cooperating producer and exporter do not hold much inventory of the Subject Goods, but rather sell the same in the domestic market and / or third country export markets. The domestic selling price of the Subject Goods in China PR and the export price of the Subject Goods to third countries are higher than the export price of the Subject Goods to India. The likelihood analysis has been made on the basis of one commercial invoice which is devoid of any logic.
- d. The Applicant has not claimed or made out a case for establishing continued injury owing to the imports from the Subject Country. The volume of the subject imports has declined substantially in both absolute terms and in terms relative to production and consumption; and in relation to total imports into India.
- e. There is no likelihood of recurrence of dumping and/or injury to the DI.

Examination by the Authority

- 31. Regarding the DI's contention that the submissions made by M/s Ajanta LLP may be ignored, it is stated that as per clause (iv) of Trade Notice No. 11/2018 dated 10th September, 2018, "*an interested party which has registered itself within the Authority within the timelines prescribed in clause (i) above, but does not file a questionnaire response, this shall not prevent such interested party from participating in other stages of the investigation by filing legal submissions, attending public hearing, filing disclosure comments etc.*".
- 32. The Authority has collected import data for the PUC, primarily for two heads, viz. 70042011 and 70042019 from DGCI&S and DGS.

33. The specific submissions made by the opposing parties which are considered relevant have been addressed by the Authority in relevant paragraphs below.

G. Assessment of Dumping – Methodology and Parameters

Submissions by the Domestic Industry

34. The DI has made the following submissions with regard to the determination of normal value, export price and dumping margin:

- i. The Applicant has determined normal value in the Subject Country as per procedure described in Para 7 of Annexure I to the Rules.
- ii. The Applicant has stated that in terms of Para 8 of Annexure I of the Rules, China has to be presumed to be a Non-Market Economy Country unless the concerned firms/ producers/ exporters are able to rebut the said presumption based on the criteria spelt out in Para 8(3). They have claimed that this is also in line with the position taken by the Authority in previous cases, and by investigating authorities in other countries. The Applicant has submitted that China PR should be treated as non-market economy for the following reasons:
 - a. None of the Chinese producers has claimed market economy treatment and have not filled the requisite questionnaire.
 - b. Market economy treatment must be rejected in such situations where Chinese exporters are unable to establish that their books are consistent with International Accounting Standards (IAS).
 - c. Market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the Rules.
 - d. It is for the responding Chinese exporters to establish that they are operating under market economy conditions.
 - e. Market economy status cannot be granted unless the responding company and its group as a whole make the claim.
 - f. It has been submitted that the normal value for China in such a case can be determined only in accordance with the provisions of para 7 of the Annexure I to the Rules without invoking proviso to 8(2) in view of the aforementioned facts and circumstances.
 - g. The normal value in China can thus be determined on the basis of (a) import price from third country into India, (b) selling price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. It is also submitted that since these options for determination of normal value are available, the Authority may not kindly consider "any other basis" because this is required to be applied only when the basis listed under the law cannot be applied.

- h. Para 8(2) of Annexure-I leaves no choice for the Authority but to presume China to be a Non-Market Economy country. However, the same is open to rebuttal by the Chinese firms under the provision of Para 8(3).
 - i. The Authority is a creation of the statute and has to perform its obligations and exercise the powers as specifically assigned to it under the specific provisions of the statute. Therefore, unless the provisions of Para 8 are amended, it is imperative for the Authority to operate as per the procedure mentioned in Para 8 and presume China as a Non-Market Economy country.
 - j. The significant extent of continued government intervention in certain important sectors of the Chinese economy warrants maintaining China's designation as a Non-Market Economy country. It is a known fact that China's economy is controlled by the state forces and there is a significant interference and control of the state machinery in the country's economy. The grant of Market Economy status under China's accession to the WTO is not automated but contingent upon China's compliance with the preconditions mentioned in the Accession Protocol.
- iii. The Applicant has relied upon import data provided by DGCI&S for determining export price. The Applicant has adjusted export price for ocean freight, marine insurance, commission, inland freight expenses, port expenses and bank charges to arrive at *ex-factory* export price.
 - iv. Questionnaire response filed by producers/exporters are grossly deficient and not filed in terms of the latest trade notice.
 - v. DI has constructed the normal values in respect of the Subject Country as documentary evidence or reliable information with regard to domestic prices of the Subject Goods in the Subject Country is not available in the public domain.
 - vi. For fair comparison between Normal Value and Export Price, the Applicant has arrived at the *ex-factory* export prices by adjusting export price for ocean freight, marine insurance, inland transportation, port handling and clearance charges, etc.
 - vii. The Applicant has accordingly arrived at the Dumping Margin based on the above computed normal value and the export price.

Views of the opposing interested parties

- 35. The exporters have submitted that the export price of the Subject Goods exported by them to India should be determined on the basis of data in the exporter's questionnaire response submitted by it to the Authority.

Examination by Authority

36. According to Section 9A (1) (c) of the Act, 'Normal Value' in relation to an article means:
- (i) *“comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
 - (ii) *when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*
 - (a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (b) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.
37. Upon initiation, the Authority sent questionnaires to the known exporters from the Subject Country, advising the producers/ exporters in the Subject Country to respond to the notice of initiation and provide information relevant to determination of their normal value and export price. Responses were received from a producer of China PR i.e. M/s. Shandong Guangyao Super-Thin Glass Co. Ltd. and an exporter of China PR, i.e. M/s. Zhongwei International Industry Co. Ltd.

H. Normal Value

38. The Authority observes that none of the producers/exporters has claimed market economy treatment, although a questionnaire was sent to them. Therefore, in view of Para 8 of Annexure I of the Rules, evidence cannot be evaluated. The Authority has determined the normal value in terms of Para 7 of Annexure I. No other specific suggestions were received from any of the interested parties.
39. Para 7 of Annexure I of the Rules provides as under:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including

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

40. The Applicant has requested the authority to construct the Normal Value for China PR under Para 7 of Appendix –I to the Rules. Though one exporter, i.e. M/s. Shandong Guangyao Super-Thin Glass Co. Ltd. has cooperated in the investigation but it has not submitted any response to the questionnaire prescribed for market economy treatment. Hence, the normal value for the country under Para 1- 5 of the Appendix cannot be computed based on the responses of the above cooperative exporter. Under these circumstances, the Authority considers construction of the normal value under Para 7 of the Appendix. The prices or constructed value of the PUC in the market economy third country or the prices from such third country to other countries including India is also neither made available by the Applicant nor available to the authority from any public domain. Therefore, the Authority, in the absence of information from the above stated sources, decided to construct the normal value based on cost of production of the PUC in the exporting country along with reasonable addition for administrative, selling and general cost and for profit. Since, no data related to the cost of production of PUC in the exporting country is available to the Authority, it considers the cost of production of the Applicant as the cost of production in the country of export and added a reasonable addition for administrative, selling and general cost and for profit. The Constructed Normal Values so determined for POI and post-POI by the Authority are US\$ ***/MT and US\$ ***/MT, respectively.

