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

F. No. 6/25/2017-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, Parliament Street, New Delhi

Dated: 27.12.2018

FINAL FINDINGS

Subject: Anti-dumping duty investigation on the imports of Fluoroelastomers, (FKM), originating in or exported from People's Republic of China

1. F. No. 6/25/2017/DGAD: Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof.
2. And whereas, M/s Gujarat Fluorochemicals Limited (hereinafter also referred to as "Petitioner" or "Applicant" or "domestic industry") filed an application in the present case before the Designated Authority (hereinafter also referred to as the Authority), Directorate General of Trade Remedies in accordance with the Act and the Rules for initiation of anti-dumping investigation and imposition of appropriate duty thereof on dumped imports of "Fluoroelastomers", also known as FKM, (hereinafter referred to as subject goods or product under consideration) originating in or exported from People's Republic of China (hereinafter also referred to as subject country).
3. And whereas, the Authority on the basis of prima facie evidence submitted by the Applicant justifying initiation of anti-dumping investigation, issued a public notice vide Notification No. 6/25/2017-DGAD dated 2nd January, 2018 in accordance with the Rule 5 of the Rules to examine and determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject country, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry

A. PROCEDURE

4. Procedure described herein below has been followed with regard to this investigation, after issuance of the public notice notifying the initiation of the above investigation by the Authority:

i. The Authority notified the Embassy/Representatives of the subject country in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.

ii. The Authority sent a copy of the initiation notification to the embassy of the subject country in India, known producers/exporters from the subject country, known importers/users in India, other Indian producers and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.

iii. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassy of the subject country and Importers/users in India in accordance with Rule 6(3) of the Rules supra.

iv. The Embassy of the subject country in India was also requested to advise the exporters/producers from the subject country to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to the Embassy along with the names and addresses of the known producers/exporters from the subject country.

v. The Authority sent Exporter's Questionnaire and Market Economy Treatment Questionnaire to the following known producers/exporters to elicit relevant information in accordance with Rule 6(4) of the Rules:

a. M/s. Zhengxin Fluorocarbons, China PR
b. M/s. Shandong Dongyue Chemical Co., Ltd, China PR
c. M/s. Changzhou Xiangtong Chemical Co. Ltd, China PR
d. M/s. Taizhou Meilan Resin Process, China PR
e. M/s. ShanDong DongYue Polymer, China PR
f. M/s. DuPont (Changshu) Fluoro Technolozy Co. Ltd., China PR
g. M/s. Sichuan Chenguang Institute of Chemical Industry, China PR
h. M/s. Jiangsu Meilan Chemical Co., Ltd., China PR
i. M/s. Shanghai 3F New Materials Co., Ltd.,
j. M/s. Fuxin Hengtong Fluorine, China PR
k. Chenguang Research Institute of Chemical Industry, China PR
l. The Chemours Chemical (Shanghai) Co., Ltd., China PR
m. Daikin Flurochemicals (China) Co.Ltd., China PR
n. FluroChemicals Shanghai FluronTM Chemicals, China PR
o. Chengdu Dowhon Industrial, China PR
p. Solvay, China PR

q. Guangzhou Polain Chemical Technology Co.Ltd, China PR
r. Shandong Huaxia Shenzhou, China PR
s. Jiangsu Meilan Chemical Co. Ltd, China PR
t. Shanghai HeChang Flurocarbon Co Ltd, China PR
u. Wuxi Fuda Fluroplastics Co Ltd, China PR
v. Beijing Ruicheng Co Ltd., China PR
w. Kam Pin Paint Works Ltd, China PR
x. Hubei Danchang China Co.Ltd, China PR
y. Wuxi Ta Tang Compound Material Co Ltd, China PR
z. Shanghai Kinering Co Ltd, China PR
aa. Chenguang Fluoro & Silicone Polymer Co Ltd, China PR

vi. In response to the above notification, the following exporters/ producers responded and submitted questionnaire responses.

a. Solvay (Shanghai) Co., Ltd, China PR
b. M/s. Solvay Specialty Polymers (Changshu) Co, China PR
c. Uni-Alliance Limited, China PR
d. Daikin Fluorochemicals (China) Co., Ltd, China PR
e. Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, China PR
f. Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR
g. Shanghai 3F, China PR
h. Inner Mongolia 3F, China PR

vii. Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR has filed the Market Economy Treatment Questionnaire response also.

viii. The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:

a. Meen Been Elastomers
b. JMF Synthetic
c. Polmann India Ltd
d. BP Chemicals
e. Nishiganda Polymers
f. Hind Elastomers
g. Jayashree Polymers
h. Vikas Elastochem Agencies Pvt.ltd.,
i. Divekar W&S Precision Seals P.Ltd.
j. Devashish Polymers Pvt. Ltd.,
k. Nu-Cork Products (P) Ltd.
l. S.J.Rubber Industries Ltd.
m. M.K. Marketing

n. Zenith Industrial Rubber
o. Rawat Engg Tech. Pvt. Ltd.
p. Kokoku lntech India
q. BDS Polychem

ix. In response to the above notification, the following importers/users responded and submitted questionnaire responses.

a. Solvay Specialities India Private Limited
b. Eastcorp International
c. Nishigandha Polymers Pvt. Ltd

x. Further, All India Rubber Industries Association, Jayem Auto Industries Pvt. Ltd, and Roop Polymers Ltd filed certain submissions opposing the petition and initiation thereof within the time limit prescribed by the Authority via the initiation notification.

xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties;

xii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.

xiii. The Non-Injurious Price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

xiv. The Authority held an oral hearing on 29th May, 2018 to provide an opportunity to the interested parties to present relevant information orally in accordance with Rule 6 (6), which was attended by the representatives of domestic industry and other interested parties. All the parties who presented their views in the oral hearing were requested to file written submissions of their views expressed orally. The parties were also advised to collect written submissions made by the opposing parties and submit their rejoinders thereafter.

xv. The verification of the information provided by the domestic industry was carried out to the extent considered necessary on 30th-31st May, 2018. Only such verified information with necessary rectification, wherever applicable, has been relied upon.

xvi. Data verification through desk study of questionnaires filed by various producers/exporters was undertaken.

xvii. Spot verification was carried out at the premises of M/s. Solvay Specialities India Private Limited to correlate to the extent possible their data with response filed by Solvay (Shanghai) Co., Ltd, China PR and M/s. Solvay Specialty Polymers (Changshu) Co, China PR.

xviii. The Period of Investigation (POI) for the purpose of the present review investigation is July, 2016 – June, 2017 (12 months). The examination of trends in the context of injury analysis covered the periods 2014-15, 2015-16, 2016-17 and the POI.

xix. The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this Finding.

xx. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

xxi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the views/observations on the basis of the facts available.

xxii. The Authority issued a disclosure statement under Rule 16 on 28th November, 2018 and provided an opportunity to give comments to the disclosure statement till 7th December, 2018.

xxiii. '***' in this document represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules. ( ) bracket in this final finding indicates negative number/range.

xxiv. Further post disclosure comments filed by the Domestic industry and various interested parties have also been appropriately considered in this finding.

xxv. The exchange rate for the POI has been taken by the Authority as Rs.67.40 = 1 US$.

A. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

Submissions by Domestic industry

5. The following are the submissions made by the domestic industry with regard to product under consideration and like article:

About the product:

i. The product under consideration in the present investigation is "Fluoroelastomers (FKM)". FKM is a class of synthetic rubber designed for very high temperature operation. With excellent over-all properties, it is called as the "Rubber King". It contains not-fully-fluorinated molecular structure, and its main and side chains contain strong electronegativity of fluorine atoms. The C-F bond is stable because of its big energy (C-F bond energy 485 KJ/111 mol). Moreover, Fluorine atom covalent radius is 0.072 nm, nearly twice the size of a single hydrogen atom, equivalent to half of the C-C bond length of 0.131 nm, the fluorine atom is able to well shield the main chain of the carbon chain to ensure the stability of the C-C bond, so that the FKM has a prominent superior performance over the other rubbers.

ii. There are various applications of Fluoroelastomers (FKM) such as industrial use in hydraulic O-ring seals, check valve balls, military flare binders, diaphragms, electrical connectors, flue duct exp. joints, valve liners, roll covers, sheet stock / cut gaskets; automotive use in shaft seals, valve stem seals, fuel injector O-rings, fuel hoses, in tank and quick connect fuel system seals, gaskets (valve & manifold), bales for check valves, lathe cut gaskets; and aerospace use in O-ring seals in fuels, lubricants & hydraulic system, manifold gaskets and fuel tank bladders, firewall seals, engine lube siphon hose, clips for jet engines, tire valve stem seals.

iii. Fluoroelastomers,a family of fluoropolymer rubbers, can be classified by their fluorine content, and can be 66%, 68%, & 70% respectively (with permissible tolerances). Fluoroelastomers having higher fluorine content have increasing fluids resistance derived from increasing fluorine levels. Peroxide cured fluoroelastomers have inherently better water, steam, and acid resistance. FKMs are broadly categorized in two sets- Copolymer and Terpolymer. Copolymers (F 66%) are pre- compounds and Terpolymers (F 67-70%) are Raw Gum. All forms of FKM are within the scope of the product under consideration. While the petitioner has given specific values for these product categories, it is clarified that these products are normally produced within a permissible tolerance. This gets clearly established by various technical literatures relating to the product under consideration. Thus, the Designated Authority may consider these specific values as "typical values" only.

iv. The main fluoro elastomers compositions are shown below:

   a. Copolymer fluoro elastomers: -(CF2-CF)-(CH2-CF2) - CF3

b. Terpolymer fluoroelastomer: -(CF2-CF)-(CH2-CF2)-(CF2-CF2) – TFE level can be varied for different fluorine contents CF3
c. Improved Low Temperature Fluoroelastomer Terpolymer -(CF2-CF)-(CH2-CF2)-(CF2-CF2) - HFP replaced with fluoro-ether O-CF3
d. Non-VF2 Fluoro elastomer Terpolymer: -(CF2-CF)-(CH2-CH2)-(CF2-CF2) - VF2 replaced with ethylene, imparts base /amine resistance O-CF3

v. Based on the above combinations FKM can be majorly categorized into two types-
   a. Copolymer FKMs are prepared out of vinylidene fluoride (VDF) and hexafluoropropylene (HEP). It has a significant temperature resistance, oxidation resistance, oil resistance and chemical resistance and good mechanical properties. With fluoride content of 66%, FKM is one of the best temperature resistance rubbers, and it can be used at 250°C for a longtime and at 300°c for short term.
   b. Terpolymer FKMs are prepared out of vinylidene fluoride (VDF), tetra-fluoroethane (TFE) and Hexa fluoropropylene (HEP). Terpolymers can further be categorized in cured and curable Terpolymers. It can be cured with Amine/Bisphenol and Peroxide cure system. It has high chemical resistance and long-term heat resistance properties and with peroxide cure system FKMs also exhibit low temperature resistance properties. With fluorine content of 67-70%, FKM Terpolymers has higher acid, ketone and ester resistance than copolymers.

vi. Petitioner has considered a PCN system for ensuring fair comparison of normal value, export price, domestic industry selling price and non-injurious price. Further, while the petitioner has categorized the product under consideration into four types, should the Designated Authority consider it necessary to further sub-divide these categories into specific product types, the petitioner shall provide relevant information to the Designated Authority.

vii. The product does not have dedicated classification. The product under consideration is classified under Chapter 39 under customs subheading no 3904, 390469 and 39046990 of the Customs Tariff Act, 1975. It is however submitted that the customs classification is indicative only and in no way it is binding upon the product scope.

Submissions regarding exclusion claims raised by other interested parties:

viii. The present petition is for consideration of whether dumping of the product under consideration is materially retarding establishment of the domestic industry. Since the domestic industry is not even fully established, it follows that the domestic industry may not have offered all the product types of the product under

consideration. Thus, absence of a particular product type by the petitioner does not imply a need for exclusion.

ix. Notwithstanding, the petitioner has already offered like article to all the product forms being imported from China. Relevant details have already been provided.

x. The argument with respect to negligible quantity of one type of product under consideration cannot be accepted because volume of imports must be seen for product under consideration as a whole and not one or few product types. Further, the interested parties themselves conceded at the time of hearing that the actual volume of imports is far higher. The Designated Authority may kindly consider questionnaire response on record from the exporters.

Submission regarding quality concerns raised by other interested parties:

xi. At the outset, responding to the concerns about the quality of the domestic industry product, petitioner has submitted as follows

a. There is no express legal provision under the law dealing with the issue of product under consideration, its scope and how the same should be defined/determined. However, there is enough guidance and jurisprudence in the decisions taken by the WTO Panels / Appellate Body as well as by the Hon'ble Designated Authority on the subject which the Domestic Industry would like to rely upon in the event interested party pursue their argument with substantive claims supported by due evidence.

b. All products which qualify as a like product remains as a part of the product under consideration. It is for the party claiming exclusion to prove with requisite evidence that the domestic industry has not offered like article to any particular product type imported into India.

c. The domestic industry has also provided details of various customers to whom domestic industry has sold the material. These consumers collectively command majority of the consumption of product under consideration in India as far as supplies by China and Indian producers are concerned. If some consumer has preferred not to buy petitioner's product due to other factors, such as price of Chinese product. Merely because one of the consumers is not able to use the goods produced and supplied by the petitioners when other consumers in the same segment have used and produced the eventual end product, does not justify exclusion of a product type.

d. The import data shows shifting of significant volume of imports from third countries to China. This shift was not driven out of technical considerations but driven out of commercial considerations and low price at which Chinese producers are willing to sell the product.

e. While contending that the quality of the petitioner's product is bad, the interested parties have not even specified the meaning of quality. The Designated Authority considers technical and commercial parameters. The interested party should have identified the technical parameters that are so different in petitioner's product which renders it un-substitutable to the imported product.
f. Quality is not a relevant parameter in anti-dumping investigations in consideration to like product determination, particularly when the claim of poor quality is neither substantiated nor quantified.
g. The Hon'ble Authority in a number of past investigations (such as USB Flash Drives, Bus and Truck Radial Tyres, Cast Aluminium Alloy Wheels or Alloy Road Wheels, Phenol and EPDM) has consistently held that quality is not a relevant consideration to like product determination. The same has beenupheld by the Hon'ble CESTAT in the matter of *DSM Idemitsu Limited Versus Designated Authority.*
h. In past about 44% of FKM market was supplied by non-Chinese suppliers. The share of Chinese suppliers rose from 32% in 2014-15 to 43% in POI, while on the other hand, the share of non-Chinese supplies declined from 68% in 2014-15 to 44% in POI. These shifts from non-Chinese sources to Chinese sources is clearly driven out of significant price difference between Chinese and non-Chinese suppliers.
i. The quality issue is just a ploy used by the importers and users to pressurize the domestic industry to reduce their prices. Therefore, the argument relating to quality issues must be rejected by the Authority on its merit, legal premise and the consistent practice of the Authority, as reflected in a plethora of decisions.
j. In this context, AIRIA has merely made hollow claims regarding rejection of their finished goods due to the use of inferior quality domestic supplies. The same is factually incorrect and misleading In any case, even the returns received by the Domestic Industry on account of quality issues are very less as compared to the volume sold.
k. As regards the argument with respect to sales realization, while the inferior quality claims of the domestic industry's goods have been addressed, the technology as also the production process for producing subject goods have not undergone any significant development and the technology employed by the company is at par with the world class technology. As GFL has the world class manufacturing facility with advanced process and quality control. It has a separate pilot plant for FKM new grade developments supported by R&D laboratory. Moreover, their FKM Quality control laboratory is fully equipped with globally renowned testing equipment's able to deliver high degree of

accuracy, precision and reliability in test results. Therefore, the only factor actually responsible for the negative sales realization is aggressive dumping by the Chinese producers.

xii. The prices of Chinese suppliers on an average have been lower than non-Chinese suppliers, by Rs. 908 per kg in POI only. This in itself evidences the dumping behavior of the Chinese suppliers. But, in fact, the petitioner does not even intend to charge the price that is being charged by the non-Chinese suppliers. The petitioner has in fact targeted the price which is at the middle of the price at which the Chinese and non-Chinese suppliers have supplied the material in the Indian market.

xiii. The fact that Chinese producers actually resorted to dumping in this range of products further gets established by significant dumping that has been found by the US authorities. While US authorities determined dumping margin of 18.49% in respect of Indian suppliers i.e. for Gujarat Fluorochemicals Limited (GFL), US authorities have found a dumping margin of 84.75 % in respect of Chinese suppliers i.e. for Daikin Fluorochemicals (China) Co., Ltd. As far as GFL is concerned, it is conceded that Indian producers were forced to sell in US market at low price only because the Chinese producers exported their products at very low price to US market.

xiv. Besides, if there may be any other factor, existence of other factors causing injury does not vitiates or breaks the causal link between dumping from China and injury to the domestic industry so as to conclude no injury on account of dumped imports from China. The petitioner refers and relies on WTO Panel Report in the matter of Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland.

Submissions regarding other product issues:

xv. The Government of India has not mandated any prescriptions for the product under consideration. The Designated Authority should consider only such prescriptions as have been laid down by a competent authority in the Country and not which are not in the prescription standards. Under the rules, the domestic industry is required to offer like article. Merely because the product supplied by the exporter is patented does not imply that the domestic industry does not supply like article.

xvi. The petitioner has provided all the relevant information with regard to the raw materials used and its cost. While the purchased raw material is valued at delivered cost, the captively produced raw material is transferred at cost of production. The only two raw materials i.e. Hexa fluoro propylene (HFP) and

TFE are used captively for the production of FKM, which the company transfers it, at cost to the product under consideration.

xvii. It is indeed correct that FKM is a special product used in highly specialized applications and for its quality assurance GFL has the world class manufacturing facility with advanced process and quality control. GFL has separate pilot plant for FKM new grade developments supported by R&D laboratory. Besides, FKM Quality control laboratory is fully equipped with globally renowned testing equipment's able to deliver high degree of accuracy, precision and reliability in test results. Moreover, since the end usage of PTFE and FKM are totally different, the end users are also different. Hence it is not correct to allude that PTFE customer base can be used for FKM.

Like article:

xviii. None of the Chinese exporters have declared the product type exported by them in their exporter questionnaire response. The petitioner requests the authority to kindly disclose the product types that have been exported to India during the relevant period by each of the responding exporters so as to enable it to identify the like article that is being offered by the petitioner in competition to the imported product. The petitioner shall identify a like article to such imported product. There can be nothing confidential as far as the product type that has been exported to India.

xix. There is no known difference in the product under consideration exported from China PR and that produced by the Indian industry. In the present case, both the imported and the domestic product have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. Consumers can use and are using the two interchangeably. The two are technically and commercially substitutable.

Submissions by exporters, importers and other interested parties

6. The following are the submissions made by exporters/importers/other interested parties with regard to scope of the product under consideration and like article:

Exclusion claimed by other interested parties:

i. As, per the import data submitted by the Domestic Industry, only 2 categories i.e. Copolymer Pre-Compound and Copolymer Raw gum are imported. Terpolymer category is not imported into India and the end product requirements for such type of product are also different.

ii. It is requested that the Authority issues a clarification at the earliest that FKM Compounds and Perfluoroelastomer (Commonly known as "FFKM") are not covered within the scope of the present investigation. In petition, it was stated that FKM imported to India consists of only two types (Raw Gum and Pre-compound). Petitioner is not manufacturing FKM Compounds and FFKM. They do not fall within the scope of product under consideration. Secondly, Raw Gum and Pre-compound are Intermediate products and FKM Compounds and FFKM are final products so they're not 'like products.'

iii. The import statement at Page No. 47 of the non-confidential version of the petition depicts that only 6 MT copolymer raw gum is imported from China PR. How such negligible quantities of 6 MT can cause injury to the Domestic Industry.

Quality & Grades

iv. The producers produce select grades of FKM as per requirement. One to one grade comparison between any two producers is not possible. Each manufacturer has its own specialty grades which are not easily replaceable by other manufacturers. Substitution of a grade is difficult and is only possible if a superior grade is developed.

v. Price is not a major factor while choosing a new grade or for grade substitution. Choice of grade is made on the basis of quality, process acceptability, requirement of the end user and not price.

vi. Imported goods are of better quality than that produced by domestic industry which is inconsistent as well. Domestic industry being a new entrant has not developed all grades yet, required by the Indian industry including automobile companies. As such rubber processors in India cannot rely on GFL to meet their demand. The quality is important as the products manufactured using FKM are used as important safety products in the vehicle.

    a. Many members of AIRIA have tried the products of domestic industry and found the same to be of inferior quality and some grades were rejected by the production department.
    b. Final customers of FKM based products are big automobile companies which will not accept any quality deviation in their product, forcing the rubber processors to buy expensive imported products.

vii. Major end users are large multinational companies which generally specify the grade of FKM to be used from a particular manufacturer for each of their product in order to maintain the quality standards.

viii. The decline in sales realization of the domestic industry could be attributed to the inferior quality of the product due to the inferior technology employed by the domestic industry.

ix. The claim made by the petitioner that quality is not a relevant parameter in anti-dumping investigations in consideration to like product determination, particularly when the claim of poor quality is not quantified is misplaced. All the cases that the petitioner has referred to are of injury and not of material retardation. In the case of material retardation, quality is a major concern since in such case domestic industry might be suffering on account of the inferior quality of its products.

x. The petitioner is a new industry and its product is of inferior quality. The subject goods is used in Aero-Space, Oil Refineries and other industries. The product manufactured using FKM are used as important safety products, and therefore, any compromise with the quality of subject goods will adversely impact the business of the user industry.

xi. If the quality of subject goods was indeed at par with that of imports from China, it ought to have been able to capture its expected and desired market share. The Domestic Industry has also referred to the declining imports from other countries to contend that the domestic market is price sensitive and therefore, since the prices from China reduced, the users shifted to sourcing the subject goods from China. However, this submission is misplaced inasmuch as had the aforesaid assertion of the Domestic Industry been true, it would have dominated the domestic market of the subject goods in India as it has consistently been selling its product at a price which is much lower than that of China.

xii. Most of major auto OEM have rejected the material produced by the domestic industry due to quality issues. Hitech Arai which accounts for almost 30% of India's FKM demand appeared for the oral hearing to put forward its complaint.

xiii. The petitioner has failed to inform why in spite of manufacturing FKM since last 3 years they do not have a single auto OEM (from companies such as Suzuki, Hero, Toyota etc.) approval for their product. GFL grades have failed to meet the stringent requirement of auto-companies. Further, the rubber companies have to use the specified grades, without any deviation of grade/manufacturer allowed at their end. As such any additional duty will only be counter–productive as the Indian rubber companies shall be forced to buy the specific imported grade at a higher price.

xiv. The manufacturer of the subject product knows that the rubber industry has no choice but to use their grade for a particular auto-component (as the name of manufacturer along with grade is mentioned in the component drawing released by the auto company), as such the manufacturer have no reason to dump the material at a lower cost.

xv. In case of a product like FKM, quality is the most important aspect to be taken care of. The use of FKM products are very crucial and used in the manufacturing of safety products, one should take extreme care while choosing the grades without taking any risks. Use of any inferior quality of product may risk the life of people using the final product. The final customers of FKM based products are big automobile companies.

