

**To Be Published In The Gazette Of India – Extraordinary-Part-I, Section-1**

**F. No. 14/7/2014-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti Dumping & Allied Duties)  
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi-110001**

**Date: 01.04.2016**

**NOTIFICATION  
(FINAL FINDINGS)**

**Subject: Anti-dumping investigation in respect of imports of Methyl Acetoacetate originating in or exported from United States of America (USA) and China PR–reg.**

**BACKGROUND OF THE CASE**

No. 14/7/2014-DGAD: Whereas M/s Laxmi Organic Industries Ltd filed a petition before the Designated Authority (hereinafter referred to as the Authority) in accordance with the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the AD Rules) for initiation of anti dumping duty investigation concerning imports of Methyl Acetoacetate (hereinafter also referred to as the subject goods) originating in or exported from United States of America (USA) and China PR (hereinafter also referred to as the subject countries) and requested the Authority for levy of anti dumping duties on the subject goods.

2. And whereas, the Authority found that the petition filed by M/s Laxmi Organic Industries Ltd contained sufficient evidence of dumping of the subject goods originating in or exported from the subject countries; injury to the domestic industry; and the causal link between the alleged dumping and injury, to justify initiation of anti-dumping investigation, and the Authority initiated the anti dumping investigation into the alleged dumping of the subject goods from the subject countries, and consequent injury to the domestic industry in terms of Rule 5 of the AD Rules, to determine the existence, degree and effect of any alleged dumping and to recommend the amount of antidumping duty, which if levied, would be adequate to remove the injury to the domestic industry.

**PROCEDURE FOLLOWED**

3. The procedure described below has been followed:

- (i) The Authority notified the Embassies of the subject countries about the receipt of dumping allegation before proceeding to initiate investigation in accordance with the AD Rules.
- (ii) The Authority, on the basis of sufficient evidence submitted by the applicants to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods originating in or exported from the subject countries.
- (iii) The Authority issued a public notice dated 7th January, 2015, published in the Gazette of India Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods.
- (iv) The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the Applicants) and the industry associations and gave them opportunity to make their views known in writing within the prescribed time limit in accordance with the AD Rules.
- (v) The Authority also forwarded a copy of the public notice to all the known importers of the subject goods in India and advised them to make their views known in writing within the prescribed time limit.
- (vi) The Authority provided a copy of the non-confidential version of the application to the known exporters to the Embassies of the subject countries in accordance with Rule 6(3) of the AD Rules. A copy of the application was also provided to the other interested parties, wherever requested.
- (vii) The Authority sent exporter's questionnaires (including Market Economy Treatment questionnaire in respect of China PR) to elicit relevant information to the following known exporters in the subject countries in accordance with Rule 6(4) of the AD Rules:
  - a) Qingdao Double-Peach Speciality Chemicals (Group) Co. Ltd., China
  - b) Zhangjiang Hope Chemicals Co. Ltd, China
  - c) Nantong Acetic Acid Chemical Co. Ltd., China
  - d) Wang Long Group Co. Ltd, China
  - e) Eastman Chemicals Co., USA
- (viii) The following exporters/producer/traders responded and filed the exporter questionnaire response:
  - a) Jiangsu Tiancheng Biochemical Products Co. Ltd., China
  - b) Nantong Tianhong International Trade Co. Ltd., China
  - c) Nantong Acetic Acid Chemical Co. Ltd., China
  - d) Qingdao Double-Peach Speciality Chemicals (Group) Co. Ltd., China
  - e) Ningbo Wanglong Technology Co. Ltd., China
  - f) Eastman Chemicals Company, USA
  - g) Eastman Chemical Ltd, Singapore
- (ix) Jiangsu Tiancheng Biochemical Products Co. Ltd., China also filed Market Economy Treatment questionnaire.

- (x) The questionnaires were also sent to the following known importers/users of the subject goods in India calling for necessary information in accordance with the AD Rules.
- a) C.J. Shah Mumbai
  - b) Sojitz, Mumbai
  - c) Hazel, Mumbai
  - d) Sarna Chemicals Pvt. Ltd., Gujarat
  - e) SM Chemicals, Hyderabad
  - f) Arch Phamalabs Ltd., Mumbai
  - g) Aurobindo Pharma Ltd., Hyderabad
  - h) Colourtex Industries Ltd., Surat Gujarat
  - i) Kailash Chemicals, Ahmadabad
  - j) Dia Chemie, Mumbai
  - k) Prima Chemicals Polygon Chemicals, Ahmadabad
- (xi) In response to the initiation notification, the following importers filed the questionnaire response.
- a) Prima Chemicals
  - b) M/s C. J. Shah & Co.
- (xii) The initiation of the investigation was based on the data provided by the Petitioner from the secondary source IBIS as complete DGCI&S (Directorate General of Commercial Intelligence and Statistics) data was not available at that time. However, the request was made to the DGCI&S to arrange details of imports of subject goods into India for the past three years, including the period of investigation, and the said information was obtained from the DGCI&S and has now been adopted in this investigation.
- (xiii) The Authority held a public hearing on 15th September, 2015 to provide an opportunity to the interested parties to present their views orally in accordance with the Rules. The parties who attended the oral hearing were advised to file written submissions of the information presented orally. The interested parties were allowed to present rejoinders on the views/information presented by the other interested parties. The Authority has considered submissions received from the interested parties appropriately.
- (xiv) 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.
- (xv) The information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, the parties providing information on confidential basis

were directed to provide sufficient non confidential version of the information filed on confidential basis.

- (xvi) Further information was sought from the applicants and other interested parties to the extent deemed necessary.
- (xvii) The Authority has examined the information furnished by the domestic producer to the extent possible on the basis of guidelines laid down in Annexure III to work out the cost of production and the non-injurious price of the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- (xviii) The period of investigation (POI) for the purpose of the present investigation was from April, 2013 to June, 2014. The examination of trends in the context of injury analysis covered the periods 2011-12, 2012-13, 2013-14 and the POI.
- (xix) At the request of the Authority, the Central Government granted extension of time upto 06.04.2016 for completing the investigation and notifying the final findings.
- (xx) 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 22.03.2016. The post Disclosure Statement submissions have been considered, to the extent found relevant, in this Final Findings Notification.
- (xxi) \*\*\* in this Final Findings Notification represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.
- (xxii) Exchange rate for conversion of US\$ to Rs considered for the POI is US\$ 60.87.

## **PRODUCT UNDER CONSIDERATION (PUC) AND LIKE ARTICLE**

4. The product under consideration in the present petition is Methyl Acetoacetate. Methyl Acetoacetate (also known as MAA/MAAE/AAME) is a Diketene based Ester or aceto-acetate. The chemical formula of MAA is  $C_5H_8O_3$  and at 99% purity, it is a clear liquid with a colourless appearance.

5. Methyl Acetoacetate is classified in Chapter 29 of the Customs Tariff Act under the subheading 29183040, as 'Methyl Acetoacetate'. Though the product under consideration has dedicated customs classification under the Customs Tariff Act, on analyzing the import data, it has been observed that the product under consideration is being imported under various other codes as well such as 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900. Therefore, the customs classification is indicative only and is in no way binding on the scope of the investigation.

6. The Authority, for the purpose of the present investigation, has considered that the product produced by the Domestic Industry is comparable to the product imported from the subject countries in terms of essential product characteristics such as physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification. The two are technically and commercially substitutable. The Authority treats the subject goods produced by the Domestic Industry as 'Like Article' to the subject goods being imported from the subject countries.

7. The issue relating to the PUC is not contentious and has not been argued upon by the interested parties in their submissions.

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

8. The petition has been filed by M/s Laxmi Organic Industries Ltd. The petitioner has claimed that they have neither imported the subject goods from the subject countries nor are they related to any exporter or importer of the product in the subject countries; that they are the only producer of the subject goods in India and there is no other producer of the product under consideration in India.

9. As per the evidence available on record, the Authority notes that the production of the petitioner accounts for the total domestic production of the like article, the petitioner being the only domestic producer. The Authority, therefore, determines that M/s Laxmi Organic Industries Ltd (hereinafter also referred to as the Domestic Industry (DI) or the petitioner) constitutes the Domestic Industry within the meaning of Rule 2 (b) and the petition satisfies the criteria of standing in terms of Rule 5 (3) of the Anti-Dumping Rules.

10. The issue relating to the Domestic Industry and its standing is not contentious and has not been argued upon by the interested parties in their submissions.

## **MISCELLANEOUS ISSUES**

### **Views of the Exporters, Importers, Consumers and other Interested Parties**

11. The opposing interested parties have made the following submissions:

- (i) With regard to the findings of the DG (Safeguards), the opposing interested parties submit that the injury period of the safeguard application and that of the present anti-dumping application are overlapping.
- (ii) The DG (safeguards) went into detailed fact finding before terminating the safeguards investigation.
- (iii) It is also emphasized that the DG (Safeguards) concluded that the position of the Domestic Industry has improved on account of market share, production, sales and capacity utilization. On this basis, the DG (Safeguards) held that there is no threat of serious injury to the Domestic Industry.
- (iv) The application Proforma on safeguards requires that information on injury caused due to dumping or subsidization, if any, needs to be specifically provided. However, the Domestic Industry mischievously stated that there are no other factors that may have attributed to the injury caused to the Domestic Industry other than the increased imports of the PUC.
- (v) It is submitted that it is grossly inappropriate to discard DGCI&S data, which is most authentic and readily available, and adopt IBIS data. The use of IBIS data is not appropriate as IBIS has reported several transactions which are duplicate.
- (vi) The Petitioner's contention that the imports of MAA have been cleared under a number of other classifications was insufficient to discard DGCI&S data and adopt secondary sources data.
- (vii) The Domestic Industry relied on IBIS data, even though it had access to a more credible and reliable source of data, i.e., data collected by the DGCI&S.
- (viii) DGCI&S does not adopt the classification reported by the importers mechanically.