I. Export Price

41. During the POI, M/s. Shandong Guangyao Super-Thin Glass Co. Ltd, made export sales of *** MT for US\$ *** through an unrelated party, M/s Zhongwei International Industry Co. Ltd. to India and *** MT for US\$ *** to third countries. M/s Zhongwei International Industry Co. Ltd. is a trading company which did not produce the PUC. M/s Zhongwei International Industry Co. Ltd. did not have any domestic sales during the POI and exported goods to India directly. M/s Zhongwei International Industry Co. Ltd.’s exports to India in the POI did not include any exports under the ITC HS Codes 70042011 or 70042019, i.e. the two HS Codes on which ADD was levied vide Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015. In the post-POI (April-September,

2019), as per data of DGS, exports of M/s Zhongwei International Industry Co. Ltd. to India were *** MT, which included *** MT under the ITC HS Code 70042019 and no exports under the ITC HS Code 70042011.

42. The cooperating producer's exports to India through the unrelated cooperating exporter was on FOB basis. The cooperating producer has claimed inland freight and port handling charges (***% of FOB), whereas the cooperating exporter has claimed bank charges (***% of FOB) and credit cost (***% of FOB). Selling & General Administrative expenses and profit of the exporter have not been considered for exclusion, since the exporter is unrelated to the producer and earned profit during the POI. A transaction-wise analysis of the DGS data indicates that M/s. Zhongwei International Industry Co. Ltd. did not export the PUC either under HS 70042011 or HS 70042019, to India during the POI, but in the post-POI there were some exports to India under the HS Code 70042019. Accordingly, the Net Export Price for the cooperating producer/exporter has been worked out for post-POI as US\$ ***. In the absence of specific reliable information from the cooperating exporter on VAT in the post-POI, the export price has been taken net of VAT @***%.
43. For all other producers/exporters of China PR, who did not cooperate in the investigations, for the computation of Net Export Price and in the absence of specific information, details as submitted by the DI have been taken, viz. ocean freight (US\$ ***/MT), marine insurance (***% of CIF), inland freight (US\$ ***/MT); port handling expenses (***% of CIF), sales commission (***% of FOB), bank charges (***% of FOB) and credit cost (Rs. ***/MT). The export price for all other exporters has been taken net of VAT (***%). The volume of exports of all other producers/exporters have been derived by subtracting the export volume of the cooperating exporter from the total export volume as per DGCI&S data. Based on the above, the Net Export Price for all other exporters has been worked out as US\$ ***/MT during POI and US\$ ***/MT during post-POI.
44. The Authority cross-checked sample export invoices of cooperative producer/exporter with the DGS data as part of the desk study to correlate quantities and prices.

J. Dumping Margin

45. Considering the normal value and export price as above, the dumping margin for all exporters of the Subject Goods from the Subject Country is determined as given in the Table below. Post-POI refers to April-September, 2019 period.

Particulars	Cooperating Exporter	All Other Exporters	
	Post-POI*	POI	Post-POI
CNV (US\$/MT)	***	***	***
Export Price	***	***	***
Dumping Margin (US\$/MT)	***	***	***
Dumping Margin (%)	***	***	***
Dumping Margin (% Range)	80-100	220-240	180-200
* In the POI the cooperating exporter did not export the PUC either under HS 70042011 or HS 70042019, to India.			

K. Assessment of Injury

Views of the domestic industry

46. The DI has submitted as follows with regard to injury and causal link:

- i. The cessation / discontinuance of ADD in force is likely to lead to recurrence of dumping and injury. In case the duties applicable on the imported goods from China cease to exist, the Chinese exporters would capture the Indian market causing significant injury to the DI.
- ii. The productivity per day has increased during the injury period, including the POI, as compared to the base year on account of the protection from the Authority in the form of ADD against dumped imports from the Subject Country. Further, productivity *per se* is not a factor of injury to the DI.
- iii. The level of dumping, volume of imports, various injury parameters, surplus capacities available with the exporters, inventories of the exporters and their prices to the world need to be examined not only during the post-POI but also over the injury period to evaluate the likelihood of continuance or recurrence of dumping and injury. The analysis of dumping and injury to the DI is required to be made keeping in view the level of ADD in existence and the likely future behaviour of the exporters.
- iv. A conclusion has to be reached whether there is no possibility of any continued dumping or injury or otherwise recurrence of dumping or injury to the DI from the dumped imports from the Subject Country before deciding not to extend the ADD.
- v. The price undercutting on the basis of the import data available from DGCI&S was positive and substantial till 2016-17. However, the price undercutting became negative after 2016-17. The DI has reiterated that the Chinese exporters have craftly increased their prices to affect the outcome of the investigation. In fact, the prices from China have already taken a huge decline in post-POI period. The DI has attached a post-POI invoice of Chinese exporters to substantiate its claim that the Chinese producers have already reduced their prices in post-POI period. The DI has submitted that price undercutting in itself is not a factor of injury.

- vi. The price underselling on the basis of the available data for the POI is negative. The same is on account of the protection of ADD provided by the Authority. However, the DI has submitted that the continued imposition of ADD in force is critical for the survival of the industry. The DI has submitted that in the event of cessation of duties, the prices of the imported Chinese goods are bound to decline causing serious injury to the DI.
- vii. The DI has submitted that it is a settled position of law that causal link analysis is not mandatorily required to be done in sunset review investigations. In this connection, the DI has invited the attention of the Authority to the Appellate Body's decision in the case of *Oil Country Tubular Goods from Mexico (WT/DS282/AB/R dated 2 November 2005)*.
- viii. The information relating to causal link as submitted by the DI is as follows:
 - a. The Subject Goods are predominantly imported from China. There has been some increase in imports from Iran as well lately.
 - b. The demand in the country has grown up over the injury investigation period. Hence, decline in demand is not a factor of injury to the DI.
 - c. There is a single market for the Subject Goods where dumped imports compete directly with the goods produced by the DI. The price determines the choice of the supplier. The dumped goods are substituting the product of the indigenous producer. The imported product is also sold to meet similar commercial grades, standards and specifications, as domestically produced Subject Goods. The imported goods and the domestically produced goods are like articles and are used for the same applications/end uses. Pricing is the most important factor for purchasing the article either from imported sources or domestic sources. The DI is not realizing reasonable selling price /profit with respect to Subject Goods. This can directly be attributed to the low priced imports from Subject Country as the DI is always expected to match the prices offered by the importers from the Subject Country. Moreover, the sheet glass industry operates under fairly competitive conditions with the prices being determined on the basis of the forces of demand and supply. It is the unfair pricing of the dumped goods from the Subject Country which is primarily and predominantly responsible for the unfair price pressure being created on the domestic producer leading to material injury to the DI. If imports take place at the fair normal prices, the DI is totally in a position to face competition from imports.
 - d. No trade restrictive practices or technology issues which can be attributed to the cause of injury to DI.
 - e. The productivity of the DI has remained almost static over the injury investigation period. Therefore, productivity is not a cause of injury to the DI.
 - f. DI has not exported the Subject Goods during the period of review. Accordingly, the question of injury to the DI due to the export's performance due not arise.