Other Issues

xvi. The entire existence of Zhonghao Chenguang is based on development of new technology and strong R&D towards fluoroelastomer technology. This has helped Zhonghao Chenguang hold more than 20 patents worldwide primarily in USA, Japan, Europe and South Korea. Many of these patented grades and technologies are exclusive to Zhonghao Chenguang and are not available with GFL

xvii. Petitioner has not given any indication of the raw materials used in the production of Fluoroelastomers. In multi-product companies like Gujarat Fluorochemicals Ltd., raw material is captively produced or purchased for the production of different products. The petitioner has not provided any information about the distribution of cost of raw material. The Domestic Industry may please be advised to submit the details of transfer pricing at which the raw material was transferred for the captive consumption to produce Fluoroelastomers.

xviii. FKM is used for highly specialized applications and has to undergo rigorous testing and approval procedures by the user industry before being accepted. And GFL could acquire the market share despite the rigorous requirements because of its established market hold in the production line of PTFE, which enabled them to leverage its existing customer base.

xix. As per domestic industry, FKM is categorized in two types co-polymer & ter-polymer. The monomer used is making co-polymer is HFP & VDF whereas for ter-polymer it is HFP, VDF & TFE. VDF, PVME and Cure Site monomer (4^{th} monomer) are a very important monomers used in manufacturing Terpolymer FKM, Co-Polymer FKM, Low Temperature Resistant FKM & Peroxide Curable FKM but the domestic industry GFL is not manufacturing the same and is dependent on imports which gives a major disadvantage not only in price but also in quality consistency. Further very importantly they do not have the technology to make high end peroxide curable FKM which is major hinderance to meet the latest BSVI norms and exceed the automobile safety requirements.

xx. Fluorspar is another major raw material for the production of FKM. China is one of the few countries in the world which has huge availability of very high purity Fluorspar, due to which most global manufacturers such Zhonghao Chenguang,

Solvay, Daikin have set up their plants in China. This helps these company to get Fluorspar not only at a competitive price but also ensure utmost quality of FKM.

xxi. Curatives which again is an important raw material for making FKM Pre-compounds is not manufactured in India. Chemicals which are used in making curatives is not being produced in India. Therefore, the domestic industry is again dependent on the imports for buying curatives whereas there are many manufacturers of curative chemicals in China. This gives another added advantage to manufacture FKM pre-compounds in China.

xxii. It is submitted that while indicating the average landed price of other countries and China in table given in Para 43, Domestic Industry has purposely not classified the type of FKM exported by these counties. China is exporting only co-polymer pre-compound and co-polymer gum but from other countries, majorly high-end specialty grades basically ter-polymers are exported to India. More than 70% of material exported from other countries are ter-polymers and specialty grades. These is a huge difference in prices of co-polymer grades and specialty terpolymer grades, which the domestic industry has purposely ignored. In fact, some of the grades exported are very special grades such as extreme low temperature grades, extreme high temperature resistance grades which are multiples time more expensive. This has led to increase in average export price from other countries, as such there cannot be any comparison between the price of other countries and export price of China. For any comparison to be made, the price of only co-polymer pre-compound exported from China should be compared with copolymer pre-compound price from other counties. The Designated Authority is requested to consider the above facts.

Examination by the Authority

7. The Authority notes that the product under consideration has been comprehensively defined in the Initiation Notification dated January 02, 2018 as under;

"*The product under consideration (PUC) in the present investigation is Fluoroelastomers (FKM). Fluoroelastomers (FKM) is a class of synthetic rubber designed for very high temperature operation. With excellent over-all properties, Fluoroelastomers (FKM) is called as the "Rubber King. It contains not-fullyfluorinated molecular structure, and its main and side chains contain strong electronegativity of fluorine atoms. "Fluoroelastomers" are a family of fluoropolymer rubbers, not a single entity. It can be classified by their fluorine content, 66%, 68%, & 70% respectively. FKMs are broadly categorized in two sets - Copolymer and Terpolymer.*

There are various applications of Fluoroelastomers (FKM) such as industrial use in hydraulic O-ring seals, check valve balls, electrical connectors, automotive

use in shaft seals, fuel injector O-rings, and aerospace use in O-ring seals in fuels, lubricants & hydraulic system, manifold gaskets and fuel tank bladders."

8. The two main fluoro elastomers categories based on monomers, fluroine content and curatives, are as follow

a) Copolymer fluoroelastomers (F 66%):

These are prepared out of vinylidene fluoride (VDF) and hexafluoropropylene (HFP). Co-polymer FKM can be in two forms i.e. Raw Gum and Pre-Compound. It has a significant temperature, oxidation, oil and chemical resistance and good mechanical properties. With fluorine content of 66%, FKM is one of the best temperature resistance rubbers, and it can be used at 250°C for a long time and at 300^{o}c for short time.

b) **Terpolymer fluoroelastomers (F 67-70%):**

- These are prepared using vinylidene fluoride (VDF), tetra-fluoroethane (TFE) and Hexa fluoropropylene i.e HFP or propylene or Perfluoromethylvinylether (PMVE). Terpolymer FKM can be in two forms i.e. Raw Gum and Pre-Compound. It can be cured with curatives i.e Amine, Bisphenol and Peroxide. It has high chemical and long-term heat resistance properties. With fluorine content of 67-70%, Terpolymers FKM has higher acid, ketone and ester resistance than copolymers.

9. The Authority notes various submissions and aspects regarding the scope of the product.

1) The domestic industry based on the scope of the product range manufactured by them in the period of investigation have provided the following PCNs, post initiation:

SN	Name of Product Type	PCN	Description of PCN
1	Copolymer Raw gum	FCP#RG0001	Fluoroelastomers (FKM) Co-Polymer Raw Gum
2	Copolymer Pre-Compound	FCP#PC0004	Fluoroelastomers (FKM) Copolymer Pre-Compound
3	Terpolymer Bisphenol Curable Raw Gum	FTPBRG0002	Fluoroelastomers (FKM) Terpolymer Bisphenol Curable Raw Gum
4	Terpolymer Peroxide Curable Raw Gum	FTPPRG0003	Fluoroelastomers (FKM) Terpolymer Peroxide Curable Raw Gum

2) The response filed by the producers/exporters include exports of 'Terpolymer Pre compound also.
3) Some interested parties have requested for excluding FKM compounds from the scope of PUC.

10. The Authority in view of the aforesaid, holds that the PUC i.e. Fluoroelastomers includes copolymer and terpolymer both in raw gum and pre-compound form and of different types. Compounds and FFKM are excluded from the scope of PUC. The types (PCN) stated by the DI in their submission have been considered for evaluating Dumping Margin and injury Margin separately for different types (PCN's) of PUC. The Authority notes that DI has capability to produce terpolymer pre-compound also besides terpolymer raw gum. Though the terpolymer pre-compound has not been produced by domestic industry during POI and has been produced in post POI, the DI has provided information regarding value addition for raw gum to pre compound for terpolymer category. The Authority has evaluated dumping and injury margin for the terpolymer pre-compound also by factoring the aforesaid value addition.

B. DOMESTIC INDUSTRY AND STANDING

Submissions by the Domestic Industry

11. Following are the submissions made by the domestic industry with regard to scope of the domestic industry and standing:

i. The petition has been filed by M/s Gujarat Fluorochemicals Limited (hereinafter also referred to as "GFL"). The domestic industry is the sole producer of the product concerned. Thus, production of the producer commands 100% of the total Indian production.
ii. The petitioner has not imported the subject goods during the period of investigation, and is not related to any exporter or producer of the subject goods in China PR or any importer or user of the product under consideration in India within the meaning of Rule 2(b).
iii. The petitioner has sufficient standing and constitutes domestic industry within the meaning of the Rules.

Submissions by producers/exporters/importers/other interested parties

12. None of the interested parties has raised any issues with respect to the standing of the applicant in the present investigation.

Examination by the Authority

13. Rule 2 (b) of the AD rules defines the domestic industry as under: "

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

14. The application has been filed by M/s Gujarat Fluorochemicals Ltd. as the domestic industry. As per the evidence available on record, the production of the applicant company constitutes "a major proportion" of the domestic production; in fact, 100% share of domestic production.

15. It is further noted that they have neither imported the product under consideration, nor they are related to any importer or exporter of the product under consideration.

16. Considering the information provided and submissions made by various interested parties and legal provision, the authority determines that the application has been filed by the domestic industry and the application satisfies the requirements of 'standing' under Rule 5 of the AD Rules. The Petitioner constitutes 'Domestic Industry' in terms of Rule 2(b) of the AD Rules.

C. CONFIDENTIALITY

Submissions by Domestic industry

17. The Domestic Industry made the following submissions:

i. The responding exporters have claimed excessive confidentiality without any proper justification. In the absence of even indexed information, the Domestic Industry is totally handicapped in defending its interests and offering its comments on these highly deficient responses.

ii. The exporters chose to keep the information pertaining to shareholders and related parties completely confidential. It is stressed here that this information is in public domain and does not merit any confidentiality.

iii. The petitioner has claimed only such information confidential which is not in public domain and for which there is no mandatory requirement for disclosure in the Country.

iv. Disclosure of actual information with regard to petitioners' domestic industry can also jeopardize the future business in the product. The information can be gold mine information for a prospective Indian Producer trying to set up a plant in India, having no definitive information about the actual current performance of current producers.

v. The information provided in Section VI relates to costing and pricing of the subject goods produced and sold by the domestic industry and none of this information is available in public domain.

vi. The Petitioner has provided all the information as per the prescribed format including the Annual Report to the Authority on confidential basis.

vii. The petitioner has defined, for the purpose of the present petition, demand or apparent consumption of the product in India as the sum of domestic sales and imports from all sources. The information related to domestic sales of the domestic industry is highly confidential, disclosure of which would cause serious prejudice to the domestic industry. Such claim of the domestic industry is consistent with law and past practice of DGAD.

viii. As regards the non-disclosure of information relating to price effect, there is no requirement under the law for such information. The requirement is for profits, cash profits and ROI for which information has already been provided.

Submissions by exporter, importer and other interested parties

18. The exporter, importer and other interested parties made the following submissions:

i. The petitioner has claimed excessive confidentiality and thus, the right of defense cannot be fully exercised. The petition fails to meet the standards laid down in Rule-7 of the Rules and Trade Notice No. 01/2013 dated December 09, 2013 and is in violation of principles of natural justice.

ii. In response to Section VI of the application, the petitioner has not furnished any information at all.

iii. Various question of Part 6 is answered as - "as per annual report" and GFL being a multi-product company, this answer is misleading.

iv. Information related to demand, price effect has been confidential without any reason.

v. The respondent has claimed only such information as confidential, which is business sensitive and not available in the public domain. On the contrary, the petitioner has itself claimed confidentiality on number of parameters like production, domestic sales, and demand and market share of petitioner in Indian demand. Reference is made the Findings in anti-dumping investigation against

imports of Sheet Glass from China PR (F.No.14/22/2013-DGAD dated 19th December, 2014)

vi. The claims of the Domestic Industry regarding excessive confidentiality being claimed by the Respondents is not only vague as they have not stated exactly what would constitute a proper statement of reasons other than what has already been provided by the Respondents but is also entirely contradictory inasmuch as a bare perusal of the Domestic Industry's own petition will reveal that the reason assigned by it while claiming confidentiality has been succinctly stated as "business proprietary information not amenable to summarization" without any further statement of reasons in respect thereof.

vii. By virtue of the doctrine of election, the Domestic industry cannot approbate and reprobate at the same time and is estopped from contending that the Exporters and Producers in China have to provide indexed figures of their data or any further statement of reasons for claiming confidentiality beyond what is already provided. Reference is made to the judgment by House of Lords in Lissenden v. Bosch Ltd., 1940 AC 412 in this regard.

viii. DI has claimed about numbers of programs being run by the Govt. of China wherein benefits are being provided to the producers/exporters. AIRIA therefore submits that the Domestic Industry has not furnished any evidence to substantiate the above claim. The petitioner is trying to mislead the Authority. The claims made by Domestic Industry are irrelevant and not substantial.

ix. Zhonghao Chenguang has provided all the information as per the rules and also enclosed the justification table clarifying the reasons for claiming the confidentiality.

x. Daikin and Uni-Alliance Ltd. have provided all the information as per above mentioned rule and also enclosed the justification table clarifying the reasons for claiming the confidentiality. The claims of the Domestic Industry that excessive confidentiality is claimed is irrelevant. However, Daikin and Uni-Alliance Ltd. are ready to provide any further information as may be required by the Designated Authority for concluding the present investigation.

EXAMINATION BY AUTHORITY

19. Submissions made by interested parties with regard to confidentiality as considered relevant have been examined and addressed accordingly in the light of legal provisions and the consistent practices adopted by the Authority. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has not been disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non-

confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority notes that any information which is available in the public domain has not been treated as confidential. The Authority notes that the disclosure of the total export sales of all cooperating Producers/Exporters has been reacted to by certain Producers/Exporters. Since there are many PCN's the Authority has disclosed total sales of all cooperating producers/exporters and also production, Capacity and domestic sales of DI for all PCN's cumulatively in this finding. The Authority also notes that product description in the DGCIS transaction wise data more or less reveals the production source of PUC

D. MISCELLANEOUS SUBMISSIONS

Domestic industry

20. The Domestic Industry made the following submissions:

i. False and misleading statements have been made by the exporters in the questionnaire response regarding absence of any subsidies by the Chinese government since there are non-exhaustive list provided by the petitioner stating the programs that are being run by the Government of China wherein benefits are being provided to the exporters.

ii. The injury submissions made by the petitioner are on the basis of domestic sales and not exports. The Authority may verify.

iii. Besides, the respondent has alleged that the information provided by the petitioner is "manipulated and is incorrect" and this allegation is based, as stated, "As per data available with [them]", relating to GFL's export slump. The respondent cannot base their arguments on mere surmises and conjectures as the said data is nowhere presented. If something has been given to the Designated Authority on confidential basis, the same must be disclosed to the petitioner.

iv. As regards the allegation that the annual report curated in a certain manner to show material retardation, a reputed company like GFL is very prudent in their business activities and they do not resort to such unethical practices.

v. Anti-dumping duty on other products doesn't have relevance here. The applicant is a multi-product company and if the Government have imposed antidumping duty on some of their products after due investigation, they cannot be faltered for approaching the authority for levy of anti-dumping duty on the subject goods as per law. The information related to product under consideration in the present investigation is only relevant.

vi. The public statements in the Annual Report do not alter the conclusion that dumping of the product has contributed to injury to the domestic industry.

vii. Designated Authority is concerned about domestic operations of the subject goods, whereas the Annual Reports are concerned about company's overall operations.

viii. Projections made were reasonable. The Designated Authority may examine. The petitioner has large network of dealers/ distributors. It is not a case wherein the petitioning company is a new company. GFL is a well-known, well established and reputed name in the Country and is known for its products and quality. Had the petitioning company been inefficient or unable to manage its business, it would not have been successful in its other businesses.

ix. The respondents are making baseless claims regarding non-delivery without any material to substantiate the same in order to mislead the Designated Authority.

x. It is by now a well settled principle of law that demand-supply gap is not a ground for non-imposition of anti-dumping duty. Imposition of anti-dumping duty is against the unfair trade practice being practiced by the exporters and aims at providing a level playing field to the domestic industry. It does not bar imports.

xi. The argument relating to inappropriate protection measures cannot be accepted as such submissions are full of conjectures & surmises, not backed with any study and contrary to the experience gained in case of petitioner itself where the petitioner has not only grown in PTFE, but also the consumers have grown and the petitioner has become more competitive. Had the arguments of the interested parties were to be true, there would not have been an option with the industry in developing and nascent stage to approach the Authority in case of being injured due to injurious effects of dumping, there would not have been any concept called material retardation recognized by WTO and worldwide.

xii. There has been no change in the data and no different sets of data have been provided. The only difference is that quarterly data with regard to capacity, gross production, net production and capacity utilization have been provided in the pre-hearing submissions whereas in the petition, only yearly data has been provided. The Authority may verify.

xiii. It is expressly clarified that the error is in the analysis conducted in the petition and there is no error in the data/information filed with the petition. The authority may kindly consider the data contained in the petition and the analysis in the pre-hearing written submissions and submissions made thereafter. It is pointed out in this regard that it is the data / information contained in the petition which has formed the basis for initiation.

xiv. The petitioner has not provided details of capacity utilization considering net production. The Authority may verify.

xv. The arguments regarding existence of basic customs duty of 7.5% is irrelevant if the subject goods are being dumped in India and the domestic industry is still

suffering injury despite this customs duty. Both are different not only in concept and substance, but also in purpose and operation.

xvi. FKM is produced globally in India, China, Europe, USA, Japan & Russia. The capacity of major global producers of FKM is 49,560 MT, out of which China's capacity is 22,500 MT.

Issues regarding monopoly

xvii. The apprehension of the respondents that the imposition of duty would lead to monopolistic situation is baseless. The anti-dumping law does not bar the sole producer from being considered as domestic industry.

xviii. There have been a number of anti-dumping investigations wherein the domestic industry was the sole producer of the product concerned in India and the Authority has recommended imposition of antidumping duty.

xix. The anti-dumping duties are not detrimental to the importing country. Rather it tries to curb a foreign unfair trade practice.

xx. The purpose of anti-dumping is not to create monopolistic situations. 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 fair competition in the Indian market, which is in the general interest of the country. The purpose of the anti-dumping law is to create a level playing field for production and consumption of the goods in the Indian market by protecting domestic production of the goods against unfair trade practices of producers from other countries. Existence and sustainability of a domestic production base is important for general economic development which has to be protected against injurious dumping.

Submissions regarding impact on other products/industries and public interest

xxi. As regards the argument of force majeure creating a shortage, it is without any basis and irrelevant in an anti-dumping investigation. Accidents that could not be foreseen cannot be a ground for justifying an act which is in human control i.e. adopting the dumping practice.

xxii. These issues of carbon black are not in relevance to the case in hand. Shortage of any other product does not have relevance in an anti-dumping investigation. The information related to product under consideration is only relevant.

xxiii. The respondent has not furnished any evidence to show the impact on growth of the MSME sector. Nonetheless, the domestic industry is seeking relief under the law for the injury suffered by it due to dumped imports.

xxiv. Anti-dumping measures are not protectionist in nature. Anti-dumping regime is designed to provide relief for aggrieved industries from this unfair trade practice.

Anti-dumping duty laws are not designed to exclude or limit imports which compete with domestic products. Rather, they are designed to deter foreign producers from using discriminatory pricing practices to injure domestic industries.

xxv. As regards the contention with respect to increase in product costs, the imposition of anti-dumping duties might affect the price levels of the product in India for a short term. However, fair competition in the Indian market will not be reduced by the imposition of anti-dumping measures.

xxvi. Imposition of anti-dumping duties, therefore, would not affect the availability of the product to the consumers. The imposition of the anti-dumping measures would not restrict imports from subject country in any manner and, therefore, would not affect the availability of the product to the consumers. The consumers could still maintain multiple sources of supply.

xxvii. Non-imposition of the anti- dumping duty would bear more devastating effects on the country than the imposition of the duty. The non-imposition of duty would lead to decimation of production of this critical product in India. The effect of such dumped imports is already seen on the domestic industry. The effect on the downstream industry will be miniscule.

xxviii. Anti-dumping measures are to ensure fair trade and provide a level-playing field to the domestic industry. They are not a measure to restrict import or cause an unjustified increase in cost of products. The purpose of the present petition is not to take any kind of undue advantage. The petitioner simply wishes the unfair dumping to be checked so that the petitioner can fully establish itself in the market and cater to the requirements of the consumers at fair price, while earning reasonable return on the investments made. It is more justified as it is the sole producer in the country.

xxix. The argument relating to the pleading of MSME sector is actually fallacious and misleading. In fact, as stated, about 90% of FKM demand in the past was being met by non-Chinese suppliers, while 48% demand in 2016-17 and 44% % demand in POI was being catered by non-Chinese suppliers in the relevant period at a price which were almost double that of the price at which Chinese suppliers were selling in the market. If these MSME consumers could merrily buy the material from non-Chinese sources at such a high price and could not only survive but also grow, there is no basis for the argument that these Chinese suppliers will suffer as a result of imposition of anti-dumping duty.

xxx. Besides, the petitioner has faced the same experience in PTFE where production is again in MSME sector. Despite ADD on PTFE for quite some time, the PTFE market has grown from 1729 MT in 2005-06 to 6800 MT in 2016-17. PTFE market has grown despite the anti-dumping duty. The facts here clearly evince that the MSME sector in the product under consideration shall not suffer as a

result of proposed anti-dumping duty. In any event, the petitioner submits that the consumers have not furnished any evidence or verifiable information to establish their claim.

xxxi. It is also relevant to point out that the arguments are being advanced in the name of MSME sector, whereas the fact is that a number of consumers of the product under consideration are in fact companies having significant turnover.

Submissions regarding NIP claims:

xxxii. The Authority may provide ROCE as per its consistent practice, even though the domestic industry has sought higher ROCE.

xxxiii. The DA has a practice to allow 22% return in all situations and, therefore, principles of equity demand that the same is applied to all situations. The DA should not accept pick and choose policy and approach of interested parties.

xxxiv. The submission of the interested parties in this regard has no merit as the Authority has been allowing the return on capital employed at 22% almost in every case for the last so many years without considering the actual rate of return earned by the domestic industry during the period when there was no dumping.

xxxv. The present case is a case where dumping is materially retarding establishment of the domestic industry in the Country. Further, such being an issue with respect to policy and practice of DGAD, the Authority may decide appropriately as it deems fit.

Submissions by exporter, importer and other interested parties

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

Miscellaneous Issues

i. Letter filed by the Domestic Industry claims that exports by Domestic Industry have increased substantially. Data available with respondents shows huge slump in export of subject goods.

ii. Annual report drafted by GFL should not be relied upon as they might have intentionally curated the same in a way to show material retardation.

iii. GFL is a habitual petitioner for imposition of anti-dumping duties on various imported products.

iv. Financial statement of GFL discloses healthy profit earned by the company during POI disputing their own claim of suffering loss.

v. While comparing domestic industry's actual performance to projections it is essential to examine the reasonableness of the assumptions made by domestic industry in its project report since petitioner is new in this industry.

vi. There is demand and supply gap in country. The domestic industry is focusing on exports. Many times, it fails to deliver on time due to non-availability of subject goods.

vii. Inappropriate protection measurers not only protect the domestic industry but may damage its long term and fundamental interest. It may cause domestic industry reluctant to improve the production technology and efficiency.

viii. Two petitions have been filed and petitioner claims that no error in data or information filed with original petition. But in fact, different sets of data have been provided in petition and pre-hearing submission for Capacity, Gross Production, Net Production and Capacity Utilization.

ix. The petitioner may have provided details of capacity utilization considering net production with objective of undermining actual capacity utilization to demonstrate a non-existent injury.

x. Respondent requests the Authority to compare both the import and the petitioner's data considering 2015-16 as the base year, since domestic industry started production from July 2015 and the period of injury of current investigation is 2014-15, 2015-16, 2016-17 and POI.

xi. There is already basic customs duty of 7.5% and any additional duty will only block exports from China PR.

xii. The request made by the petitioner to the Authority to direct the producers / exporters to file the information in terms of Trade Notice No. 5/2018 dated 28th February, 2018 is wrong as the Trade Notice No. 5/2018 is applicable for investigation initiated after 28th February, 2018. The respondent has filed the response in the correct applicable Proforma.

xiii. The petitioner is a habitual user of trade remedial measures and is suffering on account of the inferior quality of its product, inefficiencies and market entry strategy. The same gets substantiated by the fact that the petitioner has also suffered huge losses in the export market.

xiv. The reference made by the petitioner to the US determination is irrelevant here. The complete details have been filed with the Authority. Further, as per the findings of the US Authorities, petitioner has also dumped subject goods in the US Market.

xv. The petitioner has provided different sets of data for the year 2016-17 in the petition, pre-hearing written submissions and written submissions. This raises serious doubts about the veracity of the data filed by the petitioner to allege a non-existent injury.

xvi. The petitioner has claimed that it has already supplied the PUC to a large number of consumers. It is in operations since almost last 3 years. Thus, the petitioner is well established industry. Therefore, the respondent request the Authority to terminate the investigation outright as material retardation measure is only for that industry, which has not been established yet.

xvii. The Domestic Industry's previous experience with anti-dumping duties were referred by the Respondents to caution the DA of the fact that project reports and market feasibility tests would not be safe to be relied upon in the instant case as the Domestic Industry, being well versed with the nuances involved in an anti-dumping investigation, would be in a position to manipulate its projections in order to benchmark its actual performance to show that it has not been able to meet its expected performance which may not be realistic otherwise and thereby, show material retardation to its establishment. The Domestic Industry has intentionally priced its goods at a price much lower than that of imports from China in order to incur losses in its books for the purpose of showing injury to it.

xviii. The reliance placed upon the determination by USDOC in the anti-dumping investigation to showcase that the dumping margin determined against Chinese suppliers was to the extent of 84.75% is irrelevant as the same pertains to PTFE and not FKM.

xix. Domestic Industry has compared the market performance of PTFE with FKM. This argument itself proves misconstruction of facts by the domestic industry, reason being:

a. There are 2 manufacturers of PTFE in India including GFL, which ensures Indian end users don't have to rely on a single domestic supplier. Also, as there are only 2 manufacturers, no single manufacturer can over charge the end users.

b. Further, the end users and application of PTFE and FKM are totally different. In case of PTFE, the end requirements are not as stringent as FKM (which is basically used in stringent auto application). In case of PTFE, final end user never specifies the grade/manufacturer to be used. But in case of FKM, the auto-companies clearly mention the grade and the manufacturer in part drawing released by them, leaving the rubber industry with no flexibility. In such a situation, the Indian rubber industry will be forced to buy imported products at an expensive price, making them less competitive than their international competitors. Companies such as Suzuki, Toyota, Honda etc. have global suppliers, posing a major threat to growth of Indian rubber industry.

c. While the domestic industry has mentioned that the PTFE market has grown to 6800MT in India, they have not mentioned that in the same period the Chinese

PTFE market has grown multifold times to more than 90,000 MT. This shows that how GFL has tried to take advantage of the anti-dumping protection to charge higher prices to Indian PTFE consumers, thereby making them un-competitive and curtailing their growth. We again reiterate that in the present situation, the biggest losers shall be the MSME sector, who shall loose out to international competitors.

xx. Trade Notice No. 5/2018 dated 28th February 2018 is applicable to the investigations initiated after the issuance of trade notice. Since the present investigation was initiated on 2nd January 2018, the same trade notice is not applicable to the participating exporters/importers. However, if the Authority so desires, we are willing to provide all information.

xxi. Indian domestic industry is already having protection of 7.5% in the form of Customs duty. If the Directorate General of Trade Remedies decides to levy Anti-dumping duty of subject goods, then this protection to petitioner will be unwarranted as levy of anti-dumping duty on subject goods will only block the growth of FKM downstream market in India.

