

**F.No.14/1/2013-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Anti Dumping & Allied Duties**  
**4th Floor, Jeewan Tara Building, Parliament Street, New Delhi**  
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**Date: 11.01.2015**

**NOTIFICATION**  
**(Final Findings)**

**Sub: Final Findings in the anti-dumping investigation concerning import of  
“Flexible Slabstock Polyol” originating in or exported from Australia,  
EU and Singapore.**

No.14/1/2013-DGAD:- Whereas having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the AD Rules or the Rules), the Designated Authority (hereinafter referred to as the Authority) received a written application under the Rules from M/s Manali Petrochemicals Ltd., (hereinafter also referred to as the petitioner or the applicant) alleging dumping of Flexible Slabstock Polyol” (hereinafter referred to as FSP or the subject goods) originating in or exported from Australia, European Union (EU) and Singapore (hereinafter referred to as the subject countries).

2. Whereas the Authority on the basis of sufficient prima facie evidence submitted by the applicant on behalf of the domestic industry, issued a public notice dated 12<sup>th</sup> July, 2013, published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods, originating in or exported from the subject countries, in accordance with the Rule 6(1) of the Rules, to determine the existence, degree and effect of alleged dumping and to consider recommendation of the anti-dumping duty.

**A. PROCEDURE**

3. The following procedure has been followed with regard to this investigation:
  - i. The Authority notified the embassies of Australia and Singapore in India and the Delegation of the European Union in India, representing EU, about the receipt of application alleging dumping of the subject goods originating in or exported from the subject countries before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Anti-dumping Rules.

- ii. The Authority issued a public notice dated 12<sup>th</sup> July, 2013, published in the Gazette of India, Extraordinary, initiating anti dumping investigation concerning imports of the subject goods, originating in or exported from the subject countries.
- iii. The Authority forwarded a letter along with copy of the public notice to all the known exporters and other interested parties and the industry associations (whose details were made available by the domestic industry) and gave them opportunity to make their views known in writing within the prescribed time limits in accordance with the Rule 6(2) of the anti-dumping Rules.
- iv. The Authority provided a copy of the non-confidential version of the application to the known exporters of the subject countries in accordance with Rule 6(3) of the Anti-dumping Rules. Copy of the application was also made available to other interested parties, upon request.
- v. Copies of the letter and the exporter questionnaires sent to the exporters/producers in the subject countries were also sent to the embassies of Australia and Singapore in India and the Delegation of the European Union in India, along with a list of known exporters / producers with a request to advise the known exporters/producers from the subject country as also other exporters/producers from the subject countries to respond to the questionnaires within the prescribed time limits.
- vi. The Authority sent exporter's questionnaire to elicit relevant information to the following known exporters in the subject countries in accordance with Rule 6(4) of the Antidumping Rules:
  - a. M/s Shell Chemicals, Singapore
  - b. M/s Bayer Polyurethane Asia (PTE) Ltd, Singapore
  - c. M/s Bayer Polyurethane Asia (PTE) Ltd, EU
  - d. M/s Repsol Quimica, S.A., EU
  - e. M/s Dow Chemical (Australia) limited DACL, Australia
- vii. Response to the questionnaire was filed by the following:
  - a. M/s Shell Eastern Petroleum (Pte) Ltd (SEPL), Singapore
  - b. M/s Shell Eastern Trading (Pte) Ltd (SETL), Singapore
  - c. M/s Bayer (South East Asia) Pte Ltd, Singapore
- viii. However, post oral hearing, one of the subject countries, namely, Australia, through its embassy in India, filed written submissions.
- ix. Importer's questionnaires were sent to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Anti-dumping Rules:
  - a. M/S Sheela Foam P Ltd
  - b. M/S Prime Comforts
  - c. M/S M H Polymers P Ltd
  - d. M/S Somany Foam Ltd
  - e. M/S Tirupati Foam Ltd

- f. M/S Dura Puf
  - g. M/S Shree Singhal Foams P Ltd
  - h. M/S Multiwyn Foams P Ltd
  - i. M/S Shree Malani Foams P Ltd
  - j. M/S Joy Foam Pvt Ltd
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- x. None of the importers filed the importer questionnaire response after the initiation within the time frame. However, post oral hearing one of the importers, namely, M/s Sheela Foam Private Ltd, filed importer's questionnaire response along with their legal submissions.
  - xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
  - xii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the period of investigation and preceding three years and the same was obtained and relied upon.
  - xiii. The non-injurious price (NIP) has been worked out based on the information furnished by the domestic industry on its cost of production and cost to make and sell the subject goods in India and in the light of the guidelines outlined in Annexure III to the AD Rules. The NIP has been computed so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
  - xiv. Verification of the information provided by the petitioners and the examination of the responses/documentary evidences of the producers/exporters of the subject countries was carried out to the extent considered relevant by the Authority.
  - xv. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all the interested parties to present their views orally in an Oral Hearing held on 12.09.2014. Parties which participated in the Oral Hearing were requested to file written submissions of the views expressed orally.
  - xvi. Investigation was carried out for the period of investigation (POI) starting from 1<sup>st</sup> January, 2012 to 31<sup>st</sup> December, 2012. The examination of trends, in the context of injury analysis, covered the period from April 2009-March 2010, April 2010-March 2011, April 2011-March 2012 and the POI.
  - xvii. The original date for completion of the investigation was up to 11.07.2014. However, at the request of the Authority, this date was extended by the Ministry of Finance up to 11.01.2015.
  - xviii. A Disclosure Statement containing the essential facts in this investigation which would have formed the basis of the Final Findings was issued to the interested parties on 03.01.2015. The post Disclosure Statement submissions received, have been considered, to the extent

found relevant, in this Final Findings Notification.

- xix. The submissions made by the interested parties considered relevant by the Authority have been addressed in this Final Findings Notification.
- xx. \*\*\* in this Final Findings Notification represents information furnished by the interested parties on confidential basis, and so considered by the Authority under the Rules.
- xxi. The exchange rate adopted for the POI is 1 US \$ =Rs 53.69.

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

### **Submissions made by producers/exporters/importers/other interested parties**

- 4. Responding exporters from Singapore have stated that in the present investigation, the product under consideration only includes Flexible Slabstock Polyol of molecular weight 3000 to 4000 but one import transaction in the petition also shows that Flexible Slabstock Polyol of molecular weight 5000 has been included in the import statistics. The Respondents are apprehensive that there may be many such transactions in the import statistics which would enlarge the import quantity significantly and request the Authority to investigate the same.

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

- 5. The product under consideration in the present investigation is Flexible Slabstock Polyol, a polymer, originating in or exported from the subject countries. The subject product is a clear viscous liquid of molecular weight 3000-4000, manufactured by polymerization of propylene oxide and ethylene oxide with a triol chain starter.
- 6. It is a polyether and on reaction with catalysts and additives yields polyurethane foams used in upholstery, mattresses, pillows, bolsters, transport seating and packaging. Flexible Slabstock Polyol is transported in tankers or stored in steel drums.
- 7. Flexible Slabstock Polyol is classified under the category "Plastics and articles thereof" in Chapter 39 of the Customs Tariff Act, 1975 and further under 3907.20 as per International Trade Classification. The classification, however, is only indicative and in no way binding on the scope of the present investigation.
- 8. There is no known difference in the subject goods produced by the domestic industry and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from subject countries are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods.

## **Examination of the Authority**

9. Based on the information submitted by the Domestic Industry and the examination of the material on record, and keeping in view the lack of sufficient evidence of FSP of more than 3000-4000 molecular weight provided by the opposing interested parties, the Authority confirms that the product under consideration as “Flexible Slabstock Polyol of molecular weight 3000-4000”, falling under code 3907.20 as per International Trade Classification. The classification, however, is only indicative and in no way binding on the scope of the present investigation
10. With regard to like article, Rule 2(d) of the anti-dumping rules provides as under:

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

11. The Authority notes that there is no known difference in product under consideration produced by the Indian industry and exported from subject countries. Product under consideration produced by the Indian industry and imported from subject countries are comparable in terms of characteristics such as physical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The subject goods produced by the domestic industry are like article to the product under consideration imported from subject countries within the scope and meaning of Rule 2(d) of anti-dumping Rules.

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

### **Submissions made by producers/exporters/importers/other interested parties**

12. The Applicant has claimed in the petition that it is the sole producer of the like article in India. However, M/s Expanded Polymer Systems is another domestic producer of the like article in India. It is surprising to note that the Applicant has not specified their name anywhere in the petition.
13. The Authority is required to examine the quantity of the subject product which is or can be manufactured by M/s Expanded Polymer Systems. Additionally, it is also submitted that such information should have been disclosed by the Applicant in the petition and the Authority should appropriately terminate this investigation for want of completeness of petition.

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

14. The domestic industry submitted that as per the information available with them, they are the only producer commercially producing the subject goods during the period of investigation. In any case, even assuming but not accepting that there are other producers producing the subject goods, M/s Manali Petrochemicals will account for a major proportion of the total domestic

production in terms of Rule 2(b) as well as the clear standing in terms of Rule 5 of the Anti-dumping Rules.