Views of the opposing parties

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

- i. The DI has not claimed or made out a case for establishing continued injury owing to the imports from the Subject Country.
- ii. There is no likelihood of recurrence of dumping and/or injury to the DI.
- iii. The imports from China PR have fallen drastically from 40,847 MT in 2015-16 to 6,774 MT in 2017-18, and since then the imports have been at a constant decline. The imports have fallen to as much as 4,160 MT in the POI.
- iv. The combined data of M/s Bharat Glass Tubes Limited and M/s Emerge Glass India Pvt. Ltd. needs to be considered for a holistic analysis of the economic parameters of DI for the purpose this investigation.
- v. There is absence of injury to the DI and the economic parameters are healthy.
- vi. The DI's price and profitability parameters have shown substantial improvement.
- vii. The DI's domestic sales volumes have continuously and significantly increased in the injury period.
- viii. Since the buffer inventory maintained has increased to meet the increasing sales volume and the same is not the indicator of injury.
- ix. The number of employees has increased from *** to *** over the period of injury, commensurate with increased capacity.
- x. There is no situation of continued injury as per the facts presented by the DI in the present investigation.
- xi. There is no likelihood of continuation/ recurrence of dumping and injury.
- xii. Volume of imports from the Subject Country has declined in relative terms.
- xiii. Imports are not entering India at prices that may have a significant depressing or suppressing effect on domestic prices.
- xiv. The price undercutting from the subject country is significantly negative.
- xv. Capacity in the Subject Country has reduced and there are no significant unutilised capacities in the Subject Country.
- xvi. There exists no evidence of excess capacities in China PR.

- xvii. The producer and exporter have quoted the Delhi High Court Judgment, *Kesoram Rayon v. The Designated Authority & Ors.* 2017(166) DRJ 417, wherein the Court affirmed the Authority's position that mere existence of excessive capacities is not enough evidence for likelihood of diversion of exports into India. A causal link between such likelihood and excessive capacities must be drawn.
- xviii. No information is provided with respect to post POI period.
- xix. Export price to third country is higher than the export price to India.
- xx. The DI's data and assessment of extraneous factors for determining "likelihood of recurrence of dumping and injury" is inappropriate and merits rejection.
- xxi. Injury, if any, is attributable to reasons other than imports such as decline in demand, suppressed pricing of the DI, Export price and dumping margin.
- xxii. If the DI is suffering any injury, the same is due to other factors other than subject imports.

Examination by Authority

- 48. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties.
- 49. Since the Applicant, M/s Emerge Glass India Pvt. Ltd. had no commercial production in the base year 2015-16, while M/s Bharat Glass Tubes Limited was the sole producer, for the sake of consistency and to facilitate comparison, the figures for both the Applicant, i.e. M/s Emerge Glass India Pvt. Ltd. and the supporter, M/s Bharat Glass Tubes Limited have been considered for injury analysis.
- 50. Rule 11 of the Rules read with its Annexure – II thereto provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "*.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....*". While considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
- 51. Rule 23 of the Rules provides that the provisions of Rule 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall apply mutatis mutandis in case of a review. In case the performance of the DI shows that it has not suffered injury during the current injury period, the Authority shall determine whether cessation of the present duty is likely to lead to recurrence of injury to the DI.

52. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the DI before proceeding to examine the likelihood aspects of dumping and injury on account of imports from the Subject Country. For this purpose, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization and the magnitude and margin of dumping in accordance with Annexure – II of the Rules.

L. ASSESSMENT OF DEMAND

53. The Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product concerned in India as the sum of domestic sales and captive consumption of the Applicant and imports from all sources. The demand so assessed is given in the table below:

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI	Post-POI (A)
Sales of DI incl. captive	MT	***	***	***	***	***	***
Sales of Emerge Glass (incl. captive)	MT	***	***	***	***	***	***
Sales of Bharat Glass (incl. captive)	MT	***	***	***	***	***	***
Imports from Subject Country	MT	9,897	4,010	157	148	327	655
Imports from Other Countries	MT	106	401	1,875	0	0	0
Total demand	MT	***	***	***	***	***	***
Trend	Indexed	100.0	309.8	320.0	288.6	125.7	251.4

VOLUME EFFECTS OF DUMPED IMPORTS

i. Import volumes and market share of imports

54. 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. For the purpose of injury analysis, the Authority has relied on the transaction-wise import data procured from DGCI&S.

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI	Post-POI (A)
Import Volume							
Imports from Subject Country	MT	9,897	4,010	157	148	327	655
Imports from Other Countries	MT	106	401	1,875	0	0	0
Total imports	MT	10,003	4,411	2,032	148	327	655
Subject Country Imports in relation to							
Indian production	%	***	5	2	0	1	1
Demand	%	***	5	1	0	1	1

55. It is seen that imports of the PUC from the Subject Country reduced in terms of absolute numbers during the injury period and the POI. Thereafter, there was an increase. Similarly, imports of the PUC from the Subject Country as a proportion of domestic production and as a proportion of total demand too reflected a declining trend throughout the injury period and the POI, and increased in the Post-POI.

M. PRICE EFFECT OF DUMPED IMPORTS

56. In terms of Annexure II (ii) of the Rules, the Authority is required to consider the effect of the dumped imports on domestic prices in terms of price undercutting, price underselling, price suppression and price depression, if any.

i. Price Undercutting

57. With regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In this regard, a comparison has been made between the landed value of the product and the average selling price of the DI, net of all rebates and taxes, at the same level of trade. The prices of the DI were determined at the *ex*-factory level.

58. Price undercutting has been assessed by comparing the landed price of imports with the domestic selling price in India of the Subject Goods during the POI. It would be seen that the landed price of imports was lower than the net selling price of the DI since 2017-18, through the post-POI.