Monopoly Issues

xxii. Imposition of duty would lead to monopolistic situation and GFL would exploit the situation by charging a higher price.

xxiii. The Domestic Industry is misusing the protections granted by the Directorate General of Trade Remedies. The overall performance of the domestic industry is showing bumper profits whereas they are claiming that they have faced injury which is not correct. Most of its products are enjoying the benefits of anti-dumping which is leading to monopoly of GFL which may affect the Indian industry adversely.

Concern regarding other products/industry

xxiv. Any force majeure in the domestic industry's plant would create a huge shortage; the current situation in carbon black is an example. Any disturbance in their production on account of scheduled plant maintenance, breakdown maintenance, force majeure, etc would force the rubber manufacturers to buy the material at higher cost.

xxv. Any additional duty on FKM will make export of rubber components unfeasible as rubber processors are facing huge rise in cost due to shortage of carbon black which in turn will impact growth of MSME sector on which the government is focusing.

xxvi. Any additional duty will lead to a protectionist policy benefiting one company at the cost of viability and growth of thousands of small and medium rubber processors/manufacturers. This will go against Government's claim of giving big push to MSME sector and 'Make in India' policy.

xxvii. Automobile sector is one of major consumers of FKM base products; it would also lead to increase in their product cost which would finally be passed to the millions of Indian consumers.

Public interest

xxviii. Levy of anti-dumping duty will not be in public interest. Most of the rubber processors/manufacturers in Indian rubbery industry are from MSME sectors and operates at low volume for niche customers to meet their specific orders. They largely depend on import material due to better quality. GFL is yet to reach world class standard and meet customer specification. ADD would discourage the large automobile companies to make India as their manufacturing base, since their production cost will increase with restriction of choices. DGAD should give due consideration on the not so favourable situation that may arise if ADD is levied on FKM and make decision accordingly.

NIP Issues

xxix. The applicant has claimed a return of 26% on gross fixed assets. Such claim is inflated and not in accordance with law.

xxx. The DA determines NIP on the basis of cost of production of domestic industry, such determination is highly inflated and is not based on real situation as per para-4 of the Annexure III of the Rules.

xxxi. DA should adopt ROCE earned by the industry when there was no allegation of dumping as reasonable profit margin and not 22% ROCE. Providing 22% is incorrect because (i) debt portion of capital employed which attracts about 10-12% interest rate is provided 22%, (ii) this in turn result in providing more than 22% return on net worth portion of capital employed, (iii) during an era of global recession allowing such a high return to domestic industry is totally incorrect and is unheard of.

xxxii. DGAD has been adopting 22% ROCE to arrive at non-injurious price and the same is incorrect. As per the sample calculation provided, 22% ROCE gives undue advantage and protection of 41% profit margin on equity to the domestic industry.

xxxiii. Adoption of 22% ROCE to arrive at NIP is not reasonable. Adoption of a practice cannot be a ground for reasonability. Basis of 22% ROCE designed by GOI in Drugs (Prices Control) Order, 1987 (DPCO, 1987) cannot be termed reasonable

after 30 years when parameters like interest rate and corporate tax were different. By applying the current rates of corporate tax and interest rate on actual basis, ROCE will work out as under for different set of equity ratios as tabulated which shows 22% gives undue protection to domestic industry:

xxxiv. As per the decision in Bridge Stone Tyre vs DA, 22% ROCE has colored the injury determination and has inflated the price underselling and injury margin. DA should adopt the actual profit earned by the domestic industry during the period when there was no allegation of dumping as a basis for calculating reasonable return. European Union also follows the same practice.

Examination by the Authority

22. Various submissions have been made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed below.

23. As regards the argument of insufficient information provided by the domestic industry in the application, the Authority holds that the application contained essential prima facie information for the purpose of initiation of investigation. The Authority, only after considering the same initiated the present investigation. Further, subsequent to initiation, information has been sought from the applicant and other interested parties to the extent deemed necessary and the same has been adopted for the purpose of the present findings. The Authority notes that credibility of evidence improves as an investigation progresses.

24. Regarding the arguments of injury margin calculations, it is noted that injury margin is based on Non-injurious price of the domestic industry calculated as per the methodology prescribed in Annexure-III of the AD Rules. Further, the customs duty as prevailing during period of investigation is adopted.

25. As far as the argument of demand supply gap, the Authority holds that the present petition is only in respect of imports from China. As against 822 MT imports into India, 415 MT representing 43.54% of demand were from non-subject countries and would continue to be available to the consumers without any ADD. It is also noted that the landed price of imports from non-China sources are at a price above NIP. Considering that the Rules provide for application of lesser duty rule, it follows that in any case, the landed price of imports from China shall not exceed the NIP of the domestic industry even in the event of Authority considering recommending ADD.

26. The interested parties have also argued that two different sets of data have been provided by the petitioner. The Authority has based its analysis on the verified data.

27. The interested parties have argued about the capability, quality and specifications of the product manufactured by the domestic industry and those imported into India. The Authority however holds that the product manufactured by the domestic

industry is a like article to the product being imported into India and the two are being used interchangeably by the users/importers. The interested parties have not established that the goods supplied by the domestic industry cannot be used for the purpose for which the goods were imported, while raising issues on quality of goods.

28. Regarding the fact that the Petitioner Company is multi product and multi division company, the performance of other products being produced and sold by the domestic industry has been segregated for the purpose of injury analysis and the assessment of the domestic industry's performance for the AD case has been carried out with regard to the product under consideration.

29. Public statements like annual reports of petitioner are considered appropriately to establish injury to DI.

30. Since the petitioning company is a multi-product company, the Authority has relied on the information with regard to product under consideration and on the basis of records maintained by the petitioning company and duly verified. The published financial results of the petitioning company are of limited relevance in this regard, as this information does not pertain exclusively to the product under consideration alone and relates to overall performance of this company.

31. As regards the submissions that anti-dumping duty would result in monopolistic situation, the Authority holds that the purpose of anti-dumping duties, in general, is only to eliminate injury caused to the Domestic Industry by the unfair trade practice of dumping. The Authority has to establish the causality between dumping and injury irrespective of the composition and structure of domestic industry. In the instant case keeping in view the fact that this is a case of Material retardation, the Authority has considered measure only for a period of 18 months as stated in the later paras.

E. <u>Submissions by various User Industries:</u>

32. **Submissions by Ms/ Hi-Tech Arai Private Limited:**

(i) Hi-Tech Arai Pvt Ltd., is a joint Venture Company with M/s Arai Seisakusho Co Ltd., Japan for manufacturing of Automobile Ancillaries viz., Oilseals, O-rings, Moulded Rubber parts, Reed Valve Assembly etc.

(ii) These products are supplied to the Original Equipment Manufacturing (OEMs) in India Viz., Maruti Suzuki India Ltd, Toyota Kirloskar Auto Parts Pvt Ltd, Honda Cars India Ltd, Nissan Motor India Pvt Ltd, Hero Motor Corp Ltd, Bajaj Auto Ltd, India Yamaha Motor Pvt ltd, Honda Motorcycle & Scooter India PVt Lts, and TVS Motor Company Ltd etc.,

We are also exporting our products to Arai Seisakusho Co Ltd., Japan, Chrysler Group LLC, USA and Piaggio & C.S.P.A, Italy.

(iii) In all our above products, we are using different grades of Fluoroelastomers (FKM) manufactured by the following Companies:

a) Chemours Company FC, LLC, USA (formerly Dupont)
b) 3M, USA (formerly Dyneon)
c) Daikin Industries Ltd., Japan
d) Daikin Fluorochemicals Co Ltd, China
e) Zhonghao Chenguang Research Institute of Chemical Industry Co. Ltd., China
f) Chemours Fluoromaterials, China
g) Solvay, Italy / China

(iv) We are the major consumer of Fluoroelastomer (FKM) in India and our annual import quantity of FKM is around 250MT, out of which, we import around 40 MT from Chinese Manufacturers.

(v) Out of these, Daikin, Chemours and Solvay have manufacturing units of FKM in China also. The reason is, one of the basic raw materials viz., Fluorspar, which is a mineral containing Fluorine is available abundantly in China.

(vi) Now the domestic manufacturer, GFL, are in the very early development stage of manufacturing FKM in India, importing the monomers as necessary.

(vii) There are many varieties and grades of FKM- making the availability of a huge spectrum of grades which enables the Rubber Compounders to fine tune and develop compounds, for specific applications of OEMs. It is almost impossible to expect for a single manufacturer to have all the grades suiting the end users' requirement. This is again the main reason we are sourcing our various grades from different manufacturers all over the world.

(viii) Suitable BLENDS are designed and developed by our Rubber Chemists and many experimental evaluations are done to finally arrive at the final Compound Recipe meeting all laid out specifications of the OEMs.

(ix) This is why it takes a considerable period of time to result in a satisfactory product.

(x) FKM manufacturers in China have the biggest advantage of having access to "Fluorspar" and therefore, the Hydrogen Fluoride which is the starting point for the manufacture of FKM.

(xi) Most of the established manufacturers such Zhongao Chenguang, Solvay, Chemours have put years of R&D in developing technically stable quality of FKM.

(xii) There is a clear commercial equilibrium established with OEMs on the cost structure of selling parts as of today.

(xiii) If this is upset and price of FKM goes up considerably, the OEMs will start to consider importing the Seals from various approved sources outside India.

(xiv) This will lead to under-employment / unemployment in the India Manufacturing Units.

(xv) There is a satisfactory equation established today between the Manufacturer of FKM sealing parts and the OEMs, which will be upset totally leading to a very serious imbalance.

(xvi) It must be appreciated that this antidumping duty is not going to provide any support to GFL.

Whose basic problem is Inconsistency in Quality and lack of variety of grades with different Technical Specifications to meet OEM's specifications.

(xvii) It is clear that for GFL to become a Reliable source of FKM in India, they should make considerable improvements in their Technology relating to Quality and Reliability.

33. **Submissions by M/s Super Seals India Limited:**

(i) Being one of the oldest consumers of this product in India, we consume approximately 15mts of FKM per annum and are manufacturing rubber to metal bonded oil seals, gaskets etc for critical applications in automobile sector since last 3 decades. Our seals and gaskets are exposed to continuous heat oil, after fitment inside the automobile engine. Our products play an important part in smooth running of the engine. Our major customers include: M/s Simpson & Co., ITL, MGTL, ACE Ltd., Maxiforce, Midco, L&T, Rane, SML, M&M, Ashok Leyland, Tafe.

(ii) Due to such critical application, we follow stringent quality procedures at our end. Our raw materials are carefully chosen, after analysis by our R&D team. We try to simulate the conditions observed inside the automobile engine, in our lab. Our products are then tested repeatedly in this simulated condition to ensure zero failure during actual use. As, such failure could have fatal consequences.

(iii) It is submitted that we have repeatedly tested samples from Gujarat Fluorochemicals Ltd and found its performance poor in stringent conditions. The product failed when exposed to continuous heat. Their product performance was for below the required specification. Thus their samples have been repeatedly rejected by our R&D team. Further they have only limited grades developed which can never be sufficient to meet the wide variety of requirements of automobile industry.

(iv) We are buying our FKM Gumstock from Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd & from Chemours since many years and is meeting our internal specification and our customer's requirement. There has been no complain and zero failure at our customers end.

(v) It is further submitted that, the Govt. will understand FKM is generally chosen by all reputed auto component manufacturers after lot of testing and analysis. In case the Govt levies any additional duty on our current suppliers, we shall be forced to buy FKM from them at a higher price. We are already suffering heavy loss due to high prices and shortage of carbon black. Any further move in this direction would be final nail in the coffin for many rubber industries like us in India. This will not only stop the growth of rubber industry in India but also lead to large scale unemployment.

34. **Submissions by M/s ALF Industrial Products:**

(i) Usually our customers specify us the grade of raw material to be used in their application. Further as FKM is a high cost speciality rubber we check each lot of material supplied to us under various quality parameters.

(ii) We tried using GFL materials several times in our factory but their quality rejected by our production department.

(iii) GFL being the only manufacturer of FKM in India as such any levy of anti-dumping duty will create a monopolistic market situation and in case of any breakdown or force majeure in GFL factory we would need to buy at higher cost which will put extra burden on us. We are afraid even GFL will take undue advantage of the situation and we have to remain under their mercy in getting stable and timely supply at competitive prices.

(iv) We request DGAD not to levy any duty on FKM from China as already we are facing similar situation in Carbon Black supply in India although there are 4 manufacturers of the same but due to anti-dumping duty support

they are charging us with extremely high prices and even not providing sufficient materials for our production.

35. **Submissions by M/s Apollo Seals Co.**

(i) It is submitted that being a small scale Rubber factory making Rubber parts for industrial application, Fluorolelastomer is very special kind of Rubber to us and not like any other general Rubber (SBR, PBR, NBR,) which we purchase on the basis of price.

(ii) It is submitted that making different kinds of Rubber parts which is supplied to majorly O.E Industries were we change the grade easily without taking prior approvals from the OE manufacturers. Equally our end users takes several years to approve any grade of any manufacturer after taking proper field trials

(iii) Further, we have been using Zhonghao Chenguag Chemicals Research Institute of Chemical Industry Co Ltd FKM- Gum Stocks Grade – since many years and it has been approved by our customers because of consistent & stable quality.

(iv) Gujarat Fluorochemicals Ltd has just recently started the production of FKM. We had tried using GFL materials but their quality was found not to be stable and consistent. Also we found they do not have wide variety of grades as like other reputed manufacturers of FKM in the world.

(v) Already we are facing in India stiff competition in export market because of high cost of all our raw materials due to high import duty and Anti-Dumping Duty in majority of the raw materials used by us. Any levy of additional duty on our additional raw materials will make us totally non-competitive in International market.

(vi) There is only 1 manufacturer of FKM in India and any levy of duty will create monopolistic market situation and price manipulation by the domestic producer. ADD will affect hundreds of MSE & SMSE like us in India thus resulting in job losses.

36. **Submissions by M/s Gowell Rubber Industries:**

(i) It is submitted that being one of India's largest rubber auto-component OEM manufacturers, the subject matter is of grave concern to us. Our

customers include both two wheelers and four wheeler manufacturers such as Bajaj, Hero, Maruti Suzuki, TATA etc.

(ii) Fluoroelastomers are one of the most important raw material used by us with our annual consumption being around 25MTS. We are manufacturing automotive seals, gaskets, and o-rings out of it. Some of our products manufactured constitute an important safety component in the vehicles. In such a case we need to ensure utmost diligence at our end to choose the right grade of raw material from a particular manufacturers meeting all the required specification, careful processing at our end. And proper quality check of the end part before delivery to the auto-mobile manufacturer.

(iii) Due to the importance of the rubber component being manufactured, in most cases the choice of grade of FKM to be used is decided by automobile manufacturers themselves, on the basis of their global quality approval. Even when we suggest the grade, we follow a strict quality inspection at our end and several months of trial before finalizing the grade for selection. The trial results are shared with automobile manufacturer for their consent and approval.

(iv) All the above steps are strictly followed as our FKM based rubber components are important safety parts in automobile.

(v) We have been using FKM A36 and FKM A412 Gumstocks from Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd. These grades pass all our internal tests and another important factor is we have never received any complaint for product failure at the consumer end, as that would mean jeopardizing on customer safety.

(vi) We have also evaluated the samples from the Indian manufacturer – Gujarat Fluorochemicals Ltd (GFL) several times. There grades were found much inferior in quality with in-consistent results. They do not have any grade currently which can pass our customers requirement. In line with strict quality policy, we can never take the risk of using these grades for our important safety products.

(vii) We also understand the GFL is the only Indian manufacturer for this product. As such we hope that Govt will not take any unilateral action to grant undue and unwarranted protection to this large enterprise which will destroy hundreds of small and medium scale companies like us who are working day and night to give the highest quality and provide best safety product to Indian consumers.

(viii) Anti-Dumping duty is levied by any government to have level playing field between domestic manufacturer and international manufacturer where the quality of both the manufacturers are same but in case of GFL their quality is far inferior to international FKM manufacturers standard. As such by levying any additional duty the greatest loss would be to millions of Indian consumers.

37. **Submissions by M/s ISG EKASTOMERS:**

(i) It is submitted that ISG ELASTOMER are a Rubber Processing Unit. We have been using FKM Gum Stock Grade – CGA372, CGA36 & CGA412 from Zhonghao Chenguang Research Institute of Chemical Industry Co. Ltd. since long time and with the help of their quality we have been able to supply high quality rubber products to our customers. There has been no complain from our customers by using their quality. Our Annual consumption of FKM is about 5-7 Mts.

(ii) We had also tried using GFL Fluroelastomer several times in our factory but our rejection percentage increased and we also started getting complains from the market. There is lot to lot variation in GFL materials and the product quality is very inconsistent.

(iii) FKM is a very high priced rubber compared to other rubbers we purchase as such we give lot of importance on quality at the time of choosing any new grade. If there are any quality issues we will suffer huge loss as cost of FKM is high compared to other rubbers and also our market reputation will be in stake.

(iv) We request DGAD department not to impose any extra duty on FKM as it will give us extra burden of cost and will totally make us non-competitive in India as well as in international market.

38. **Submissions by M/s Rawat Engg. Tech (PVT.) LTD.**

(i) It is submitted that being a small scale industry and our annual consumption of FKM is around 9 ton per annum used for making seals for water purifiers and filters which is supplied to companies like Eureka Forbes & Kent. Our seals are used in very critical application in water purifiers/filters which prevents leakage of water. Any failure in our seals will result in contamination of purified water, leading to health hazards to millions of people. As such we conduct lot of internal test before choosing any new grade of FKM.

(ii) But every time the material supplied by them had lot to lot variation. Our seals made up of GFL materials had major bonding failure with metal and the compression set was very high as such we principally decided not to use GFL materials whose quality is unstable and unusable for our critical application which application which may even result in loss of business. Being a ZED certification. We are also enclosing some of our internal test reports of GFL material as well as ZED certificate for your reference.

(iii) We had informed GFL team headed by their technical head about various problems faced by us using their materials but till now they are unable to provide any solutions.

(iv) We have been using FKM from Zhonghao Chenguang Research Institute of Chemical industry Co Ltd. and Chemours since 2013 and we are very satisfied with the quality supplied by them.

(v) We request not to put any additional duty to protect a company whose quality is poor and unstable as GFL quality is yet to reach International standard. Further it would create a monopolistic situation in India as GFL being the only manufacturer of this product would try to take advantage of this situation.

Examination by Authority

39. The Authority notes that user industry has raised concerns on availability, consistent quality and non resolution of technical difficulties related to the usage of the product supplied by the domestic industry. The Authority notes the following:

(i) The domestic sales of domestic industry have increased and also they have undertaken exports.

(ii) The Authority notes that user industry may face challenge of quality of a new product due to technical stabilization. However repeated orders have been placed by certain customers on the DI it indicate increasing acceptance of Domestic industry's goods.

40. The Authority notes that issues raised do not relate to the fact that PUC and goods produced by DI are not like article but there are quality inconsistencies. Under these circumstances the Authority holds that AD measure endeavours to address the unfair price aspect only. FFKM and FKM compounds are not a part of the PUC as domestic industry does not have capability to produce these.

F. Market Economy Treatment (MET), Normal Value, Export Price and Dumping Margin

41. **Submissions by exporters, importers and other interested parties**

i. The Director General Trade Remedies is requested to consider the questionnaire response of exporters to determine the real export price and landed value of Raw Gum and Pre-Compound, since the domestic Industry has deliberately classified raw gum into copolymer pre-compound. Reason being inclusion of raw gum into pre-compound has lowered the average price of pre-compound and resulted into very high dumping margin in respect of Raw Gum and Pre-Compound.

ii. The Designated Authority should grant MET to China based on the development of market economy of China, conduct any normal value calculation in accordance with Article 2 of ADA and apply the data and prices provided by the Company in this response for the determination of the normal value rather than applying analogue country data.

iii. Zhonghao Chenguang Research Institute of Chemical Industry Co., Ltd., China PR is willing to give price undertaking as per Rule 15 of anti-dumping rules in case the Director General Trade Remedies concludes that Zhonghao Chenguang is dumping, or the Authority may fix reference price.

iv. The determination of the normal value violates the provisions of paragraph 7 of Annexure I and is not supported by any evidence. The same also violates paragraph 7 of Annexure I of the AD Rules as the Designated Authority has accepted the Petitioner's way to compute the normal value based on the last option, i.e. on the basis of cost of production in India, duly adjusted, without exhausting the first two options. Referred to Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. and others [(2005) 3 SCC 39].

v. Data presented in the petition with regard to every adjustment are bare assertions and unsubstantiated by evidence, which could not have been relied on for initiating the case. As a result, deflated export price arrived at by GFL to "show" dumping is frivolous and must be rejected.

vi. There is no dumping from the subject country and has not caused any injury to the domestic industry.

vii. The petitioner's claim regarding incomplete value chain of the respondents is not applicable to CFSE as during the POI we have only sold products manufactured by our company and not engaged in any trading of the PUC. The Authority may verify the filed information.

viii. The respondent has provided all relevant information regarding incentives or subsidies, as applicable, in its questionnaire response. The present investigation is an anti-dumping investigation and not a countervailing

investigation. Therefore, the issue raised by the petitioner is irrelevant. Reference is made to the findings in the anti-dumping investigation against imports of Plain Medium Density Fibre Board (MDF) from Indonesia and Vietnam (F. N0. 14/23/2014-DGAD dated 5th May 2016).

ix. The actual data filed by CFSE should be considered for the determination of its individual dumping margin in terms of the provisions of section 9A (1) (c) of the AD Rules, which will clearly show that the dumping margin is negative.

x. Post 11th December 2016, the provisions of the ADA and the GATT 1994 that ordinarily apply to the determination of normal value for companies from market economy companies will apply to imports from China PR without any discrimination. In view of the above submissions, the Authority may determine the normal value for China PR based on the actual domestic prices of the exporters as done for other market economy countries in terms of the provisions of section 9A(1)(c) of the AD Rules.

xi. CFSE has filed the market economy status questionnaire to rebut the presumption that it is operating under non-market economy principles and to demonstrate that its cost or pricing structures reflect the fair value of its merchandise in accordance with the criteria specified in paragraph 8 (3) of Annexure I of the AD Rules.

xii. The claim of domestic industry regarding incomplete value chain of responding parties is not applicable to Solvay Group as it has been already clarified that SSPC directly exports the subject goods to India. These subject goods are imported by SSIPL, who in turn sells it to other customers in India. Furthermore, though domestic sales in China are inconsequential as SSPC has not claimed Market Economy status. SSCL has also filed EQR as the subject goods produced by SSPC are sold in the domestic market and exported to other countries by SSCL.

xiii. With regard to the non-disclosure of benefits received by Chinese producers, Solvay Group submits that the Authority may verify the furnished data. Also, such information is inconsequential as the same have no relevance for the purposes of an anti-dumping investigation. Thus, any information which is not accurate or inadequate is inadvertent while submitting the EQR and is liable to be ignored. If any such subsidy program has not been reported inadvertently by the Respondents, the DA may allow the same to be rectified.

xiv. The Domestic Industry has wrongly claimed that none of the Chinese producers disputed the existence of dumping. The Respondents have already made submissions disputing the claim of dumping of the subject goods from China for the reason that the same has been established on the basis of the Domestic Industry's prices which are not appropriate in the facts and circumstances of the present case.

xv. The domestic industry had claimed constructed normal value in the petition, while in the written submissions it has claimed that the price from a market economy third country to other countries, including India may be resorted to for the purpose of determining the normal value in China. In case the Designated Authority decides to proceed on the basis of prices from a market economy third country to other countries, the same may be disclosed to the interested parties including the respondents well in advance so that the appropriateness of the same may be examined and additional evidence to this effect may be provided if required.

xvi. The present investigation is an anti-dumping investigation, not an anti-countervailing investigation. The benefits in form of subsidies or other, if at all provided by the Government, are not relevant to the present investigation.

xvii. DI has claimed about numbers of programs being run by the Govt. of China wherein benefits are being provided to the producers/exporters. However the Domestic Industry has not furnished any evidence to substantiate the above claim. Zhonghao Chenguang have not been granted any benefits from Government of China.

xviii. The present investigation is an anti-dumping investigation, not an anti-susidy investigation. The benefits in form of subsidies or other, if at all provided by the Government, are not relevant to the present investigation.

xix. Chinese producers are against dumping. They are selling the subject goods as per demand and requirements of the Indian industry. In fact, since FKM is a highly specialized product with specific grades of the manufacturer, approved after several months/years of trial done by auto-companies, there is no need for dumping by Chinese producers.

xx. Uni-Alliance Limited exports the subject goods manufactured by Daikin and is nowhere related to Daikin as per definition provided in trade notice 9/2018 dated 10th May 2018.

xxi. Daikin has exported the subject goods through Uni-Alliance Ltd. (79% of the total exports) and Mitsubishi Corporation Plastics Ltd. (21% of the total exports). Uni-Alliance Ltd. has filed the complete response with the Authority whereas Daikin tried its best that Mitsubishi Corporation Plastics Ltd. files the questionnaire response with the Authority. Mitsubishi Corporation Plastics Ltd. is not related to Daikin, so Daikin could not compel the exporter to be a part of the present investigation. Since majority of exports (79% to total exports) of Daikin was done through Uni-Alliance Ltd. and Uni-Alliance Ltd. has filed the complete response with the Authority, Director General Trade Remedies is requested to consider the same.

xxii. The Domestic Industry has claimed that the various benefits are given to producers/exporters by Government of China PR and stated about various

programs being run by the Govt. of China wherein benefits are being provided to the producers/exporters. However has not furnished any evidence to substantiate the above claim. Daikin and Uni-Alliance Ltd. submit that they have not been granted any such benefits from Government of China. The claims made by domestic industry are irrelevant and insubstantial. In addition, it is also submitted that the present investigation is an anti-dumping investigation, not an anti-countervailing investigation. The benefits in form of subsidies or other, if at all provided by the Government, are not relevant to the present investigation.