15. In relation to M/s Expanded Polymers Limited, it is submitted by the domestic industry that they are not in the commercial production of the subject goods.
16. It was further submitted that the present investigation initiated by the Designated Authority is fully in accordance with the Anti-dumping Rules and, therefore, entirely maintainable

#### **Examination of the Authority**

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

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

18. The Application has been filed by M/s Manali Petrochemicals Limited. As per the records available with the Authority, the petitioner accounts for major proportion of the product under consideration in the total domestic production in the period of investigation and, therefore, constitutes Domestic Industry as well satisfies the criterion of standing within the meaning of the Rules. The petitioner has certified that there are no imports of the product under consideration during the POI by the petitioner or any of its related party within the meaning of Rule 2(b). The petitioner has also certified that it is not related to any of the exporters from the subject countries in terms of the Rules.
19. It is further noted from the evidence on record that the other producer, namely, M/s Expanded Polymers Systems Private Limited, had manufactured negligible quantities of the subject goods during the POI in the total production in the country and even if these negligible quantities are taken into account, it is clear that the standing of the applicant shall not be affected as they would still account for far more than 50% of the total domestic production. Thus, the applicant satisfies the requirements of being considered as the “Domestic Industry” in terms of Rule 2(b) as well the ‘standing’ under Rule 5 of the AD Rules.

#### **D. CONFIDENTIALITY**

##### **Submissions made by producers/exporters/importers/other interested parties**

20. Various submissions made by the producers/exporters/importers/other interested parties during the course of the present investigation with regard to confidentiality and considered relevant by the Authority are examined and addressed as follows:
  - i. The petition suffers from excessive confidentiality. The petition provides absolutely no information with respect to petitioner’s policy regarding its distribution channels, commission/discount policy, credit terms, normal

value calculation, Purchase Policy, Sales Policy, Inventory and Quality Control Procedure, etc.

- ii. The Applicant is also registered as a “Public Limited Company”, but has claimed confidentiality over its Annual Reports. No reason has been provided by the Applicant for this claim of confidentiality.

### **Submissions made by the domestic industry**

21. Various submissions made by the domestic industry with regard to confidentiality and considered relevant by the Authority are examined and addressed as follows:
  - i. Petitioner has claimed confidentiality on information provided by them as allowed in rule 7 of the AD rules and a meaningful summary of such information was also provided. The claims of interested parties that the petitioner has claimed excessive confidentiality are baseless.
  - ii. On the other hand, excessive confidentiality has been claimed by the exporters inasmuch as the non-confidential versions of the questionnaire response were not the exact replica of the confidential version filed by the exporters as required under the Rules and the instructions on the issue.
  - iii. Information about related entities was kept confidential by Shell group of companies and the Authority had to extract the information from the exporter.
  - iv. Volume related information was also not disclosed by the exporters and same needs to be provided by them. Shell and Bayers has also not disclosed that their related entities from EU had also exported the subject goods to India but that information is also not provided by them.
  - v. One of the two cooperating exporters, namely, M/s BSEA has not even disclosed the names of their linked producers. They have even failed to provide any information in their exporter questionnaire response. Therefore, there is no opportunity for the domestic industry to make any comments.

### **Examination by the Authority**

22. Various submissions made by the interested parties during the course of the present investigation with regard to confidentiality and considered relevant by the Authority are examined and addressed as follows:
  - i. With regard to confidentiality of information, Rule 7 of the Anti-dumping Rules provides as follows:-

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

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

*statement of reasons why summarization is not possible.*

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

- ii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. As regards the contention of the opposing interested parties with regard to non-disclosure of the costing information, the Authority has taken the view that costing and price related information is confidential in nature and generally not amenable to summarization. The annual reports of the Domestic Industry are available in public domain and on the website of the applicant. Therefore, the claim of the interested parties regarding excessive confidentiality by the Domestic Industry is not valid and hence rejected. On the other hand, the Authority observes that the Domestic Industry has vehemently contended that Shell Group has not revealed certain basic information relating to their related entities, that they have kept even the volume related information confidential and that most of the appendices in the questionnaire response have not been indexed which could provide a meaningful understanding to the concerned parties. However, the Authority has accepted the confidentiality claims, wherever warranted, of the domestic industry and opposing interested parties 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. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.

## **E. MISCELLANEOUS SUBMISSIONS**

### **Submissions made by producers/exporters/importers/other interested parties**

23. The miscellaneous submissions made by the producers/exporters/importers/ other opposing interested parties during the course of the present investigation and considered relevant by the Authority are as follows:
  - i. The application filed by the Domestic Industry is not in the form and manner prescribed by the Authority.
  - ii. The application filed by the domestic industry does not even meet the basic evidentiary standard of the Article 5.2 of the Antidumping Agreement.
  - iii. Due to the location disadvantage, domestic industry is facing high logistic costs and, therefore, injury faced by them is on account of poor selection of location and not because of imports of subject goods.
  - iv. Domestic industry is unable to achieve high capacity utilization due to lack of infrastructure to handle critical material like propylene oxide. This factor can also be seen from the various annual reports of the petitioner. Further, due to the moratorium ban domestic industry cannot increase their capacity.

- v. It is further submitted by one of the importers that the domestic industry is not able to supply subject goods of adequate quality and consistency.
- vi. Interested parties also contended that there are differences between the petition filed in the anti-dumping and in safeguards investigation. Therefore, the Authority should check and verify the same before coming to any conclusion.
- vii. The domestic industry has not provided any details of average selling price of indigenous product anywhere in Proforma IVB, as per Proforma. Moreover, the indexed numbers in petition are different, which needs to be verified.
- viii. It is relevant that during the POI, the exchange rate for USD that has been adopted by domestic industry is Rs.53.69. However, the prevailing rate of USD, as per the RBI, is currently Rs.61.10. It is also predicted that Rupee will not appreciate once again and may get depreciated further. This means that imports into India currently are priced significantly higher than what they used to be during the POI. It is also submitted that the Applicant Domestic Producers arrived at a price undercutting of 0-10% considering the exchange rate of Rs.53.69. However, if the prevailing exchange rate is considered, which would present the most accurate picture, the level of price undercutting and price underselling would be eliminated.
- ix. Certifications provided by domestic industry are altered by hand. Further, there is no indication of any dates on the certificates.
- x. The Applicant has sought to have safeguard duties imposed on the subject goods, thereby acknowledging that it is suffering injury only due to a certain quantity of imports, and not due to any allegedly dumped imports. This proves that there is no case of dumping of subject goods into India.
- xi. Domestic industry has not provided the excel version of the import data despite the repeated request of the exporters.
- xii. The domestic industry has not provided correct information in relation to difference in production process employed by them and that of exporters.
- xiii. The increase in import volume is because of the positive effect of the India- Singapore CECA. Therefore, the Authority should consider the fact while making any determination.
- xiv. The petition is deficient and, therefore, the investigation needs to be terminated.
- xv. Importers need not file questionnaire response in order to be treated as a cooperating importer. Non-filing or incomplete filing of response does not dilute the right of an interested party to make submissions.
- xvi. Import port data submitted by the domestic industry is not correct as it contain double counting of many import entries.

- xvii. The installed capacity of the domestic industry is 25000 MT, which is about 1/3<sup>rd</sup> of the total demand in India. The demand supply gap is huge and therefore, the current proceedings should be terminated.
- xviii. Domestic industry is enjoying benefit of trade remedies since 1999 and, therefore, has adversely affected the downstream industry. It was further submitted that the Authority should not recommend duties this time.
- xix. As far as the issue of relationship between BASF and SEPL/SSPL is concerned, the following submissions are made:
- a) Propylene Oxide (PO) is the main raw material used in the production of Flexible Slabstock Polyol (FSP). SEPL sources PO from, among others, Shell Seraya Pioneer Limited (“SSPL”). SSPL is a 100% owned subsidiary of SEPL. SSPL and BASF South East Asia Pte. Ltd. (“BASF”) jointly own Ellba Eastern Pte Ltd JV (“Ellba”) which is also engaged in the manufacture of PO.
  - b) The applicant has contended during the course of the investigation that BASF and SEPL are related entities as SEPL (as a 100% holding company of SSPL) and BASF jointly own Ellba. The Applicant seeks to support this contention by applying Explanation (c) to Rule 2(b) of the AD Rules, which states that producers shall be deemed to be related to exporters or importers if together they directly or indirectly control a third person.
  - c) Explanation (c) to Rule 2(b), which expressly states that it applies only to Rule 2(b) by the words “for the purposes of this clause” is only applicable to the definition of “domestic industry” contained in Rule 2(b) and not to any other situation. In other words, Explanation (c) to Rule 2(b) cannot be used to support the rather absurd hypothesis that SEPL and BASF are related because they jointly own and control Ellba. Explanation (c) to Rule 2(b) is only applicable to an examination of whether a domestic producer in India and an exporter in a subject country are related to each other. There is no other situation in which Explanation (c) to Rule 2(b) may be applied as it is in the nature of a “legal fiction”, a well known principle of interpretation of statutes.
  - d) The Hon’ble Supreme Court has held in *Bengal Immunity Co. Ltd. v. State of Bihar* AIR 1955 SC 661 that legal fictions are to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.
  - e) This well-settled rule of interpretation has been affirmed in a series of decisions by the Hon’ble Supreme Court, including *CIT, Bombay v. Amarchand N. Shroff* AIR 1963 SC 1448 and *UCO Bank v. Rajinder Lal Capoor*, (2008) 5 SCC 257.
  - f) In light of the above decisions of the Hon’ble Supreme Court, the Designated Authority being a quasi-judicial authority is legally bound to

confine the scope of operation of Explanation (c) to Rule 2(b) of AD Rules only to situations where it undertakes an examination of whether a domestic producer in India and an exporter in a subject country are related to each other. There are no other situations to which Explanation (c) to Rule 2(b) would be applicable, and for the Designated Authority to do so would be in gross violation of its powers and mandate as a quasi-judicial body.