DGCI&S adopts its own classification after carefully processing the data. Therefore, preference should be given to data published by the Govt. of India in a situation where the PUC has dedicated customs classification.

- (ix) The Domestic Industry's ability to produce MAA and satisfy the domestic demand in India is directly linked to its ability to produce sufficient quantity of Diketene.
- (x) It is submitted that the Petitioner has limited capacities for production of Diketene, a common intermediate used for production of a number of products by the Petitioner.
- (xi) It would be natural for the Petitioner to first focus on a product that has a higher profitability, and only then utilize the production facilities for the production of MAA.
- (xii) The Petitioner themselves accepted the fact of existence of seasonality involved in subject goods. The Petitioner is faced with seasonality in the production of MAA because of seasonality of other products. Therefore, the injury to the domestic industry is required to be determined after addressing the seasonality in production.
- (xiii) The seasonality in production has led to increase in imports.
- (xiv) The Domestic Industry stated during the Public Hearing that its installed capacity for Diketene is three times the requirement for producing MAA. Eastman USA submits that this appears to be incorrect and misleading because the DI by its own admission on its website produces many other products from Diketene apart from MAA, and therefore cannot divert all the Diketene produced to make MAA. Thus, it does not appear to have access to sufficient refined Diketene to fuel MAA production.
- (xv) The Petitioner has either kept confidential or not provided at all parameters prescribed in Proforma IVA. The Petitioner has not disclosed information on ROI, Cash Profit, Interest and Depreciation, NFA, Investment, Net Worth, and Working Capital. Moreover, no information on price undercutting has been provided and it appears that since price undercutting is significantly negative, the applicant Domestic Industry is refraining from giving such information.
- (xvi) Stock as number of days has been marked confidential. Actual figures of Normal value, export price and dumping margin have not been disclosed. Section VI Costing Information was claimed confidential. Indexed information should have been provided.
- (xvii) DI has claimed public documents such as its audit reports to be confidential. Ningbo Wanglong further submitted that Domestic Industry failed to provide adequate and sufficient information to enable the Exporters to reasonably understand the information submitted and have failed to fulfill their obligations under the Anti-dumping rules. This has seriously affect the Exporter's right to defense.
- (xviii) It is submitted that the Petitioner supplied excessive redactions of information, especially in relation to price and cost data, which have prejudiced Eastman USA's ability to make representations responsive to the specific claims of the Petitioner, especially the confidential claims of price suppression allegedly caused by imports from the subject countries.
- (xix) It is submitted that the Petitioner demands retrospective Anti-dumping Duty, even though DG (Safeguards) has held that there was no serious injury in the first three months of the POI of the present case.
- (xx) It is submitted that DI sought to initiate the anti-dumping investigation with mala fide intention to dominate the Indian market and to escape from competing in the free trade

market. Thus, it is requested the Authority to reject the Application of the DI.

- (xxi) Eastman USA has submitted that the Petitioner's allegation of an incomplete presentation of the nature and structure of Eastman USA's manufacturing and export chain is completely misplaced and misconceived.
- (xxii) Eastman USA claims to have provided complete and accurate details of its manufacturing export chain in response to the exporter's questionnaire. The response submitted by Eastman USA contained information with respect to Eastman Singapore which is a wholly owned subsidiary of Eastman USA.
- (xxiii) Eastman USA segregated the data provided in response to the exporter's questionnaire and submitted a separate response on behalf of Eastman Singapore. Hence, Eastman USA's response should be deemed to incorporate the response on behalf of Eastman Singapore.
- (xxiv) Eastman India which is another wholly owned subsidiary of Eastman USA does not play any role in the export chain. Therefore, no information in its behalf is required to be filed under the AD Rules.

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

12. The Domestic Industry has made the following submissions:

- (i) The submissions made by the opposing interested parties repeatedly emphasize upon the findings of the DG (Safeguards). In that investigation it was concluded that there is no threat of serious injury to the Domestic Industry. However, the requirement of serious injury is different from that of material injury as applicable under anti-dumping investigations.
- (ii) On the basis of the difference between the legal requirements to establish dumping for imposition of anti-dumping duty and unforeseen circumstances to impose safeguard duty, the Petitioner submitted that the findings of the DG (Safeguards) should not be taken as a guiding point in the present anti-dumping investigation.
- (iii) The Authority specifically noted that the trends in losses do not appear to conform to the causal analysis, probably due to the price factor, which is not a subject under safeguard investigations as per Section 8B of the Customs Tariff Act 1975. Price injury is one of the major factors in an anti-dumping investigation.
- (iv) An anti-dumping investigation is based on clear evidence of existence of dumping and material injury. Moreover, the WTO stipulates different standards and conditions for conducting various trade remedial investigations whereby: anti-dumping investigations relate to actions taken against dumping (selling at an unfairly low price) and safeguard investigations relate to emergency measures to limit imports temporarily, designed to "safeguard" domestic industries.
- (v) The assertion by the opposing interested parties that since the POI in the Safeguards investigation and the present investigation are overlapping, the findings of the DG (Safeguards) should be applicable to the present investigation, has no basis in law. Moreover, the POI in the instant investigation is April 2013 to June 2014, which is different from the POI adopted in the safeguard investigation i.e. 2010-11 to 2012-13.

- (vi) There is no requirement for analysis of post-POI data in an original anti-dumping investigation as per the established practice of the DGAD.
- (vii) As far as the arguments on the source of import data, while the product under consideration has a dedicated classification, i.e., 29183040, the subject goods are being imported under various chapter sub-headings.
- (viii) The Domestic Industry sourced the import data from IBIS, since the transaction-wise import data was not available from DGCI&S and only a summary of the imports from each country for the financial year was available.
- (ix) The import data sourced from IBIS was appropriately classified country-wise in terms of volumes, values, rates as well as shares in total imports and summarized for the purposes of the present Application.
- (x) The Domestic Industry had also submitted a brief note on the methodology adopted to classify the imports of the subject goods for the purposes of obtaining the volume and value.
- (xi) With reference to the submission on DI's lack of access to sufficient refined Diketene, the Petitioner denied any statements made in relation to the installed capacity of Diketene being three times the requirement of producing MAA. According to the Petitioner, the averment exhibited naïveté of Eastman's counsel with regard to the process of producing Diketene Derivatives.
- (xii) The Petitioner submits that any experienced person from the Diketene industry would agree to the fact that the capacity of producing Diketene is roughly pegged at two-thirds of the capacity of producing Diketene Derivative products as there are further raw material additives required for manufacture of Diketene Derivatives. The capacity increase is clearly evident, both in terms of Diketene and Diketene Derivatives.
- (xiii) The capacity of Diketene as well as Diketene Derivatives has increased by more than 100%. This fact has also been corroborated with the projection of sales over the injury period in the business plan.
- (xiv) This information is adequate as well as sufficient to enable a reasonable understanding. The submissions made by the opposing interested parties in this regard are baseless.
- (xv) The DI has not made claims with regard to undercutting and is in fact suffering from price suppression and price underselling. All the information required by Proforma IVA is either provided or indexed to reflect an estimate. Hence, Eastman USA's inability to respond to the allegation of price suppression has nothing to do with the confidentiality claimed by the Petitioner over sensitive information.
- (xvi) Most of the parameters listed by C. J. Shah and Prima, namely, ROI, cash profit, interest and depreciation, NFA and working capital are not prescribed by Proforma IVA. All the information required by Proforma IVA is either provided or indexed to reflect an estimate. Only such information that is not amenable to summarisation has been kept confidential with in consonance with the practice of the Authority.
- (xvii) In response to C. J. Shah and Prima's allegation of non-disclosure of the actual figures of normal value, export price, dumping margin and costing data (section vi), it is submitted that these figures constitute business sensitive information and therefore, cannot be disclosed. Meaningful ranges have been provided to reflect an estimate of the actual figures.



- (xviii) With reference to the contention that the Domestic Industry would exercise monopoly over MAA, the Domestic Industry submitted that Anti-dumping Rules do not bar the benefit of protection to Domestic Industry vis-à-vis dumped imports.
- (xix) It is evident from Eastman's response that Eastman USA first sells the PUC to Eastman Singapore, which in turn exports to India.
- (xx) Despite the mandated practice of the DGAD, separate questionnaires have not been filed for both Eastman USA and Eastman Singapore.
- (xxi) Since the Questionnaires have not been filed, the Authority should reject the responses and accord them the non-cooperative status.
- (xxii) Further, it is submitted that their data must be rejected outright for failure to comply with the requirements under the law and no further opportunity needs to be provided for any additional response.