42. **Submissions made by CFSE regarding claim on MET status**

i. In terms of Section 15(d) of the Protocol on the Accession of the People's Republic of China, "in any event, the provisions of subparagraph (a) (ii) shall expire 15 years after the date of accession". Accordingly, Members are required to terminate the use of methodologies mentioned under section 15(a)(ii) of the Protocol after 11 December, 2016 and the continued use of these methodologies thereafter will be in violation of a member's obligations under the ADA and the GATT `1994. Therefore, post 11 December, 2016, the provisions of the AD Agreement and the GATT 1994 that ordinarily apply to the determination of normal value for companies from market economy countries will apply to the companies based in China PR without any discrimination. It means that for the calculation of the normal value for the companies based in China PR their actual domestic prices should be considered.

ii. M/s CFSE is the sole cooperating exporter from China PR, which has claimed market economy status (MET) since we believe that our cost or pricing structures reflect the fair value of our merchandise in accordance with the criteria specified in paragraph 8(3) of Annexure I of the Indian Anti-dumping Rules, 1995.

a) None of the major shareholders of our company are state owned or controlled;
b) CFSE is not indirectly controlled by the Government, and therefore, there is no interference of Government in CFSE.
c) The private shareholding in CFSE is more than 85% & indirect government shareholding in less than 15%.
d) The private shareholding in Wuxi Guolian Junyuan Venture Investment Centre (Limited Partnership) is less than 70% & government shareholding is less than 40%.

iii. Attention of the Authority is also invited to the Article 4 of Chapter 1 of the Ministry of Finance Decree No.32 in 2016 of China PR (Measures for Supervision and Management of State Owned Assets transaction.) The content of Article 4 is reproduced below for the ease of ready reference of the Authority.

"Article 4 of Chapter 1. State owned and state holding enterprises and state actual controlled enterprises as mentioned in these measures include:

(1) Wholly state-owned enterprises (companies) established by government department, organizations and institutions, and wholly state-owned

Enterprises with 100% direct or indirect total shareholdings of the above-mentioned units and enterprises;

(2) enterprises in which the units and enterprises listed in paragraph (1) of this Article make separate or joint capital contributions, the proportion of the total ownership of property (shares) rights exceeds 50% and one of them is the largest shareholder;

(3) Sub-enterprises in which the enterprises listed in paragraphs (1) and (2) of this Article, which have more than 50% equity in their capital contributions;

(4) enterprises that can be effectively controlled by the largest shareholders who shall be government departments, organizations, institutions, single state-owned or state-controlled enterprises through shareholders agreements, articles of association, board resolutions or other agreements, although direct or indirect shares held by government departments, organization, institutions, single state-owned or state-controlled enterprises is less than 50%."

iv. The relevant excerpts of section 2(45) of the Indian Companies Act, 2013 are also reproduced below for the perusal of the Authority.

(45) "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;

v. It is amply clear from the above that a company can be termed as state owned & controlled only in the following two situations:

a) Direct or indirect shares held by government department, organization, institutions, single state-owned or state-controlled enterprises is more than 50%, or;

b) Shareholder agreements, articles of association, board resolutions or other agreements authorizes the government to exercise control.

vi. The indirect government shareholding in CFSE is only ***%. Further, the Articles of Association of CFSE authorizes the President of the Board of Directors to exercise control over the day-to-day operations of the company since the president is the legal representative of the company. The Articles of Association (Article 27 to Article 30) of the company has been enclosed with the Supplementary Questionnaire Response. CFSE is therefore not a state owned company.

vii. As regards our only non-individual major shareholder i.e., Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership), it is reiterated that government holding is only ***%. It may also be noted that the Partnership agreement clearly mentions that Wuxi Guolian Industrial Investment Co., Ltd is the only general partner of Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) and has complete control over its day-to-day operations. It is submitted that all shareholders of Wuxi Guolian Industrial Investment Co., Ltd are private persons. Accordingly, it is clear that Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) is not a state owned company.

viii. The applicant has without any basis alleged that CFSE is indirectly controlled by the Government and there is substantial interference of Government in CFSE. In order to substantiate our claim attention of the Authority is invited to the definition of control as per the Indian Companies Act, 2013.

"***Section 2(27) of the Companies Act, 2013***

(27) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;"

ix. From the above, it is clear that in order to exercise control, the shareholder shall have the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly. It is reiterated that in CFSE, the government indirectly holds only ***% of the total shares. Therefore, it is clear that neither the government has indirect control over CFSE nor is there any interference of Government in the management of CFSE.

x. Further, it is submitted that the decisions relating to the day-to-day operations is taken by the Board of Directors of CFSE. It is the executive organ of the company. The President is the legal representative of the Company. The President is elected by 2/3 of directors.

xi. There are three directors of CFSE. Two directors represent the private shareholders of CFSE and the third director is nominated by the non-individual shareholder of the company i.e., Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership).

xii. The only major non-individual shareholder of CFSE i.e., Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) is not a state-owned company. It is a limited partnership company. It is submitted that limited partnership is different from a general partnership on account of the following two main reasons

a. Management of a limited partnership rests with the 'general partner';
b. Limited partners are 'silent partners' since they can make investments in the company but have no voting power or control over its day-to-day operations.

xiii. The applicant has claimed that Wuxi Guolian Industrial Investment Co., Ltd (referred to as "Wuxi Guolian Venture Investment Co., Ltd", which seems to be a typo error) holds 20% shares in our major shareholder namely Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership). In this context, it is submitted that Wuxi Guolian Industrial Investment Co., Ltd is a limited partner of Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) and has no role to play in its day-to-day operations. A copy of the partnership agreement of Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) is enclosed with the submissions. This partnership agreement also contains the details regarding the contribution of partners in the capital.

xiv. The Authority's attention is invited to the following para's from the partnership agreement, which will prove beyond doubt that Wuxi Junyuan Capital Management Center (Limited Partnership) is the only general partner of Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) and has complete control over its day-to-day operations.

"1.13 General Partner and Executive Partner refer to Wuxi Junyuan Capital Management Center (Limited Partnership)."

"2.7.1 The only general partner of the partnership is Wuxi Junyuan Capital Management Center (Limited Partnership)…."

"5.1.1 Limited partnership shall be carried out by general partners in partnership affairs. The management, control, operation and decision-making powers of the partnership, its investment business and other activities are entirely vested in the general partner and exercised directly or through the representatives appointed by the general partner."

"5.1.2 All the partners agreed to entrust the general partner, Wuxi Junyuan Capital Management Center (Limited Partnership), as the partner of the partnership in the execution of partnership affairs."

There is no direct or indirect shareholding of the government in Wuxi Junyuan Capital Management Center (Limited Partnership). All shareholders of this company are private shareholders. Therefore, there is no state interference of government in the day-to-day operations of Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership), which is a shareholder of CFSE. In such case, it is also clear that there is no state inference of the government in the day-to-day operations of CFSE.

xv. Neither any of our shareholders nor our company is a state owned company or controlled by the Government. Accordingly, the decisions of CFSE regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply & demand and without any State interference.

xvi. The Authority should consider to grant MET status to CFSE and determine the normal value based on our actual domestic prices as done for exporters from other market economy countries.

43. **<u>Submissions by Domestic industry</u>**

i. None of the parties barring one i.e. Chenguang Fluoro & Silicone Elastomers Co. Ltd. have filed the MET Questionnaire response.

ii. Secondly, market economy status cannot be granted unless the responding exporters satisfy each & every of the following conditions:

a. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity. In the present case, four of the exporters and producers namely Chenguang Fluoro and Silicone Elastomers Co., Ltd, Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, Shanghai 3F and Inner

Mongolia 3F are indirectly controlled by the Government of China with a relatively substantial amount of State interference. The relevant evidence have already been placed on record.

b. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values.
c. Market economy treatment must be rejected in such situations where Chinese exporters are unable to establish that their books are consistent with International Accounting Standards (IAS). The requirement on insisting compliance with International Accounting Standards is to ensure accuracy and adequacy of revenues and expenses, assets and liabilities expressed in the annual report.
d. Market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules. While one parameter is sufficient to establish existence of injury, failure to pass one single parameter is sufficient to reject the claim of market economy status.
e. It is for the responding Chinese exporters to establish that they are operating under market economy conditions.
f. Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group have not filed the response, market economy status must be rejected. In the present case, as per the petitioners understanding Daikin Fluorochemicals (China) Co., Ltd ("DCC") and its related entity Mitsubishi has not filed the questionnaire response. But since all the exporters and producers have kept the shareholding information confidential, plausibility of other related entity being involved in the product under consideration cannot be ruled out.
g. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.

iii. None of the exporters including Chenguang Fluoro & Silicone Elastomers Co., Ltd who has filed the market economy treatment questionnaire satisfy each and every condition developed from jurisprudence to qualify for grant of market economy status. Thus, the Chinese producers' cost and price cannot be relied upon for determination of normal value.

iv. According to the European Commission's Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations dated 20th December, 2017; in China's state-run economy, the government – as a player of multiple roles controlling factors of production – has the capacity to fully manage these factors in order to achieve its industry policy goals. As such, the government indirectly or directly affect supply, demand and prices, through limits or incentives to produce certain chemicals or to relocate activity to other sub-markets, through relieving the production costs of certain companies, or through supporting the acquisition of new production capacities abroad. All these measures significantly affect or impede the free functioning of the market as well as company decisions, which are no longer genuinely market-driven.

v. The United States Department of Commerce ("Department") in its Memorandum China's Status as a Non-Market Economy dated 26th October, 2017 concluded that China is a non-market economy country because it does not operate sufficiently on market principles to permit the use of Chinese prices and costs for purposes of the Departments antidumping analysis. The basis for the Department's conclusion is that the state's role in the economy and its relationship with markets and the private sector results in fundamental distortions in China's economy.

vi. The normal value for China in such a case can be determined only in accordance with the provisions of para 7 of the Annexure I to Anti-dumping Rules in view of the aforementioned facts and circumstances.

vii. While Art. 15(a)(ii) of China's Accession Protocol expired on December 11, 2016, the Authority must treat China PR as a non-market economy (NME) in the present investigation for the reason that a major part of the POI was till to December, 2016 as the situation prevailing during the POI becomes the relevant consideration.

viii. According to these Rules, the normal value in China can be determined on any of the following basis:

a. The price in a market economy third country,
b. Constructed value in a market economy third country,
c. The price from such a third country to other country, including India.

ix. The petitioner has made submissions and claims on normal value as per the best available information available to it. The Authority may appropriately adopt the methodology to determine normal value.

x. Normal value in China of the product under consideration could not be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not publicly

available and thus, the petitioner resorted to the last option. The interested parties also had sufficient time and opportunity since initiation of investigation to suggest an appropriate market economy third country and produce appropriate evidence for the same.

xi. Moreover, the respondents have themselves admitted that the understanding, "China must be treated in the same way as to any other WTO Member for the purpose of anti-dumping investigations" is no longer shared by the U.S. and the EU when they stated in Page 18 of their written submissions- "Until recently this understanding had been also shared by both the US and the EU". The petitioner here focused on the usage of the word "had been" which clearly does not reflect the present position.

xii. Respondent's further reference to the U.S.'s 1999 White House statement on US-China bilateral agreement and the EU's 2001 Explanatory Memorandum attached to Council Decision Accession Protocol is irrelevant and misleading because they predate the Accession Protocol, and do not reflect the recent positions of U.S. and EU on the interpretation of Section 15(d) which has changed substantially and henceforth are not legally binding.

xiii. Most significantly, respondent's reference to *EC–Fasteners* case is misleading because the Appellate Body has itself clarified that "[…] China's claim before the Panel concerned the determination of individual and country-wide dumping margins and duties, not the possibility of resorting to alternative methodologies in the calculation of normal value in anti-dumping investigations involving China" and in addition, the quoted passage does not support Respondent's argument to bar the use of "surrogate country" practice or makes it compulsory to treat China as "market economy country". The matter of interpretation of Section 15 and China's status is *sub judice* in WTO.

xiv. The domestic industry has provided export price to the best of its abilities, has made adjustments as per best available information and in a manner prescribed and consistent with the practice of the Designated Authority. The domestic industry is not privy to the actual evidence and therefore cannot be expected to provide the same. In any case, the exporter from China should respond with complete and credible information in order to demand dumping margin based on its own questionnaire response. The Authority may, after verification, adopt the prices relevant for the present purpose, if the questionnaire response is complete in all respects.

xv. For the reasons mentioned above, none of the Chinese producers/exporters including Chenguang Fluoro & Silicone Elastomers Co., Ltd should be given the market economy treatment. Also, almost each and every information was claimed confidential in the MET QR which hampers the petitioner's right to make effective comments.

xvi. The very fact that the exporters have resorted to dumping gets established by their tacit admission in not denying existence of dumping.

xvii. The domestic industry has identified the import data to the best of their abilities. What now appears to the domestic industry is that the exporters are now trying to show their higher value product as a low value product and have created stories to suppress such misdeeds at their end. The petitioner requests the Designated Authority to kindly consider the questionnaire response and corroborate the same with the Indian import data. Unless the questionnaire response corroborates with the Indian customs data, the questionnaire response should not be accepted.

xviii. The dumping margin is positive and above de minimis limit.

xix. The Authority has been rejecting the request for price undertaking made by exporters in the past in earlier cases as the Authority felt that it creates lot of practical difficulties to monitor such price undertakings. Further, since the product under consideration is produced and supplied in different forms, it would further add to practical difficulties in implementation of undertaking.

xx. The response of the respondents should not be accepted given the fact that they have failed to disclose vital information, such as name of their related parties, details of their related party producing product under consideration, suppression of facts regarding benefits & incentives received by them.

xxi. The domestic industry requests the Designated Authority to consider weighted average individual one dumping and injury margin for these related/group companies. Apart from the related companies, there are also unique set of Chinese producers who have responded in the present investigation.

Examination by the Authority

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

comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or

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

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

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

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

45. The Authority notes the following relevant provisions related to Normal value computation under the AD Rules as well.

46. Provisions under Para 7 and Para 8 of Annexure I to AD Rules are as under:

"7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, 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 the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.

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

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country. Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether: (a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values; (b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts; (c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and (d) the exchange rate conversions are carried out at the market rate. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph.

(4) Notwithstanding, anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph (3), has been, by publication of such evaluation in a public document, treated or determined to be treated as a market economy country for the purposes of anti-dumping investigations, by a country which is a Member of the World Trade Organization."

47. The Article 15 of China's Accession Protocol in WTO provides as follows:
"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's of the date of accession. ***In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession.*** *In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector."*

48. The Authority notes that provisions of Article 15 (a) (ii) of the China's Accession Protocol has expired on 11/12/2016. However provision in 15(a) (i) still obligates the producers/exporters of China to establish their claim for market economy treatment. Para 7 and Para 8 of the AD Rules stipulates methodology/methodologies regarding Normal Value and also requirements for establishing market economy claims.

49. Authority notes that following exporters/producers have responded and filed questionnaire response.

a. Solvay (Shanghai) Co., Ltd, China PR
b. M/s. Solvay Specialty Polymers (Changshu) Co, China PR
c. Uni-Alliance Limited, China PR
d. Daikin Fluorochemicals (China) Co., Ltd, China PR
e. Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, China PR
f. Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR
g. Shanghai 3F, China PR
h. Inner Mongolia 3F, China PR

50. Only M/s Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR, has claimed MET. The other producers/exporters who have though not claimed MET by filing the stipulated questionnaire but have made submissions regarding China to be treated as Market Economy and also appropriate methodology to determine the Normal Value in case of Non-Market Economy.

Evaluation of MET status of CFSE and Computation of its Normal Value

51. The Authority notes submissions made by M/s Chenguang Fluoro And Silicone Elastomers Co. Ltd. (CFSE) regarding claim of market economy status, questionnaire filed with domestic sales, export sales and cost of production along with supplementary questionnaire regarding claim of market economy status and supplemented with additional submissions with regard to the claim of market economy status.

52. The Authority notes that M/s CFSE produces only one type of PUC i.e pre compounds (copolymer and terpolymer) and not the raw gum, which is the foundation to prepare pre compounds of FKM. Raw Gum accounts for almost 70-75% of the total cost of sales and more than 75% of the total raw material cost. This cost proportion also corroborates with the cost of production composition of

domestic industry wherein the raw material cost mainly raw gum is more than 95% of cost of sales. The submissions on claim of market economy status by M/s CFSE are only with reference to their limited operation on the value addition part of only one type of PUC and with no detailed information and evidences on raw gum production (which is also a PUC) by its suppliers who also need to establish that they are also operating under the market economy conditions. CFSE's questionnaire does not include the questionnaire responses of the producers/suppliers of the raw gum. The limited and incomplete information can not enable comprehensive examination and establishment of the claim of market economy status to M/s CFSE for the subject goods.

53. The Authority has nevertheless examined the cost of production provided by the producer/exporter for pre compounds only wherein also certain discrepancies were noted. These include name of the owner of assets being erroneous, unjustified and unsubstantiated differential procurement prices of raw materials and discrepancies in power bills filed by the producer. As regards the state inference, the producer/exporter has provided its share holding pattern wherein one of its shareholders i.e M/s Wuxi Guolian Junyuan Venture Investment Centre limited partnership who holds ***% of share of the producer/exporter infact has Government shareholding to an extent of ***%. This ***% shareholding is comprised of M/s Wuxi Guolian Industrial Investment Co. Ltd. (*****%)**, M/s Wuxi Newspaper Developer Co. Ltd. (***%), and M/s Wuxi New District Science and Technology Financial Venture Capital Group Co. Ltd. (***%), who further have 100% government shareholding. The investment trail of the producers/exporters investment portfolio therefore shows significant investment by the state enterprises both directly/indirectly. The Authority also notes the submissions by CFSE that M/s Wuxi Guolian Junyuan Venture Investment Centre (***%) has M/s Wuxi Junyuan Capital Management Centre (Limited Partnership) (***% Private) as a General partner who unlike other limited partners is authorised to take day to day management decisions and that there is no government interference in decision making. The Authority notes that the para 8(3) of Annexure 1 of AD rules states "the designated authority shall consider in each case the following criteria as to whether:

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

(b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system,

in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

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

(d) the exchange rate conversions are carried out at the market rate. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in Anti-Dumping Rules, 1995 in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph."

54. In the instant case, the provision under of 6.4 of the partnership agreement of M/s Wuxi Guolian Junyuan Venture Investment Centre, the major shareholder in CFSE stipulates the role of all Shareholders in investment decision making which appropriately clarifies State interference in investment decision making in CFSE. Therefore with decision making for investment by producer/exporter having interference of the state entities, the condition under para 8 (3) (a) is not met to claim MET status. Also the Authority notes that exchange rate as regards foreign currency transactions the producer/exporter has stated that exchange rate's reflected in their financial accounts are based on rate published by people's bank of China. However there are no submissions on the aspect as to whether the exchange rate is controlled by the Government. The Authority recalls its earlier finding no.14/14/2014-DGAD dated 8/4/2017 wherein in para 108 the continued control of exchange rate by Government was underscored. The issues on cost of production, shareholding pattern and claim of market economy treatment being limited only to value added component of PUC and further with no participation of raw material suppliers/producers do not qualify and justify grant of market economy status to the producer/exporter i.e. M/s CFSE.

55. The post disclosure comments on MET claim have also been further appropriately examined by the Authority in the later paras. Therefore, the Authority has adopted the methodology for normal value for CFSE as stated for the other four cooperating producers/exporters including the residual category of producers/exporters.

Computation of 'NV' for producers/exporters not claiming MET status

56. The Authority notes the hierarchy to determine 'NV' as prescribed in Para 7 of Annexure-I to AD Rules; and the following submissions made by various producers/exporters and Domestic Industry on appropriate methodology to determine the NV.

57. M/s TPM representing the domestic industry have stated the following:

(i) For determination of normal value for non-market economy the following three options are available as per Para 7 of Annexure I to the Rules:
   a) Price or constructed value in the market economy third country; or
   b) Price from such a third country to other countries, including India; or
   c) Price actually paid or payable in India for the like product, duly adjusted to include a reasonable profit margin.

(ii) Efforts were made by the domestic industry to collect information with regard to price or constructed value in market economy third country but could not get relevant information in this regard. Thus, the normal value has been determined on the basis of price from following third countries into India, as the same passes the test of Annexure-1, Para 7:
   - USA (Share of imports into India is 28.15%)
   - Japan (Share of imports into India is 15.70%- however, all forms of the PUC have not been imported into India)
   - Italy (Share of imports into India is 2.13%)- however, all forms of the PUC have not been imported into India, and the volume of imports is de-minimus.

(iii) Full information with regard to price from these countries to India have been provided in the petition. Since these prices are CIF prices, and the export price is ex-factory export price, the price has been adjusted for expenses such as freight, insurance, bank charges and inland freight etc. This should be considered as the normal value for the product under consideration.