- g) The Respondents thus submit that BASF and SEPL cannot be considered to be related parties by applying Explanation (c) to Rule 2(b) of the AD Rules.
- h) In addition to the above, the Respondents reiterate their consistent submission that BASF and SEPL are not related entities. In support of the same, the Respondents make the following submissions:

- i. The Designated Authority has considered the same issues earlier in the sunset review of anti-dumping duty against imports of Flexible Slabstock Polyol originating in or exported from EU, Japan, Singapore and USA and has concluded that BASF and SEPL are not related entities. The relevant extract of Final Findings dated 26th December 2007 is provided below:

“41. BSEA did not have its own FSP manufacturing facility. Propylene is purchased by ELLBA which is a 50-50 joint venture of Shell & BASF and converted into PO. The suppliers bore no legal relation to BASF and propylene is purchased from local as well as overseas suppliers at prevailing market conditions partly on spot basis. BSEA had signed a tolling arrangement with SCSL effective from 2002, whereby BSEA would supply PO to SCSL, which would produce FSP and invoice back the same to BSEA. BSEA could source an increasing amount of FSP, till a final plateau of annual volume was reached, subject to a tolling fee, covering all actual cost and an appropriate rate of return. The arrangement could be terminated 7 years after commencement of the first FSP supply. BSEA sells this finished product as per its own marketing arrangements and under a different brand name. Both SEPL and BSEA are two separate legal entities and have nothing in common except this arrangement.”

- ii. It may also be seen in Annual Reports for the financial years ending on 31st December 2010, 2011 and 2012 that BASF is not listed as a related company of SEPL. This further proves the fact that SEPL and BASF are unrelated entities and must be treated as such by the Designated Authority.
- xx. In view of the above submissions, the Respondents request the Authority to reject the applicant’s argument that BASF and SEPL are related entities

due to the fact that SEPL (as a 100% holding company of SSPL) and BASF jointly own Ellba.

- xxi. Australian High Commission submitted that Australia did not receive advice prior to the initiation of the investigation that an application had been received. Further, Australia did not receive advice on the decision to initiate this investigation.
- xxii. Australian High Commission also submitted that it requests to know as to what special circumstances have led to not completing this investigation within one year.

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

- 24. The domestic industry during the course of the present investigations also raised certain issues and has also given comment on the miscellaneous submissions made by the interested parties, which are as follows:
  - i. Petition is filed as per the guidelines of the Authority by the domestic industry. Further, after being satisfied with the evidences provided by the domestic industry, the Authority has initiated the current investigation and therefore, the current proceedings are valid and justifiable as per current laws.
  - ii. The certificates were signed and submitted prior to initiation of the investigation. The domestic industry nevertheless has confirmed that they were not related to any exporters, importers or they have themselves imported the subject goods in the entire injury investigation period. Further, the concerned person who has signed the certification fully owns and stands responsible for the alteration done by hand. It is therefore submitted that the information provided in the petition is correct and shows no discrepancy as claimed by the interested parties. Further, the domestic industry has followed all the procedures prescribed in the Rules.
  - iii. Domestic Industry has provided complete details of selling price in the Proforma IV A and in the injury analysis. Therefore, mere non reproduction of the information at one place cannot be said as violation of any rule, particularly when the domestic industry has provided price undercutting separately while giving injury analysis.
  - iv. The domestic industry has provided complete raw data to the Authority and explained the segregation methodology in detail, thereafter, the domestic industry has only provides the data relevant for the investigation in the petition. It is also important to note that all the interested parties has made mere submissions and failed to present any evidence to show that the same is incorrect.
  - v. The written submissions filed by M/s Shell Eastern Petroleum (Pte.) Ltd. (SEPL), M/s Shell Eastern Trading (Pte.) Ltd. (SETL) and M/s Bayer (South East Asia) Pte. Ltd., were not served on us either electronically or by hard copy in terms of the Trade Notice No. 01/2012 dated January 9, 2012. Moreover, M/s Sheela Foams had not provided any written submissions within the timeline. In view of the aforesaid, the domestic industry requests the Authority to reject the response of interested parties

in line with the strict view taken by the Designated Authority in other similar cases where complete response of the exporter has been rejected on account of clerical mistakes.

- vi. Certificates submitted by the exporters/producers are not signed as per the prescribed guidelines of the DGAD. Moreover, complete addresses of all the related parties were also not provided by the exporters in response to the questionnaire sent by the Authority.
- vii. It is submitted by the domestic industry that M/s Shell Eastern Petroleum (Pte.) Ltd. (SEPL), M/s Shell Eastern Trading (Pte.) Ltd. (SETL) needs to be treated as non-cooperating exporter in line with the view taken by the Designated Authority in the case of Saccharin investigation.
- viii. It is also submitted by the domestic industry that the responses of Shell should be rejected for non-adhering the specific instruction of the Hon'ble Designated Authority of filing complete response of all the related parties to complete the full value chain of the subject goods.
- ix. Shell has also withheld the information that they are related to BASF, one of the exporters of the subject goods. They have also not provided the exact status of their relationship with manufacturers of the major raw material. In view of this factor also, the Authority should reject the complete exporter questionnaire response of the both Shell entities.
- x. Bayer South East Asia (Bayer) has not filed any information in the questionnaire response relating to the linked producer. In the absence of which, Bayer is not entitled to an individual dumping margin. The response is to be rejected outright on this ground alone. Further, it has submitted that the exporter has not even disclosed even the name of the linked manufacturer/producer from which it has purchased the subject goods in the POI for exporting the same to India.
- xi. It is further submitted by the domestic industry that in the event exporter questionnaire response of Shell gets rejected, the exporter questionnaire response of Bayer automatically gets rejected in line with the consistent practice of the Authority. In view of the above, domestic industry has requested the Authority to reject the response filed by the exporter considering the consistent practice being followed by the Authority in plethora of cases.
- xii. Moreover, from the inspection of public file and non-confidential version of the responses submitted by the Shell, it is clear that they have not confirmed that the complete subject goods exported by Bayer is procured domestically from them. In view of the aforesaid, domestic industry submitted that the response of Bayer should also be rejected.
- xiii. The domestic industry can technically produce subject goods up to 50000 MT and there is no constrain in that, except low priced imports coming in the market from subject countries. It is further submitted by the domestic industry that they have advantage of using captively produced propylene oxide (PO) in the manufacturing of subject goods. Moreover, domestic industry is also importing the PO for the balance of their requirement.

Therefore, the domestic industry requested the Authority to reject the claims of the interested parties as they are devoid of any merit and contrary of the facts on record.

- xiv. Domestic industry submits that their quality is at par with the imported goods and only because of the low priced imports, user industry is buying imported subject goods. Domestic industry has ample idle capacity to fulfill the local demand.
- xv. In relation to location or geographical disadvantages, domestic industry submits that these factors have no weightage in the anti-dumping investigation as all the expenses after ex-factory are not considered in any of the analysis. Therefore, the argument related to any freight and location disadvantage needs to be rejected.
- xvi. The domestic industry submitted that the history of the previous cases is of no legal or factual relevance to the fact of current proceedings. The Authority is required only to see whether a case for imposition of anti-dumping duties is made out in the facts and circumstances of the present case. It may be appreciated that the interested parties have referred to the details of previous investigations only with the intent to create a bias in the mind of the Authority.
- xvii. In the context of the initiation of the investigation in Safeguard Directorate for the same product, it is submitted by the domestic industry that this is not the first case where both the investigations are going on simultaneously for the same product. Further, it is important to note that in the instant case, the period of investigation is different for both the investigations. Therefore, no prejudice is caused to any interested parties. It is submitted that the Domestic Industry is not seeking duplication of the protection as the Central Government would invariably ensure that only the higher of the two duties is effectively enforced. In view of the aforesaid, the Authority is requested to reject the claims made by the interested parties as they are devoid of any merits. The domestic industry further submits that due to the difference in the methodology used in analyzing the data, there may be some variation in the numbers.
- xviii. The domestic industry submits that there is no difference in the production process employed by the domestic industry and producers in the subject countries. Domestic industry further submits that even none of the producers/exporters have provided any information in their exporter questionnaire response. Moreover, they have also failed to provide any material fact to support their claim. In view thereof, the domestic industry requested the Authority to reject the submissions of the interested parties as they are contrary to the facts.
- xix. The methodology suggested by the interested parties that the Authority should use current exchange rate and determine price undercutting is wrong and contrary to the established practice of the DGAD.

## **Examination by Authority**

25. Various miscellaneous issues raised by the interested parties during the course of the present investigation and considered relevant by the Authority are examined herein below:
- a. The Authority notes that from the record available with the Authority, the Australian High Commission was duly advised prior to the initiation of the investigation that an application had been received and the public notice initiating the investigation was put on the department's website. Further, the Authority notes that the Rules do provide time up to eighteen months to complete the investigation depending upon the complexity of the responses/submissions.
  - b. Regarding the issue raised in the safeguard investigation that domestic industry is suffering injury only due to a certain quantity of imports, and not due to any allegedly dumped imports, the Authority holds that the nature of the safeguard investigations and the anti dumping investigations are two separate and each one is governed by respective rules.
  - c. As regards the argument of the opposite interested parties that the petition is deficient and, therefore, the investigation needs to be terminated, the Authority notes that the present investigation was initiated on the basis of prima facie evidence furnished by the domestic industry showing dumping, injury and causal link and justifying initiation of the investigation in accordance with the Act and the Rules. The Authority has also called for additional information wherever required and verified the information furnished by the domestic industry.
  - d. With regard to the argument on certificates and support letter, it is noted that the same are complete and correct and has no discrepancy whatsoever.
  - e. The information provided by the domestic industry is verified and only verified information is used for the final proceedings of the investigation. It is further noted that the domestic industry has provided all the information as and when required and there is no inconsistency found in their data.
  - f. As regards the submission of the interested parties that the increase in imports from Singapore is on account of the FTA between the two countries, it is noted that the argument is of no consequence or relevance from the anti-dumping perspective. As per the anti-dumping rules, anti-dumping duty will only be imposed if the imports are dumped and are causing injury to the Domestic Industry. Therefore, the issues raised by the exporters /importers in relation to increase in imports due to FTA have no bearing in this investigation.
  - g. In relation to the import data, it is noted that the Authority has used DGCI&S import data for analysis purpose and, therefore, all the issues related double counting of import data are taken care of.
  - h. As regards the argument of using current exchange rate for determining price

undercutting, the Authority notes that this would be logically an incorrect proposition. Since the entire investigations relate to a particular period, it would not be appropriate to analyze as effect of exchange rate in isolation for the current period.