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI	Post-POI (A)
Landed Price of Imports	Rs./MT	19,298	22,357	11,417	16,449	17,206	17,206
Net Selling Price	Rs./MT	***	***	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***	***	***
	%	***	***	***	***	***	***
	Range (%)	(0)-(20)	(0)-(20)	80-100	20-40	20-40	20-40

Price Suppression and Depression

59. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the information given by the DI for the changes in the costs and prices over the injury period has been compared with the landed value to see the desired effect. The details are as under:

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI	Post-POI (A)
Landed price of Imports -Subject Country	Rs/MT	19,298	22,357	11,417	16,449	17,206	17,206
Trend	Indexed	100	116	59	85	89	89
Cost of sales of domestic industry	Rs/MT	***	***	***	***	***	***
Trend	Indexed	100	90	93	106	101	101
Selling price of domestic industry	Rs/MT	***	***	***	***	***	***
Trend	Indexed	100	102	116	117	113	113

60. The following is observed:

- i. The landed price of imports was above the selling price of the DI in the first two years of the injury period and thereafter it has been lower than the latter.

- ii. The landed price of imports was below the cost of sales of the DI in 2015-16, 2017-18, POI and post-POI.

ii. Price Underselling

61. Price underselling has been evaluated by comparing the Non-Injurious Price (NIP) with the landed value of the Subject Goods. The Authority notes that price underselling is an important indicator of assessment of injury. The NIP has been determined considering the cost of production of the DI for the PUC during the POI, in accordance with Annexure III of the Rules.
62. The landed price of the Subject Goods from the Subject Country has also been computed considering the CIF price in India plus customs duty and surcharge thereon. It is observed that in the POI, the injury margin was positive for other exporters, both with and without ADD. The injury margin, with and without ADD, was positive for the cooperating exporter during the post-POI.

Particulars	UOM	Cooperating Exporter		
		Post-POI	POI	Post-POI
Without ADD				
Import Volume	MT	***	***	***
Landed Price of Imports	US\$/MT	***	***	***
Non-Injurious Price	US\$/MT	***	***	***
Price Underselling	US\$/MT	***	***	***
	%	***	***	***
	Range	20-40	40-60	40-60
With ADD				
Import Volume	MT	***	***	***
Landed Price of Imports	US\$/MT	***	***	***
Non-Injurious Price	US\$/MT	***	***	***
Price Underselling	US\$/MT	***	***	***
	%	***	***	***
	Range	0-20	0-20	0-20

N. ECONOMIC PARAMETERS OF DOMESTIC INDUSTRY

63. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of alleged imports on domestic producers of such products. With regard to the consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the DI should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

64. The various injury parameters relating to the DI are discussed herein below:

i. Production, Capacity, Capacity Utilization and Sales Volumes

65. The performance of the DI with regard to production, domestic sales, capacity and capacity utilization is as follows:

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI (A)
Capacity	MT	***	***	***	***	***
Trend (2015-16)	Indexed	100	261	261	261	261
Trend (2016-17)	Indexed	-	100	100	100	100
Total Production	MT	***	***	***	***	***
Trend (2015-16)	Indexed	100	457	478	507	490
Trend (2016-17)	Indexed	-	100	105	111	107
Total Capacity Utilization	%	***	***	***	***	***
Trend (2015-16)	Indexed	100	175	183	195	188
Trend (2016-17)	Indexed	-	100	105	111	107
Domestic Sales incl. captive	MT	***	***	***	***	***
Trend (2015-16)	Indexed	100	459	489	450	389
Trend (2016-17)	Indexed	-	100	106	98	85
Domestic Sales excl. captive	MT	***	***	***	***	***
Trend (2015-16)	Indexed	100	450	471	429	371
Trend (2016-17)	Indexed	-	100	105	95	82

66. The Authority notes the following:

- i. The DI, viz. M/s Emerge Glass India Ltd, came into existence in 2016-17. The supporter, M/s Bharat Glass Tube Ltd. was in operation prior to that too. The capacity installed by the DI and the supporter remained the same since 2016-17, through the injury period, including the POI, and in the Post-POI as well.
- ii. The total production of DI, including the production of the PUC increased from the base year till the POI. However, it declined during post-POI.
- iii. The trend for domestic sales of DI, both including captive and excluding captive, increased during the injury period, but declined during the POI and further in post-POI.

ii. Market Share in Demand

67. Market share of alleged dumped imports and DI have been examined as below:

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI	Post-POI (A)
Sales of DI incl. captive*	%	***	***	***	***	***	***
Imports from Subject Country	%	35.6	4.7	0.2	0.2	0.9	0.9
Imports from Other Countries	%	0.4	0.5	2.1	0.0	0.0	0.0
Total Demand	%	100	100	100	100	100	100

* Since Emerge Glass India Pvt. Ltd. had no commercial production in the base year 2015-16, and M/s Bharat Glass Tubes Limited was the sole producer, for the sake of consistency and to facilitate comparison, the figures for both the Applicant, i.e. M/s Emerge Glass India Pvt. Ltd. and the supporter, M/s Bharat Glass Tubes Limited have been considered.

68. It is noted that the market share of the DI, including captive consumption, has increased throughout the injury period, including the POI. However, there was a marginal decline in post- POI. The market share of the Subject Country declined over the injury period, including the POI, but increased in the Post-POI.

iii. Inventories

69. The data relating to inventory of the Subject Goods as shown in the following table indicates an increase in the POI and Post-POI as compared to the base year.

Particulars	UoM	2015-16	2016-17	2017-18	POI	Post-POI (A)
Closing stock	MT	***	***	***	***	***
Trend	Indexed	100	103	100	127	954

iv. Profit or Loss, Cash Profits and Return on Investment

70. The profit/loss, cash profits and return on investment of the DI are as follows:

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI (A)
Profit/(Loss)	Rs. Lakh	(***)	***	***	***	***
Trend (2015-16)	Indexed	100	272	794	150	228
Trend (2016-17)	Indexed	-	100	404	29	74
Cash Profit	Rs./MT	(***)	***	***	***	***
Trend (2015-16)	Indexed	100	497	760	747	412
Trend (2016-17)	Indexed	-	100	166	163	79
Return on Capital Employed	%	(***)	***	***	***	***
Trend (2015-16)	Indexed	100	125	225	108	125
Trend (2016-17)	Indexed	-	100	500	33	100

71. It is observed that the profit/(loss), cash profit and return on capital employed have improved from negative to positive in the injury period, but they declined in the POI and post-POI as compared to 2017-18.

v. Employment and Productivity

72. The details of employment and wages are given below:

Particulars	UOM	2015-16	2016-17	2017-18	POI	Post-POI (A)
No. of Employees	Nos	***	***	***	***	***
Trend (2015-16)	Indexed	100	180	181	190	186
Trend (2016-17)	Indexed	-	100	101	105	103
Productivity /Employee	MT	***	***	***	***	***

Trend (2015-16)	Indexed	100	254	264	267	262
Trend (2016-17)	Indexed	-	100	104	105	104
Productivity /day	MT	***	***	***	***	***
Trend (2015-16)	Indexed	100	454	475	505	488
Trend (2016-17)	Indexed	-	100	105	111	107

73. The number of employees increased during the injury period and the POI but there was a marginal decline in the post-POI. Also productivity per day and per employee increased over the injury period and the POI but there was a marginal decline during post POI.

vi. Growth Rate

74. The base year for computation of growth rate is taken as 2016-17 as both the applicant and the supporting domestic producer were in operation during that year. The table below shows that the DI has registered positive growth in terms of both volume and price parameters, such as production, capacity utilization, market share, during injury period and POI and registered declining thereafter whereas domestic sales, profits, cash profits and return on investment have increased till 2017-18 but declined thereafter.