58. M/s World Trade Consultants and Advocates representing Zhonghao Chenguang Research Institute of Chemical Industry Co., Ltd. have stated the following:

(i) The exporters Questionnaire response has been filed with the understanding that after 11th December, 2016 the Director General Trade Remedies will follow the protocol on China's accession to the WTO.

(ii) As per Section 15(a) (ii) of the protocol on the Accession of the People's Republic of China to the World trade Organization expired on December 11, 2016, India no longer has a legal basis under the agreements of the World Trade Organisation to calculate normal value in anti-dumping investigation of Chinese products using the non-market economy methodology. Any such action by India would be inconsistent with the requirements of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-dumping Agreement") and other covered agreements. We believe that it is the Ministry of Commerce and Industry's obligation as

the Investigating Authority to solicit the information that it requires for calculating the dumping margin in accordance with the WTO Rules.

(iii) In case the Director General Trade Remedies does not agree with our submissions and still considers China as a Non-Market Economy country, it is required that DGTR must follow given guidelines in Para 7 of the Annexure-I of the Anti-Dumping rules which read as under:

"7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin"

(iv) Under the Anti-dumping Rules, normal value shall be determined on the basis of the price or constructed value in the market economy third country or price from such a third country to other countries. In view of the above, it is suggested that normal value may be constructed by adopting the following parameters:

a. Raw material consumption norms to construct the cost shall be adopted for the respective participating producers/exporters.
b. International price of raw material may be considered.
c. Utilities cost may be workout based on the prevailing prices in China PR.
d. Interest rate as prevailing in international market including China PR may be considered.

59. M/s Dua Associates representing M/s Inner Mongolia 3F Wanhao Fluorochemicals Co. Ltd. ("**Inner Mongolia 3F**") and M/s Shanghai Huayi 3F New Materials Sales Co. Ltd ("**Shanghai 3F**") have stated the following:

(i) The Paragraph of Annexure-1 provides the chronology for determination of Normal Value for non-market economy countries as follows:

a. **Ist methodology:** *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,*

b. **IInd methodology:** Where the determination of Normal Value is possible as per Ist methodology, *Normal Value to be computed based on price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin.*

(ii) For the determination of Normal Value as per the aforesaid methodology, the Authority is requested to adopt the price of subject goods in Italy or

USA. To gather the said information, we request your good self to seek information from Italy or USA through Embassy of India in the respective countries. We also wish to highlight that the product under consideration is divided into PCN's therefore, the Authority should seek information as per the product category.

(iii) Since the aforesaid methodology is practically difficult, as an alternate to the above, the Authority may also compute the Normal Value of subject goods in Italy and USA based on landed value of subject goods in India. For the said purpose, the Authority may take import value of subject goods from Italy and USA to India and make necessary adjustments such as deduction of tax and duty levied by Government of India, international freight and insurance paid by exporter/importer, domestic inland freight and other charges and taxes paid in surrogate country.

(iv) The aforesaid methodology is best suited for computation of Normal Value due to following reasons:

a. The Authority possess transaction wise import data of the goods imported from surrogate country. The said import data can be segregated on a PCN basis as per the same methodology adopted for segregating import from subject country.

b. The cost/ sale price arrived on the basis of the aforesaid methodology will be at ex-factory level and therefore, the same is best suited for comparison with the ex-factory export price. Moreover, Para 6 of Annexure I of Anti-dumping Rules mandate that the normal value and the export price should be compared at same level and the Authority prefers to compare the same at ex-factory level.

c. The domestic industry constitutes nascent producers who have commenced commercial production since June 2015 (as admitted in the application). Therefore, Indian producers and Indian market is not representative of the price for an established industry. In this respect, Para 7 also mandates that the Authority while selecting surrogate country should keep in view the level of development of the country concerned and the product in question.

d. The aforesaid methodology would be the most suitable methodology because the computed normal value will be based on reliable information.

e. Computation of Normal Value on the aforesaid methodology will avoid any unnecessary delays.

f. The domestic industry has provided post factory expenses for China PR to arrive at ex-factory export price. Therefore, the Authority may adjust the said data (concerning post factory expenses) to arrive at cost/price of subject goods in surrogate country.

Examination by Authority

60. The Authority notes the submissions by M/s WTC on China's Accession protocol provisions and holds that claim of MET requires satisfying the provisions of 15(a) (i) of the Accession Protocol. On 11.12.2016 the provisions of 15 (a) (ii) have though expired, the provision of Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession protocol require criterion stipulated in para 8 of the Annexure 1 of India's AD Rules to be satisfied through the information/data provided in the supplementary questionnaire on MET status. Only one of the producers/exporters i.e. M/s Chenguang Fluoro & Silicone Elastomers Co. Ltd. has provided the requisite information which has been examined in the earlier para. . Therefore for producers/exporters who have not lodged claim for grant of MET the normal value computation is required to be dealt as per provisions of para 7 of Annexure-1 of AD Rules. The Authority notes the hierarchy of options for normal value computation in case of a non-market economy country and various submissions on adopting an appropriate methodology as per the provisions of this para.

61. The Authority in the disclosure statement had noted that the first proviso to consider domestic prices in a surrogate third market economy country for NV is not feasible as the product under consideration has many PCN's for which information of domestic sales in a third market economy country is not available in public domain. Further none of the interested parties has filed any such an information before the Authority. The Authority noted that the 2nd proviso of para 7, stipulates that price of PUC from such a Market economy third country to other countries including India can be considered. In view of the significant imports of PUC from USA, a market economy and the technical nature of PUC, a specialised rubber with applications in sophisticated Auto sector, space and water purification systems, the Authority had proposed USA as a surrogate Market economy country for referencing its export prices to India in accordance with the 2nd proviso of para 7.

62. However the Authority notes that the above approach at Normal Value proposed by it in the disclosure for the subject goods in China referencing import price from USA in accordance with Para7 of Annexure 1 has been contested by various interested parties. The Authority in this context recalls that submissions made by various interested parties regarding issues of considering import prices from USA as a surrogate country to India were exchanged amongst various interested parties through the public file. The Authority notes that though this approach has been justified by the domestic industry and one of the producers/exporters, the other interested parties have stated that this approach is not appropriate as export prices of raw gum from USA to India are more than Precompound prices which is anamalous and not justified. The Authority keeping in view various submissions regarding the computation of 'Normal Value', has in this finding adopted the Constructed 'Normal Value' approach on the basis of cost of production of the Indian Industry by appropriately normating various elements of cost as per best practices/norms and by allowing a reasonable return on the Cost of production of subject goods. The Authority notes that this approach has been consistently adopted by it in past cases as well and takes care of the various concerns raised on the approach suggested in the disclosure statement.

63. The Authority in this regard notes that certain interested parties have requested that while computing the Normal Value, international prices of raw material and power cost in China be adopted. The Authority notes that as per its consistent practice, it endeavours to reference international prices. In the instant case two main raw materials VF2 and GX902 have been imported in POI by the domestic industry which have been referenced as a cost element for 'CNV'. Another major raw material is 'TFC' which is captively manufactured and is not tradable. Under such circumstances, the normated cost of domestic industry with best practices/norms has been considered to evaluate the Normal Value for producers/exporters of China. Further the two raw materials i.e. VF2 and GX902 as per the WTA database are imported either in very insignificant quantities or nil respectively into China and therefore the import price of these raw materials into India can be considered as representative of international prices for the Asia region and is justified to be adopted for 'CNV' purpose.

64. The Authority has therefore constructed the 'NV' on the basis of the above methodology:

Grades	**CNV ($/kg)**

Co polymer Raw gum	***
Co polymer Pre compound	***
Terpolymer –Bisphenol cured Raw gum	***
Terpolymer – Peroxide cured Raw gum	***
Terpolymer Bisphenol precompound	***

G. Determination of Export Price

65. The following producers/exporters filed exporter's questionnaire (EQ) response in the present investigation

a. Solvay (Shanghai) Co., Ltd, China PR
b. M/s. Solvay Specialty Polymers (Changshu) Co, China PR
c. Uni-Alliance Limited, China PR
d. Daikin Fluorochemicals (China) Co., Ltd, China PR
e. Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, China PR
f. Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR
g. Shanghai 3F, China PR
h. Inner Mongolia 3F, China PR

Determination of Export Price of Solvay (Shanghai) Co., Ltd and M/s. Solvay Specialty Polymers (Changshu) Co

66. The producer/exporter has sold 136.51 MT of Subject goods i.e. FKM (Co Polymer Pre Compound) on CIF basis during POI to India to its related entity i.e. M/s Solvay Specialities India Private Limited (SSIPL). The related importer has sold these goods on ex work basis to end customers but has incurred losses during POI to an extent of Rs. ***. The Authority has appropriately adjusted these losses to determine the Ex-factory Export Price.

67. The Authority appropriately considered adjustments on logistics expenses (ocean freight, ocean insurance, inland transportation, and port handling) to an extent of *** $/MT, Bank Charges to an extent of *** $/MT and Credit Cost to an extent of *** $/MT, on the basis of actual incidence of expenses on these elements. Further, adjustment on loss on sales made by the related importer has also been considered to an extent of *** $/MT. The Ex-factory Export Price is proposed at *** $/MT. The landed value after adding relevant duties and charges comes to *** $/MT.

Export price of Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd

68. The producer/exporter has exported subject goods to an extent of 131 MT in POI (only Co polymer Raw Gum) at a total invoice value of *** USD. (both with ex-works and CIF terms). The equivalent CIF value for all transactions during POI on the basis of various expenses on account of Port charges and handling, Inland transportation, Overseas transportation, Insurance and Bank Charge is computed as *** USD. The per unit CIF price comes to *** $/MT. After allowing adjustments on Port charges and handling, Inland transportation, overseas transportation, insurance and bank charges and VAT to an extent of ***, ***, ***, *** *** and *** $/MT respectively, the ex-factory export price comes to *** $/MT.

69. The authority notes that the producer/exporter has stated that their Joint venture of M/s Zhonghao Chenguang Research Institute of Chemical Industry Co. Ltd. i.e. M/s Chemours Chenguang Fluoromaterials (Shanghai) Co. Ltd. has not exported subject goods directly during POI. The Authority has validated the same with transaction wise DG systems data also. The Authority however notes that the dumping margin is being computed for direct export by the participating producer/exporter only.

70. The Authority also notes that response for *** MT of imports has been filed by M/s Eastcorp International, an importer whose CIF also gets broadly correlated with the producer's response.

Export price of Uni-Alliance Limited and Daikin Fluorochemicals (China) Co., Ltd

71. M/s Daikin Fluorochemicals (China) Co. Ltd. has exported the subject goods i.e Fluoroelastomers to an extent of 112.32 MT of Fluoroelastomers during POI to India through 2 channels i.e. M/s Mitsubishi (23.80 MT) and M/s Uni alliance (88.52 MT). M/s Mitsubishi has not filed the Exporter Questionnaire Response. The exports by M/s Uni-Alliance includes 4.02 MT of Fluoroelastomers (compound) which is not part of PUC and the same is proposed to be excluded. Therefore the PUC to an extent of 84.50 MT of 3 grades i.e. Terpolymer Bisphenol Pre-Compound, Co Polymer Pre-Compound, Terpolymer Peroxide Curable Raw Gum have been exported by M/s Uni Alliance to an extent of ******* MT, ******* MT, ******* MT at a total invoice value of *** US$, *** US$, *** US$ respectively.

72. In case of **Terpolymer Bisphenol Pre Compound**, after allowing the adjustment on Inland Freight, Handling Charge, Ocean Insurance, Overseas Freight, Bank Charges, Credit Cost and VAT to an extent of ***, ***, ***, ***, ***, *** and *** US$/MT respectively, the Ex-factory export price comes to *** $/MT. The Landed Value after applying all applicable duties comes to ******* $/MT.

73. In case of **Co Polymer Pre Compound**, after allowing the adjustment on Inland Freight, Handling Charge, Ocean Insurance, Overseas Freight, Bank Charges, Credit Cost and VAT to an extent of ***, ***, ***, ***, ***, *** and *** US$/MT respectively, the Ex-factory export price comes to *** $/MT. The Landed Value after applying all applicable duties comes to *** $/MT.

74. In case of **Terpolymer Peroxide Curable Raw Gum**, after allowing the adjustment on Inland Freight, Handling Charge, Ocean Insurance, Overseas Freight, Bank Charges, Credit Cost and VAT to an extent of *******, *******, *******, *******, *******, ******* and ******* US$/MT respectively, the Ex-factory export price comes to ******* $/MT. The Landed Value after applying all applicable duties comes to ******* $/MT.

Export price of Shanghai 3F (Exporter) and Inner Mongolia 3F (Producer)

75. During the POI, the following three related entities were involved in production, domestic sales and exports:
    (i) Inner Mongolia 3F Wanhao Fluorochemical Co., Ltd. ("IM 3F") engaged in domestic sales and also sales to countries other than India,
    (ii) Inner Mongolia All Top Fluorine Chemistry New Materials Development Co., Ltd. ("All Top") engaged in production and domestic sales, and
    (iii) Shanghai Huayi 3F New Materials Sales Co., Ltd. ("SH 3F") engaged in domestic sales and export of countries including India.

76. Post POI of the present investigation, M/s All Top was merged in IM 3F with notification in January 2018. Documents in support of merger of All Top were filed along with questionnaire response filed by IM 3F. Since All Top is already merged with IM 3F, the Authority has considered the combined response of IM 3F and All Top containing relevant information in prescribed format. A separate exporter's questionnaire response was also filed by SH 3F the exporter.

77. The Authority has undertaken desk verification of data filed by IM 3F (including data of All Top) and SH 3F. Since closure of All top has been notified after its merger with IM 3F, the Authority considers IM 3F as the producer and SH 3F as

the exporter of goods for determining dumping and injury margins.

78. The Authority notes that during POI, All Top was engaged in production and domestic sales of subject goods. IM 3F was undertaking domestic sales in China and export of subject goods to third countries. SH 3F was engaged in domestic sales, exports to India as well as other countries. SH 3F as an exporter of subject goods has exported one type of FKM i.e. Terpolymer Bisphenol Curable Raw gum grade of subject goods. The Authority notes that SH 3F has exported 2000 kg of Terpolymer Bisphenol Curable Raw gum grade of subject goods to India.

79. The Authority notes that subject goods produced by All Top (now IM 3F) has been physically supplied to SH 3F. SH 3F has further undertaken exports of subject goods to India with a significant mark up. The export price is exclusive of VAT. The Ex-factory export price for IM 3F (the producer) has been computed on the basis of sales price from IM 3F to SH 3F as *** US$/kg after making adjustment on inland freight charges to the extent of *** USD/kg.

LANDED VALUE:

The landed values of subject goods exported by SH 3F have been computed by applying applicable basic customs duty and cess on the assessable value which is considered as CIF import price plus landing charges. Transactions on FOB have been converted to CIF by adding appropriate expenses on insurance/ocean freight as applicable. The Landed Value of goods exported by SH 3F is determined as *** INR/Kg (*** USD/kg).

Ex-factory export price of Subject goods exported by CFSE

80(a) The Authority notes that as per the Questionnaire response, the producer/exporter has exported two grades of FKM i.e. FKM copolymer Pre compound and FKM Terpolymer Pre Compound to an extent of 31.375 MT with breakup of ******* kg and ******* kg respectively during POI. The Copolymer Pre Compound has been exported both to end users (******* kg) and to trader (******* kg) and Terpolymer to trader(******* kg). The Authority has computed ex-factory export price and landed value for 2 grades separately for an Apple to Apple comparison with NV and NIP on grade basis irrespective of the customer type.

a. Copolymer Pre Compound

The Authority notes that producer/exporter has exported the above type of PUC to an end user at an invoice price of *** CNY/kg (CIF) and to trader in India at *** CNY/kg (FOB).

i. The adjustments have been claimed by the producer/exporter on exports to end user on account of discount/commission, packing, Inland freight, Overseas freight, Overseas Insurance, Bank charges, Credit Cost and VAT refund to an extent of ***, ***, ***, ***, ***, ***, ***, *** (CNY/kg) respectively. The Authority on the basis of desk study has verified the adjustments on sample evidence and system reports and has allowed the same. As regards VAT refund the producer/exporter has claimed enhancement in export price to an extent of 13% on FOB. However, it is noted that out of the applicable VAT, the producer/exporter gets a 13% refund with 4 % VAT becoming cost incidence and therefore needs to be adjusted further beyond above mentioned adjustments to arrive at ex-factory export price. The VAT refund rather than *** CNY/kg as a roll back is considered as *** CNY/kg as a deductible expense for arriving at Ex- factory export price. The ex-factory export price is considered as *** CNY/kg (*** $/kg)

ii. As regards the export sales to trader, the adjustments have been claimed on account of discount/commission, packing, Inland freight, Bank charges and VAT refund to an extent of ***, ***, ***, ***, *** (CNY/kg) respectively. The Vat refund as per methodology stated above is considered as ******* CNY/kg. The exfactory export price comes to *** CNY/kg (*** $/kg). The weighted average Ex-factory export price for Copolymer pre compound for both sales channel comes to *** $/kg. The weighted average Landed Value comes to *** $/kg.

b. Terpolymer Pre Compound

The Authority notes that producer/exporter has exported the above type of PUC only to a trader at an invoice price of *** CNY/kg.

i. The adjustments have been claimed by the exporter/producer on exports to trader on account of discount/commission, packing, Inland freight, Bank charges and VAT refund to an extent of ***, ***, ***, ***, *** (CNY/kg) respectively. The Vat refund as per methodology stated above is considered as *** CNY/kg. The exfactory export price comes to *** CNY/kg (******* $/kg). The Landed value comes to *** $/kg.

The Authority notes the submission on VAT adjustment by the producer/exporter and holds that VAT refund to the extent VAT is borne as an expense is deductible.

Determination of Dumping Margin

The export price to India (net of all the adjustments claimed by the exporter and accepted by the Authority) have been compared with the normal value to determine

dumping margin. The weighted average dumping margin of all goods during the POI for all exporters/producers from subject country has been determined and the same have been indicated in the table below. For residual category, the Authority has considered the highest dumping margin evidenced amongst the cooperating producers/exporters.

SN	Producer	Exporter	Dumping Margin - US$/Kgs	Dumping Margin - %	Dumping Margin Range- %
1	M/s. Solvay Specialty Polymers (Changshu) Co, China PR	Solvay (Shanghai) Co., Ltd, China PR	***	***	40-50
2	Daikin Fluorochemicals (China) Co., Ltd, China PR	Uni-Alliance Limited, China PR	***	***	20-30
3	Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, China PR	Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, China PR	***	***	30-40
4	Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR	Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR	***	***	30-40
5	Inner Mongolia 3F, China PR	Shanghai 3F, China PR	***	***	100-110
6	Residual Others		***	***	100-110

H. DETERMINATION OF INJURY AND CAUSAL LINK

81. **Submissions by exporter, importer and other interested parties**

i. The domestic industry is already in existence for three years, started commercial production from July 2015. Accordingly, it cannot be concluded that the purported dumping has materially retarded the establishment of the Domestic Industry. Domestic Industry cannot claim material retardation as it

is already established.

ii. All three forms of injury cannot co-exist simultaneously (Korea- Anti-Dumping Duties on Imports of Polyacetal Resins from the United States refers).

iii. Proposals on material retardation to the WTO have no legal sanctity.

iv. No material injury or threat of material injury or material retardation suffered by domestic industry as relevant economic parameters show significant improvement.

v. Petitioner has exaggerated the increased imports of subject goods and deliberately invented material retardation.

vi. The petitioner has not brought any substantive evidence of dumping and/or injury to provide the condition for initiation of AD investigation while the investigating authority has not carried out appropriate scrutiny of facts.

vii. Application does not meet the evidentiary and legal standards regarding dumping, injury and causal link between alleged dumping and injury.

viii. Initiation of the investigation is short of factual and legal basis is baseless and thus, the same should be terminated.

ix. The claims of petitioner appears to be, manipulated and fabricated in order to show injury.

x. Imports from subject country have increased with the increase in demand and have compensated decline in imports from other countries. There is no volume effect caused by imports from China PR during the POI.

xi. Petitioner has exported the subject material to other countries at prices much lower than the prices at which the goods have been imported in India from China PR and that too mainly to its subsidiary companies such as GFL America, GFL GMBH. This is one of the main reasons of purported injury to the Domestic Industry.

xii. Price undercutting, which is most important parameter to establish causal link, is negative during the entire injury period.

xiii. There might be some other factors which are causing injury to the domestic industry that needs to be examined by the DA. The petition deliberately fails to address a number of crucial issues which had an impact on the domestic industry independently from the subject imports.

xiv. Capacity, production and capacity utilization have been at the highest-level during POI and there is no reduction in these parameters.

xv. Petitioner is selling whatever they are producing. Their focus has been exports, by choice and not by chance, and not Indian market.

xvi. Domestic industry is facing losses during the injury period even when imports were not causing injury. There might be some other reason for its injury and not the subject imports.

xvii. The productivity of domestic industry has increased.

xviii. There is no price effect as price depression is due to GFL's own pricing policies.

xix. The negative performance with relation to profitability is due to unremunerative pricing of like articles produced by domestic company.

xx. The domestic industry has not segregated the export profit/loss from domestic sales profit/loss in calculating return on capital employed and cash profits. Hence, the extent of deterioration is flawed as there is no separation of injury due to exports.

xxi. The commencement of production coincided with decline in demand, hence target anticipated in the project reports could not be achieved which were set when demand was increasing. However, the domestic industry captured a sizeable market in short span of time.

xxii. There is no injury with respect to employment, wages and productivity and no adverse impact on the Growth of the domestic industry.

xxiii. The correct way to analyze the inventories is to compare the closing inventories with the domestic sales made by the domestic industry as laid down by the Hon'ble CESTAT in the case of Bridge Stone Tyre Manufacturing (Thailand) Vs. DA 2011 (270) E.L.T. 696 (Tri. - Del.).

xxiv. The assertion of the petitioner that it has exported significant volume of the PUC only because of dumping of the product in the country is misleading. Both domestic and exports sales of the petitioner increased significantly in the POI as compared to 2015-16 (Year of commencement of the production by the petitioner). The respondent has not resorted to any dumping.

xxv. In a short span of two years of operation, the petitioner's domestic sales have increased by five times, market share increased by four times, capacity utilisation increased by two times etc. In such case, it is baseless and wrong to say that the dumped imports are inhibiting the growth of the domestic industry. The petitioner has suffered injury, if any, on account of its inefficiencies and poor quality of the product. It may also be noted that it is on account of these other reasons that the petitioner has incurred losses not only in the domestic market but also in the export market.

xxvi. It is requested that 2014-15 data should be ignored. Further, 2015-16 should be considered as base year for injury analysis. Also, the investigation should be terminated since this investigation has been initiated based on wrong analysis of the data and information provided by the petitioner.

xxvii. The Domestic Industry's contention that dumping by Chinese producers and exporters at low prices are restraining the Domestic Industry from capturing the desired market share and thereby, are inhibiting growth is false and deceptive for the simple reason that the Domestic Industry has been selling

the subject goods produced by it at prices that were lower than the landed value of imports from China. A situation of inability to capture market share due to cheap dumped imports may only arise when the Domestic Industry prices its goods higher than that of the alleged dumped imports. The only reason for which users of the subject goods would not source the same from the Domestic Industry would be due to quality issues as evidently, the prices at which the Domestic Industry is offering the subject goods is far more attractive, being much lower than the prices of imports.

xxviii. Data prior to July 2015 is relevant to the extent of analyzing the trends prevalent of the subject goods in the domestic market of India. As there was no production of the subject goods prior to July 2015, the trends of demand and consumption, prices of subject goods etc. are necessary to ascertain whether the claims of the Domestic Industry such as lowering of prices, changes in patterns of consumption and demand in the domestic market etc., are correct.

xxix. Such a trend comparison by taking data prior to July 2015 is especially necessary in the facts and circumstances of the present case as it can be seen that the demand of the subject goods in the domestic market had sharply declined in 2015 when compared to the preceding year. Furthermore, landed value of imports from China increased by approximately 9% in 2015. This clearly contradicts the misleading claim of the Domestic Industry that China lowered its prices to India when the Domestic Industry commenced production in 2015 when in fact, Chinese imports had become more expensive.