- i. As far as the contention of the domestic industry that there is relationship between BASF South-East Asia Pte Ltd (“BSEA”) and SEPL/SSPL and BASF has not filed the exporters questionnaire response and, therefore, SEPL/SSPL should be declared non-cooperative, the Authority notes that it has considered the same issues earlier in the sunset review of anti-dumping duty against imports of Flexible Slabstock Polyol originating in or exported from EU, Japan, Singapore and USA and had concluded that BSEA and SEPL are not related entities. There is no change in these facts in the present investigation as well. The Authority also notes that in the Annual Reports for the financial years ending on 31st December 2010, 2011 and 2012 that BSEA is not listed as a related company of SEPL. This further proves the fact that SEPL and BSEA are unrelated entities and must be treated as such by the Designated Authority. The Authority, thus, concludes that this claim of the applicant is devoid of merit.

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

### **Normal Value, Export Price and Dumping Margin**

26. In the present case, only the following exporters/ producers from Singapore have responded and filed their questionnaire’s response in the form and manner prescribed:
  - a. M/s Shell Eastern Petroleum Pte. Ltd. (“SEPL”)
  - b. M/s Shell Eastern Trading (Pte) Ltd (“SETL”)
  - c. M/s. Bayer (South East Asia) Pte Ltd (“Bayer”)
27. From their questionnaire responses, the Authority notes that SEPL is involved in production of the subject goods and also manufactures other grades of polyols. SEPL sells the entire quantity of subject goods to SETL, a trading arm of SEPL. SETL is a subsidiary of SEPL. SETL sells the subject goods in domestic market and also to export markets including India. Bayer has also purchased the subject goods for exporting to India from SETL.

### **Submissions made by the domestic industry**

28. The domestic industry has raised a number of issues relating to the questionnaire responses submitted by SEPL/SETL and has requested for rejection of questionnaire responses filed by SEPL/SETL:
  - i. The domestic industry has submitted that BSEA and SEPL are related entities as SEPL (as a 100% holding company of SSPL) and BSEA jointly own 50% shares each in a third company, M/s. Ellba Eastern (Pte) Ltd (“ELLBA”). In this regard, the domestic industry has relied on Explanation (c) to Rule 2(b) of Anti-Dumping Rules which states that producers shall be deemed to be related to exporters or importers if together they directly or indirectly control a third person.

- ii. The domestic industry has submitted that the responses of Shell Chemical Seraya (Pte) Ltd (“SCSL”), Shell Seraya Pioneer Limited (“SSPL”), Ethylene Glycol Singapore (“EGS”) and Ellba Eastern Pte Ltd JV (“Ellba”) have not been filed, and, therefore, the value chain is not complete. Consequently, the domestic industry has argued that the responses of SEPL and SETL are also to be rejected.
- iii. The domestic industry has contended that the price at which PO is supplied by SCSL to SEPL should be rejected and the correct market price should be adopted.
- iv. The domestic industry has contended that the PO supplied by SSPL should be taken at true market value as SSPL is a fully owned subsidiary of SEPL.
- v. The domestic industry has contended that it is not clear which company is manufacturing the subject goods in Singapore and whether the subject goods are being supplied to Bayer/BSEA by SCSL or SETL.
- vi. The domestic industry has contended that it is not clear which company owns the manufacturing facilities for the production of the subject goods.
- vii. The Authority has, in the recently concluded investigation of Cast Aluminium Alloy Wheels or Alloy Road Wheels, taken very strict view and rejected the response of the exporters on the grounds that their value chain is not complete, information of related parties not filed, producer has not confirmed and that the quantity exported by one of the participating unrelated exporter is their goods. In view thereof, domestic industry requested that the Authority should follow the same principle in the instant case also. It is further submitted that any different approach will be contrary to the principles of natural justice.
- viii. The producer/exporter has misled the Authority by not providing complete costing of their related parties involved in the manufacturing of the major raw material.
- ix. The local consumption of subject goods in Singapore is only around 1500 MT per annum, which is less than the 5% of the total exports to India during the POI. In this context, it is further submitted that the domestic sales made by Shell which were ultimately exported outside Singapore, should not be considered as their local sales.
- x. It is also requested by the domestic industry that if Authority is of the view that Shell still deserves an individual dumping margin, then in that case, while computing 80:20 test, the Authority should use international prices of the major raw materials such as propylene oxide and ethylene oxide as the only responding producer from Singapore failed to provide complete details of the costing of raw material of their related parties. It is a well-settled principle of jurisprudence that the prices of raw material which are not at arm’s length ought to be rejected for the purposes of computing the costs.

- xi. None of the producers/exporters from EU and Australia has participated in the investigation and, therefore, the Authority should construct the normal value and determine the export price as per the consistent practice.
- xii. All the related companies have not filed the complete exporters' questionnaire response and, therefore, the value chain is not complete.
- xiii. It is not clear which company is manufacturing the subject goods in Singapore and whether the subject goods are being supplied to Bayer/BSEA by SCSL or SETL.
- xiv. It is not clear which company owns the manufacturing facilities for the production of the subject goods. It is not clear whether the manufacturing facilities for the production of the subject goods are owned by SCSL or SEPL.

### **Submissions made by SEPL and SETL**

29. SEPL and SETL have made extensive submissions on the issues relating to the questionnaire responses submitted by them, as highlighted below:

- i. SEPL and SETL have submitted that BSEA and SEPL cannot be considered to be related merely because of the reason that SEPL and BSEA jointly own ELLBA. Explanation (c) to Rule 2(b) of Anti-Dumping Rules, which expressly states that it applies only to Rule 2(b) by the words "for the purposes of this clause" is only applicable to the definition of "domestic industry" contained in Rule 2(b) and not to any other situation, as it is in the nature of a "legal fiction", a well known principle of interpretation of statutes. The Hon'ble Supreme Court has held in the case of *Bengal Immunity Co. Ltd. v. State of Bihar* AIR 1955 SC 661 that legal fictions are to be limited to the purpose for which it was created and should not be extended beyond that legitimate field.
- ii. In the sunset review antidumping investigation findings dated 26<sup>th</sup> November 2007, the Authority has already concluded under the same set of facts that BSEA and SEPL are independent companies unrelated to each other.
- iii. SEPL is a private limited company incorporated and registered in Singapore. SEPL is a manufacturer of the subject goods in Singapore. SEPL produces the subject goods in its plant.
- iv. The manufacturing activities of SEPL plant are managed by its 100% owned subsidiary M/s. Shell Chemicals Seraya (Pte) Ltd ("SCSL"). Although, SCSL is a separate legal entity, it is treated by

SEPL as a fully integrated cost centre, and as a single tax entity with SEPL within Singapore.

- v. The main raw materials required for production of subject goods are Propylene Oxide (“PO”), Ethylene Oxide (“EO”) and Glycerine. PO is the primary raw material used in the production of subject goods (approximately 90% by weight of FSP).
- vi. PO is procured by SEPL from the following companies in the following proportion:

Shell Chemicals Seraya (Pte) Ltd (“SCSL”)	Approx. ***%
Shell Seraya Pioneer Limited (“SSPL”)	Approx. ***%
BASF South-East Asia Pte Ltd (“BSEA”)	Approx. ***%

- vii. In the earlier sunset review against imports of the subject goods, the Authority under the same set of facts had concluded that SCSL was a fully integrated cost centre and there was no rationale in rejecting the cost at which PO was transferred by SCSL to SEPL and adopting the market price of PO.
- viii. The PO supplied by SSPL to SEPL is procured from ELLBA. ELLBA is a 50-50 joint venture between SSPL and BSEA. ELLBA is treated as a cost centre by SSPL. ELLBA transfers PO to SSPL at cost. Thereafter, SSPL transfers PO to SEPL at a transfer price determined on the basis of market price.
- ix. SEPL and SETL have submitted to the Authority all the available information pertaining to SCSL, SSPL, EGS and ELLBA which relates to the production of FSP. Therefore, the contention of the domestic industry that the value chain is not complete is not correct.

**Other submissions made by the producers/exporters/importers/other interested parties**

- 30. Other submissions concerning normal value, export price and dumping margin made by the producers/exporters/importers/other interested parties during the course of the investigation and considered relevant by the Authority are as follows:
  - a. The Applicant domestic producer has sought to have an investigation initiated against the subject goods but have adduced no evidence in support of the same, which has been accepted by the DGAD. In this connection, it is submitted that no investigation is tenable without the fulfillment of the basic evidentiary standards and, therefore, the present investigation must be terminated immediately.
  - b. The two conditions specified in the relevant provisions do not include “non-availability” of data relating to domestic selling prices as a ground for construction of normal value. The basis stated in the application for resorting to constructed normal value is thus erroneous.

- c. The estimate of inland freight provided by domestic industry is also not supported by any evidence. The Applicant Domestic Producers have arbitrarily arrived at a set of figures to express its estimation of inland freight. The application did not contain any evidence as to how the figure cited as inland freight was arrived at and what the relevant calculations are.
- d. The normal value and export price arrived by petitioner in its petition cannot be accepted as correct since petitioner has not made available any evidence to support their computations.
- e. The adjustments made by the Applicants with respect to the export price are abnormally high and unsupported by any evidence. Therefore, the Authority should use correct adjustments while computing the export price.