### **Examination by the Authority**

13. Submissions made by the Domestic Industry and the opposing interested parties with regard to confidentiality and considered relevant by the Authority are examined and addressed as follows:

- (i) The Petitioner submits that the findings of the DG (Safeguards) should not be taken as a guiding point in the present anti-dumping investigation. Different standards and conditions apply for conducting various trade remedial investigations. Anti-dumping investigations relate to actions taken against dumping and safeguard investigations relate to emergency measures to limit imports temporarily, designed to "safeguard" domestic industries. The requirement of serious injury in a safeguard investigation is a higher threshold (accounting for unforeseen circumstances) than material injury as applicable under anti-dumping investigations. The Safeguard investigation was based on a period up to 2012-13, whereas the dumping petition is based on the period April 13 till June 14. Therefore, the findings of the DG (Safeguards) cannot be taken into consideration for the present anti-dumping investigation.
- (ii) With reference to the allegation by all opposing interested parties of the inappropriateness of sourcing import data from IBIS, instead of DGCI&S, the Authority notes that while the product under consideration had a dedicated classification, i.e., 29183040, the subject goods were being imported under various chapter sub-headings. Moreover, the transaction-wise import data was not available from DGCI&S and only a summary of the imports from each country for the financial year was available. There were several precedents from investigations conducted by the DGAD, whereby import data from IBIS was given preference over import data from DGCI&S. The IBIS import data provided by the Domestic Industry was adequately analyzed before initiating the investigation and methodology explained by the Domestic Industry was accepted after due consideration. Therefore, IBIS import data was considered as credible and reliable for the purposes of initiation of the present investigation. However, the request was made to the DGCI&S to arrange details of imports of subject goods into India for the past three years, including the

period of investigation, and the said information was obtained from the DGCIS and has now been adopted in this investigation.

- (iii) The opposing interested parties submitted that the production and sales of MAA by the Petitioner is seasonal as raised in the Safeguard investigation and inversely proportional to imports in the first two quarters of the calendar year. However, the correlation of the imports with sales of Domestic Industry in the Period of Investigation of the instant investigation is not suggestive of any seasonality. This trend as per averment of opposing interested parties is clearly non-existent as the movement of sales of the Domestic Industry mimic the movement of imports into India in first two quarters of calendar year 2014 which also forms a part of Period of Investigation. The production and sales of MAA by the Domestic Industry is strictly governed by the market forces of demand and supply. It has nothing to do with seasonality or access to raw material.
- (iv) The opposing interested parties submitted that the Petitioner claimed excessive confidentiality. The Authority notes that the allegation by made by opposing interested parties on the inadequacy and insufficiency of information provided by the Domestic Industry are baseless. Only such information that is not amenable to summarisation has been kept confidential with in consonance with the practice of the Authority. This information is adequate as well as sufficient to enable a reasonable understanding.
- (v) With reference to the allegation by various interested parties that the Petitioner did not provide information on undercutting, the Authority notes that though the DI had no claims with regard to undercutting, it is found that there is positive undercutting. It is in fact suffering from price suppression and price underselling. Use of Trade Remedial Measures to Maintain Monopoly
- (vi) The opposing interested parties contended that the Domestic Industry would exercise monopoly over MAA, however, the Petitioner is the sole producer of the subject goods. The issue about abuse of dominant position by being in a position of monopoly is not a subject matter under the Directorate General of Anti Dumping and Allied Duties.
- (vii) As far as the allegation that Eastman Chemicals Company had not filed all the information that is deemed necessary for receiving an individual margin of dumping, the Authority notes that Eastman USA as well Eastman Singapore had filed the separate questionnaire responses which were kept in the public file. Therefore, the Authority has decided to accept the Exporters Questionnaire response submitted by Eastman USA and has taken it into consideration for determination of the dumping margin.

## **ASSESSMENT OF DUMPING – METHODOLOGY AND PARAMETERS**

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

14. The opposing Interested Parties have made the following submissions:

- i). Ningbo Wanglong made limited exports of the PUC (less than 50 MT) by a single transaction done in the POI. Further, it is selling the PUC in India at a profit and above the Normal Value and thus there is no question of PUC being dumped by it or causing injury to the Domestic Industry.
- ii). Since Eastman has submitted all the relevant information, the Authority is requested to calculate individual dumping margins for all its trade channels and accordingly recommend duty rates in this behalf.

15. The Domestic Industry has made the following submissions:

- (i) China is a non-market economy. No country has granted market economy country status to China. None of the Chinese producers can satisfy market economy status.
- (ii) In the case of USA, the Domestic Industry proposed to consider its raw material prices and the utility rates as per the information provided in the petition.
- (iii) The net export price has been determined as per established rules after making adjustments towards the expenses such as ocean freight, marine insurance, bank charges, commission, packing, inland freight, loading/ unloading & port charges. VAT difference should be considered in case of China only.
- (iv) For the purpose of calculating dumping margin, fair comparison is made between the export price and normal value. The normal value and export price have been determined at ex-factory level and pertain to the same period. There are no known differences in the conditions and terms of sales. Both prices are free of taxes. Foreign producers are selling the goods in both the markets at the same level of trade. Thus, the comparison made is a fair comparison.
- (v) It is evident from Eastman's response that Eastman USA first sells the PUC to Eastman Singapore, which in turn exports to India. Despite the mandated practice of the DGAD, separate questionnaires have not been filed for both Eastman USA and Eastman Singapore. Since the Questionnaires have not been filed, the Authority should reject the responses and accord them the non-cooperative status. Further, it is submitted that their data must be rejected outright for failure to comply with the requirements under the law and no further opportunity needs to be provided for any additional response.

### **Examination by Authority**

#### **A. Normal Value**

#### **Determination of Normal Value for China PR**

16. Under section 9A (1)(c), the 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):

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

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

- a) Jiangsu Tiancheng Biochemical Products Co. Ltd., China
- b) Nantong Tianhong International Trade Co. Ltd., China
- c) Nantong Acetic Acid Chemical Co. Ltd., China
- d) Qingdao Double-Peach Speciality Chemicals (Group) Co. Ltd., China
- e) Ningbo Wanglong Technology Co. Ltd., China
- f) Eastman Chemical Company, USA
- g) Eastman Chemical Ltd., Singapore

18. Jiangsu Tiancheng Biochemical Products Co. Ltd., China also filed Market Economy Treatment questionnaire.

19. As far as the allegation that Eastman Chemicals Company had not filed all the information that is deemed necessary for receiving an individual margin of dumping, the Authority notes that Eastman USA as well Eastman Singapore had filed the separate questionnaire responses which were kept in the public file. Therefore, the Authority has decided to accept the Exporters Questionnaire response submitted by Eastman USA and has taken it into consideration for determination of the dumping margin.

20. The Authority notes that in the past three years, China PR has been treated as a non market economy country in anti-dumping investigations by India subject to rebuttal of the presumption by the exporting country or individual exporters/producers in terms of the AD Rules.

21. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy may be rebutted, if the exporter(s)/producer(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The co-operating exporters/producers of the subject goods from China PR are required to furnish necessary information/sufficient evidence as mentioned in sub paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:

- The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology, labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms; and
- The exchange rate conversions are carried out at the market rate.

22. The Authority sent copies of exporter's questionnaire and questionnaire on market economy treatment (MET) to exporters in China PR. However, except Jiangsu Tiancheng Biochemical Products Co. Ltd., China, no producer/exporter has claimed MET. Though Jiangsu Tiancheng Biochemical Products Co. Ltd., China had claimed Market Economy Treatment (MET) status, yet from the MET response it is seen that the company has not provided evidence backed with documents about the complete details/sources of raw material suppliers and the sources of capital invested by its promoters. Further MET response for the parent company, namely, Jiangsu Tiancheng Science Group has also not been filed. In the absence of this information, the Authority proposes not to grant the company MET status. In view of the above, the Authority considers it appropriate to proceed with para-7 of Annexure I to the Rules for determination of normal value in case of China PR which provides as under:

“In case of imports from non-market economy countries, normal value shall be determined on the basis if the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country

concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.

23. In view of the above, the Authority has determined the normal value having regard to para-7 of Annexure-I for the purpose of present investigation. The normal value for the subject goods imported from China PR into India has been constructed considering optimum consumption of major raw materials as per information provided by the domestic industry, international prices for raw material, conversion cost, interest, SGA etc. at the levels allowed for the domestic industry along with a reasonable profit on the cost of production. Accordingly, the normal value so determined is as indicated in the Dumping Margin Table below.

#### **Determination of Normal Value for USA**

##### **Normal Value for M/s Eastman Chemical Company, USA**

24. M/s Eastman Chemical Company, USA has responded and provided the information in the prescribed format. The company has sold \*\*\*MT of the PUC in the domestic market during the Period of Investigation (POI). On the spot verification of the company's data showed that out of the total domestic sales of \*\*\*MT of MAA during the POI, sales of \*\*\*MT of MAA were to one customer, namely, Future Fuel Chemical Company ("future fuel") and \*\*\*MT to other customers. The company claimed that out of \*\*\*MT of sales to Future Fuel, \*\*\*MT was not in the ordinary course of business and the rest, i.e., \*\*\*MT were made pursuant to usual arms length basis in the ordinary course of business. Sales of \*\*8MT of MAA during the POI were made pursuant to a long terms supply agreement that Eastman Chemical Company and Future Fuel had entered into as part of an earlier transaction involving the sale of Eastman USA's wholly owned subsidiary, Eastman SE, Inc. to Future Fuel in \*\*\*. \*\*\* MT of MAA were sold by Eastman Chemical Company to Future Fuel during the POI.

25. During the POI, Eastman Chemical Company made a total of \*\*\*MT of export sales to India. It is noted that the total domestic sales of Eastman Chemical Company (\*\*\*- including the sales claimed not to be made in the ordinary course) expressed as a percentage of its export sales to India would be \*\*\*% and \*\*\*% (\*\*\* - sales claimed to be made in the ordinary course). Keeping only \*\*\*% domestic sales claimed to be made in the ordinary course expressed as a percentage of its export sales to India, the company requested that its export sales of MAA to China during the POI may be considered appropriate for constructing the normal value for Eastman Chemical Company. In this regard, the Authority notes that Future Fuel Chemical Company is not a related company of Eastman USA and thus sales to Future Fuel cannot be said to not in the ordinary course of trade just because these were made under a long terms supply agreement. The Authority, therefore, considers all the domestic sales for determination of the normal value for Eastman USA.