Particulars	UOM*	2017-18	POI	Post-POI (A)
Total Production	Indexed	5	6	-4
Domestic Sales incl. captive	Indexed	6	-8	-13
Total Capacity Utilization	Indexed	5	6	-4
Market Share of DI Sales, including captive	Indexed	2.8	2.1	-0.7
Profit/(Loss)	Indexed	304	-375	45
Cash Profits	Indexed	66	-3.4	-84.2
Return on Capital Employed	Indexed	400	-467	67

* The figures are the growth of the respective indices.

O. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY:

75. The Authority observes that this is a sunset review investigation and the focus of this investigation is to examine the likely scenario of continued dumping and consequent injury if ADD was to be allowed to expire even if there is no current injury.

Views of the domestic industry

- i. The DI has submitted evidence substantiating newly added capacities in China. This shows that there has been capacity enhancement in the production of Subject Goods in China PR.
- ii. The DI was also able to get the prices offered by some of the Chinese exporters to the Indian customers. It is submitted that the prices quoted by the Chinese exporters are unrealistically low.

- iii. The DI was also able to get the commercial invoice of the export made by one of the Chinese exporters to an Indian customer. The price at which the said Chinese exporter has sold the Subject Goods demonstrates the kind of impact the removal of duties might have on the DI. While the prices offered are way below the cost of the DI, the DI apprehends that in the event the existing duties are revoked such a price would start prevailing Indian market.
- iv. The price undercutting, price underselling, dumping margin computed on the basis of the post-POI import data is positive and substantial. This shows that the revocation of duties would lead to a disastrous condition of the DI.
- v. As per the imports data sourced from info-drive, while the volume of imports in the POI was 4160 MT, in the 5 months of post-POI period alone the volume of imports has been 5871 MT. Further, the import prices in the post-POI period have also seen a constant decline. This clearly shows that the Chinese exporters have strategically reduced the volume of exports during the POI while also increasing the prices to affect the outcome of the present investigation.

Views of the opposing parties

76. The submissions of the cooperating producer and exporter, with regard to the likelihood of continuation or recurrence of dumping and injury are summarized hereunder:
- i. The DI has referred to import data from ‘Info Drive’, which is an unreliable secondary source, and cannot be considered accurate.
 - ii. The volume of the subject imports has also declined substantially in both absolute terms and in terms relative to production and consumption. The volume of subject imports has declined in relation to total imports into India as well as in relation to Indian production and consumption.
 - iii. No data pertaining to the post-POI period has been brought out by the Applicant.
 - iv. The Applicant’s cost has reduced, and the selling price has increased. This shows that the Applicant’s pricing is unaffected by the trends of pricing of the subject imports. There is clearly no signs of price suppression and depression.
 - v. The landed value of the imports, without the addition of the ADD has been rising consistently. The price underselling is also negative.
 - vi. The price undercutting from the Subject Country, China PR, is significantly negative. This means that:
 - a. The Applicant could have significantly increased their selling price if the market rates were a reflection of the Chinese prices;

- b. The Applicant opted to keep its prices exceptionally lower than the value / price of imports or the Applicant was unable to raise its prices owing to factors other than volume and values of the subject imports;
 - c. The Applicant has suffered losses owing to these low prices at which it continued to sell, despite the Subject Country having significantly increased its prices. This is evident from its PBIT becoming negative at a time when import prices are significantly higher than Applicant's selling price;
 - d. The Applicant has willfully failed to identify the import prices from non-Subject Country, depriving the Authority as well as the cooperating exporter to compare Chinese prices to global prices or understand the pricing trends globally.
- vii. There has been an active closure of existing plants in China PR. To control the capacities of glass and cement in China PR and to address concerns regarding pollution, the Government has been controlling and regulating their production since 2014. Therefore, there are no excessive capacities.
- viii. The cooperating producer and exporter do not hold much inventory of the Subject Goods, but rather sell the same in the domestic market and / or third country export markets.
- ix. The domestic selling price of the Subject Goods in China PR and the export price of the Subject Goods to third countries are higher than the export price of the Subject Goods to India. The cooperating producer has no commercial incentive to shift its domestic sales or exports to third countries to India in the event of revocation of ADD by India.
- x. The likelihood analysis has been made on the basis of one commercial invoice which is devoid of any logic.

Examination by Authority

77. The Authority has considered various information, as made available by the DI and other interested parties, in order to evaluate the likelihood of continuation or recurrence of dumping or injury. The examination of the parameters of likelihood is as follows:

i. Post POI imports of PUC

Import Volume	UOM	POI	Post-POI	Post POI (A)
Subject Country	MT	148	327	655

78. For examining the Post-POI period imports into India, the Authority has obtained data from DGCI&S and from that it is observed that imports during Post-POI have increased when compared to POI.

ii. Capacity of the Exporter

79. The Authority is required to examine whether the exporting country has surplus capacity to export the PUC. The Subject Country should have capacity adequate to cater to its domestic requirement and any capacity over and above that is treated as capacity meant for export. The DI has also quoted ITC Trademap wherein it is stated that China has the highest export potential as far as HS 700420 is concerned. Further, the DI has submitted an email correspondence where the producer /exporter from China has stated that they have added one more production line of clear sheet glass.

iii. Attractiveness of India as a market

80. The Authority is required to establish that the price prevailing in the domestic market i.e. India is attractive for the exporter to divert the quantity exported to the third countries. The applicant has not submitted any data or information indicating that the price in the Indian market is more attractive than the prices prevailed in third countries. It can be seen that the landed value of imports is below the Cost of Sales and the Net Selling Price of the DI. The Authority has further examined the price of exports from the Subject Country to third countries, and it is found that the exporters of the Subject Country are exporting the PUC to a number of countries at prices lower than Indian prices, thereby clearly showing price attractiveness of Indian market. Data from ITC Trade Map is available at 6-digit and the same indicates that 51.6% of quantity of 700420 exported from the Subject Country was at a rate lower than that exported to India in 2018. In the event of cessation of ADD, the exporters in the Subject Country are likely to export the product in India at dumped pricing causing injury to the DI.