### **Examination by the Authority**

31. In its various submissions, the domestic industry has raised many issues concerning the questionnaire responses filed by SEPL and SETL. The issues which are considered as relevant are being dealt with hereunder:

#### **Relationship between BSEA and SEPL/SETL:**

32. As mentioned above, as far as the contention of the domestic industry that there is relationship between BSEA and SEPL/SSPL and BSEA has not filed the exporters questionnaire response and, therefore, SEPL/SSPL should be declared non-cooperative, the Authority notes that it has considered the same issues earlier in the sunset review of anti-dumping duty against imports of Flexible Slabstock Polyol originating in or exported from EU, Japan, Singapore and USA and has concluded that BSEA and SEPL are not related entities. There is no change in these facts in the present investigation as well. The Authority, therefore, rejects the claim of the applicant in this regard.
33. With regard to the claim of the domestic industry that all the related companies have not filed the complete Exporters' Questionnaire Response (EQR) and, therefore, the value chain is not complete, the Authority notes that the subject goods are claimed to be manufactured by SEPL and sold by SETL. The Authority further notes that the manufacturing operations of the subject goods are managed by SCSL a 100% owned subsidiary of SEPL. The Authority also notes that the sales of the subject goods have been made by Shell Eastern Chemicals (S), a registered business owned by SETL. While SEPL and SETL filed EQR, SCSL and Shell Eastern Chemicals (S) have not filed EQR in spite of a specific direction issued by the Authority at the time of public hearing held on 12.9.2014. In the absence of EQR filed by Shell Eastern Chemicals (S) and SESL, the Authority has not been able to establish (i) the actual export price of the subject goods exported to India, (ii) the actual selling price of domestic sales, (iii) the actual cost of production of the subject goods and (iv) pre and post production movement of the subject goods. Therefore, in the absence of aforesaid complete value chain of production and sale of subject goods, the Authority has rejected the EQR filed by SEPL and STEL.

### **Determination of Normal Value**

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

- i. The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under subsection (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);

#### **Normal value in the case of producers and exporters from Australia**

35. As there is no response from Australia and neither the information concerning the normal value of the subject goods in Australia during the POI has been made available by any interested party, nor could it be accessed in the public domain, the Normal Value for the producers/exporters in Australia is to be determined by the Authority on the basis of international prices of major raw materials and constructed costs of production, duly adjusted to include selling, general & administrative costs and packing cost of the domestic industry by adding reasonable profits. The normal value so determined by the Authority for Australia is mentioned in the dumping margin table below.

#### **Normal value in the case of producers and exporters from EU**

36. As there is no response from EU and the information concerning the normal value of the subject goods in EU during the POI, as prescribed under the Anti-dumping Rules, has not been made available by any interested party, nor could it be accessed in the public domain, the Normal Value for the producers/exporters in EU is determined by the Authority on the basis of international prices of major raw materials and constructed costs of production, duly adjusted to include selling, general & administrative costs and packing costs of the domestic industry by adding reasonable profits. The normal value so determined by the Authority for EU is mentioned in the dumping margin table below.

### **Normal value in the case of producers and exporters from Singapore**

37. As already mentioned that due to non-filing of EQR by the related parties of SEPL/SETL, the Authority has rejected the EQR filed by them. As there is no other producer of subject goods other than SEPL, the Normal Value for the producers/exporters in Singapore has been determined by the Authority on the basis of international prices of major raw materials and constructed costs of production, duly adjusted to include selling, general & administrative costs and packing costs of the domestic industry by adding reasonable profits. The normal value so determined by the Authority for Singapore is mentioned in the dumping margin table below.

### **Determination of Export price**

#### **Export price in case of producers and exporters from Australia**

38. There is no response from any producer/exporter from Australia. In the light of the above, export price from all the producers/exporters in case of Australia is determined on the basis of information available on record. The Authority made adjustments on account of ocean freight, overseas insurance, port expenses, inland freight, bank charges and credit cost as claimed by the petitioner after due adjustment in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level in case of Australia determined is as mentioned in the dumping margin table below.

#### **Export price in the case of producers and exporters from EU**

39. There is no response from any producer/exporter from EU. In the light of the above, export price from all the producers/exporters in case of EU is determined on the basis of information available on record. The Authority made adjustments on account of ocean freight, overseas insurance, port expenses, inland freight, bank charges and credit cost as claimed by the petitioner after due adjustment in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level in case of EU determined is as mentioned in the dumping margin table below.

#### **Export price in the case of producers/exporters from Singapore**

40. SEPL/SETL had exported the subject goods to several countries in the POI including India through its registered business viz Shell Eastern Chemicals (S). As already mentioned that due to non-filing of EQR by the related parties and due to absence of complete value chain, the Authority has rejected the EQR filed by SEPL/SETL.
41. Bayer had exported \*\*\*MT of the subject goods (both in bulk and packed form) to India in their brand name Arcol Polyol 5613 during the POI having total value of US\$ \*\*\*. The exporter has claimed adjustments of \*\*\*US\$ per MT on account of credit cost, overseas freight, insurance, surveyor fees, cost

of drums, drumming cost, warehousing and handling, inland transportation, storage and bank charges. The Authority, however, notes from the import data collected from DGCI&S that about \*\*\* MT of Arcol Polyol 5613 has been imported from Singapore where Bayer South East Asia Pte Ltd., is the only trader of Arcol Polyol 5613. Since the quantity of exports reported by Bayer South East Asia Pte Ltd., is materially different from the quantity of imports of their branded subject goods reported in DGCI&S data, the Authority rejects the Exporters Questionnaire response filed by Bayer.

42. Since no other producer/exporter has submitted EQR, the net export price for the exports made from Singapore has been determined on the basis of information available on record. The Authority made adjustments on account of commission, credit cost, bank charges, overseas freight, insurance, inland freight and port handling charges in order to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level determined is mentioned in the dumping margin table below.

**Dumping Margin**

43. Considering the normal values and export prices for the subject goods as determined above, the dumping margins for the subject goods have been determined as follows. The dumping margins for the subject goods are as under:

**Dumping Margin Table**

Country	Producer	Exporter	Normal Value (US\$/MT)	Net Export Price (US\$/MT)	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin Range %
Australia	Any	Any	***	***	***	***	30-40
European Union	Any	Any	***	***	***	***	30-40
Singapore	Any	Any	***	***	***	***	0 - 10

**METHODOLOGY FOR INJURY ASSESSMENT AND EXAMINATION OF INJURY AND CAUSAL LINK**

**Submissions made by the producers/exporters/importers/other interested parties**

44. The following are the injury related submissions made by the producers/exporters/importers/other interested parties during the course of the present investigation and considered relevant by the Authority
- i. DGAD is required to examine the data of not only the petitioner company but also for the other domestic producers in the market. There is one more producer in the market. That being the case, DGAD should direct petitioners to submit information about the other producers or require other domestic producers to provide necessary information for the purposes of evaluating injury.

- ii. Import prices have increased during the injury period as compared to base year, therefore, the claim of the petitioner that the dumped and low priced imports are affecting the profitability and its inability to increase selling price has no merit. It is further submitted that there is no volume effect as well.
- iii. It is submitted that the domestic industry has not fulfilled the requirement with respect to Article 3.4 which mandates that 'actual and potential' decline in various factors be examined and established for a positive finding of injury.
- iv. The domestic industry has faced injury due to its incapability to expand its plant capacity and also in handling critical raw material and therefore, the injury cannot be said to be because of imports from Singapore.
- v. The domestic industry was able to sell 98-99% of the goods produced every year. In that case, inventories with the Applicant Domestic Producer should logically be very low, as opposed to the inflated inventory figures provided in the petition.
- vi. The domestic industry is alleging that imports of the subject good from subject countries is substantially high and is hampering the functioning of the domestic industry. However, it is to be noted that the domestic industry is only able to cater to 25-30% of the total demand on an average. Even while the capacity utilization of 100%, it was at the most able to cater to about 40% of the total demand.
- vii. While an Australian sole manufacturer had very minor exports to India of the product under consideration previously, the company has confirmed to Australian Government that at the time of the initiation of this investigation it no longer exported this product to India. For this reason, Australia considers that there must be an immediate termination of the investigation into imports from Australia.

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

45. The following are the injury related submissions made by the domestic industry during the course of the present investigation and considered relevant by the Authority:
- i. Imports of the product under consideration have shown significant increase over the years with a significant increase in POI. Imports have also shown increase in relation to production and consumption in India;
  - ii. Market share of the subject countries in demand is significant. Market share of the domestic industry has decreased in the POI as compared to the base year. The same is due to significant imports from the subject countries;
  - iii. With reduction in the prices by the foreign producers, the only choice available to the Indian producers is to either realign their prices with the changes in the import prices or to lose orders and hence the market share;
  - iv. Domestic industry prices, reflects the effect of the prices that are being

offered by the importers in the domestic market;

- v. Imported goods have been undercutting the prices of the domestic industry. Price undercutting in respect of the product under consideration is positive during the period of investigation;
- vi. Inventories with the domestic industry increased in the POI as compared with the base year;
- vii. Performance of the domestic industry has steeply deteriorated in terms of profits, return on investments and cash profits to a very significant extent.
- viii. The decline in profitability of the domestic industry was due to significant increase in the import volume at non-remunerative prices from the subject countries.
- ix. The increase in selling price was lower than the increase in cost of production and thus the dumped imports are creating price suppression effect on the domestic industry.
- x. As regards the submissions of interested parties that low quantum of imports and their impact of domestic industry, it is submitted that the imports from all the subject countries is above threshold limit of 3% and therefore, it would be wrong to say that imports are miniscule. Moreover, their value is below the cost and selling price of the domestic industry and thus caused injury. Therefore, the Domestic Industry requested the Authority to reject the claims made by the responding interested parties in relation to injury suffered by them.
- xi. The domestic industry has suffered material injury in connection with dumping of subject goods from subject countries. Further, the domestic industry is threatened with continued injury, should the present condition continue.