26. The cost of production of the Company has been compared with the transaction wise

domestic sales and it was found that \*\*\*\*% sales are loss making. Therefore, the Authority determines the normal value on the basis of only the profitable domestic sales out of the total sales as reported in the Appendix-1. The adjustments on account of Discount, inland freight, packing cost and credit cost as claimed have been allowed. Accordingly, the normal value so worked out is indicated in the Dumping Margin Table below.

#### **Normal Value for non-cooperative producers/exporters from USA**

27. The Authority notes that no other producer/exporter from USA has submitted exporter's questionnaire response. Therefore, the normal value for the non cooperative producers/exporters from USA has been determined on the basis of facts available. Accordingly, the normal value so determined is as indicated in the Dumping Margin Table below.

#### **Determination of Export Price for China PR**

##### **Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd. (producer/exporter)**

28. Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd. has exported \*\*\*MT of the PUC to India during the POI. The goods have been exported directly to customers in India. The sales to Indian customers are on CIF basis. The producer/exporter has claimed adjustments on account of port and handling charges, ocean freight, marine insurance, credit expenses, and bank charges, which have been allowed. The net export price worked out by the Authority is as shown in the Dumping Margin Table below.

##### **Jiangsu Tiancheng Biochemical Products Co., Ltd.(producer/exporter)**

29. Jiangsu Tiancheng Biochemical Products Co., Ltd. has exported \*\*\*MT of the PUC to India during the POI. \*\*\*MT of the subject goods have been exported directly and \*\*\*MT through B K Rekhatex (HK) Ltd., Hong Kong, to customers in India. The sales to Indian customers are on CIF basis. It is seen from the questionnaire response that B K Rekhatex (HK) Ltd., Hong Kong, has not filed its questionnaire response despite exporting \*\*\*\*% of the total exports of the subject goods to India. Since the information relating to substantial percentage of the subject goods exported to India is not been filed and thus the value chain is not complete, the Authority rejects the response of Jiangsu Tiancheng Biochemical Products Co., Ltd.

##### **Nantong Acetic Acid Chemical Co., Ltd.(producer/exporter) and Nantong Tianhong International Trade Co., Ltd.(exporter/trader)**

30. Nantong Acetic Acid Chemical Co., Ltd. is a producer/exporter of the subject goods and has exported the PUC to India during the POI directly and through a related party, namely, Nantong Tianhong International Trade Co., Ltd. \*\*\*MT of the goods have been sold directly and \*\*\* MT through a related party, namely, Nantong Tianhong International Trade Co., Ltd. Further, out of \*\*\* MT, \*\*\*MT have been sold to India during the POI, whereas \*\*\*MT have been sold before the POI. Hence to get average ex-factory price, only the quantity sold

during the POI by Nantong Acetic Acid Chemical Co., Ltd. (producer/exporter) and Nantong Tianhong International Trade Co. Ltd.(exporter/trader) have been considered. The sales to Indian customers are on CIF basis. However, the Authority has determined average ex-factory price after making due adjustments. The producer/exporter and exporter/trader have claimed adjustments on account of port and handling charges, ocean freight, marine insurance, credit expenses and bank charges which have been allowed. The net export price worked out by the Authority is as shown in the Dumping Margin Table below.

### **Ningbo Wanglong Technology Co. Ltd., China**

31. Ningbo Wanglong Technology Co. Ltd. (producer/exporter) has exported \*\*\*MT of the PUC to India during the POI under \*\*\*transaction. The company's total production volume of the subject goods in the POI is \*\*\*MT. The export volume to India in the POI is a mere \*\*\*% as against the company's total production volume of the subject goods in the POI. The Authority notes that the exports made by Ningbo Wanglong Technology Co. Ltd to India in the POI are too insignificant to represent fair export price behaviour. Further, the Authority has also noted that the average export price from China PR during the POI is much less than that of Ningbo Wanglong Technology Co. Ltd, clearly indicating that the export price of Ningbo Wanglong Technology Co. Ltd. is not in the normal course of trade. Therefore, the Authority does not considers the exports made by Ningbo Wanglong Technology Co. Ltd for granting them the individual dumping margin.

### **Non-Cooperative exporters from China PR**

32. The Authority notes that no other exporter/producer from China PR has responded to the Authority in the present investigation. Therefore, the Authority proceeds to determine the net export price on the basis of facts available. Accordingly, the export price so determined is as indicated in the Dumping Margin Table below.

### **Determination of Export Price for USA**

#### **Determination of Export Price for M/s Eastman Chemicals Company, USA (Producer) through M/s Eastman Chemical Ltd, Singapore (Exporter/Trader)**

33. The Authority notes that Eastman USA manufactures MAA and in the case of exports of MAA to India, Eastman USA firstly sells the PUC to Eastman Chemical Ltd, Singapore (Eastman Singapore), a wholly owned subsidiary of Eastman USA (without physically supplying Eastman Singapore with the PUC) and Eastman Singapore processes the invoices of all export sales made by Eastman USA to India. Eastman Singapore raised the invoices and processed the orders and exported the PUC to customers in India. Both Eastman USA and Eastman Singapore filed the questionnaire responses.

34. The company has exported \*\*\*MT of the PUC to India during the Period of Investigation (POI). The adjustments claimed are being considered for determination of net export price, i.e., ocean freight, insurance, packing cost and credit cost. The net export price for Eastman USA (Producer) and Eastman Singapore (Exporter) so determined is as indicated in the Dumping Margin Table below.



## Determination of Export Price for Non-Cooperative exporters from USA

35. The Authority notes that no other exporter/producer from USA has responded to the Authority in the present investigation. Therefore, the Authority proceeds to determine the net export price based on facts available. Accordingly, the export price so determined is as indicated in the Dumping Margin Table below.

### Dumping Margin Table

36. Considering the proposed Normal Values and the Export prices as determined as above, the Dumping Margin for the producers/exporters from the subject countries is determined as follows:

Producer	Exporter	Normal Value (US\$/Kg)	Net Export Price (US\$/Kg)	Dumping Margin (US\$/Kg)	Dumping Margin (%)	Dumping Margin Range (%)
<b>China PR</b>						
Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd.	Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd.	***	***	***	***	25-50
Nantong Acetic Acid Chemical Co., Ltd.	Nantong Acetic Acid Chemical Co., Ltd.	***	***	***	***	25-45
	Nantong Tianhong International Trade Co., Ltd.		***	***	***	
Any other	Any other	***	***	***	***	40-50
<b>USA</b>						
Eastman Chemical Company	Eastman Chemical Ltd, Singapore	***	***	***	***	120-150
Any other	Any other	***	***	***	***	400-450

## ASSESSMENT OF INJURY

37. The opposing interested parties have made the following submissions with regard to injury and causal link.

- There is an increase in the imports from the subject countries in the POI as compared to 2012-13. It is further submitted that over all imports have increased up to 2013-14 and declined thereafter in the POI. Thus, the increase in imports from the subject countries is a mere realignment of imports.
- Domestic Industry is able to increase its production and sales with increase in demand. The production and sales have, in fact, doubled in the POI as compared to the previous year.
- Demand for the PUC has increased in absolute terms. The imports are bound to increase because of increase in demand and the scarcity of domestic supply of goods.
- The market share of the Domestic Industry sharply increased from 30.85% in the POI

to 46.16% whereas the market share of imports from subject countries only increased by less than 2% from the base year till the POI.

- (v) It is not explained that when import prices have increased over the injury period, what prevented the Domestic Industry to increase its prices to the level of landed prices of imports. It is also not explained why the imports are increasing despite import prices being higher than the domestic selling price.
- (vi) As regards price suppression alleged by the Petitioner, it is submitted that till the POI, the increase in selling price was more than the increase in cost. In the POI, however, the increase in cost was three times higher than the increase in price.
- (vii) With significant increase in production and capacities of the Domestic Industry, the inventories with the Domestic Industry have significantly declined by 17%. Whereas production has increased by more than 100%.
- (viii) Production of the Domestic Industry has increased significantly over the injury period. However, since the production is below the capacity of the first plant, the Authority may kindly examine the reasons for such low production by the Petitioner.
- (ix) The Domestic Industry has submitted that it has suffered severely in terms of profits and return on capital employed. Even if this is correct, it's on account of the Petitioner's own intrinsic reasons. Expansion of capacity on the POI has led to high overhead cost and finance cost.
- (x) The impact on the profitability of the Domestic Industry is due to the capital intensive expansion and cannot be attributable to the imports of PUC from subject countries.
- (xi) The Petitioner has been suffering losses for quite some time. The DG (Safeguards) had investigated the surge in imports and the injury caused to the Domestic Industry. The period considered by the DG (Safeguards) included a period up to 2012-13. The DG (Safeguards) found no merits for the imposition of safeguard duties. Thus, continued financial losses by the Domestic Industry are not on account of imports.
- (xii) The Petitioner has enhanced its capacities significantly in the POI. The Petitioner enhanced its capacity even when the previously existing capacities were underutilized.
- (xiii) Capacity utilization of the Domestic Industry increased in 2011-12 and then declined in 2012-13. However, it has increased during the POI despite capacity additions.
- (xiv) Capacity utilization in the POI was higher than the base year. The increase in capacity utilization was despite doubling of capacities. This clearly shows that if the Petitioner was not able to increase production earlier, it was due to capacity constraints and not sales constraints.
- (xv) The import prices have increased consistently over the period in consonance with increase in raw material prices.
- (xvi) The raw materials for the PUC constitute a significant part of the costs. The Petitioners have shown a significant increase in cost in the POI. Respondents analyzed month-wise imports of raw material which shows decline in prices. The Domestic Industry refuted this argument during the public hearing stating that import prices in USD terms have increased. However, it is submitted that the price of glacial acetic acid, which constituted 65% of the cost, in USD terms, also shows a decline.
- (xvii) Having admitted that raw material constitutes significant proportion of the cost of this product, the Authority may kindly look into the elements that caused increase in the

cost of production in the Domestic Industry. It would be seen that the enhancement of capacity has led to increase in cost leading to increase in losses.