Particulars	UOM	China P.R. Post-POI
Landed Price of imports	Rs./MT	17,206
Net selling price of DI	Rs./MT	***
Cost of sales of DI	Rs./MT	***

iv. Inventories of the article being investigated

81. It is also vital to mention that inventories of the DI have been increasing in the injury period, in the POI and in the post-POI. The inventory of cooperative exporter from China is as under:

Particulars	Unit	2016	2017	2018	POI
Inventory	MT	***	***	***	***

P. POST DISCLOSURE COMMENTS

82. The post disclosure submissions have been received from the DI, M/s. Shandong Guangyao Super-Thin Glass Co. Ltd, who made export sales through an unrelated party, M/s

Zhongwei International Industry Co. Ltd. to India (producer/exporter) and M/s Ajanta LLP (importer). The issues raised by these interested parties are largely repetitive and had been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity, the submissions made by the interested parties are examined below:

Comments by the DI

- i. The disclosure statement was issued on 30th January, 2020 and time was allowed till 6th February, 2020 to the concerned interested parties to file submissions on this statement. The domestic industry vide letter dated 3rd February, 2020 requested the Authority to provide additional time of 7 days to file comments to the disclosure. The Authority noted that since the existing Anti-Dumping Duty is in force only till 12th March, 2020 and, therefore, the pressing time lines require the final findings to be issued without delay so that the Central Government has adequate time to consider the recommendations of the Authority well before the expiry of the measure. Hence, the request for extension of time was not acceded to.
- ii. The Domestic Industry then, through letter dated 6th February, 2020, provided its detailed comments on the Disclosure Statement as under:
 - a. The issues raised by them during the public hearing, written submissions and the rejoinder statement do not find mention and have not been dealt with appropriately in the Disclosure Statement.
 - b. Paragraph 19 of the Disclosure Statement, which states “*classification of the Subject Goods for the purpose of this sunset review at 8-digit level is 70042011 and 70042019*”, is contradictory to the initiation notification, Authority’s own observation in paragraph 17 and the consistent approach of the Authority in various investigations over the years. It is a settled position that the product scope in an anti-dumping investigation is not bound by the HS codes/Tariff classifications mentioned in the findings but the same is governed by the definition of the PUC as defined in the relevant finding. The Authority while issuing its final finding in the original investigation had mentioned two tariff headings, i.e. 70042011 and 70042019 in the duty table. However, the duty table also contained a proviso that the tariff classifications are for indicative purpose only and the imports shall be governed by the product scope as defined in the findings.
 - c. Paragraph 8 of the Disclosure Statement and the initiation notification mentions that the scope of the present review covers all aspects of the previous investigation concerning imports of the Subject Goods, originating in or exported from the Subject Country. Therefore, it would not be appropriate for the Authority to limit the scope of the present investigation only to two tariff headings despite the uncontroverted fact that the PUC is being imported under other headings also. The fact that the PUC is being imported under various other headings is established from the import data of DGCI&S and can be confirmed from the Customs data also. Even the exporters have confirmed that they have exported the PUC under various headings other than those mentioned in the Customs Notification. Therefore, it is incumbent upon the Authority to include the imports of the PUC irrespective of the heading under which the same have been

classified by the Customs at the time of import. There is no reason for the Authority to take a different approach from what is followed in all other cases.

- d. Nowhere in its decision, the Hon'ble Gujarat High Court has restrained the Authority to limit the extension of duties only to the two headings mentioned in the Customs Notification. The said decision only directs the customs authorities not to collect ADD on the goods imported under the headings not covered by the Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015. The Hon'ble High Court has not passed any order altering the scope of the PUC. The Hon'ble High Court also did not, at any stage, rule that the goods not covered by the customs headings mentioned in the customs notification are excluded from the product scope. It was for this reason that neither the DI nor the Authority had been impleaded in the proceedings before the Hon'ble Gujarat High Court. Since the DI was not made a party to the proceedings before the Hon'ble Gujarat High Court, it was in no position to either contest before the Hon'ble Gujarat High Court or to file an appeal against the said order.
- e. There is no reason for the Authority to deviate from its consistent position that, "*Customs classification is only indicative and the determination of the duty shall be made as per the description of PUC*". The recommendations of the Authority are absolutely clear that the determination of duties shall be decided on the basis of the description of the PUC and not the Customs Heading which is only for indicative purposes.
- f. There is no bar on the Ministry of Finance to add to or alter the Customs Headings in its notification. In several Customs Notifications, the Customs Headings have been altered/amended by the Ministry of Finance for various reasons.
- g. In Customs Notification No. 47/2019, dated 30th December, 2019, the Ministry of Finance has amended the earlier Customs Notification relating to 6 anti-dumping cases in view of the change in tariff heading. This has been done solely to align them with the amended Customs Tariff. This establishes that the duties in anti-dumping investigations are governed by the product description and not by the tariff headings.
- h. In the recent Customs Notification No. 10/2020 dated 2nd February, 2020 issued by the Ministry of Finance the Customs Headings have been altered due to the change in the tariff classification.
- i. There is absolutely no restriction imposed by the Hon'ble Gujarat High Court either on the Authority or on the Ministry of Finance from mentioning the correct headings in the customs notification under which the PUC is actually being imported and cleared by Customs.
- j. Authority is requested to incorporate all the tariff headings under which the Subject Goods are being imported besides reiterating, "*Customs classification is only indicative and the determination of the duty shall be made as per the description of PUC*".
- k. In the context of Hon'ble Gujarat High Court's decision, "*the respondent authorities have no authority in law to demand definitive antidumping duty in relation to the goods imported by the petitioner which do not fall under the Tariff Items mentioned*", the Hon'ble High Court in the above case has granted a party-specific relief to the petitioner from collection of the duties on the goods not covered under the customs notification. It would be extremely unfair if the relief granted to a particular petitioner/importer

forms the basis for restricting the scope of ADD for all the imports. This would be a completely uncalled for interpretation of the High Court order which, as per information of the DI, even the Ministry of Finance is not adopting as they continue to collect duties from other importers.