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

- 46. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
- 47. As regards the impact of the dumped imports on the domestic industry. Para (iv) of Annexure-II of the AD Rules states as follows:

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

48. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties during the course of the present investigations and considered relevant by the Authority:
49. As regards the submissions that DGAD is required to examine the data of not only the petitioner company but also other domestic producers in the market, the authority notes that the petitioner company constitutes domestic industry under the Rules. Moreover, the production of other domestic producer is insignificant and thus cannot have any impact on the current investigation.
50. The Authority computes the non-injurious price in accordance with Annexure 3 to the Anti-dumping Rules and the established practices of the DGAD.
51. For the examination of the impact of imports on the domestic industry in India, 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, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

### **Volume Effect of Dumped Imports**

#### Import Volume and Market Share

52. 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 import data procured from DGCI&S Import data. The volume of imports of the subject good from the subject countries have been analyzed as under:

<b>Particulars</b>	<b>UOM</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
<b>Imports from subject countries</b>					
Australia	MT	0	0	0	1585
EU	MT	1493	8515	4079	3048
Singapore	MT	11890	16515	20060	33635
Total	MT	13383	25030	24139	38268
Imports from other countries	MT	10593	7594	10985	2040
Total Imports Volume	MT	23976	32624	35124	40308

<b>Particulars</b>	<b>UOM</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Domestic Sales	MT	15370	16615	18192	15533
Demand	MT	39346	49239	53316	55841
<b>Market share in Imports</b>					
Imports from Subject Countries	%	56	77	69	95
Imports from Other Countries	%	44	23	31	5
<b>Market share in demand</b>					
Imports from Subject Countries	%	34	51	45	68
Imports from Other Countries and undumped imports from Singapore	%	27	15	21	4
Domestic Industry	%	39	34	34	28

53. It is noted from the above table that the imports of the subject goods from subject countries have increased in absolute terms in POI as compared to the base year i.e., 2009-10. The imports from subject countries have gone up from 13382 MT in the base year of 2009-10 to 38268 MT during the POI.
54. The market share of imports from subject countries in relation to the overall imports has also gone up significantly from 56% in the base year to 95% during the POI. The increase is significant. Similarly, the market share of imports from subject countries in the total demand has also increased from 34% to 68% during the same period. Thus, it is seen that the volumes from subject countries have increased very significantly in absolute terms as well as in relation to the imports and the overall demand in the country.

#### **Price Effect of Imports**

55. With regard to the effect of the dumped imports on prices, the Designated 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 products in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price suppression and price depression, if any.

#### **Evolution of Prices over the Period**

56. In the injury period, average CIF prices of the imports originated in subject countries has been as under:

Subject Countries	Import price (CIF) of dumped subject goods	
	US\$/MT	Rs./MT
Unit		
2009-10	1768	85381
2010-11	2043	94331
2011-12	2416	116299
January 12 to December 12 (POI)	1944	104364

57. It is seen from the above table that the CIF import price of subject goods has increased until the year 2011-12 and decreased thereafter. It is further noted that there is increase in POI as compared to base year. However, the Authority notes that import prices in US \$ terms has considerably declined in the POI when compared to the immediately preceding two years. It may be seen that in rupee terms also the variation is marginal during the same period due to exchange variation. The Authority is required to examine the data for the entire injury investigation period and not only a comparison of the POI and the base year. It is noted that the decrease in prices as compared to the immediately preceding two years is significant particularly when the costs have gone up during the corresponding period. Detailed analysis has been done in the latter part of the injury analysis.

#### Price Undercutting

58. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales realization of the domestic industry.

Subject countries	Unit	2009-10	2010-11	2011-12	POI
Landed price of dumped imports	Rs./MT	90207	99456	120033	106344
Net Sales Realization	Rs./MT	***	***	***	***
Net Sales Realization	Index	100	116	133	128
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting (%)	Range	(0 - 10)	0 - 10	(0 - 10)	0 - 10

Australia	Unit	2009-10	2010-11	2011-12	POI
Landed price of dumped imports	Rs./MT	-	-	-	***
Net Sales Realization	Rs./MT	-	-	-	***
Net Sales Realization	Index	-	-	-	***
Price Undercutting	Rs./MT	-	-	-	***
Price Undercutting (%)	%	-	-	-	***
Price Undercutting (%)	Range	-	-	-	0 - 10

EU	Unit	2009-10	2010-11	2011-12	POI
Landed price of dumped imports	Rs./MT	***	***	***	***
Net Sales Realization	Rs./MT	***	***	***	***
Net Sales Realization	Index	***	***	***	***

EU	Unit	2009-10	2010-11	2011-12	POI
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting (%)	%	***	***	***	***
Price Undercutting (%)	Range	0 - 10	0 - 10	(5) - 5	0 – 10

Singapore	Unit	2009-10	2010-11	2011-12	POI
Landed price of dumped imports	Rs./MT	***	***	***	***
Net Sales Realization	Rs./MT	***	***	***	***
Net Sales Realization	Index	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting (%)	Range %	(0 - 10)	0-10	(0 - 10)	0 - 10

59. The Authority notes that the landed values of the subject goods were below the selling price of the domestic industry showing significant price undercutting being caused by the dumped imports from subject countries in the POI. Moreover, the Domestic Industry has claimed that their selling prices in POI have declined mainly on account of the fact that they were forced to match their prices with the landed values of dumped imports.

#### Price Underselling

60. The Authority has also examined the price underselling suffered by the domestic industry during POI on account of dumped imports from the subject countries, as follows:

Particulars	Unit	Australia	EU	Singapore	Subject countries
Landed price of imports	Rs./MT	***	***	***	***
Non-Injurious Price	Rs./MT	***	***	***	***
Price Underselling	Rs./MT	***	***	***	***
Price Underselling	%	***	***	***	***
Price Underselling (%)	Range	0-10	0-10	5 - 15	5 - 15

61. It is noted from the above table that the domestic industry has suffered significant price underselling on account of imports of the subject goods from the subject countries.

#### Price Suppression and Depression

62. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority considered the changes in the costs and prices over the injury period. Table below shows the factual position:

Particulars	Unit	2009-10	2010-11	2011-12	POI
Landed Value of dumped Imports	Rs./MT	***	***	***	***
Index	Indexed	100	110	133	118
Cost of Sales	Rs./MT	***	***	***	***
Trend	Indexed	100	122	145	153
Selling Price	Rs./MT	***	***	***	***
Trend	Indexed	100	116	133	128

63. The selling prices of the subject goods in the domestic market during POI have not increased in comparison to the increase in the cost and on the contrary it has decreased. Accordingly, it is noted that the dumped imports of subject goods from subject countries have suppressed the domestic industry prices.

#### H. Economic Parameters of the Domestic Industry

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

65. The various injury parameters relating to the domestic industry are discussed herein below:

i. **Market share:** The effect of the dumped imports on the domestic sales and the market share of the domestic industry has been examined as below:

Particulars	Unit	2009-10	2010-11	2011-12	POI
Domestic Sales	MT	15370	16615	18192	15533
Imports from subject countries	MT	13382	25030	24139	38258
Imports from other countries	MT	21620	21473	25490	19501
Total Imports	MT	10594	7595	10985	2040
Total Demand	MT	39346	49239	53316	55841
Trend	Index	100	125	136	142
Market share of Domestic Sales in demand	%	39	34	34	28
Share of imports from Subject countries in demand	%	34	51	45	68
Share of imports from other countries and undumped imports from Singapore in demand	%	27	15	21	4

As mentioned earlier, imports of the subject goods from subject countries have increased in absolute terms in POI as compared to the base year, i.e., 2009-10. The imports from subject countries have gone up from 13382 MT in the base year of 2009-10 to 38268 MT during the POI.

- ii. **Profitability:** It can be seen from the table below that the profitability of the Domestic Industry has declined throughout the injury investigation period and become negative in the POI. This clearly shows the injurious impact of dumped imports from the subject countries on the prices of the Domestic Industry.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Cost of sales	Rs./MT	***	***	***	***
Trend	Indexed	100	122	145	153
Selling price	Rs./MT	***	***	***	***
Trend	Indexed	100	116	133	128
Profit/Loss	Rs./MT	***	***	***	***
Trend	Indexed	100	83	60	-32
Profit/Loss	Rs. Lacs	***	***	***	***
Trend	Indexed	100	89	71	-32

- iii. **Return on Investment:** It is noted from the following Table that the return on investment has shown similar trend as that of profitability and the ROI has become negative during the POI.

Particulars	Unit	2009-10	2010-11	2011-12	POI
ROI	%	***	***	***	***
Trend	Indexed	100	82	63	-26

It is seen that the ROI has become negative during the POI.

- iv. **Cash Flow:** The cash flow for the Domestic Industry has become negative during the POI indicating the decline in the performance of the Domestic Industry.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Cash Profit/Losses	Rs. Lacs	***	***	***	***
Trend	Indexed	100	90	74	-28

- v. **Production and Capacity Utilization:** It can be seen that the capacity utilization of the Domestic Industry has decreased throughout the injury investigation period despite the fact that demand in the country has increased by 42% during the same period. It may also be noted that the Domestic Industry has increased their capacity anticipating the increase in demand but due to injurious impact of dumped imports they are not able to increase their production. It is also noted that there are significant idle capacity lying with the Domestic Industry to cater to the increasing demand and, therefore, the Domestic Industry has suffered on account of significant idle capacities.