xxx. The claims of Domestic Industry regarding co-existence of two forms of injury is entirely misplaced as the forms of injury specified in Section 9B(1)(b)(ii) have been separated by the words "or" which has been used in its disjunctive sense which indicates that the same are mutually exclusive. It is a settled position of law that needs no reiteration that the word "or" has to be used in its ordinary sense unless reading it as disjunctive would result in an unintelligible or absurd meaning. Reliance is place on Supreme Court Judgment in Municipal Corpn. Of Delhi v. Tek Chand Bhatia [1980) 1 SCC 158] wherein it was stated that or has to be read in its ordinary disjunctive sense unless the context indicates.

xxxi. There is no provision in the AD Rules 1995 which indicates that if one form of injury is not found, the other form may be examined. Neither does Section 9B(1)(b)(ii), nor does Rule 11 or Annexure II provide either explicitly or through necessary implication that the DA ought to check for other forms of injury if the injury in the nature of the initial claim by the Domestic Industry is not made out.

xxxii. Although the decision in Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States (ADP/92, and Corr.1) was issued before the present ADA came into existence, the relevant provision regarding the term “injury” under the erstwhile Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("Tokyo Round Anti-dumping Code") are pari materia with the ADA. A bare perusal of footnote 9 of the ADA and footnote 3 of the Tokyo Round Anti-dumping Code makes it clear that the understanding of the terms ‘material injury’, ‘threat of material injury’ and ‘material retardation’, as they were provided for under the Tokyo Round Anti-dumping Code, have not undergone any change under the present ADA either.

xxxiii. It is also no longer res integra, as per the decision of the Hon’ble Supreme Court in Commissioner of Customs, Bangalore v. G.M. Exports & Ors [(2016) 1 SCC 91] that while interpreting a provision in a municipal law that has been enacted by the legislature as a consequence of the obligations incurred by India as a result of being a signatory to an international treaty, the interpretation of such a statute should be construed on broad principles of general acceptance rather than earlier domestic precedents, being intended to carry out treaty obligations, and not to be inconsistent with them.

xxxiv. The Indian provisions regarding establishment of injury are based on the provisions contained in the ADA. Therefore, in view of the GATT Panel Report in Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States (Supra), it is established that all three forms of ‘injury’ cannot co-exist for the same Domestic Industry.

xxxv. The domestic industry placed reliance on EU Commission Regulation (EEC) No 165/90 dated 23rd January 1990, wherein the EC found both material injury and material retardation to substantiate its claim. However, it is no longer good law in view of the later GATT Panel decision in Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States (Supra) which has expressly ruled to the contrary.

xxxvi. The Domestic Industry’s reliance upon the final findings dated July 12, 2017 of the DA in the case of SBR 1500-1700 series and the CESTAT appeal thereto is also misplaced as the Domestic Industry in the aforesaid case consisted of two domestic producers- one which suffered material injury on the factum that it was an established domestic producer, the other was examined for material retardation due to the reason that it was not considered as established as it had not commenced. Therefore, the facts and circumstances of that case are inapplicable to the present case inasmuch as the Domestic Industry in the present case consists of only one domestic producer.

xxxvii. The DA and the Hon'ble CESTAT did not have the advantage of the GATT Panel report in Korea - Anti-Dumping Duties on Imports of Polyacetal Resins from the United States, which is to be considered as the authoritative pronouncement on the issue as per the law laid down by the Hon'ble Supreme Court in G.M. Exports while deciding the case of SBR and as such, the aforesaid decisions were passed in ignoratium of the settled legal principle that all three form of injury cannot co-exist.

xxxviii. The Designated Authority's final finding in anti-dumping investigation concerning PHPG Dane Salt originating in or exported from China PR and Singapore cannot be relied upon as it's determination were arrived at without taking the arguments of the parties into consideration and without assigning any reasons whatsoever on how both forms of injury could co-exist for the same Domestic Industry. Such an unreasoned finding on the said issue of injury has to be treated as sub-silentio and therefore, is not a binding on the DA while deciding the present case. Reliance is placed upon the Supreme Court judgment in State of U.P. & Anr. v. Synthetics and Chemicals Ltd. & Anr. [(1991) 4 SCC 139].

xxxix. The Domestic Industry has again sought to rely upon the discussions and proposals of the WTO member countries for the purpose of establishing how material retardation is to be ascertained, especially the proposed amendment to the ADA by way of insertion of an Article 3.9. Even though the proposal may not have been incorporated into the substantive provisions of the treaty, the same can be relied upon if there is a subsequent agreement between the parties regarding the interpretation of the treaty or the interpretation of its provisions in terms of Article 31(3)(a) of the VCLT. Unfortunately, the Domestic Industry has not been able to provide any material regarding the existence of any such agreement either.

xl. The domestic industry tried to mis-guide the investigating authority vide its pre-hearing submission (letter dated 17th May 2018) showcasing an excellent export performance and growth. They purposely used indexed data to put its point as per their benefit. As soon as the Chinese producers and AIRIA mentioned, during the oral hearing, that their material has failed in International market due to poor quality in spite of offering the same at very low prices.

xli. We request the designated authority to take cognizance that how this has suddenly become "Make for India" plant to disguise their dismissal export performance. Perhaps, even the respected authorities will find it strange that a so called global company has set up a plant with the intention to cater domestic market only, while they believe their product quality and cost of production is comparable to International standard. The Designated Authority

is requested to critically examine the same.

xlii. Zhonghao Chenguang has done detailed R&D and patented many grades which are exclusively produced by them only, thus, there is no need to sell those products at lower prices or causing injury to the Domestic Industry. The prices at which Zhonghao Chenguang is selling are completely market driven.

xliii. It is submitted that Trade Notice No. 5/2018 dated 28th February 2018 is applicable to the investigations initiated after the issuance of trade notice. Since the present investigation was initiated on 2nd January 2018, the same trade notice is not applicable to the participating exporters/importers. However, if the Authority so desires, we are willing to provide all information.

82. **Submissions by Domestic industry**

i. The imports from the subject country have increased over the injury period in absolute terms and in POI by 50% as compared to the base year as compared to the base year against 13% increase in demand

ii. The share of subject imports in total imports entering India has increased throughout the injury period and is 49.50% during the POI, while that of other countries have decreased throughout during the corresponding period.

iii. The share of imports from the subject country in domestic demand/consumption has also increased over the injury period and is 42.67% during the POI.

iv. There is a decline by Rs.28/Kg in import price over the injury period and is much below the average CIF import price and that from the other countries.

v. The import price from subject country declined very steeply after 2015-2016, the year in which the domestic industry started its commercial production. It decreased by Rs.113/Kg i.e 11% in POI as compared to 2015-16 when the domestic industry came into existence.

vi. Price undercutting from China is negative because the domestic industry is compelled to keep low prices in order to compete with cheap import prices from the subject country.

vii. The subject country imports are depressing domestic industry's prices.

viii. The market share of the domestic industry in Indian demand has increased over the injury period but continues to be abysmally low, despite the demand of the product in the country has increased.

ix. The domestic industry has been prevented by the presence of dumped imports from increasing its production, sales, capacity utilization and market share despite existence of significant demand and capacities in the Country.

x. Inventories with the domestic industry are increasing constantly, despite low production.

xi. The petitioner is suffering significant financial losses, cash losses, and negative ROI.

xii. The growth of the domestic industry is negative in terms of a number of price parameters.

xiii. The injury margin is positive and significant.

xiv. Dumping of the product under consideration is not allowing the domestic industry to fully establish itself. The domestic industry had commenced the commercial production in July, 2015 and the period of investigation in the present investigation is July, 2016 to June, 2017. The Designated Authority may consider (a) actual performance so far to establish effect of dumping, (b) potential situation in order to establish threat of injury and (c) whether dumping of the product under consideration is materially retarding the establishment of the domestic industry in India.

xv. The petitioner fails to understand that how an industry cannot claim retardation within one year from the date of its commencement of commercial production.

xvi. The Rules do not state that the retardation should be claimed only when the company has not commenced commercial production. If a new industry is facing injury, it follows that it is getting materially retarded. Decision of the Designated Authority in the matter of SBR is referred to and relied upon, which has since been affirmed by the Supreme Court as well. It cannot be said that an industry is getting materially retarded but not suffering material injury, particularly if the domestic industry has performed for some time. In fact, absence of material injury to the extent of performance must be pre-requisite in case of retardation.

xvii. Petitioner is at its "nascent stage of business". The rules do not specify that authority records this form of injury only if the domestic industry has performance of less than one year. In fact, the WTO guidelines on the investigation period suggest that if the domestic industry performance is below 3 years, it shall fall in the category of nascent stage. The law has recognized only three forms – retardation to establishment, material injury and threat of material injury. Thus, there cannot be more than two stages of a domestic industry – in the process of development or developed.

xviii. In the present case; Imports are leading to material retardation. The petitioner has so far suffered a loss of Rs. 12.74 crores as of now on an investment of 30 crores. The performance of the domestic industry so far clearly shows that during the short period of operation, the performance of the domestic industry has deteriorated.

xix. Three forms of injury i.e. material injury, material retardation and threat of material injury can co-exist. The Rules imply that if one form of injury is not found, the other form of injury must be examined. "Or" has to be read as "and", if more than one form of injury exists.

xx. The domestic industry has essentially claimed injury on the basis of material retardation to establishment of the domestic industry to the extent the petitioner has been prevented from utilising its capacities and is facing significant sub-optimal utilisation and significant financial losses. Further, petitioner has claimed material injury in as much as petitioner's performance as exists and the same shows significant financial and cash losses.

xxi. The Authority has time and again found the co-existence of material injury and material retardation as has been done in the investigations concerning Induction Hardened Forged Steel Roll from Russia, Ukraine and Korea RP, PVC Flex Films originating in or exported from China PR, 1,1,1,2,-Tetrafluroethane or R-134a of all types originating in or exported from China PR and Japan and O- Acid originating in or exported from China PR.

xxii. In the anti-dumping investigations concerning D(-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt originating in or exported from China PR and Singapore and D(-) Para Hydroxyl Phenyl Glycine Base originating in or exported from China PR and Singapore, the Authority found the existence of all three forms of injury i.e. material retardation, material injury and threat of injury. Reliance is also placed on finding in EU Japanese Dynamic Random Access Memory (DRAMs) case (Regulation (EEC) 165/90, OJ L20, 25.1.90).

xxiii. Respondents' reference to Korea- Anti-Dumping Duties on Imports of Polyacetal Resins from the United States case is irrelevant because of two foremost reasons. Firstly, the above decision was before the Anti-dumping Agreement came into existence and secondly in view of the case of Styrene Butadiene Rubber, where the Authority in its final finding dated 12th July, 2017 has examined both material retardation and material injury simultaneously. The Authority held that:

> *"x. The Anti-Dumping Rules do not prevent simultaneous examination of both these forms. It cannot be held that the 3 forms of injury are mutually exclusive."*

The findings of the authority were challenged in CESTAT contending the finding issued by the Designated Authority in SBR on the ground that both type of injury can-not be examined together. The CESTAT upheld the findings of the Designated Authority.

xxiv. The Designated Authority even in the matter of Veneered Engineered Wooden Flooring originating in or exported from China PR, dated 13th Feb, 2018 held

the coexistence of the material injury and material retardation. Going by the above analysis of the Designated Authority under various cases it is held again and again that all the forms of injury are not "mutually exclusive" and may co-exist together for the purpose of determination of different kinds of injury being suffered by the Domestic Industry.

xxv. The authority may kindly consider the present case as a case where establishment of domestic industry was getting materially retarded and the same is established by considering the existing performance on one hand and comparison of existing performance with the projected/targeted performance. However, should the interested parties insist that the domestic industry is already established and both material retardation and material injury cannot co-exist, in that event the authority may kindly consider the present case for the purpose the determination of material injury as the petitioner has already commenced commercial production in July 2015. In such event, the authority may kindly apply Annexure-III for the purpose of determination of NIP and injury margin and consider that the capacity utilization in POI was at its optimum level and in that event, NIP is required to be determined by considering the capacity utilization achieved during the POI. Should the Designated Authority examine the present case as a case of material injury, as the capacity utilization in the POI was optimum, no normation may kindly be done for determination of the NIP.

xxvi. The examination of the impact of the dumped imports on the domestic industry should include an objective evaluation of all relevant economic factors and indices having a bearing on the state of the industry. The law doesn't say that the economic parameters necessarily show decline. The word "evaluation" doesn't mean "demonstration" and "existence". Such evaluation will definitely be different for each case as per the situation of the concerned industry. Reliance is placed on decision in EC — Bed Linen (Article 21.5 — India).

xxvii. The sales volume of the domestic industry could not increase in tandem with increase in capacity and production due to availability of dumped imports in the market. The domestic industry could utilise its capacities only to the extent of 36.10% during the POI and up to 54.76% in 2017-18. Further, having produced 238 MT in POI, the domestic industry was not able to sell to the extent of its production and was forced to export the product out of India.

xxviii. The fact that some criteria do not show injury will not discredit an affirmative finding.

xxix. The subject imports have increased by 50% over the injury period. The subject imports are causing material injury and materially retarding the establishment of the domestic industry.

xxx. The opposite party has miserably failed to point out as to how this precondition of Rule 5 has not been met with.

xxxi. The information filed by the domestic industry has already been duly verified by the Authority. The Authority had initiated the present investigations on the basis of sufficient prima facie evidence of dumping of the subject goods from the subject country, injury to the domestic industry and causal link between dumping and injury. The applicant has provided all relevant information in support of its claim of dumping, injury and causal link and the Authority have found it appropriate to initiate the investigations.

xxxii. Exporting the subject goods was not the domestic industry's choice but its compulsion. GFL was forced to sell in US market at a low price only because of the sale of Chinese product at low prices in US market.

xxxiii. As regards exports at a low price to affiliated party, while the issue is irrelevant to the present investigations, should the Authority still consider relevant, the domestic industry can provide information on resale price of the exported product to show that there is no material difference in the export price of the petitioner and sales price of the US affiliated (after adjusting for their expenses).

xxxiv. As regards no volume effect caused by imports from China PR; the subject imports have increased by 50% in the period of investigation as compared to the base year, the demand has increased by 112 MT by 13%.

xxxv. The non-subject countries imports have declined but their import price has increased while that of subject country has decreased.

xxxvi. There were no DI sales in 2014-15 as DI started its commercial production in July, 2015. The same has increased from 26 MT in 2015-16 to 132 MT in POI. The DI is not able to utilize its capacities and is running at a very low capacity utilization rate. The subject imports are 68% more than the sales of the domestic industry in POI even after having the demand increased in the market. The subject imports have always put pressure as can been seen from the sales figure of domestic industry. Even after the increase in demand, the domestic industry could not sell what it produced. Thus, it cannot be said that there is no volume effect caused by imports from China PR during POI.

xxxvii. Price undercutting is the most important parameter under the law. The rules refer to price undercutting and price suppression/depression and place these with "OR", which means alternatives. Thus, contrary to the claim, price undercutting, price suppression and price depression are at equal footing.

xxxviii. The price undercutting in present case is negative for a very valid reason. The petitioner being a new player has given favorable prices to the consumers to switch them from the imported product. However, the exporters reduced their prices further.

xxxix. The initial prices offered by the petitioner itself were injurious, when considered with optimum costs and NIP (the petitioner is not even claiming injury based on actual cost, price, profits). Secondly, being a retardation case, there is no data for the longer four years period and therefore, the suppression/depression is getting determined based on the data for a much shorter period. The relevant benchmark therefore is optimum costs and NIP.

xl. Regarding the contention of existence of others factors causing injury; the respondent has failed to justify its claim or to show existence of any other factor which might have caused injury to the domestic industry. The respondent has not pointed out any "crucial issues" which had an impact on the DI independently from the subject imports.

xli. As regards the argument that domestic industry is facing losses during the injury period even when the imports were not causing injury; the factuality clearly proves that the domestic industry is facing injury since the time of its commencement of commercial production and the same is due to the presence of dumped imports throughout.

xlii. The domestic industry's plant was running at meager 36.10% capacity utilization during the POI, which in no prudent manner could be considered as a barometer for concluding that the domestic industry is not suffering injury. Production has increased throughout the injury period. However, the increase in sales was far lower than the increase in production.

xliii. The domestic industry acknowledges that the productivity per day and per employee has increased throughout the injury period. Thus, the possible decline in productivity could not a reason for the injury to the domestic industry.

xliv. As regards the argument that price depression is due to GFL's own pricing policy; the same is incorrect as landed price of imports from the subject country is significantly below the cost of production of the domestic industry.

xlv. As, the domestic industry has started offering the product under consideration in the market from July, 2015, the prices fixed by the domestic industry were benchmarked to the import prices.

xlvi. The only factor responsible for the low domestic industry prices are the import prices of the product from the subject country and the cost of production of the domestic industry.

xlvii. Regarding the contention of unremunerative pricing; it is the intensified dumping with the commencement of production by domestic industry which has forced the petitioner to reduce the prices.

xlviii. The reduction in cost was not due to decline in input cost but due to increase in production and decrease in per unit fixed costs.

xlix. As regards the argument that extent of deterioration is flawed as there is no separation of injury due to exports; the domestic industry submitted that the injury submissions made by the petitioner are on the basis of domestic sales and not exports.

l. The domestic industry needs to be seen as it exists and not in the ideal situation as has been held by the Tribunal in the matter of Nippon Zeon Co. Ltd., Japan & Others v. Designated Authority [1997 (96) E.L.T. 126 (T)].

li. The position of domestic industry, in the base year in comparison to the following years, is not truly indicative of the prevalent situation of the domestic industry; as GFL has recently commenced its production of the subject goods and is a new player in the market.

Examination by the Authority

83. The Authority notes various relevant post disclosure submissions by the interested parties which have been dealt later in this section. The Authority notes that domestic industry had filed application on grounds of both material injury and material retardation as has been mentioned in the initiation notification.

84. The Authority notes that establishing injury on account of material retardation to the domestic industry due to dumped imports has been an aspect of discussion under WTO's Negotiating group of rules from time to time. However consensus has not been arrived at in codification of appropriate parameters to establish material retardation. The Authority notes that in following documents certain suggestions emanated in meetings in WTO:

(i) In document no. TN/TL/W/213 dated 30 November, 2007- Draft Consolidated Chair Texts of the AD and SCM Agreements, it was proposed to amend the Agreement by way of insertion of Article 3.9 as follows:

"3.9 A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility. An industry may be considered to be in establishment where a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in the territory of the importing Member, but production has not yet begun or has not yet been achieved in commercial volumes.[1]

[1] *The authorities may however consider that an industry is in establishment notwithstanding the existence of established producers of the domestic like product, if those established producers are not able to satisfy domestic demand for the product in question to any substantial degree; provided that under no circumstances shall an industry be considered to be in establishment if the collective production capacity of*

In making a determination whether an industry is in establishment, and in examining the impact of dumped imports on the establishment of that industry, the authorities may take into account evidence concerning, inter alia, installed capacity, investments made and financing obtained, and feasibility studies, investment plans or market studies.[2]"

(ii) In document no. TN/RL/GEN/40 dated 13 May 2005, no. TN/RL/E/105 and no. TN/RL/W/175 dated 31 March 2005 Egypt, one of the WTO member countries proposed that:

"Definition: …….it is proposed to clarify the current text of footnote 9 to Article 3 to clarify that the concept of "material retardation" is not limited to industries which are established from zero, but should apply to all domestic industries which are characterized by a limited level of development and/or a new organization.

….. It is crucial not to limit the "material retardation" test to industries which are newly established; hence particular concern should be paid to embryonic, restructuring and newly privatized industries which should also be regarded as industries in the process of establishment. This matter is of specific concern to developing country Members since their domestic industries are rarely developed……

Test: …… Footnote 9 to Article 3 specifies that injury which shall also mean material retardation shall be interpreted in accordance with the provisions of Article 3 of the Agreement. Therefore, Egypt understands that investigating authorities should consider and evaluate the factors listed in Article 3.4 also in case of material retardation. This seems supported by the Panel's findings in Mexico – HFCS. In that case, the Panel explained that Article 3.7 sets out additional factors that must be considered in a threat case, but does not eliminate the obligation to consider the impact of dumped imports on the domestic industry in accordance with the requirements of Article 3.4. In other words, according to the Panel, investigating authorities should consider both the factors listed in Article 3.7 as well as the factors listed in Article 3.4 in a threat case. The Panel explained that this conclusion is mandated by the text of Article 3 which, as a whole deals with the determination of injury which is defined as material injury, threat of material injury, or material retardation of the establishment of a domestic industry……"

(iii)In document no. G/ADP/AHG/W/168- Note by the Secretariat, Korea, one of the WTO member countries discussed that:

"1.22. (Korea) Criteria in determining "material" in both "material" injury and "material" retardation under footnote 9

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established producers exceeds 10 per cent of domestic demand for the product in question.

[2] Members recognize that an examination of possible material retardation relates to the impact of dumped imports on the efforts of the industry to become established, and that this type of impact may not be reflected in actual or potential declines in performance. Nonetheless, the authorities shall evaluate, to the extent that data exists, available information with respect to all economic factors and indices relevant to an examination of material retardation of the establishment of the domestic industry in question.

Authorities shall consider, under Article 3.2, the 'significance' of the increase in dumped imports, the price undercutting by the dumped imports, and the degree of the depressive effect by the dumped imports, respectively…….

Article 3.4 exemplifies four groups of relevant economic factors and indices to be evaluated by authorities in examining the impact on the domestic industry of the dumped imports. An objective methodology should be established for the same reason as agenda item 3. For instance, it can be considered whether each indices of the same group have varied collectively, or whether the weighted average of the group can function as a general index."

The Authority notes that out of the various suggested parameters of evaluation, the level of development of the domestic industry requires appropriate analysis against listed parameters under Article 3.4 for evaluating the existence and extent of material retardation.

85. The Authority in past has in a few cases analyzed injury on account of material retardation to the domestic industry. The analysis of this form of injury has been an integral part of overall injury. These cases include Veneered Engineered Wooden Flooring from China PR, Malaysia, Indonesia and the European Union dated the 13th February, 2018, O- Acid originating in or exported from China PR Dated the 19th December, 2017, Styrene Butadiene Rubber (SBR) of 1500 series and 1700 series from European Union, Korea RP and Thailand dated the 12th July, 2017, 'Resin or other organic substances bonded wood or ligneous fibre boards of thickness below 6mm, except insulation boards, laminated fibre boards and boards which are not bonded either by resin or other organic substances' originating in or exported from China PR, Indonesia, Malaysia and Sri Lanka Dated 10th May 2013, PVC Flex Films originating in or exported from China PR Dated the 29th July, 2011, Induction Hardened Forged Steel Roll from Russia, Ukraine and Korea RP dated the 2nd July, 2003, D(-) Para Hydroxy Phenyl Glycine Methyl Potassium Dane Salt originating in or exported from China PR and Singapore and D(-) Para Hydroxy Phenyl Glycine Base originating in or exported from China PR and Singapore.

86. The parameters of analysis have been broadly capacity utilization, sales and profitability which are also the parameters considered for material injury. However after establishing material retardation, the Authority has examined these parameters in context of extent of growth and level of development of industry. The Authority in certain cases has also recommended measures below the normal tenure of even 5 years. The post disclosure submissions on injury and causal link have been dealt later by the Authority in this finding.

87. The Authority has evaluated and analyzed various volume and price parameters

related to injury to domestic industry (material and as well as material retardation) as tabulated below.

a) Demand and Market Share

88. The demand or consumption of the product under consideration in India has been determined as the sum of domestic sales of the Indian producer and imports from all sources as depicted in table 1 below.

Table 1: Demand and Market Share

Particular	Units	2014-15	2015-16	2016-17	POI
Demand (MT)					
Sales of Domestic Industry	(Actual) MT	-	26	108	131
Sales of Domestic Industry	Indexed	-	100	310	376
Imports from China	MT	271	300	352	407
Import from Other Countries	MT	570	402	421	415
Total Demand	**Indexed**	**100**	**87**	**105**	**113**
Market share in demand %					
Sales of Domestic Industry	Indexed	-	100	341	383
Sales of Other Indian Producers	%	-	-	-	-
Subject Country - China	Indexed	100	128	124	132
Share of Other Countries	Indexed	100	81	70	64

89. The Authority notes that the demand for the product under consideration has increased over the injury period from base year 2014-15 (*** MT) to *** MT in POI showing 13% growth i.e. around 3% per annum. In 2015-16 there is a slight decrease in demand which is also reflected in decreased imports from countries other than China.