- (xviii) Imports have increased and so has the production and sale volume of the Domestic Industry in view of the increase in demand. It may be noted that until 2012-13, the demand was more than the capacity. Further import prices have increased and imports are not undercutting the prices of the Domestic Industry. Thus, injury if any to the Domestic Industry cannot be attributed to the alleged imports.
- (xix) Domestic Industry has not suffered any injury. Rather, injury, if any, has been caused by its own decision to focus on the production of other more remunerative Diketene derivatives. In this regard, the DG (Safeguards) concluded that the Domestic Industry's restrictive/regulated production of MAA in accordance with their own suitability indicates that their assertion on loss of market share is incorrect.
- (xx) Ningbo Wanglong has submitted at the outset that it has made limited exports of the PUC (less than 50 MT) by a single transaction in the POI. Further, it is selling the PUC in India at a profit and above normal value. Therefore, there is no question of the PUC being dumped or causing injury to the Domestic Industry.

#### **Submissions made by Domestic Industry**

38. The Domestic Industry has made the following submissions with respect to the assessment of injury and causal link:

- (i) It is submitted that the examination of the performance of the Domestic Industry shall substantiate that the Domestic Industry is suffering material injury due to the incessant dumping of the subject goods from the Subject Countries.
- (ii) The imports from the subject countries have increased during the injury period when compared on a yearly trend as well as base year. In relation to the domestic production and sales of the Petitioner, the imports from the subject countries are still substantially high and the rate of increase of the imports is significant.
- (iii) The Domestic Industry has increased its price over the injury period consequent to the increase in cost of sales. Despite the fact that the prices are at par, the imports are increasing because of severe price suppression, resulting in material injury to the Domestic Industry.
- (iv) The landed value of the imported product is not higher than the domestic price in real terms and no allegations with respect to price undercutting have been made by the Domestic Industry.
- (v) The Petitioner has been forced to sell at a price which is lower than the import parity level in order to make sales in the Indian market to sustain its operations and keep its plant in an operating state.
- (vi) Domestic Industry is forced to match import parity prices in order to maximize sales to keep capacity utilization higher and recover fixed costs. Therefore, there is no price undercutting.
- (vii) In light of the growing demand for the PUC in the country, the Domestic Industry ought to have been able to sell the subject goods at reasonable profits in the home

market. However, it is not able to do so.

- (viii) The Petitioner is not even recovering its cost of sales, let alone minimum return on capital employed. Moreover, on a comparison of the landed prices of the imports of the subject goods from the Subject Countries and the Non-injurious price of the Domestic Industry, it can be seen that there is significant under-selling which is materially injuring the Domestic Industry.
- (ix) It is clear from the above that the Domestic Industry is unable to realize the fair selling price and is forced to sell at prices below the cost of the subject goods in order to compete with the dumped imports from the subject countries. Hence, the Domestic Industry is forced to match or better the prices offered by the dumped imports from the Subject Countries.
- (x) The domestic sales of the Domestic Industry have been adversely affected by the dumping of the subject goods into India from the Subject Countries. It can be seen that the sales of the Petitioner had significantly declined in 2012-13 as compared to 2011-12. However, the Domestic Industry has been forced to make sales at suppressed prices during the period of investigation, to compete with the low priced dumped imports in a bid to recover its marginal costs and to liquidate inventory.
- (xi) The Domestic Industry is incurring significant losses as it is being forced to sell the subject goods at prices lower than the costs owing to significantly low prices of the dumped imports from the subject countries.
- (xii) Moreover, the dumping of the subject goods has yielded a negative return on capital employed to the Domestic Industry and is causing material injury to the Domestic Industry.
- (xiii) In light of the growing demand for the PUC in the country, the Domestic Industry ought to have been able to sell the subject goods at reasonable profits in the domestic market. However, while the cost of sales increased constantly till the POI, the profitability of the Domestic Industry has gone down by over 50% and the losses have accumulated.
- (xiv) The demand in the country has increased significantly as was anticipated by the Domestic Industry. In view of the rising demand, the capacity was increased in line with the business plan so that the Domestic Industry is equipped to meet the Indian demand.
- (xv) The Petitioner invested towards expanding its capacity to meet the total demand of the subject goods in the country. However, due to the compulsion of competing with unfairly priced imports, the capacity of the Petitioner is grossly underutilized.
- (xvi) The incessant dumping of imports from the subject countries has not allowed the Domestic Industry to attain a level of capacity utilization so that its operations become viable. It is clearly evident that more than 55% of its capacity still remains idle which is causing material injury to the Domestic Industry.
- (xvii) The submissions as regards decline of raw material prices made by the opposing interested parties are liable to be outrightly rejected as the raw material prices have increased during the injury period as well as the Period of Investigation. The Authority would note the same from the on-site verification conducted. Further, it should be noted that there has been a significant depreciation of "Rupee" in terms of

currency exchange rates over the Period of Investigation, which has compounded the woes of DI as acetic acid is completely imported.

- (xviii) The prices of the dumped imports have not increased to commensurate with the global increase in prices of raw materials and have suppressed the selling prices of the Domestic Industry. Clearly the imports from the subject countries are entering the market at prices that will continue to have a significant suppressing effect on domestic prices.
- (xix) It should be noted that the domestic sales of the Petitioner are adversely affected by the reason of price suppression as they have not been able to increase the price of product under consideration. While the cost to make and sell has been steadily increasing, the selling price of the Petitioner has remained below the cost to make and sell throughout the injury period. The delta has only kept widening thereby attributing to the injury suffered by the Petitioner.
- (xx) Despite the increase in production, the capacity of the Petitioner is still grossly underutilized especially in light of the increased demand in the country.
- (xxi) Without prejudice to increase in capacity, the Petitioner is compelled to compete with unfairly priced imports and has been forced to adopt import parity pricing which has resulted in an improvement in production of subject goods.
- (xxii) The depressed performance of the Petitioner during the period of investigation and the injury period is clearly attributable to the dumped imports from the subject countries in the Domestic Industry.

### **Examination by the Authority**

39. The Authority has taken note of various submissions of the interested parties on injury to the domestic industry and has analyzed injury to the domestic industry considering the facts available on record and applicable law. The submissions made by the interested parties have been considered to the extent found relevant and examined as follows in the relevant headings.

40. With regard to the contention of severe breach of causality, the Authority has made a separate analysis of causal link under appropriate heading. However, it notes that there are significant volumes of imports from subject countries.

41. As regards the contention that injury to the Domestic Industry is on account of its own inefficiencies, the Authority notes that the Domestic Industry has in fact made profits on other products that it produces. Therefore, the deterioration in performance and consequent injury to the domestic industry cannot be attributed to these parameters.

42. As regards the contention that injury margin calculations are baseless, the Authority has made its analysis under appropriate headings. As regards the contentions pertaining to non-attribution factors, the Authority has made a separate analysis under appropriate headings.

43. Annexure-II of the AD Rules provides 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 articles; and (b) the consequent impact of these imports of the domestic producers of such articles. 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.

44. 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 I 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.”*

45. For the examination of the impact of imports on the domestic industry in India, the Authority has considered indices having a bearing on the state of the industry such 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.

46. Annexure II (iii) of the Anti Dumping Rules provides that in case imports of a product from more than one country are being simultaneously subjected to anti dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that:-

- a. The margin of dumping established in relation to imports from each country/territory is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;
- b. Cumulative assessment of the effect of imports is appropriate in light of conditions of competition between the imported articles and the like domestic articles.

47. In the present case, it is noted that:

- a. The margin of dumping from each of the subject countries is more than the limits prescribed;
- b. The volume of imports from each of the subject countries is more than the limits prescribed;
- c. Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries compete not only with the like goods offered by each of them but also the like goods offered by the domestic industry in the Indian market.

48. In view of the above, the Authority considers it appropriate to cumulatively assess the effect of imports. The Authority has analyzed injury to the domestic industry after analyzing the information submitted by the interested parties.

### **Volume Effect**

#### **Assessment of Demand**

49. The Authority has determined the demand as the sum of domestic sales of the domestic industry, sales of other Indian producers and imports of the subject goods in India (as per the transaction wise import data procured from the DGCI&S) from all sources. The demand so assessed is shown in the following table.