Particulars	Unit	2009-10	2010-11	2011-12	POI
Capacity	MT	18000	20000	25000	25000
Total Production	MT	15573	16510	18381	15703
Capacity Utilization	%	87	83	74	63
Domestic Sales Volume	MT	15370	16615	18192	15533

vi. **Sales Volumes:** It is seen from the above table that the sales volume of the Domestic Industry has increased till 2011-12 and declined thereafter despite the increase in the market size. The Authority notes that the Domestic Industry has suffered on the price front also leading to cash losses.

vii. **Inventories:** The data relating to inventory of the subject goods is shown in the following table:

Particulars	Unit	2009-10	2010-11	2011-12	POI
Closing Stock	MT	***	***	***	***
Trend	Indexed	100	66	103	289

66. It is noted from the above table that the closing stock during POI has increased significantly as compared to the base year. The increasing trend can be seen in the POI even when compared to the immediately preceding two years. It is observed that the inventories increased in the POI as compared to the immediately preceding year despite the fact that there was a reduction in the production as well as the selling price during the same period.

viii. **Employment and Wages:** The position with regard to employment and wages is as follows:

Particulars	2009-10	2010-11	2011-12	POI
Employees	***	***	***	***
Trend	100	100	100	100
Wages/employee (Rs)	***	***	***	***
Trend	100	159	171	117
Production (MT)	***	***	***	***
Production/employee	***	***	***	***
Trend	100	106	118	101

ix. **Productivity:** It can be seen from the table above that productivity in terms of production per employee has decreased in the POI as compared to the preceding two years. This decline is attributed to the decline in production due to increased dumped imports from subject countries.

x. **Magnitude of Dumping:** Magnitude of dumping is an indicator of the extent to which the dumped imports can cause injury to the domestic industry. The dumping margin determined against the subject countries are above de minimis and significant.

- x. **Ability to raise Capital Investment:** The future investment in the sector is marred by the presence of dumped imports from subject countries. The sharp decline in profitability, return on investment along with reduced cash flow indicates that the ability of the domestic industry to raise capital investments for the sector is jeopardized due to dumped imports from the subject countries.
- xii. **Factors affecting domestic prices:** Considering the import prices from subject countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market show that the landed value of imported material from subject countries are significantly below the selling price and non-injurious price of the domestic industry causing significant price undercutting and underselling in the Indian market. The imports of the product under consideration from countries other than subject countries are not injuring the domestic industry as the prices offered by these countries are significantly higher. Demand for the product is showing an increase trend and, therefore, could not have been a factor responsible for price depression and suppression faced by the domestic industry. It is thus evident that the dumped goods from subject countries are responsible for the depressed and suppressed prices of the domestic industry.
- xiii. **Growth:** There was negative growth of the domestic industry in terms of sales, production, profits, cash profit as well as ROI in the POI as compared to the base year despite significant increase in demand. The domestic industry has contended that with increase in capacity, the domestic industry had expected robust growth in profits, comfortable cash flow and increase in return on investments. However, the domestic industry was not able to achieve the same due to the presence of the dumped imports from the subject countries.

## I. CONCLUSION ON MATERIAL INJURY

- 67. An examination of the various parameters of injury along with the volume and price effects of imports clearly reveals that material injury has been caused to the Domestic Industry during the period of investigation. There is an increase in the volume of imports of subject goods from subject countries during the injury investigation period in absolute terms as well as in relation to the total imports, domestic production and total demand in the country. Other volume parameters like sales, production and capacity utilization of the domestic industry also indicate that the domestic industry has suffered volume injury on account of dumped imports of subject goods from subject countries. With regard to price effect on account of dumped imports of subject goods from subject countries, it is noted that imports of the subject goods from subject countries are significantly undercutting the prices of domestic industry. Further, the domestic industry has suffered price depression on account of imports of subject goods from subject countries. The domestic industry has also suffered price suppression on account of imports of product under consideration from subject countries as sales price of subject goods has not increased in comparison to increase in cost of production of subject goods during the injury period. Comparison of the landed values with the non-injurious price of the Domestic Industry also reveals significant price underselling. The decline in profits, return on investment and cash flows is quite significant and material. Thus, the

Authority concludes that the domestic industry has suffered material injury during the period of investigation.

**J. OTHER KNOWN FACTORS & CAUSAL LINK**

68. Having examined the existence of material injury, volume and price effects of dumped imports from the subject countries on the prices of the domestic industry, in terms of its price undercutting, underselling and price suppression, and depression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-dumping have been examined by the Authority to see whether any other factor, other than the dumped imports could have contributed to injury to the domestic industry.

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

69. Imports of the product under consideration from countries other than subject countries in the POI are below 3% of the total imports. Further, it is evidenced from the table below that the import prices from other countries were much higher than the import price of imports from subject countries during the injury period except in the year 2011-12.

<b>Particulars</b>	<b>Unit</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>	<b>POI</b>
Import Price (CIF Price)	Rs./MT				
Imports from Subject Countries	Rs./MT	85381	94331	116299	104364
Imports from Other Countries	Rs./MT	100411	95424	112981	129621

**(b) Contraction of demand and changes in the pattern of consumption.**

70. There has been a constant rise in demand of the product concerned throughout the injury period. Therefore, decline in demand cannot be a possible reason of injury to the Domestic Industry.

**(c) Developments in technology:**

71. Technology for production of the product concerned has not undergone any change. Thus, development in technology is also not a factor causing injury to the domestic injury.

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

72. There is no trade restrictive practice, which could have contributed to the injury to the Domestic Industry as the raw materials as well as the subject goods are freely importable in the country.

**(e) Export performance of the domestic industry**

73. The Domestic Industry has not exported the subject goods during the injury investigation period. Therefore, performance in the export market has not affected the present injury analysis.

## (f) Productivity of the Domestic Industry

74. It is noted that the productivity of the domestic industry has declined in POI as compared to the previous two years on account of reduction in the production of the subject goods caused by dumped imports.
75. It is thus noted that listed known other factors do not show that the domestic industry could have suffered injury due to these other factors. None of the interested parties has also led any evidence to suggest that the material injury caused to the Domestic Industry is attributable to other known factors. On the other hand, the following parameters show that injury to the domestic industry has been caused by dumped imports:
- The imports of subject goods from subject countries were significantly undercutting the prices of the domestic industry in the market. Resultantly, the domestic industry was not able to increase its prices commensurate with the increase in costs. In fact, the Domestic Industry had to reduce its prices in the POI as compared to the immediately preceding year despite increase in costs. The price depression and price suppression suffered by the domestic industry is primarily on account of the dumped imports of the product from the subject countries.
  - The pressure on the domestic prices of the domestic industry led to significant loss of profitability and negative return on investment during the POI.
  - Performance of the Domestic Industry also was affected adversely in terms of poor cash flow and rising inventories.
76. It is, therefore, concluded that the domestic industry suffered material injury due to dumped imports from subject countries.

## K. MAGNITUDE OF INJURY MARGIN

### Injury Margin

77. The non-injurious price of the subject goods produced by the Domestic Industry determined has been compared with the landed value of the exports from the subject countries for determination of injury margin during POI. The injury margin determined are as under:-

**Injury Margin Table**

Country	Producer	Exporter	NIP (US\$/MT)	Landed Value (US\$/MT)	Injury Margin US\$/MT	Injury Margin %	Injury Margin Range %
Australia	Any	Any	***	***	***	***	0 - 10
European Union	Any	Any	***	***	***	***	0 - 10
Singapore	Any	Any	***	***	***	***	5 - 15

78. The level of dumping margins and injury margins, as determined, are considered significant.

## **L. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES**

79. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way and, therefore, would not affect the availability of the product to the consumers.
80. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

## **M. POST DISCLOSURE STATEMENT SUBMISSIONS BY THE INTERESTED PARTIES**

### **M.1 Post Disclosure Statement submissions by the opposing Interested Parties**

#### **Post-disclosure submissions of SEPL and SETL**

81. SEPL and SETL has requested the Authority to confirm its conclusions on the issue of non-filing of EQR by related parties, supply of raw materials by related parties, the role of SEPL in the manufacture of subject goods indicated in the disclosure statement, in the Final Findings as well. SEPL and SETL submitted that Shell Eastern Chemicals (S) is not a separate legal entity but only a trade name of SETL and it is not figuring in the Annual Reports for the financial years ending on 31st December 2010, 2011 and 2012 of SEPL/SETL as a related company of SEPL/SETL.
82. SEPL and SETL also reiterated their comments on injury parameters of the domestic industry and requested the Authority to re-consider its submissions relating to factors of injury

#### **Post-disclosure submissions of Bayer**

83. Bayer certifies that only \*\*\*MT of the subject goods has been exported by it to India during the POI. Bayer submits that the Authority can reject its data only if it has evidence that Bayer have not disclosed the correct quantity of subject goods exported by it to India. So long as Bayer has reported the correct quantity exported to India, its data cannot be rejected merely because of the fact that DGCI&S data shows a different quantity of imports of Arcol

Polyol 5613 brand. DGCIS data also shows the same quantity of imports from Bayer as reported by it in its Exporters Questionnaire. There is no discrepancy in this regard.