90. The share of imports from the subject country in domestic demand/consumption has increased over the injury period from ***% in 2014-15 to ***% in POI. Since there was no production of the subject goods in India in the past, the entire demand was being met by imports. The petitioner commenced commercial production of the subject goods in July, 2015 and their market share increased from ***% in 2015-16 to ***% in POI.

b) Import volumes and share of subject country

91. With regard to volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India in terms of Annexure II (ii) of the Rules. The volume of imports and market share in total imports entering India are depicted in table 2 below:

Table 2: The Import profile

Particulars	Unit	2014-15	2015-16	2016-17	POI
Import Volume					
Subject Country - China	MT	271	300	352	407
Other Countries	MT	570	402	421	415
Total import volume	**MT**	**841**	**702**	**773**	**822**
Market Share in Imports					
China	%	32.25	42.75	45.56	49.50
Other Countries	%	67.75	57.25	54.44	50.50
Total Share in total import volume	**%**	**100.00**	**100.00**	**100.00**	**100.00**
China Imports in relation to					
Petitioner Production	Indexed	-	100	50	50
Consumption	Indexed	100	128	124	132
Total Imports	%	32.25	42.75	45.56	49.50
Petitioner Sales	Indexed	-	100	28	27

i. The Share of Domestic Industry increased with a matching displacement of imports from non-dumped sources.

ii. The volume of imports from subject country has increased in absolute and also relative to total imports and consumption over the injury period.

iii. Imports from other countries have decreased both in absolute and relative terms during the injury period.

c) <u>Trends of Import Price</u>

92. The tables 3(a), 3(b) and 3(c) below shows import price trend over the injury period, on an overall, PCN basis and quarterly basis respectively.

Table 3(a): Trend in Import Price

Particulars	Unit	2014-15	2015-16	2016-17	POI*
Subject Country- China	Rs./Kg	951	1,037	922	923
Other Countries	Rs./Kg	1,595	1,647	1,740	1,757
Chinese prices as % of third countries prices	%	60%	63%	53%	53%

Table 3(b): PCN wise Imports during injury period.

Particular	Unit	2014-15	2015-16	2016-17	POI*
Copolymer Pre-Compound	Rs./Kg	1,138	1,117	1,097	1,114
China - Subject Country	Rs./Kg	959	974	908	934
Other Countries (Share => 3%)	Rs./Kg	1,295	1,298	1,504	1,647
Other Countries (Share < 3%)	Rs./Kg	967	1,476	954	1,151
Copolymer Raw Gum	Rs./Kg	1,307	1,661	1,782	1,359
China - Subject Country	Rs./Kg	621	-	-	666
Other Countries (Share => 3%)	Rs./Kg	1,510	1,661	1,782	1,732

Particular	Unit	2014-15	2015-16	2016-17	POI*
Other Countries (Share < 3%)	Rs./Kg	-	-	-	-
Terpolymer Bisphenol Cured Raw Gum	Rs./Kg	1,689	1,741	1,724	1,663
China - Subject Country	Rs./Kg	-	-	-	-
Other Countries (Share => 3%)	Rs./Kg	1,741	1,847	1,775	1,704
Other Countries (Share < 3%)	Rs./Kg	1,225	1,074	1,187	1,183
Terpolymer Peroxide Cured Raw Gum	Rs./Kg	1,990	2,450	2,051	1,940
China - Subject Country	Rs./Kg	-	-	-	-
Other Countries (Share => 3%)	Rs./Kg	1,995	2,449	2,048	1,952
Other Countries (Share < 3%)	Rs./Kg	1,650	3,651	2,099	1,796
Terpolymer Bisphenol Cured Pre-compound	Rs./Kg	1,754	2,066	1,699	1,747
China - Subject Country	Rs./Kg	-	2,066	-	-
Other Countries (Share => 3%)	Rs./Kg	1,754	2,064	1,699	1,747
Other Countries (Share < 3%)	Rs./Kg	-	-	-	-
Unidentified Grades/ Types	Rs./Kg	1,245	1,461	1,424	1,411
China - Subject Country	Rs./Kg	948	1,103	963	897
Other Countries (Share => 3%)	Rs./Kg	1,686	1,800	1,855	1,828
Other Countries (Share < 3%)	Rs./Kg	842	1,028	1,316	1,558
Grand Total	Rs./Kg	1,388	1,386	1,367	1,344
China - Subject Country	Rs./Kg	951	1,037	922	923
Other Countries (Share => 3%)	Rs./Kg	1,615	1,669	1,754	1,772
Other Countries (Share < 3%)	Rs./Kg	1,146	1,082	1,384	1,428

Table 3(c): Quarterly Trend of import prices post commencement of production by DI

Particulars	**CIF Price Subject Country- China**	**CIF Price Other Countries**	**Chinese prices as % of third countries prices**
Unit	Rs./Kg	Rs./Kg	%
2015-16 Q2	882	1,649	53%
2015-16 Q3	1,030	1,784	58%
2015-16 Q4	1,025	1,694	61%
2016-17 Q1	931	1,591	59%
2016-17 Q2	900	1,835	49%
2016-17 Q3	938	1,899	49%
2016-17 Q4	909	1,691	54%
2017-18 Q1	930	1,646	57%

The tables above indicate that;

(i) The import price for China has remained in the range of 50-60% of the import price from other countries. Further in 2016-17, the import price from China

dropped by 11% after domestic industry commenced production in July, 2015. This price behavior is contrary to the price behavior from other countries.

(ii) Import prices from countries with share less than 3% are also significantly higher than import prices from China.

I. Examination of Economic Parameters relating to Domestic Industry

93. Annexure II to the AD Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the AD 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. Accordingly, various economic parameters of the domestic industry are analyzed herein below:

a) Production, Capacity, Capacity utilization and Sales

94. The performance of the domestic industry with respect to production, capacity, capacity utilization and sales is as depicted in table 5(a) and 5(b) below:

Table 5(a): production and sales parameters

Particulars	Unit	2014-15	2015-16	2016-17	POI
Capacity	(Actual) MT	-	495	660	660
Capacity	Indexed	-	100	100	100
Production	(Actual) MT	-	86	200	235
Production	Indexed	-	100	175	205
Capacity Utilisation	(Actual) %	-	17.31	30.36	35.53
Capacity Utilization	Indexed	-	100	175	205
Domestic Sales	(Actual) MT	-	26	108	131
Domestic Sales	Indexed	-	100	310	376

Table 5(b): Quarter wise Production and Sales Parameters

Particulars	Capacity (MT)	Production (MT)	Capacity Utilization (%)	Sales (MT)	
				Domestic	Export
Period	Indexed	Indexed	Indexed	Indexed	Indexed
2015-16 Q2	100	100	100	100	100

2015-16 Q3	100	50	50	263	244
2015-16 Q4	100	84	84	349	906
2016-17 Q1	100	73	73	595	250
2016-17 Q2	100	141	141	763	355
2016-17 Q3	100	181	181	555	2791
2016-17 Q4	100	153	153	1031	5561
2017-18 Q1	100	166	166	1228	3013

(i) The production and capacity trends (annual/quarterly) indicate that both production and capacity are generally on a rise but subdued with the best quarterly capacity utilization being at ***% even though the gap in the country provided opportunity to domestic industry to operate at almost double the present capacity utilization.

(ii) The Authority notes that domestic sales of DI were of repeat nature to customers and that they have even undertaken significant exports. Therefore quality issues does not appear to be a constraining factor for low sales.

b) Market Share in demand

95. As stated above, the share of imports from the subject country in domestic demand/consumption has increased over the injury period from ***% to ***%. Since there was no production of the subject goods in India in the past, the entire demand was being met by imports. The petitioner commenced commercial production of the subject goods in July, 2015 and their market share increased from ***% in 2015-16 to ***% in POI.

c) Inventories

96. The performance of the domestic industry with respect to the inventories is depicted in table 6(a) and 6(b) below:

Table 6(a): Inventory trend

Particular (Unit in MT)	Unit	2014-15	2015-16	2016-17	POI
Opening	Indexed	-	-	100	107
Closing	Indexed	-	100	203	210
Average	Indexed	-	100	303	317

Table 6(b): Quarterly Trend of Inventory

Particulars	Opening Stock (MT)	Closing Stock (MT)
	Indexed	Indexed
2015-16 Q2	-	100

2015-16 Q3	100	123
2015-16 Q4	123	166
2016-17 Q1	166	178
2016-17 Q2	178	246
2016-17 Q3	246	352
2016-17 Q4	352	337
2017-18 Q1	337	349

The closing stock both annual and quarterly depicts progress of stock piling with average inventories being of about 5 month of sales.

J. Price Effect of dumped imports and impact on domestic industry

97. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in normal course. The impact on the prices of the domestic industry on account of the dumped imports from the subject country has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis the cost of production, Net Sales Realization (NSR) and the Non-injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from the subject country. The price depression effect has been analyzed with regard to its manifestations in the form of price retardation thereby preventing production to ramp up to an optimum level post commencement of commercial production by domestic industry.

a) Price suppression and depression effects of the dumped imports

98. In order to analyze whether the dumped imports are suppressing or depressing the domestic prices which prevents price increases which otherwise would have occurred fairly and reasonably, the Authority notes the changes in the cost, prices and landed value of imports over the injury period as shown in tables 4(a) to 4(d) below:

Table 4(a): Cost/price Trend

Particular (Unit in Rs/Kg)	Unit	2014-15	2015-16	2016-17	POI*
Cost of sales (Actual)	Indexed	-	100	83	81
Cost of sales (Optimum)	Indexed	-	100	86	85
Selling price	Indexed	-	100	88	87
Landed value	Rs./Kg	1,035	1,128	1,003	1,004

Selling prices as % of Cost of Sales (Actual)	Indexed	-	100	105	106
Selling prices as % of Cost of Sales (Optimum)	Indexed	-	100	101	101
Selling prices as % of landed value	Indexed	-	100	99	98

*using best Capacity utilization of ***% on the basis of exporters data

Table 4(b): Price Undercutting over Injury Period

Particulars	Unit	2014-15	2015-16	2016-17	POI*
Import Volume	MT	271	300	352	407
Landed price of imports	Rs./Kg	1,035	1,128	1,003	1,004
Net Sales Realisation (Rs/Kg)	Indexed	-	100	88	87
Price Undercutting (Rs/Kg)	Indexed	-	100	97	110
Price Undercutting (%)	Range	-	Negative	Negative	Negative

Table 4(c): Quarterly Trend of Price Undercutting

Period	Selling Price (Rs/Kg)	Landed Value	Price Undercutting	
UOM	Indexed	Rs./ Kg	Indexed	Range
2015-16 Q2	100	960	100	10-20
2015-16 Q3	90	1,121	-44	Negative
2015-16 Q4	83	1,116	-89	Negative
2016-17 Q1	83	1,013	-29	Negative
2016-17 Q2	75	979	-65	Negative
2016-17 Q3	76	1,020	-81	Negative
2016-17 Q4	77	989	-57	Negative
2017-18 Q1	77	1,012	-70	Negative

Table 4(d): Price Underselling during POI.

Particulars	Rs/Kg	US$/Kg
		67.40
Non-Injurious Price (NIP)	***	***
Landed Value	1,004.22	14.90
Price Underselling	***	***
Price Underselling (% Range)	10-20	10-20

(i) It is seen that cost, selling price of the domestic industry and also the landed value of imports from China have decreased in the injury period.

(ii) In the first quarter of injury period when the domestic industry commenced production, the introductory selling price of domestic industry is noted to be above the landed value of imports from China. The Price Undercutting in the first quarter is later observed to have manifested into a price suppression phenomenon with all subsequent quarterly selling price of DI in the injury period being lower than the landed value from China. The domestic industry

progressively enhanced its production to enhance its presence in terms of supply in the domestic market, however this is noted to be happening along with a corresponding price depression trend.

(iii) The price undercutting therefore barring the first quarter of injury period became negative subsequently throughout the injury period evidencing a significant price retardation. The price suppression is also indicated by the DI's realization of selling price covering only ***% of the normated cost and being ***-***% of the landed value of imports from China.

d) <u>Profits, PBIT, return on investment and cash flow</u>

99. Performance of the domestic industry with regard to profit, return on investment and cash flow have been analyzed for injury period on annual and Quarterly basis in the following tables 7(a) to 7(d) below:

Table 7(a): Profitability Parameters (Annual)

Particulars	Unit	2014-15	2015-16	2016-17	POI
Cost of sales (Actual) - Rs/Kg	Indexed	-	100	83	81
Selling price - Rs/Kg	Indexed	-	100	88	87
Profit/(Loss) per unit - Rs/Kg	Indexed	-	(100)	(74)	(70)
Profit/(Loss) - Rs.Lacs	Indexed	-	(100)	(230)	(263)
Cash Profit - Rs.Lacs	Indexed	-	(100)	(162)	(270)
PBIT - Rs.Lacs	Indexed	-	(100)	(233)	(266)
ROCE - Domestic - %	Indexed	-	(100)	(200)	(235)

Table 7(b): Profitability Parameters (Quarterly)

Period	Cost of sales (Actual) (Rs/Kg)	Selling Price (Rs/Kg)	Profit/ Loss (Rs/Kg)	Profit/ (Loss) (Rs/Lacs)	ROI (%)
UOM	Indexed	Indexed	Indexed	Indexed	Indexed
2015-16 Q2	100	100	-100	-100	-100
2015-16 Q3	100	90	-127	-335	-347
2015-16 Q4	100	83	-149	-519	-540
2016-17 Q1	83	83	-82	-490	-440
2016-17 Q2	83	75	-106	-812	-731
2016-17 Q3	83	75	-104	-578	-520
2016-17 Q4	83	77	-101	-1,040	-937
2017-18 Q1	81	77	-92	-1,130	-1,045

* The Cost of Sales evaluated for the entire year is also referenced for Quarterly periods within the same year.

Table 7(c): Return on Capital Employed (Annual)

Particulars	Unit	2014-15	2015-16	2016-17	POI

Cost of sales (Optimum) - Rs/Kg	Indexed	-	100	87	85
Selling price - Rs/Kg	Indexed	-	100	88	87
Profit/(Loss) per unit - Rs/Kg	Indexed	-	(100)	-82	-80
Profit/(Loss) - Rs.Lacs	Indexed	-	(100)	(255)	(301)
Cash Profit - Rs.Lacs	Indexed	-	(100)	(140)	(318)
PBIT - Rs.Lacs	Indexed	-	(100)	(260)	(307)
ROCE - Domestic - %	Indexed	-	(100)	(298)	(360)

Table 7(d): Return on Capital Employed (Quarterly)

Period	Cost of sales (Rs/Kg)	Selling Price (Rs/Kg)	Profit/ Loss (Rs/Kg)	Profit/(Loss) (Rs/Lacs)	ROI (%)
UOM	Indexed	Indexed	Indexed	Indexed	Indexed
2015-16 Q2	100	100	-100	-100	-100
2015-16 Q3	100	90	-156	-412	-448
2015-16 Q4	100	83	-201	-702	-771
2016-17 Q1	87	83	-105	-624	-592
2016-17 Q2	87	75	-155	-1,184	-1,127
2016-17 Q3	87	75	-151	-836	-794
2016-17 Q4	87	77	-144	-1,481	-1,412
2017-18 Q1	85	77	-133	-1,631	-1,597

The two key profitability indices i.e. per unit losses and ROCE evaluated on the basis of both actual cost of sales and also normated cost of sales depict losses and negative ROCE respectively. The extent of losses/negative ROCE is much higher when actual COS is considered. If the start up problems are appropriately discounted by considering ***% capacity utilization, even then these 2 parameters remain significantly adverse. The price depression is noted with price undercutting becoming negative for DI to sustain a reasonable capacity utilization which is manifested in erosion of profitability indicating price retardation.

e) Employment, Wages and Productivity

100. It is seen from the table 8 below that production per day and per employee have been increasing over the injury period.

Table 8: Productivity Parameters

Parameters	Unit	2014-15	2015-16	2016-17	POI
No of Employees - Nos	Indexed	-	100	200	222
Wages - Rs.Lacs	Indexed	-	100	155	171
Productivity per day (MT/Day)	Indexed	-	100	156	182
Productivity per Employee (MT/Nos)	Indexed	-	100	117	123

f) Growth

101. It is seen that the growth of the domestic industry has been positive in terms of production, sales volume, market share and capacity utilization. However, the domestic industry has always been facing financial losses and its growth in respect of profits, profit before interest, cash profits and ROI has been negative.

Particulars in %	Unit	2014-15	2015-16	2016-17	POI
Net Production	Indexed	-	-	100	25
Domestic Sales Volume	Indexed	-	-	100	23
Cost of sales domestic	Indexed	-	-	(100)	(15)
Selling price domestic	Indexed	-	-	(100)	(12)
Average stock	Indexed	-	-	100	7

g) Ability to raise Capital Investment

102. The Authority holds that negative profitability, cash flows, returns, increased losses are likely to impair the ability of the domestic industry to raise capital investment.

h) Level of dumping & dumping margin (DM)

103. It is seen that subject country imports are entering the country at dumped prices and the dumping margin from the subject country is quite high.

i) Factors affecting domestic Prices

104. The examination of the import prices from the subject country, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc. shows that landed price of imports from the subject country is significantly below the cost of production of the domestic industry. The domestic industry has started offering the product under consideration in the market from July, 2015; and the prices fixed by the domestic industry were to be benchmarked to the import prices. Demand for the product has shown increase and could not have been a factor responsible for price depression faced by the domestic industry in the POI. There is no inter-se competition as domestic industry is the Sole producer. It is thus noticed that the only factor responsible for the low domestic industry prices are the import prices of the product from the subject country.

j) Magnitude of Injury and Injury Margin

105. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the AD Rules is compared with the landed value of the imports from the subject country for determination of injury margin during the POI and the injury margin so worked out is as under:

SN	Producer	Exporter	Injury Margin - US$/Kgs	Injury Margin – %	Injury Margin Range- %
1	M/s. Solvay Specialty Polymers (Changshu) Co, China PR	Solvay (Shanghai) Co., Ltd, China PR	***	***	30-40
2	Daikin Fluorochemicals (China) Co., Ltd, China PR	Uni-Alliance Limited, China PR	***	***	0-10
3	Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, China PR	Zhonghao Chenguang Research Institute of Chemical Industry Co Ltd, China PR	***	***	30-40
4	Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR	Chenguang Fluoro and Silicone Elastomers Co., Ltd, China PR	***	***	20-30
5	Inner Mongolia 3F, China PR	Shanghai 3F, China PR	***	***	20-30
6	Residual / Other Non-cooperating exporters/producers		***	***	50-60

For residual category, the Authority has considered the highest Injury margin evaluated amongst the cooperating producers/exporters, considering lowest landed value and NIP of an appropriate PCN for this purpose.

k) <u>Post POI- Economic parameters</u>

Particular	**Units**	**Post POI (Jul'17-Dec'17)**	**Annualised (Post POI)**
Import Volume	**MT**	**417**	**834**
Subject Country - China	MT	238	476
Other Countries	MT	179	359
CIF Import Price			
Subject Country - China	Rs./Kg	950	950
Other Countries	Rs./Kg	1640	1640

Chinese prices as % of third countries prices	%	58%	58%
Market share in import volume			
Subject Country - China	%	57.02%	57.02%
Other Countries	%	42.98%	42.98%
Demand/Consumption in India (MT)	**Indexed**	**120**	**120**
Sales of Domestic Industry (MT)	Indexed	681	681
Sales of Other Indian Producers (MT)	Indexed	-	-
Imports from China	MT	238	476
Import from Other Countries	MT	179	359
Market share in demand in %			
Share of Domestic Industry	Indexed	490%	490%
Share of Other Indian Producers	%	-	-
Share of Subject Country - China	Indexed	146%	146%
Share of Other Countries	Indexed	52%	52%
Landed Import Price			
Subject Country - China	Rs./Kg	1033	1033
Other Countries	Rs./Kg	1784	1784

DI Parameters Indexed from 2015-16 and Other Parameters from base year 2014-15

Particular	**Units**	**Post POI (Jul-Dec'17)**	**Annualised (Post POI)**
Capacity	(Actual) MT	330	660
Capacity	Indexed	100	100
Production	(Actual) MT	164	329
Production	Indexed	384	384
Capacity Utilisation	(Actual) %	49.79	49.79
Capacity Utilization	Indexed	288	288
Domestic Sales	(Actual) MT	89	178
Domestic Sales	Indexed	681	681
Closing Stock (MT)	Indexed	307	307
Selling price domestic (Rs/Kg)	Indexed	92	92

DI parameters Indexed from 2015-16

It is noted that post POI the domestic industry has attained capacity utilisation of ***% with continued price suppression.

106. In regard to various submissions pertaining to claimed injury by domestic industry, the Authority notes that the notice of initiation refers to material injury as well as material retardation. The interested parties have contended that the present case is not a case of material retardation to establishment of domestic industry and that

both form of injury cannot co-exist. In this regard, the Authority notes that the domestic industry commenced its production of the subject goods in July, 2015 only and the capacity utilization of the domestic industry is low. Information filed by the foreign producers showed capacity utilization in the range of ***%, whereas the capacity utlisation of the domestic industry was only ***% in POI. The petitioner is not able to achieve production capacity to the extent the petitioner had envisaged while setting up the plant. The Authority considers this to draw attention to the examination in similar cases investigated earlier.

107. As regards the contention that the imports increased because of increase in demand, the Authority notes that the imports have increased when the domestic industry has started production and holding capacities beyond the domestic demand and have produced and sold the product.

108. As regards the contention of the other interested parties that the economic parameters of the domestic industry have improved during the POI as compared to previous period; the Authority holds that the injury to domestic industry has on account of volume and price parameters remaining below the desired performance levels. The Authority has also examined the post POI capacity utilization and price realization to evaluate if the claimed material retardation is also evident in post POI.

109. The Authority holds that the factors relevant in this case are price suppression/depression and low capacity utilization which evidence boot strapping phenomenon when examined on a quarterly time period.

110. The Authority notes that there are no specific rules on the methodology to be adopted for evaluation of material retardation to the establishment of a domestic industry. Noting the arguments of the interested parties in this regard, the authority has considered its past determinations, various judicial decisions and the available information with regard to the practices of other investigating authorities as made available by interested parties. The authority notes that in a situation where domestic industry does not have performance over a longer period, it is not possible to analyse injury to the domestic industry by considering an injury analysis as is normally done by authority in a material injury case. The authority notes in this regard that WTO Committee on Anti-dumping practices has prescribed that the period of data analysis for injury purposes should be at the least three years unless the domestic industry concerned does not have existence for a three-year period. This clearly implies that the authority may examine injury to the domestic industry even in those situations where the domestic industry does not have data for three

or longer period. Further, the purpose of considering three or more years is to consider the performance of the domestic industry in the POI and compare the same with the earlier periods in order to ascertain whether the performance of the domestic industry during POI could be described as injurious, having regard to the performance in previous years. Considering the methodology that is normally applied in analysing data over the longer period, the authority considers that in a case like the present where performance of the domestic industry is not available for three-year period, it would be appropriate to divide the performance of the domestic industry within the investigating period. The domestic industry in the present case has its operation from July'2015. The authority has analysed the performance of the domestic industry over this period by undertaking a quarterly analysis of the various injury parameters.

111. As regards the contention that material retardation and materials injury cannot co-exist, the Authority notes that there is no bar under the law for examination of more than one form of injury. The authority has been examining both material injury and material retardation to establishment of the domestic industry in those cases where the domestic industry does not have performance over a longer period and the domestic industry has set up production facilities in recent period. The authority has been examining performance of the domestic industry to the extent of its existence and comparing the performance of the domestic industry with the expected performance. The authority notes in this regard that the past decisions made by the authority in this manner have been upheld by the CESTAT. Thus, considering the fact of this case, the injury to the domestic industry has been examined by undertaking all possible evaluations – actual performance to the extent of domestic industry's existence/operations, potential performance by considering the actual performance till POI, comparison of actual performance with the performance planned or considered by the petitioner while deciding to set up the plant and performance of the domestic industry in respect of macro-economic parameters in the post POI period. The authority has also considered post POI data for the purpose of examining whether the performance of the domestic industry was adverse even in the post POI period.