<b>Particulars</b>	<b>Unit</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>POI</b>	<b>POI (Annualized)</b>
Imports from USA	MT	1,087	1,665	1,344	2,578	2,062
Imports from China PR	MT	1,428	1,601	2,095	1,974	1,579
Imports from Subject Countries	MT	2,515	3,267	3,439	4,552	3,641
Imports from Other Countries	MT	1,131	505	891	447	357
Domestic Industry Sales	MT	1,778	2,692	2,050	4,903	3,922
Demand	MT	5,424	6,464	6,380	9,901	7,921
Domestic Production (Total)	MT	1,975	2,604	2,045	5,268	4,215

#### **Import Volume and Market Share**

<b>Particulars</b>	<b>Unit</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>POI</b>	<b>POI (Annualized)</b>
<b>Imports Volume</b>						
Imports from USA	MT	1,087	1,665	1,344	2,578	2,062
Imports from China PR	MT	1,428	1,601	2,095	1,974	1,579
Imports from Subject Countries	MT	2,515	3,267	3,439	4,552	3,641
Imports from Other Countries	MT	1,131	505	891	447	357
<b>Total</b>	<b>MT</b>	<b>3,646</b>	<b>3,772</b>	<b>4,330</b>	<b>4,998</b>	<b>3,999</b>
<b>Market Share</b>						
Imports from USA	%	29.82	44.16	31.04	51.58	51.58
Imports from China PR	%	39.16	42.45	48.38	39.48	39.48
<b>Imports from Subject Countries</b>	<b>%</b>	<b>68.98</b>	<b>86.61</b>	<b>79.42</b>	<b>91.06</b>	<b>91.06</b>
Imports from Other	%	31.02	13.39	20.58	8.94	8.94

Countries						
Total Imports	%	100.00	100.00	100.00	100.00	100.00
<b>Market Share in Demand</b>						
Sales of Domestic Industry	%	32.78	41.65	32.13	49.52	49.52
Imports from subject countries	%	46.37	50.54	53.90	45.97	45.97
Other Countries	%	20.86	7.81	13.97	4.51	4.51

50. It is noted that the submission made on behalf of the interested parties states that the absolute increase in imports is a mere realignment of imports between subject countries and other countries, while, the imports in relative terms have declined.

51. Contrary to the submissions made by the opposing interested parties with respect to volume effect, the imports from the subject countries have increased during the injury period when compared from the base year.

### **Price Effect**

52. 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.

### **Price undercutting**

53. 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.

Particulars	UOM	USA	China PR	Subject Countries
Landed value of imports	Rs./kg	***	***	***
Net Sales Realization	Rs./kg	***	***	***
Price Undercutting	Rs./kg	***	***	***
	%	***	***	***
	Range	0 to 5	0 to 5	0 to 5



54. It is noted that the landed price of the subject goods from the subject countries is below the selling price of domestic industry showing positive price undercutting being caused by the dumped imports from the subject countries.

#### Price Underselling

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

<b>Particulars</b>	<b>UOM</b>	<b>USA</b>	<b>China PR</b>	<b>Subject countries</b>
Non Injurious Price	Rs./kg	***	***	***
Landed Value	Rs./kg	***	***	***
Price Underselling	Rs./kg	***	***	***
	%	***	***	***
	Range	15-25	15-25	15-25

56. It is noted that the domestic industry has suffered significant price underselling during the investigation period on account of imports of the subject goods from the subject countries.

#### Price Suppression

57. 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. The price suppression is evident from the below table:

<b>Particulars</b>	<b>Unit</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>POI (Annualized)</b>
Landed Price from Subject Countries	Rs. Kg	***	***	***	***
Indexed Landed Price	Indexed	100.00	102.52	106.94	108.34
Cost of Sales	Rs. Kg	***	***	***	***
Indexed Cost of Sales	Indexed	100.00	103.72	106.29	119.11
Domestic Net Sales Realization	Rs. Kg	***	***	***	***
Indexed Net Sales Realization	Indexed	100.00	107.27	107.56	111.52

58. The Authority notes that the cost of sales increased due to the increase in the raw material prices. Further, whereas both the cost of sales and the selling price have increased

when compared with the base year, the increase in selling price is much below the increase in the cost of sales. Thus, the imports are suppressing the domestic prices in the injury period.

### **Economic Parameters of the Domestic Industry**

59. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the 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. An examination of performance of the domestic industry reveals that the domestic industry has suffered material injury.

60. Various injury parameters relating to the domestic industry are discussed below:

#### **(a) Capacity, Production, Capacity Utilization and Sales**

(i) Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

<b>Particulars</b>	<b>Unit</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>POI</b>	<b>POI (Annualised)</b>
Installed Capacity of DI	MT	4,950	4,950	4,950	11,875	9,500
Production of Domestic Industry	MT	1,975	2,604	2,045	5,268	4,215
Capacity Utilisation of DI	%	39.89	52.61	41.32	44.37	44.37

(ii) It is noted that the domestic industry's installed capacities are grossly underutilized. The Domestic Industry presently has sufficient capacity to meet the demand of the subject goods in the country and had invested towards expanding its capacity to meet the projected increasing demand of the subject goods in the country, which in fact increased significantly in the POI in comparison to the base year. The Domestic Industry has to compete with unfairly priced imports and is forced to adopt import parity pricing which has resulted in an improvement in the production of subject goods. Despite the increase in production, the capacity of the Petitioner is still grossly underutilized especially in light of the increased demand in the country. The depressed performance of the Petitioner during the period of investigation and the injury period is because of the dumped imports from the subject countries.

**(b) Market Share**

Market Share in Demand	Unit	2010-11	2011-12	2012-13	POI
Sales of Domestic Industry	%	32.78	41.65	32.13	49.52
Imports from subject countries	%	46.37	50.54	53.90	45.97
Other Countries	%	20.86	7.81	13.97	4.51
Total	%	100.00	100.00	100.00	100.00

(iii) It is noted that the Domestic Industry started its operations to manufacture the product under consideration in 2010-11 and since then has been competing with imports to gain market share in the Indian market. Owing to unfair pricing of the imports, the Domestic Industry had to sell at prices which are lower than the import parity level in order to make sales in the Indian market to sustain its operations and keep its plant in an operating state. Despite this, the Authority notes that the Domestic Industry's market share was less than 50%, despite having the capacity to meet the country's demand.

**(c) Profitability**

(iv) The profits of the domestic industry have been examined as under:

Particulars	Unit	2010-11	2011-12	2012-13	POI (Annualised)
Cost of Sales	Rs./MT	***	***	***	***
	Indexed	100.00	103.72	106.29	119.11
Selling price	Rs./MT	***	***	***	***
	Indexed	100.00	107.27	107.56	111.52
Profit/Loss	Rs./MT	***	***	***	***
	Indexed	(100.00)	(88.41)	(100.82)	(151.84)
Profit/Loss	Rs. Lacs	***	***	***	***
	Indexed	(100.00)	(66.63)	(75.10)	(263.19)

(v) It is noted that the opposing interested parties have made an averment based on the 2013-14 financial statements of the Domestic Industry that it is a financially healthy company and that its operations have been profitable.

(vi) However, the Authority notes that profitability has deteriorated dismally and stayed at negative levels in the injury period.

**(d) Inventories**

(vii) The submission made on behalf of opposing interested parties states that the inventories with the Domestic Industry have significantly declined. It is noted that this is due

to the fact that the Domestic Industry was forced to make sales at suppressed prices to compete with the dumped imports and liquidate the inventory.

Particulars	Unit	2010-11	2011-12	2012-13	POI	POI (Annualized)
Domestic Industry Sales	MT	1,778	2,692	2,050	4,903	3,922
Inventory	MT	98.16	***	***	***	***
Index	MT	100	142.91	83.18	83.31	83.31

**(e) Employment and Wages and Productivity**

(viii) The status of employment levels, wages and productivity of the domestic industry is as follows:

Particulars	UOM	2010-11	2011-12	2012-13	POI
No. of Employees	Nos	***	***	***	***
	Indexed	100.00	111.94	134.83	139.30
Productivity Per Employee	MT/Nos	***	***	***	***
	Indexed	100.00	117.83	76.82	153.23
Productivity Per Day	MT/Day	***	***	***	***
	Indexed	100.00	131.90	103.58	213.45
Wages per unit of Production	Rs./Kg	***	***	***	***
	Indexed	100.00	120.94	194.48	112.77

(ix) It is noted that employment, productivity and wages have increased in the POI in comparison with the base year.

**(f) Magnitude of Dumping**

(x) Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margin determined against the subject countries are above de-minimis and substantial.

**(g) Ability to raise capital**

(xi) With regard to the ability to raise investments, it is noted that the domestic industry has not made fresh investments in the product under consideration, except for the planned expansions it had already invested in. Further, even though the demand is less than the capacity with the domestic industry, the domestic industry is not able to utilize its capacity and is suffering losses.

**(h) Factors affecting Domestic Prices**

(xii) The examination of the import prices from the subject countries and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market shows that the landed value of imported material from the subject countries is below the selling price and cost of production of the domestic industry, causing price undercutting and significant price suppression and underselling in the Indian market. There is no viable substitute to this product. It is also noted that demand for the subject goods was showing significant increase during the injury period and this could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is landed value of the subject goods from the subject countries.

**(i) Growth**

(xiii) The various parameters of growth are examined as below. It is noted that some of the growth parameters have deteriorated. Production and sales have shown a growth as the Domestic Industry was forced to produce and sell in order to build and retain market share, even though at the expense of its profitability. The overall growth of the domestic industry has been adverse during the injury period.