- l. In the unlikely event that the Authority is not convinced with the DI's above submissions, the Authority is requested to include all the headings under which imports of sheet glass from China have taken place with a clear proviso that the collection of duties qua M/s Ajanta LLP would be subject to the order of the Hon'ble Gujarat High Court in SCA No. 13496 of 2015, which is the limited purport of the decision of the Hon'ble High Court.
- m. Trade Notice No. 11/2018 dated 10th September, 2018 states that an interested party who does not file a questionnaire response shall be entitled to participate in other stages of the investigation by filing legal submissions, attending public hearing, filing disclosure comments, etc. provided it has registered itself with the Authority within the timelines prescribed. In this case, it is undisputed that M/s Ajanta LLP has not registered before the Authority and, therefore, they do not fulfil the condition precedent prescribed in clause (iv) of the said Trade Notice. In such a scenario, the submissions made by M/s Ajanta LLP cannot be entertained by the Authority in terms of the said Trade Notice. Neither the said party has made any plea for making an exception not the Authority recorded any grounds for any kind of special consideration in the instant case. Therefore, the submission of M/s Ajanta LLP ought to be disregarded.
- n. It may be noted from the Disclosure statement that the dumping margin of the cooperating producer from China PR also well as the non-cooperating producers is exceedingly high. This substantiates the argument of the DI that despite the imposition of the duties, the Chinese exporters absorbed the duties and continued to dump the Subject Goods in India. In view thereof, the continuation of the duties is imperative for the survival of the DI.
- o. It is clear from the perusal of the Disclosure Statement that the Subject Goods from the Subject Country continue to cause injury to the DI. The price undercutting, price suppression/depression and price underselling are positive and substantial. Even though the Authority has analysed the imports under two headings only, the volume of imports have increased in the post-POI period. The performance parameters of the DI have worsened in the post-POI period. The inventories of the DI have taken a serious toll in the post-POI period and similar trends are visible with respect to profitability, ROCE and other injury parameters.
- p. The trends of ROCE mentioned in Disclosure Statement in the post-POI period appear to be incorrect. While the ROCE of the DI has reduced in the post-POI period, the Disclosure Statement shows an increase in the same. The percent figures of the ROCE appear to have inadvertently been annualised for the post-POI period. The Authority is requested to rectify the same.
- q. It is clear from the Disclosure Statement that the Chinese exporters continue to dump the Subject Goods in the Indian market causing injury to the DI. There is clear and imminent likelihood of further injury to the DI in case the duties are removed. Imports have gone up in the post-POI period while the import prices have decline. The capacity

enhancement and export potential of the Chinese exporters have already been demonstrated by the DI. The Disclosure Statement demonstrates that Indian market is attractive for the Chinese producers. The Authority is requested to recommend the continuation of duties in order to protect the DI from the Subject Goods duped from China at highly injurious prices.

- r. It is evident from the Disclosure Statement and from the pricing pattern of the Chinese exporters that they have absorbed the ADD by lowering their prices, thereby defeating the purpose the imposition of the ADD. The Authority is requested to change the duty structure from fixed duty on per MT basis to a Reference Price based duty as has been done in several cases in the past even at the stage of sunset review. Such a mode of duty would ensure that the duties are not being absorbed by the Chinese producers and, at the same time, no excessive burden is saddled on the Indian importers who import at un-dumped prices. Given the history of the Chinese producers to absorb the ADD in the present case, it would be most logical to change the duty structure to reference price based duty. A Reference Price based duty would also be in line with the stated policy of the government that India should not become a dumping ground for cheap and poor quality goods.
- s. The DI also requested that an opportunity may be given to them to explain their position in person in the interest of justice and equity since some issues have been brought out in the Disclosure Statement for the first time.

Comments by the Importer

83. M/s. Ajanta LLP is the only importer who participated as an interested party in the present investigation. M/s Ajanta LLP has informed that they have noted that the Authority has allowed their claims for limiting the scope of the PUC to the two tariff items 7004 2011 and 7004 2019, on which ADD had been imposed vide Customs Notification 7/2015-Customs (ADD) dated 13th March, 2015.

Comments by the Producer and Exporter

84. The Producer, M/s. Shandong Guangyao Super – Thin Glass Co. Ltd. and Exporter, M/s. Zhongwei International Co. Ltd., from the Subject Country have submitted that their exports to India were under the Custom Tariff Item 7004 90 99, while the PUC for the said Sunset Review falls under HS 7004 20 11 and 7004 20 19. Their exports are beyond the scope of the PUC covered under this investigation.

Examination by the Authority

85. The post-disclosure submissions are examined by the Authority as follows:
 - i. The Authority appreciates the concern of the domestic industry and holds that the purpose of the disclosure statement is to bring to the notice of all concerned interested parties the essential facts which would be the basis of the final finding. The disclosure statement, therefore, also intends to provide opportunity to all interested parties to

comment on any essential fact which may not find a mention in the disclosure statement or any issue/fact which may have escaped attention by any interested party during the ongoing process of investigation and needs to be addressed in the final finding in the interest of justice and equity. Further, there is a need to issue the final recommendation at the earliest in view of the timeline as explained in para 82(i). The Authority further observes that two oral hearings were held in this case on 30th September, 2019 and 18th December, 2019 wherein all interested parties including the Domestic Industry have been granted sufficient opportunity to file submission and rejoinder during the course of investigation. Hence, the Authority did not grant any personal hearing post the disclosure statement to any interested party. However, all relevant submissions made by various interested parties, including those made by the domestic industry, have been addressed appropriately in this final findings.

- ii. Authority notes that post-disclosure comments/submissions made by the interested parties are mostly reiterations of earlier submissions, which have already been examined suitably and adequately addressed in the Disclosure Statement or relevant paras of the present findings.
- iii. The Authority also notes that the domestic industry has stated that the various submissions made by them from time to time during the investigation do not find a mention or have not been considered appropriately. The Authority holds that the purpose of disclosure is to bring to the notice of all interested parties any relevant submissions/aspects which have not been included in the disclosure for consideration. Further, certain submissions which are repetitive or get covered in related/similar submissions may not be considered to have been omitted. However, the Authority notes that the domestic industry has not stated as to which specific relevant submissions have not been mentioned in the disclosure. The Authority has revisited the submissions made by the domestic industry and holds that all relevant submissions have been dealt by the Authority in the Disclosure Statement.
- iv. The Authority notes the submissions of the domestic industry that M/s Ajanta LLP did not register as an interested party in accordance with the Trade Notice No. 11/2018 dated 10th September, 2018, and that they also did not make any plea for any exception, nor the Authority recorded any grounds for any kind of special consideration. The Authority notes that all interested parties, including M/s Ajanta LLP, were specifically requested to file responses to the initiation notification dated 17th July, 2019 through letter dated 26th July, 2019, within 40 days from the date of issue of the letter. The last date for all interested parties was further extended by 2 weeks. M/s Ajanta LLP filed their response on 11th September, 2019 within the specifically directed timeline by the Authority as per extension granted to all interested parties. The Authority holds that responses filed by all interested parties, including M/s Ajanta LLP, on account of the specific direction of extension granted by Authority in this investigation have been appropriately considered.