84. It is only because DGCIS data shows a different quantity of imports of Arcol Polyol 5613 brand than the quantity reported by Bayer that its data is proposed to be rejected. This kind of rejection by the Authority is beyond the imagination of Bayer. Bayer requests the Authority to kindly accept its data and provide a separate rate of duty.
85. Since Bayer is a known exporter, a separate dumping margin and an individual margin of dumping is to be determined for it by the Authority as per Article 6.10 of WTO Anti-Dumping Agreement and Rule 17(3) of AD Rules.
86. In any case, as admitted by the domestic industry, the subject goods are only being manufactured by SEPL and the Authority has determined a negative dumping margin for SEPL in the range of 0 – (10) %. Therefore, the subject investigation must be terminated at the earliest.

#### **Post-disclosure submissions of M/s Sheela Foam**

87. M/s Sheela Foam Pvt. Ltd., in their post-disclosure statement comments, apart from reiterating their earlier submissions have stated the following:
  - a) For the determination of the injury margin, in respect of exports, other than those effected by Shell, we submit that the full tariff rate of duties are required to be considered for determination of landed value, since such exports would not enjoy concessional duties under the ASEAN - FTA with Singapore.
  - b) It is not clear from the disclosure statement how Export Price has been worked out for the residual category from the different countries. The applicant has artificially inflated Freight, Bank charges and Inland transportation with a view to reduce the ex-factory export price. There is also no material on record for deduction of any amount towards commission. No reasons have been given as to why the claims of the applicant have been accepted - especially since they are not based on any evidence or material.
  - c) The applicant has provided inconsistent/incorrect profit & loss figures in the application. In the petition filed before the safeguard authorities, it has shown that its profit has increased three fold in 2011-12 as compared to 2010-11. In the present petition, however, there is a decline in profitability.
  - d) The Selling Price of the applicant has considerably increased in the post POI period. The authority has failed to examine post POI data while carrying out injury analysis.

## M.2 Post Disclosure Statement submissions by the Domestic Industry

88. Following are in brief the post Disclosure Statement submissions made by the domestic industry:

- i. M/s Shell Eastern Chemicals (S) has not filed questionnaire response and therefore it should not be treated as co-operative exporter. Further, SETL has filed incorrect response. Therefore, the entire response of SEPL and SETL should be rejected by the Authority.
- ii. The manufacturing activities of the Polyol plant owned by SEPL are managed by its 100% owned subsidiary SCSL and therefore it is incorrect to state that SCSL is not involved in the manufacture of the subject goods. Since SCSL has not filed exporters' questionnaire response, the response filed by SEPL should be rejected.
- iii. The present approach of the Authority in this case is in complete contradiction to the approach in the recent investigations of ARW, Solar and USB, wherein the exporter questionnaire response filed by the producers have been rejected due to absence of complete value chain of production and sale of the subject goods claimed to have been exported to India during the POI.
- iv. The Authority is obliged to evaluate that the costs of subject goods should reasonably reflect the cost associated with production of the subject goods. The price of PO sourced from SSPL (through ELLBA) should be rejected as ELLBA transfers its PO at cost to SSPL. Further, it is not clear from the disclosure statement how the Authority has considered that the transfer prices are at arm's length and reasonably reflective of the true costs.
- v. The import prices and not the export prices of the Propylene Oxide (PO), the main raw material for manufacture of the subject goods are relevant for the purpose of determining constructed normal value for Singapore. Further, the export price of PO in Singapore should not be considered as most of the exports have been made to China and Korea at cheaper prices to the related parties of Shell and BASF.
- vi. No new information/documents submitted by the parties can be considered post-public hearing as had been decided by the Authority in the antidumping investigations concerning CR Coils and Saccharin.
- vii. The domestic industry has stated that since there is only one producer of subject goods in Singapore namely SEPL, while applying the 5% test, the Authority should take into account the total exports to India from Singapore and not the exports of Shell alone. It is further submitted that the Authority should not consider the sales made to BASF and Bayer as domestic sales as ultimately these goods have been exported to India or other countries.
- viii. The Authority should construct the normal value for non-cooperating exporters in Singapore instead of adopting the normal value determined for SEPL.

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

89. The Authority has examined the above arguments of the domestic industry, SEPL/SETL, Bayer and Sheela Foams and noted that some of them are repetitive and have already been dealt with by the Authority in the disclosure statement earlier. However, the submissions considered relevant are being dealt with again in the Final Findings Notification as under:
90. With regard to the submission of SEPL/SETL for confirming the provisional conclusions of the Authority in the Final Findings, the Authority notes that the manufacturing operations of the subject goods are managed by SCSL a 100% owned subsidiary of SEPL. The Authority also notes that the sales of the subject goods have been made by Shell Eastern Chemicals (S), a registered business owned by SETL. It is also noted that the payments for the goods sold are received by Shell Eastern Chemicals (S). While SEPL and SETL filed EQR, SCSL and Shell Eastern Chemicals (S) have not filed EQR in spite of a specific direction issued by the Authority at the time of public hearing held on 12.9.2014. In the absence of complete value chain of production and sale of subject goods, the Authority has rejected the EQR filed by SEPL and SETL.
91. With regard to the submission of domestic industry that M/s Shell Eastern Chemicals (S) and SCSL have not filed questionnaire response and incorrect details are mentioned in the response filed by SETL, the Authority has carefully reconsidered the issue and rejected the response filed by SEPL/SETL.
92. As regards the contention of domestic industry that import prices of the raw material (PO) is relevant for the purpose of determining constructed normal value, the Authority notes that the imports of PO in Singapore as per UN Comtrade data are very negligible as compared to the production of PO in Singapore and its exports to other countries. The Authority, therefore, holds that export price of PO from Singapore is more relevant as compared to the import price of PO in Singapore for the purpose of determining the price of PO in Singapore. The domestic industry has requested not to consider the export price of PO from Singapore to China and Korea on the ground that SEPL/BASF have related or group entities. In this regard, the Authority has compared the import price of PO from Saudi Arabia with the export price of PO to China and Korea and found that the prices were comparable. The Authority, has therefore, adopted the price at which PO had been exported from Singapore to world for the purpose of constructing normal value.
93. With regard to submission of domestic industry that no new information/documents can be considered post public hearing, the Authority notes that in order to clarify the matter, the Authority can seek additional information/documents from the interested parties including the domestic industry during the course of the investigation. The Authority notes that the fact and circumstances of the investigations mentioned by the domestic industry in support of their contention are different from the present case as in the investigation concerning Saccharin, the Authority notes that the exporter's related parties had filed the MET and Exporters' Questionnaire response at much belated stage, which were not accepted. Whereas in the instant case, the Authority has sought additional documents/information in support of the claims made by SEPL/SETL in their response.

94. With regard to the comments of SEPL/SETL on injury parameters, the Authority notes that they have been addressed in the relevant paragraphs in this finding.
95. With regard to the submission of Bayer that they have reported the entire exports to India and therefore they should be granted individual dumping margin, the Authority notes that Bayer has not explained the reasons for the variation in the quantity of imports of their branded subject goods from Singapore. Therefore, the Authority is not in a position to grant individual dumping or injury margin to Bayer.
96. With regard to the submission of the Sheela Foam regarding calculation of landed value, the Authority notes that all imports originating from Singapore will enjoy concessional duty irrespective of the exporter and therefore their request for re-determining the injury margin for residual exporters is rejected.
97. The Authority has determined the net export price as per information available on record.
98. The information on profit submitted by the domestic industry has been admitted after due verification and considered for injury analysis.
99. With regard to the request of Sheela Foam for examining the post-POI data, the Authority holds that it is not relevant for the fresh anti-dumping investigation.
100. With regard to the other issues re-iterated by Sheela Foam, the Authority notes that they have been addressed in relevant paragraphs of this finding.

## **N. CONCLUSION**

101. After examining the submissions made by the opposing interested parties and the domestic industry and issues raised therein; and considering the facts available on record, the Authority concludes that the product under consideration has been exported to India from the subject countries below its associated normal value, thus, resulting in dumping of the product. The domestic industry has suffered material injury in respect of the subject goods. The material injury has been caused by the dumped imports from the subject countries.

## **O. RECOMMENDATIONS**

102. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and the causal link. Having initiated and conducted investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti dumping duty is required to offset dumping and consequent injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of the subject goods from the subject countries in the form and manner described hereunder.
103. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to

the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive antidumping duty as per amount specified in the table below is recommended to be imposed from the date of the Notification to be issued by the Central Government, on all imports of the subject goods originating in or exported from the subject countries.

**Duty Table:**

S. No.	Heading /Sub-Heading	Description of Goods	Country of origin	Country of exports	Producer	Exporter	Amount	Unit of Measurement	Currency
1.	3907.20	Flexible Slabstock Polyol of Molecular weight 3000-4000	Australia	Australia	Any	Any	135.96	MT	US\$
2.	-do-	-do-	Any other than EU and Singapore	Australia	Any	Any	135.96	MT	US\$
3.	-do-	-do-	Australia	Any other than EU and Singapore	Any	Any	135.96	MT	US\$
4.	-do-	-do-	European Union	European Union	Any	Any	154.94	MT	US\$
5.	-do-	-do-	Any other than Australia and Singapore	European Union	Any	Any	154.94	MT	US\$
6.	-do-	-do-	European Union	Any other than Australia and Singapore	Any	Any	154.94	MT	US\$
7.	-do-	-do-	Singapore	Singapore	Any	Any	67.79	MT	US\$
8.	-do-	-do-	Any Other than European Union and Australia	Singapore	Any	Any	67.79	MT	US\$
9.	-do-	-do-	Singapore	Any Other than European Union and Australia	Any	Any	67.79	MT	US\$

104. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.
- 105.101. An appeal against the order of the Central Government arising out of this finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

**(J K Dadoo)**  
**Designated Authority**