Growth		2010-11	2011-12	2012-13	POI
Production (MT)	%	-	31.90	(21.47)	106.08
Sales Volume (MT)	%	-	51.42	(23.85)	91.30
Cost of Sales (Rs./Kg)	%	-	***	***	***
Index	%	-	100	66.40	324.19
Selling Price (Rs./Kg)	%	-	***	***	***
Profitability (Rs./Kg)	%	-	***	(***)	(***)

**Conclusion on material injury**

(xiv) After examining the volume and price effects of the imports from the subject countries and its impact on the domestic industry, it is noted that the dumped imports of the subject goods from the subject countries have increased significantly in absolute terms as also in relation to consumption of the subject goods in India. After examining other volume parameters, it is noted that domestic industry has suffered significant volume injury on account of dumped imports of subject goods from the subject countries. Further, with regard to the price effect on account of imports of the subject goods from the subject countries, the domestic industry has suffered price undercutting, price underselling and price suppression on account of imports of product under consideration from the subject countries as sales price of the subject goods could not increase in proportion to the increase in the cost of production of the subject goods during the injury period. With regard to consequent impact of the dumped imports on the domestic industry, it is concluded that the performance of the domestic industry has deteriorated. The decline in profits is quite significant and material. Thus, the Authority concludes that the domestic industry has suffered injury from dumped imports.

### Causal Link

(xv) It is noted that the depressed performance of the Petitioner during the period of investigation and the injury period is clearly attributable to the dumped imports from the subject countries. Therefore, the Petitioner's low production is not due to capacity constraints as alleged in the submission made by interested parties.

### **Other known factors**

61. Having examined the existence of material injury, volume and price effects of dumped imports 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) Technological Advancements

(i) There have been no major technological advancements that may have been a cause for injury or material retardation.

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

(ii) There are no trade restrictive practices currently which can be attributed to the cause of injury to the Domestic Industry.

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

(iii) There is no observable change in contraction of demand and the pattern of consumption.

(d) Productivity of the Domestic Industry

(iv) Based on the current situation of the market trends and internal operations, the productivity of the Petitioner has not caused injury to the Domestic Industry, but with the imposition of duties, the optimal productivity will be achieved.

(v) The dumped goods compete directly with the goods produced by the Domestic Industry, at the same level, viz., commercially, standards and specifications as domestically produced subject goods.

(vi) The imported dumped goods and the domestically produced goods are like articles and are used for the same applications and end use.

(vii) Thus, pricing becomes an important factor for purchase of the subject goods and determine whether the subject goods are to be procured either from imported sources or domestic sources.

(e) Volume and imports from third countries

- (viii) Imports from third countries were negligible or are already subject to anti dumping duties and thus could not have caused injury to the domestic industry. Most of the imports of the subject goods from countries other than the subject countries and countries attracting anti dumping duty were at a price higher than that from the subject countries.

(f) Export performance of the domestic industry

- (ix) The export performance is not relevant since the Authority has considered only the domestic performance of the Domestic Industry for injury analysis.

(g) Parameters establishing causal link

- (x) It is noted that while listed known other factors do not show that injury to the domestic industry has been caused by these factors, the following parameters show that injury to the domestic industry has been caused by the dumped imports. The volume of dumped imports from the subject countries increased resulting in increase in the share of dumped imports in the demand of the product under consideration in India. Consequently the domestic industry lost its market share.

- (xi) Unabated dumping of the PUC from the subject countries is causing an adverse effect on the operations of the Domestic Industry.

- (xii) Hence, there is a causal link between the material injury to the Domestic Industry and the dumping of the subject goods from the subject countries.

**Conclusion on Injury and Causation**

62. From the above examination of injury and causal link, the Authority proposes to conclude that the domestic industry has suffered injury as a result of dumping of the subject goods from the subject countries. There has been a significant increase in the volume of dumped imports from the subject countries in absolute terms throughout the injury period and in relation to production and consumption in India. The dumped imports have adversely impacted the prices of the domestic industry in the market. The dumping margin for the subject countries has been determined and is considered significant. Performance of the domestic industry has significantly deteriorated in respect of profitability and overall performance as the domestic industry has also suffered price undercutting, price underselling and price suppression. The Domestic Industry's installed capacities are grossly underutilized. The Authority concludes that the domestic industry has suffered injury as a result of dumped imports from the subject countries.

**Magnitude of Injury Margin**

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

**Injury Margin Table**

Producers	Exporters	NIP (USD/Kg)	Landed Value (USD/Kg)	Injury Margin (USD/Kg)	Injury Margin (%)	Injury Margin Range (%)
<b>China PR</b>						
Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd.	Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd.	***	***	***	***	20-30
Nantong Acetic Acid Chemical Co., Ltd.	Nantong Acetic Acid Chemical Co., Ltd.	***	***	***	***	15-25
	Nantong Tianhong International Trade Co., Ltd.	***	***	***	***	
Any other	Any other	***	***	***	***	25-35
<b>USA</b>						
Eastman Chemical Company	Eastman Chemical Ltd, Singapore	***	***	***	***	10-20
Any other	Any other	***	***	***	***	15-30

64. The level of injury margins as determined are considered significant.

## INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

65. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. 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.

66. 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.

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

### **Post Disclosure Statement submissions by the opposing Interested Parties**

67. Following are in brief the post Disclosure Statement submissions made by the opposing Interested Parties:

- (a) In the case of Jiangsu Tiancheng Biochemical Products Co., Ltd., it has been recorded that since B K Rekhatex (HK) Ltd., Hong Kong, has not filed its questionnaire response despite exporting substantial percentage of the subject goods to India and thus the value chain is not complete, the Authority proposes to reject the response of Jiangsu Tiancheng Biochemical Products Co. Ltd., China PR. It is submitted that the above conclusion arrived by the Authority in its Disclosure Statement is contrary to the law and practice followed by various investigating Authorities in the world. Jiangsu Tiancheng Biochemical Products Co., Ltd. has reported all sales transactions which were destined for exports to India. The same formed the basis of reporting export transactions in Appendix-2 of the Questionnaire Response. The goods have been sold first to an independent buyer and the same should form basis of calculating Export Price to India. Goods have physically transported to India directly from China PR. Filing of response by non-related trader/inventor is beyond the control of Jiangsu Tiancheng Biochemical Products Co., Ltd. Such non filing of Questionnaire Response cannot be used as a tool to reject Jiangsu Tiancheng Biochemical Products Co., Ltd., China PR, response.
- (b) Further, the rejection of complete response of Jiangsu Tiancheng Biochemical Products Co., Ltd., China PR, by the Designated Authority is also in gross violation of Para 5 of the Annex II of Anti-dumping Agreement.
- (c) B K Rekhatex (HK) Ltd., Hong Kong, is not a related company of Jiangsu Tiancheng Biochemical Products Co., Ltd., China PR. Further, the sale price between Jiangsu Tiancheng Biochemical Products Co., Ltd., China PR and this company is at arm's length basis not influenced by compensatory arrangement. In view of the above the export price claimed by Jiangsu Tiancheng Biochemical Products Co., Ltd., China PR, with regard to sales to India directly and through B K Rekhatex (HK) Ltd., Hong Kong, should be accepted for determination of Export Price.

- (d) Arbitrary rejection of data submitted by Ningbo Wanglong: The said rejection of data on the ground that Ningbo Wanglong has made limited exports in the POI is unreasonable and wrong in law. The reason for making limited exports by Ningbo Wanglong was that during the POI there was shortage of supply of PUC in China PR. Accordingly, Ningbo Wanglong preferred to sell the PUC in China PR (domestic market) rather than exporting to India. Limited export is and cannot be an indicator, justification, reason and / or ground to show that it does not represent fair trade pricing. As long as the exports are made in normal course of trade [which was done in the present case], the export price can be used and relied upon by the Authority. It is relevant to state that Ningbo Wanglong is a regular exporter of PUC to India. Subsequent to the initiation of the subject investigation, Ningbo Wanglong exported about \*\*\*MT of PUC from January 2015 till date.
- (e) Ningbo Wanglong further submits that the export price of the exporter cannot be rejected by the Authority since Explanation (b) to Section 9A(1) of the Customs Tariff Act 1975 is not attracted in the present case. The explanation (b) (which is akin to Article 2.3 of the WTO Anti-dumping Agreement clearly states that only in cases where there is “no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed...” The said section read with the explanation does not allow the Authority to reject the data given by an exporter and construct the export price on the grounds of limited exports to India. Reliance is also made to H and R Johnson (India) Ltd.Vs. Designated Authority Ministry of Finance and Ors., 2005 (123) ECR 337 (Tri.-Delhi).
- (f) Further, Section 9A(6A) of the Act mandates that the margin of dumping shall be determined on the basis of the records concerning normal value and export price maintained and information provided, by such exporter or producer. Therefore, the rejection of export price of the Ningbo Wanglong for the reason that it made limited exports is against the statutory provisions.
- (g) Reference may also be made to Annexure II (Best information available in terms of paragraph 8 of article 6) of the WTO Anti-dumping Agreement for the purposes of interpretation of Article 6(8) as well as Rule 6(8) of the AD Rules. Clause 3 of the Annexure II makes it obligatory for the Authority to take into account the information given by an exporter if the information is (i) verifiable and is appropriately submitted so that it can be used in the investigation without undue difficulties, (ii) supplied in a timely fashion, and (iii) is supplied in a medium or computer language requested by the authorities, where applicable.
- (h) The Authority had more than 1year to raise its concerns about limited exports made by Ningbo Wanglong. No objection was ever raised by Authority, Domestic Industry and / or any other party in this regard. The Authority without observing the principles of Natural Justice and without giving an opportunity to Ningbo Wanglong to be heard in this regard, proceeded to reject Ningbo Wanglong’s data; (ii) put the Ningbo Wanglong in the ‘residuary category’ or the category of exporters who have not cooperated with the Authority.