- v. The Authority notes that in the final finding of the original investigation two tariff headings, i.e. 70042011 and 70042019 were mentioned in the duty table, along with a proviso that the Subject Goods are also being imported under other tariff headings and that the customs classification is indicative only. However, the Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015 mentioned only two tariff headings, i.e. 70042011 and 70042019. As evident from Rule 23 of the Rules, a review investigation is a review of the ADD imposed. In this case, vide Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015, the ADD was imposed on 'Sheet Glass' imported under two HS codes, viz. 70042011 and 70042019 and hence the sunset review also pertains to imports of 'Sheet Glass' under these two HS codes.
- vi. The Authority notes that the Hon'ble Gujarat High Court in paras 13 and 14 of the judgement dated 4/11/2015 has held as under;
- "13. In the light of the above discussion, this court is of the view that the respondent authorities have no authority in law to demand definitive anti-dumping duty in relation to the goods imported by the petitioner which do not fall under the Tariff Items mentioned in the notification No. 07/2015-Customs (ADD) dated 13.3.2015. Under the circumstances, the impugned demand notice as well as the communication dated 30.3.2015 cannot be sustained.*
- 14. For the foregoing reasons, the petition succeeds and is accordingly, allowed. It is hereby held that the action of the respondents No. 2 to 4 in seeking to levy anti-dumping duty on Import of glass sheets from China PR classified under Tariff item 70049099 is without jurisdiction and without authority of law. Accordingly, the impugned demand notice dated 24.4.2015 and the letter dated 30.3.2015 are hereby quashed and set aside. Rule is made absolute accordingly, with no order as to costs."*
- vii. The Authority notes that the domestic industry has made submissions that the aforesaid judgement is party-specific. On perusal of the aforesaid judgement, the Authority notes that the Hon'ble Gujarat High Court has held that collection of anti-dumping duty under ITC HS 70049099 which is not included in the Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015 has no authority of law. The judgement is a directive on scope of ADD collection on a notification which is not party-specific. Further, with reference to the domestic industry's submissions that the Ministry of Finance is continuing to collect duties from other importers, the Authority notes that the data from DG System, CBIC indicates that ADD during the POI was collected only on the two HS codes on which ADD was levied vide Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015.
- viii. Further, the aforesaid judgment was not challenged by the domestic industry nor by any other interested party or the Government. The Authority, therefore, holds that in a Sunset Review investigation, only the goods which are liable for levy of anti-dumping duty can be considered for investigation of continuance of existing anti-dumping duty. The Authority also holds that in an event of circumvention of Anti-Dumping Duty, the

domestic industry could have approached the Authority either for a circumvention/ Mid-Term Review (MTR) investigation or could have appealed against the order of the Hon'ble High Court. Since none of these actions were taken, the Authority has considered only the two ITC heads of the Customs Notification No. 7/2015-Customs(ADD) dated 13th March, 2015 for the scope of conducting the SSR.

- ix. With reference to the DI's submissions regarding the product scope and that there is a contradiction in paragraphs 17 and 19 of the Disclosure Statement, it is stated that as already mentioned in paragraph 19 of the Disclosure Statement, in the initiation notification of the present sunset review, the PUC was considered as per the original investigation. Since the present investigation is only a sunset review of the ADD actually imposed on the imports of Subject Goods from Subject Country vide Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015, hence, the classification of the Subject Goods for the purpose of this sunset review at 8-digit level is limited to two heads only, i.e. 70042011 and 70042019, on which the ADD has actually been collected in view of Hon'ble Gujarat High Courts order dated 4th November, 2015 and DoR's Customs Notification No. 7/2015-Customs (ADD) dated 13th March, 2015.
- x. The figures for ROCE mentioned in the Disclosure Statement have been re-checked and found to be correct.
- xi. The Authority notes that reference price duty is generally appropriate in cases where there are many grades/models captured in various Product Control Numbers (PCN's), which also have inter se variation in price. In the instant case, the Authority notes that the only cooperative producer has not exported in the POI and that measure on it is being recommended on account of likelihood of dumping and injury on post POI data, reconciled with DGS. Under such circumstances, it is not feasible to quantify and recommend a reference threshold based on POI data and, therefore, the Authority has recommended that the existing measure of the same quantum and form be continued.

Exporters and Importer

- xii. The Authority notes that the exporter/importer have only clarified their position on the scope of the present SSR, which has been appropriately considered and addressed by the Authority.

Q. CONCLUSION

- 86. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings and on the basis of above analysis, including analysis of likelihood of continuation of dumping and injury and post Disclosure Statement submissions made by the DI, the Authority concludes that:

- a. Although imports of the PUC reduced during the injury period, including the POI, the imports increased in the post-POI.
- b. Dumped imports are causing injury to the DI.
- c. Producers in the Subject Country have significant capacities to produce the PUC and have a high export orientation. Dumping of the PUC is likely to intensify from the Subject Country, should the current ADD be revoked. Dumping and injury are likely to continue if the ADD is revoked.
- d. The Authority, thus, in order to remove likely injury to the DI considers it necessary to recommend continuation of definitive ADD on all imports of the Subject Goods from the Subject Country.

R. RECOMMENDATION

87. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the DI, exporters, importers and other interested parties to provide information on the aspects of dumping, injury and the causal link.
88. Having concluded that there is positive evidence on the aspect of dumping, injury and causal link, likelihood of dumping and injury, if the existing ADD is allowed to cease, the Authority is of the view that continuation of duty is required on subject goods from the Subject Country.
89. The Authority notes that the cooperative producer/exporter has not exported subject goods during POI and the continuation of the antidumping duty is being recommended on the basis of likelihood of dumping and injury in the post POI period. The continuance of existing AD measure of USD 63 per MT as per the Custom Notification No. 7/2015-Customs (ADD) dated 13th March, 2015 is recommended for both the cooperative and non-cooperative producers/exporters. The Authority, hence, recommends continuance of Anti-Dumping Duty equal to the amount mentioned in Column 8 of the table below, on imports of Subject Goods originating in or exported from China PR for a further period of 5 years from the date of its imposition:

DUTY TABLE

Sl. No	Tariff Item	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	7004 2011 & 7004 2019	Sheet Glass	China PR	China PR	Any	Any	63	MT	US\$
2	7004 2011 & 7004 2019	Sheet Glass	Any	China PR	Any	Any	63	MT	US\$
3	7004 2011 & 7004 2019	Sheet Glass	China PR	Any	Any	Any	63	MT	US\$

90. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

(Bhupinder S. Bhalla)
Additional Secretary & Designated Authority