- (i) Eastman USA submits that while the Authority has declined from treating the sales made to Future Fuel as not being in the 'ordinary course of trade', on account of Future Fuel Chemical Company not being related company of Eastman USA, it is submitted that Future Fuel not being a related company of Eastman USA, cannot be a ground for not treating the sales made by Eastman USA to Future Fuel as not being in the ordinary course of trade. The WTO Appellate Body observed in a case that, "“Where a sales transaction is concluded on terms and conditions that are incompatible with ‘normal’ commercial practice for sales of the like product, in the market in question, at the relevant time, the transaction is not an appropriate basis for calculating ‘normal’ value.” In this regard, it is submitted that whereas the sales to Future Fuel were above cost, they were significantly lower than the usual market price for MAA sales in the domestic market.
- (j) The domestic industry is not facing any injury. Various parameters such as sale, production, market share, capacity utilization of the Domestic Industry etc, have shown a positive trend. Ningbo Wanglong denies that there is price underselling and suppression due to imports of the PUC from the subject countries. It may be noted there has been a constant increase in the landed price and sales value of PUC from the subject countries as well as from China PR individually. An analysis of injury parameters clearly shows that the Domestic Industry did not suffer any injury. The Domestic Industry's Balance Sheet for period 2013-14, which forms a part of the POI, clearly shows that Domestic Industry is a financially healthy company and is in the mode of expansion.
- (k) The Authority has not dealt with the issue repeatedly raised by Ningbo Wanglong that excessive confidentiality has been claimed by the Domestic Industry.
- (l) The PUC is a major raw material used in Pyrazolone industry and pharmaceutical industry in India. Imposition of anti-dumping duty on PUC will adversely impact the said 2 sectors amongst others and will also be against public interest.

#### **Post Disclosure Statement submissions by the Domestic Industry**

68. Following are in brief the post Disclosure Statement submissions made by the Domestic Industry:

- (a) The Authority has rightly determined that the parameters and conditions for a safeguard investigation are different from those analyzed in an anti-dumping investigation. Anti Dumping investigations relate to actions taken against dumping (selling at an unfairly low price) from certain subject countries, i.e., China PR and United States, whereas Safeguard investigations relate to emergency measures to limit imports temporarily from all sources. Furthermore, the Period of Investigation in the instant Anti Dumping investigation is different than the Period of Investigation in the Safeguard investigation.
- (b) The Authority is requested to adopt the import data as provided by IBIS as it includes imports of the product under consideration which have not been recorded in the dedicated classification, i.e., 29183040.

- (c) The export price of Ningbo Wanglong Technology Co. Ltd. cannot be considered to represent the export price for China as their exports are too insignificant to be representative of fair pricing behaviour.
- (d) The Authority should compare the export data submitted by Ningbo Wanglong Technology Co. Ltd. with the DGCI&S's data. If the data provided by Ningbo Wanglong Technology Co. Ltd. deviates from the data provided in DSCI&S, then Ningbo Wanglong Technology Co. Ltd. should be considered as non-cooperative and the data should thus be rejected.
- (e) The Authority may also determine an appropriate export price based on third country export data of Ningbo in order to construct the export price.
- (f) The Authority is requested to ensure that the export price of Eastman USA reflects its true ex-factory value after deduction of all the post-factory expenses of Eastman USA as well as Eastman Singapore.
- (g) The Authority is also requested to verify that Eastman Singapore is profit making, after considering its Selling, General and Administrative Expenses, so as to ensure that Eastman Singapore is not resorting to any middle-man dumping.
- (h) The Domestic Industry presently has sufficient capacity to meet the demand of the subject goods in the country. The Authority may note that while the increased capacity only became operational during the Period of Investigation, the Domestic Industry already had plans to expand its capacity in the Period of Investigation according to its Business Plan in order to cater to the increasing domestic demand for the Product under Consideration. The Domestic Industry had received finance from financial institutions based on this Business Plan and had invested towards expanding its capacity well before the POI.
- (i) The Domestic Industry submits that its financial statement for 2013-14 shows a profit because the Laxmi Organic Industries Limited is a multiproduct company. Therefore, the profits reflected in the financial statement are due to the other products sold by the Domestic Industry and do not relate to the subject goods. It is also submitted that past practice and precedents of the Authority clearly notes that anti-dumping investigations are product specific investigations and not company specific investigation.

### **Examination by the Authority**

69. The Authority notes that most of the above arguments of the opposing interested parties and the domestic industry are repetitive and have already been dealt with by the Authority in the Disclosure Statement earlier and have also been dealt with again in the Final Findings Notification.

- (i) Jiangsu Tiancheng Biochemical Products Co., Ltd. has exported substantial percentage of the subject goods to India through B K Rekhatex (HK) Ltd., Hong Kong, who has not been filed the response. Thus the value chain is not complete. The Authority notes that the company has not submitted any response of the above mentioned exporter/traders claiming that all the information which is in possession of the exporter/trader had been provided for the Authority and that the company does not

have information regarding complete value chain because of nature of the relationship between the company and its unrelated traders. In this regard, the Authority notes that since \*\*\*% of the subject goods produced by the company have been exported to India by the above mentioned exporter/trader, the company cannot claim that it has no relationship with them and cannot ask these companies to file the responses to complete the value chain. The Authority, therefore, maintains its stand to reject the response of Jiangsu Tiancheng Biochemical Products Co. Ltd., China PR.

- (ii) As far as rejecting the response of Ningbo Wanglong Technology Co. Ltd. (producer/exporter) is concerned, the Authority notes that the company's export volume to India in the POI is a mere \*\*\*% as against the company's total production volume of the subject goods in the POI. The Authority re-iterates that the exports made by Ningbo Wanglong Technology Co. Ltd to India in the POI are too insignificant to represent fair export price behaviour. Further, the Authority has also noted that the average export price from China PR during the POI is much less than that of Ningbo Wanglong Technology Co. Ltd, clearly indicating that the export price of Ningbo Wanglong Technology Co. Ltd. is not in the normal course of trade. It is also noted by the Authority that there are precedents where the Authority has rejected responses of cooperative producers/exporters on the ground that the exports made by such cooperative producers/exporters to India in the POI are too insignificant to represent fair export price behaviour. Therefore, the Authority maintains its stand not to consider the exports made by Ningbo Wanglong Technology Co. Ltd for granting them the individual dumping margin.
- (iii) As far as Eastman USA's contention is concerned, the Authority notes that Future Fuel Chemical Company is not a related company of Eastman USA and thus sales to Future Fuel cannot be said to not in the ordinary course of trade just because these were made under a long terms supply agreement. The Authority has, therefore, rightly considered all the domestic sales for determination of the normal value for Eastman USA.
- (iv) As far as the contention that excessive confidentiality has been claimed by the Domestic Industry, the Authority notes that the information provided by the interested parties on confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential and not disclosed to other interested parties.
- (v) As far as the submissions of the domestic industry are concerned, the Authority notes that it has already dealt with these submissions under appropriate headings in the Final Findings Notification.

## **CONCLUSION AND RECOMMENDATIONS**

70. After examining the submissions made by the interested parties and issues raised therein and considering the facts available on record, the Authority concludes that:

- a. The product under consideration has been exported to India from the subject

countries below the normal values.

b. The domestic industry has suffered material injury on account of the subject imports from the subject countries.

c. The material injury has been caused by the dumped imports of the subject goods from the subject countries.

71. The Authority notes that the investigation was initiated and it was notified to all the known interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an 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 duty is required to offset dumping causing injury. The domestic industry has requested for imposition of anti dumping duty to address injury being suffered.
72. Having regard to the lesser duty rule followed by the authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the anti-dumping duty equal to the amount indicated in the table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of the subject goods originating in or exported from the subject countries.

**Duty Table**

Sl.No.	Sub-heading	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit	Currency
1	29183040 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900	Methyl Acetoacetate	China PR	China PR	Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd.	Qingdao Double-Peach Specialty Chemicals (Group) Co., Ltd.	0.353	Kg	US\$
2	29183040 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900	Methyl Acetoacetate	China PR	China PR	Nantong Acetic Acid Chemical Co., Ltd.	Nantong Tianhong International Trade Co., Ltd.	0.277	Kg	US\$
3	29183040 29146990, 29153910, 29153940, 29153990, 29183090,	Methyl Acetoacetate	China PR	China PR	Any combination other than the combinations specified above		0.404	Kg	US\$

	29331990, 29410090 and 29189900								
4	29183040 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900	Methyl Acetoacetate	China PR	Any	Any	Any	0.404	Kg	US\$
5	29183040 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900	Methyl Acetoacetate	Any country other than the subject countries	China PR	Any	Any	0.404	Kg	US\$
6	29183040 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900	Methyl Acetoacetate	USA	USA	Eastman Chemical Company	Eastman Chemical Ltd, Singapore	0.243	Kg	US\$
7	29183040 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900	Methyl Acetoacetate	USA	Any	Any	Any	0.293	Kg	US\$
8	29183040 29146990, 29153910, 29153940, 29153990, 29183090, 29331990, 29410090 and 29189900	Methyl Acetoacetate	Any country other than the subject countries	USA	Any	Any	0.293	Kg	US\$

\*Note: Where there is overlapping of anti-dumping duty on the subject goods with respect to a subject country in different customs notifications, the duty applicable to that subject country shall be one imposed under the customs notification in which the said country has been specifically mentioned under the Column “Country of Origin”.

73. 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.
74. An appeal against the findings after its acceptance by the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in accordance with the Customs Tariff Act, 1975 as amended in 1995 and Customs Tariff Rules, 1995.

**(A.K. Bhalla)**

**Additional Secretary & Designated Authority**