112. The Authority also notes that it is not necessary that all parameters of injury show deterioration. Some parameters may show deterioration; while some may show improvement. The Authority has therefore considered all relevant injury parameters to evaluate whether the domestic industry has suffered material retardation due to dumping or not.

K. <u>Other Known Factors & Causal Link</u>

113. The Authority has examined other factors listed under the Antidumping Rules which could have contributed to injury to the domestic industry for examination of causal link between dumping and material injury to the domestic industry.

a) Volume and prices of imports from third countries:

114. The Authority has examined the imports data of the subject goods from DGCI&S. It is noted that even though the imports from third countries are substantial, the import price of subject goods from non-subject countries is materially higher than the import price from China and hence these imports are not a cause of the assessed injury to the domestic industry as may be seen in the table below:

CIF Import Price	Unit	2014-15	2015-16	2016-17	POI*
Subject Country- China	Rs./Kg	951	1,036	921	923
Other Countries	Rs./Kg	1,595	1,647	1,740	1,757

b) Contraction in demand

115. There has been rise in demand of the product concerned over the injury period and therefore decline in demand is not a reason for injury to the domestic industry.

c) Changes in the patterns of consumption

116. The pattern of consumption with regard to the product under consideration has not undergone any material change. Therefore, changes in the pattern of consumption cannot be considered to have caused injury to the Domestic Industry.

d) Developments in technology

117. No different technology for production of the product has been claimed or contested to have undergone a change. Thus, developments in technology cannot be regarded as a factor causing injury to the domestic injury.

e) Conditions of competition and trade restrictive practices

118. The Authority notes that the subject goods are not subjected to any trade restrictive practices in India. Petitioner is the sole producer of the product under consideration in the Country and therefore while inter-se competition between the domestic producers could not have been a cause of injury to the domestic industry.

f) Export performance of the domestic industry

119. The Authority notes that the performance of the domestic industry and injury there to has been examined with respect to the performance of domestic industry's domestic operation to the extent possible. Possible deterioration in the export performance of the domestic industry is, therefore, not a possible cause of injury to the domestic industry.

g) Performance of the domestic industry with respect to other products

120. The Authority notes that the performance of other products being produced and sold by the domestic industry has not affected the assessment made by the Authority of the domestic industry's performance. The information considered by the Authority is with respect to the product under consideration only.

121. It is thus seen that none of the listed other factors of injury are responsible for the injury to the domestic industry.

Factors establishing causal link

122. The Authority has examined whether injury to the domestic industry is due to dumped imports on account of following factors:

a) The dumped imports have entered the Indian market throughout the injury period and the volume has increased in absolute terms which have resulted in price depression.
b) Since the domestic industry started selling the product under consideration from July, 2015, the prices fixed by the domestic industry were required to be benchmarked to the import prices.
c) Presence of dumped imports is preventing the domestic industry to fully utilize its capacity and maximize its production and sales. The domestic industry has been prevented from increasing its production, sales, capacity utilization and market share despite existence of significant demand supply gap in the Country.
d) Price depression being suffered by the domestic industry is due to dumping in the Country.
e) The domestic industry has suffered significant financial losses which have led to deterioration in return on capital employed and cash profits.
f) The growth of the domestic industry is negative in terms of a number of price parameters like ROCE and cash profits.
g) The subject imports are also resulting in underselling in the market, when compared with the non-injurious price.

h) Dumping of the product under consideration is not allowing the domestic industry to fully establish itself and is unable to increase its production and sales to the extent of optimum level of capacity utilisation despite significant demand for the subject goods in the Country.

L. Post Disclosure Comments

123. Pursuant to the Disclosure statement, following submissions are made by the Domestic Industry, Exporters, Importers and User Industries:

a. Submissions by M/s TPM representing Domestic Industry

i. Rejoinder submissions, communications with other interested parties, dumping margin, verficication report of exporters/producers should be disclosed.

ii. The NIP determined by the Designated Authority is unduly low as the Authority has normated the cost of the domestic industry considering the best achieved capacity utilization. Even while it is appreciated that the petitioner has not produced to the extent of optimum levels, it would not be appropriate to consider the expenses charged to PUC in the POI and normate the same on the basis of notational production. This is for the simple reason that a number of these expenses have been charged to the product by following an apportionment methodology linked to production/sales/turnover.

iii. It is requested to kindly consider the following approach: (A) Format C-II be redrawn by considering optimum level of production, (b) Apportion fixed expenses between PUC and other product in the ratio of revised turnover.

iv. Existence of dumping has not been disputed by the producers/exporters in China PR.

v. Much of the submissions made by user industry have become known to the petitioner domestic industry for the first time through the disclosure statement. The petitioner has not got a chance to rebut the issues raised by user industries so far. The petitioner requests to make available the non-confidential version of the same.

vi. As per the decision of Hon'ble Supreme Court in Shenyang Matsushita S. Battery Co. Ltd. v. Exide Industries Ltd. and others [(2005) 3 SCC 39] and

Gauhati High Court in Century Plyboards Ltd. vs Union of India, the export price of USA to India is to be preferred for normal value determination as compared to constructed normal value.

vii. The anti-dumping duty may be imposed as fixed quantum of anti-dumping duty (fixed form of duty), expressed in US$/kg.

b. <u>Submissions by various Exporters and Importers</u>

i. The petitioner has not manufactured Terpolymer Pre-compound during the POI and thus should be excluded from the scope of PUC. Also, Petitioner has only included Terpolymer Raw Gum and not Pre-compound within the scope of the product under consideration. No PCN has been suggested by the petitioner for Terpolymer Pre-compound (Referred to decision in Plain Gypsum Plaster Board, Gypsum Ceiling Board with Aluminium Edges Sealed in White Film and Saturated Fatty Alcohols).

ii. Information regarding export sales of exporter, not available in public domain, is disclosed while the confidentiality claims of DI regarding its volumetric parameters are accepted. The respondents stand on an equal footing as that of the Domestic Industry regarding the volume parameters. The DA ought to have extended the same benefit to the respondents and other interested parties on the ground of parity.

iii. The data filed in the petition doesn't matches with data in pre hearing written submissions. Similarly, there is a huge difference in data in pre hearing written submissions and verified data.

iv. Value addition is not a criterion in an anti-dumping investigation to grant or reject individual dumping or injury margin and MET. CFSE purchases raw gum from unrelated suppliers.

v. High quality grade of raw gum is purchased from The Chemours Chenguang Fluoromaterials (Shanghai) Co., Ltd., and therefore, the cost is high.

vi. It is requested to take into consideration all the element of costing provided by the respondent into consideration except power cost, average cost per Kwh as per the power invoices provided by the respondent and best ratio of power consumption of the petitioner (Kwh / KG) to produce pre-compound from raw gum for determining its normal value in line with Para 3 of Annex II ADA.

vii. The decisions of CFSE regarding prices, costs and inputs, output, sales and investment are made in response to market signals and without significant State interference

a. Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) is not a state owned company, and therefore, there is no State interference in investment decision making in CFSE

As per the law, a company can be termed as state owned & controlled only in the following two situations:

a) Direct or indirect shares held by government departments, organization, institutions, single state-owned or state-controlled enterprises is more than 50%, or;
b) Shareholder agreements, articles of association, board resolutions or other agreements authorize the government to exercise control.

Government holding is only 34% in Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) (Wuxi Investment). It may also be noted that the Partnership agreement clearly mentions that Wuxi Junyuan Capital Management Centre (Limited Partnership) (Wuxi Capital) is the only general partner of Wuxi Investment and has complete control over its day-to-day operations. All shareholders of Wuxi Capital are private persons. Accordingly, it is clear that Wuxi Investment is not a state owned company.

b. Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) is not state controlled, and therefore, no State interference in investment decision making in CFSE.

The shareholders of Wuxi Guolian Junyuan Venture Investment Center (Limited Partnership) with government shareholding are limited partners and have no role to play in its day-to-day operations.

Partnership agreement makes it amply clear that Wuxi Capital is the only general partner of Wuxi Investment and has complete control over its day-to-day operations.

The decisions of the investment committee are taken as per the professional ethics and in line with the company law, securities investment fund law and other laws and administrative regulations.

viii. Exchange rate in China is determined based on the market forces and the government has no control over it. Also, it is a macro economic issue and the market economy status of the company cannot be decided on the basis of this issue alone as per Tiles Case.

ix. International price of raw material and power cost in China may be considered for the determination of the normal value.

x. The price to Trader will always be lower than the price to the End Consumer (varies by 6%). Thus, the export price, landed value, dumping and injury margin should be calculated for each customer type.

xi. The respondent requests the Authority to apply 0.4/1.04 formula to the FOB export price of CFSE to calculate the VAT adjustment of 4% assuming that export price is inclusive of 4% VAT for the calculation of the ex-factory export price of different PCN's.

xii. Post POI data is not relevant in the case of injury or material retardation investigation.

xiii. Export performance is the cause of injury, if any, to the petitioner.

xiv. Injury, if any, to the petitioner is because of other reasons like inferior quality of its product, internal inefficiencies, mismanagement, pricing / predatory pricing strategy etc.

xv. The Authority in the Disclosure Statement has considered USA as an appropriate market economy third country for determination of Normal Value. However, despite the same, the Authority has computed Normal Value based on the normated cost of production of Domestic Industry. This methodology has been adopted merely because 10 percent of the overall import entities from USA do not specify the grade / PCN as per the present investigation. Even though the Authority has recognised that the Indian laws provide a chain to be followed while computing normal value in case of a non-market economy country, the Authority has erred in adopting the second methodology (i.e. on any other reasonable basis) and discarding 90 percent of import data from USA to India. It is also relevant to highlight that similar to the import data of subject goods from USA to India, a large number of import transactions from China to India also do not specify the grades. However, the Authority has accepted the import data of subject goods from China to India and while rejecting that of USA to India. It is submitted that the Authority should base its determination of 'Normal Value' on the basis of export price from USA to India instead of adopting any other basis.

xvi. The Authority has erred in determination of ex-factory price of goods exported by Shanghai 3F.

xvii. The Authority should not base its determination based on Post POI data. Also, Average inventory has been evaluated incorrectly.

xviii. The Authority should mandatorily examine all 15 economic parameters listed in Article 3.4 of AD Agreement to evaluate material retardation or material

injury as per WTO Panel Report in *Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey*

xix. There is absence of causal link between subject imports and injury to domestic industry

xx. Price Depression to Domestic Industry is self-inflicted.

xxi. USA is a developed country while China is developing. Prices of subject goods from USA to India cannot be taken as NV for China.

xxii. USA has exported a nominal quantity of co-polymer raw gum (around 3 MT) to India during the POI, which is negligible quantity and the same is of specialty grades. This small volume of Imports cannot be termed as represented quantity to arrive at normal value for China PR.

xxiii. It is requested that the normal value may be constructed by adopting raw material consumption norms, international price of raw material, utilities cost as per prices in China PR and interest rate as prevailing in international market.

xxiv. The export price of USA cannot be considered for the purpose of determining normal value in the present investigation as it is not an appropriate surrogate market economy third country for China PR owing to difference in the level of development of the two countries.

xxv. Information regarding export sales of exporter, not available in public domain, is disclosed while the confidentiality claims of DI regarding its volumetric parameters are accepted. The respondents stand on an equal footing as that of the Domestic Industry regarding the volume parameters. The DA ought to have extended the same benefit to the respondents and other interested parties on the ground of parity.

xxvi. All three forms of injury cannot co-exist. The DA has brushed aside the submissions of respondents in this regard and hasn't addressed.

xxvii. The DA has not mentioned as to why Korea Panel Report is not applicable in the facts and circumstances of the present case.

xxviii. The Final Findings and CESTAT order in SBR is not applicable for it having different set of facts as compared to the present investigation.

xxix. GFL is an established Domestic Industry of the like article. Since the DA did not have a standard test for determining whether an industry was already established or under establishment, the test applied by anti-dumping authorities in other jurisdictions may be adopted.

xxx. The UISTC examines (i) length of domestic operations; (ii) characteristics of domestic production; (iii) the size of domestic operations; (iv) whether the Domestic Industry has reached a reasonable financial 'break-even' point and (v) whether the start-up is more in the nature of the introduction of a new product line by an already established business- GFL is already a well-

established business, being the 4th largest manufacturer of PTFE globally of which, fluoroelastomers is only a further downstream product. As per GFL's Annual Report, adding capability for manufacturing fluoroelastomers required minimal capital expenditure and that it would be sweating the assets already set up.

xxxi. Proposal to the WTO cannot be relied upon to gauge material retardation. As per the Vienna Convention on the Law of Treaties, the proposals made by the various countries do not fall within the ambit of any of the legitimate aids to construction.

xxxii. The DA is also required to consider the fact that imports have actually decreased in relation to domestic production. The increase in imports from China PR has only been at the cost of reducing imports from non-subject countries. Therefore, imports from China PR have not had a volume effect.

xxxiii. The DA has compared the import prices from China PR with that of non-subject countries and has thereby observed that import prices from China PR have been at 50-60% of import prices from other countries. Such an analysis is unprecedented and has no relevance as far as the analysis under Para (ii) of Annexure II is concerned.

xxxiv. The DA has stated that 'the price depression effect has been analyzed with regard to its manifestations in the form of price retardation thereby preventing production to ramp up to an optimum level post commencement of commercial production by domestic industry'. This prescription for such an analysis is not to be found under any of the provisions in Annexure II of the AD Rules 1995. The term 'price retardation' does not have any foundational basis in any provision governing the levy of anti-dumping duty or any past determinations of the DA. Therefore, the DA is requested to clarify the nature of analysis involved while examining 'price retardation' or what the same entails so that the interested parties can offer meaningful comments.

xxxv. The data regarding quarterly trends of price undercutting clearly shows that prices between the five quarters from 2016-17 Q1 to 2017-18 Q1 have largely remained the same with minimal variations. The post-POI data of the two quarters of July to December 2017 shows that import prices have increased further.

xxxvi. DA has stated that though the prices of the DI were being undercut by imports from China PR in the first quarter, later the price undercutting turned negative which resulted in price suppression. The requirement under Para (ii) of Annexure II of the AD Rules 1995 is whether imports have been significantly undercutting the prices of the like product in India. Therefore, the reasons stated by the DA for arriving at a conclusion of price suppression is contrary to the settled position that it is the existence of price undercutting that is

considered responsible for price suppression and depression and not its absence.

xxxvii. Prices from China PR were above the prices of the DI clearly indicate that their prices were not under pressure from imports. The margin of negative price undercutting actually increased during the POI when compared to the previous year. Despite having enough leeway to increase its selling price further, at least to the same level as that of imports from China, the Domestic Industry instead chose to lower its price.

xxxviii. Referred to the Panel Report in China – Definitive Anti-Dumping Duties on X-Ray Security Inspection Equipment from the European Union [DS425]- price undercutting was negative as the Domestic Industry was selling below landed value of imports, price suppression or depression could not be attributed to imports in the absence of cogent reasons explaining why the Domestic Industry could not raise its prices, at least to the level of the imports.

xxxix. The volumetric parameters have shown a massive improvement and yet the DA has observed that the said parameters are subdued. The said observation of the DA is misplaced as FKM is a product with highly specialized application and therefore, the Domestic Industry cannot be expected to capture the entire market overnight. The steady improvements made by the Domestic Industry cannot be negated by suggesting that better performance could have been achieved.

xl. When viewed as a percentage of sales of the Domestic Industry, inventories have actually decreased in the POI when compared to the base year {as per the decision of CESTAT in Bridge Stone Tyre Manufacturing (Thailand) v. Designated Authority [(2011) 270 ELT 696]}.

xli. DI has not suffered injury with respect to employment, productivity or wages.

xlii. Imports from China PR have had no effect on the prices of the subject goods sold by the Domestic Industry by virtue of being much above the selling price.

xliii. The DA has proposed to hold that the losses would impair the ability of the Domestic Industry to raise capital investment. The DA is requested to take into consideration the fact that the Domestic Industry has itself admitted in its Annual Report 2015-16 that it "has the ability to comfortably raise more capital at any time should the need arise."

xliv. The DA has attributed the declining profitability of the Domestic Industry to price depression as a result of price undercutting becoming negative. However, the said observation suffers from an inherent contradiction inasmuch as it is positive price undercutting that is responsible for price suppression and depression whereas negative price undercutting implies that selling price of the Domestic Industry is not under any pressure. Rather, on

prices of imports being higher, the Domestic Industry can also afford to raise its prices, at least to a price comparable to that of imports.

xlv. Post POI data has only been supplied for the two quarters between July 2017 and December 2017 (6 months) and therefore, annualization of the data has been adopted to gauge the various economic parameters. Only data till December, 2017 was furnished despite the fact that the information was filed by the Domestic Industry on the 7th of November, 2018. Not only is the Annual Report for FY 2017-18 available on GFL's website but also its financial results for the quarter and half year ending September 30, 2018.

Causal Link

xlvi. An absolute increase in the volume of imports in isolation cannot be reconciled with price depression. The relevant criterion for assessing price depression is to examine whether the prices of imports are undercutting the prices of the Domestic Industry. The only situation in which an increase in volume of imports can result in price depression is if it is coupled with price undercutting which is not the case in the present investigation.

xlvii. Domestic Industry has made commendable improvement in volumetric parameters and Domestic Industry cannot be expected to capture the entire domestic market overnight. Fluoroelastomers are used in highly specialized applications, users have to assess the goods sourced from different manufacturers through product trials in order to gauge compatibility and performance which takes time.

xlviii. In a situation where price undercutting is negative, dumping cannot be the reason for price depression. The prices of imports are required to be compared with the prices of the Domestic Industry to examine whether the former is dictating the latter and thereby, depressing it

xlix. Financial losses suffered by the Domestic Industry is due to selling the subject goods produced by it at unremunerative prices that are not comparable to prices of imports which have consistently been higher throughout the injury analysis period.

l. Dumping by itself does not prevent the Domestic Industry from increasing its sales, production or capacity utilisation. It must be coupled with other factors such as price undercutting which make it more lucrative for the users of the product to switch to the lower priced imports. However, the DA must explain how dumping has restrained the Domestic Industry from achieving optimum capacity utilisation when the Domestic Industry has consistently priced the subject goods produced by it below the prices of the Domestic Industry. Therefore, this factor does not establish a causal link between dumping of the subject goods and injury to the Domestic Industry either.

li. Referred to previous Findings (Caustic Soda, N butanol, PBR and Belting Fabric) where investigations have been terminated because absence of causal link between dumped imports and injury to the Domestic industry in cases where a majority of the economic factors have shown improvement despite a decrease in profitability.

c. <u>Submissions by User Industries (M/S Hi-Tech Arai Private Limited and M/s Devashish Polymers Pvt. Ltd)</u>

i. Referring to the calculation of the copolymer gum price to be USD 24.60 and co-polymer precompound price to be USD 22.25. It is submitted that this value in itself is factually and theoretically totally in-correct. The price of Copolymer gum has to be atleast 20-25% lower than the price Co-polymer gum is mixed with expensive curatives to make pre-compounds. Process in itself is unique and involves precaution to be taken. Therefore even after addition of very expensive curatives and underdoing a strict manufacturing procedure the price of pre-compound will cheaper than the price of gum. Further there is a flaw in calculation of raw gum price strangely the price of co-polymer raw gum is calculated to be even more expensive than ter-polymer raw gum. Ter-polymer consists of 3 monomers whereas co-polymers consists of 2 monomers. The addition of the 3rd monomer is done under controlled environment, makes the terpolymer raw gum much expensive than co-polymer raw gum, and thus is used in only very high demanding applications. Hence, the views of DGTR for calculating such a high price of co-polymer raw gum, even over and above co-polymer precompund is factually and theoretically in-correct.

ii. Non-injurious price (NIP) considered by the DGTR is almost 30% higher than what has been claimed by the domestic industry in its petition. This is one of a kind case wherein the DGTR wants to allow the DI a higher selling price (in terms of higher level of protection) than what the DI had demanded as a fair price thus overlooking interest of medium and small industries. DGTR has strangely calculated the fair prices based on prevailing prices in USA. We donot understand the rationale behind using USA which is the most developed economy of the world, and calculate fair price to be prevailing developing economies such as China and India. USA has one of highest prevailing labour cast, overheads and other related expenditures.

iii. An increase in cost by way of additional duties would affect the entire Indian Automobile parts manufacturing units who are making progress in the world market.

iv. It is submitted that DGTR has failed to address the quality issues associated with the DI product. The product had huge consistency issues. It was informed to DI several times but they have failed to address it from their end. In a high performance product like FKM, this is totally unacceptable.

v. It is submitted that fluoroelastomer as a category of material is divided into several types and are available in several grades; the applicant claiming injury currently does not produce materials of such types and do not intend to do so at this point of time. There are certain products even belonging to the same category of product being imported from China, do not provide similar or better results that a buyer may choose to procure the material for its functional requirement. It is clear with the applicant claiming injury if the intention of the Company lies to offer the materials in form of Raw Gums or Pre Compounds, and in case of a single interest the antidumping duty should be added categorically and not both to safeguard its interests in all manners.

vi. It is submitted that the department should consider a fair pattern in which the selective category of the materials be placed within in order to offer ease to the Industry in continuing to import, manufacture and sell its final products. Rubber Industry have largely been hit with several Trade Agreements between India and other Nations where in the finished Rubber parts are being imported at Duties much lower than even the Basic Customs Duty of the Base Raw Material, enabling the OEM's to take advantage from Countries other than India itself. Increase in unjustified costs on the raw materials which are not even produced in India will incur immense pressure on the Manufacturers of Rubber Components in India and shall force them to give up the business and loose them against others.

M. Examination by Authority

124. The Authority notes that interested parties have also raised concerns on quality of goods produced by the Domestic Industry mainly consistency of product. The Authority notes that the petitioner has attained capacity utilisation of almost 50% in the post POI period, which indicates that quality concerns are being overcome by the domestic industry. 'Price Correction' of unfair imports through AD measure is only to ensure a level playing field. The Imports can come in at corrected fair price. M/s Seetharaman and Associates representing M/s Solvay Specialty Polymers (Changshu) Co Ltd., M/s Solvay (Shanghai) Co Ltd. and M/s Solvay Specialities India Private Limited have stated that while total export sales

of the Cooperating exporters have been disclosed but for the Domestic Industry it has been kept Confidential. The Authority after considering these submissions to ensure equity have also disclosed the total domestic sales of the Domestic Industry in this Finding.

125. The Authority notes that M/s Dua Associates representing M/s Inner Mongolia 3F Wanhao Fluorochemical Co., Ltd. ("IM 3F"), M/s Inner Mongolia All Top Fluorine Chemistry New Materials Development Co., Ltd. ("All Top") and M/s Shanghai Huayi 3F New Materials Sales Co., Ltd. ("SH 3F") has mentioned that Ex-factory Export price be determined by working backwords from CIF price of exporter to India to producer in China. The Authority notes that in the instant case as the exporter has made exports at a profit, the relevant value chain link between producer in China i.e. IM3F and the linked exporter i.e. SH3F has been considered to evaluate the Ex-factory Export price at the producer level. Since the profits made by the exporter cannot become part of the Ex-factory export prices, the approach suggested by the exporter is trivial. The Ex-factory export price as determined and disclosed on confidential basis to exporters in the disclosure is confirmed. Further the export price is net of VAT.

126. The Authority notes that submissions have been made by various interested Parties on injury and causal link analysis mainly related to not using the post POI data, that too only of 6 months, evaluating all parameters of article 3.4, Price depression to domestic industry is self-inflicted with causal link missing, all three forms of injury cannot coexist and proposal to WTO cannot be relied upon to gauge Material retardation.

127. The Authority notes that it has been submitted by the interested parties that even terpolymer pre compound be excluded along with compound and FFKM as domestic industry has not produced terpolymer Pre compound during the period of Investigation. The Authority notes that the Domestic industry has produced terpolymer Pre compound during the post POI. However for compounds and FFKM for while DI has no capability terpolymer precompound is a grade of precompound which is within the scope of PUC. The Authority has considered raw gum and Pre Compound (Copolymers and terpolymers) as the two main types of Product under consideration which further has different variants. All variants have been considered as part of the product under consideration. As the injury claim is of material retardation, the variants not produced in POI but DI having capability need to be included in the scope of PUC.

128. Therefore, the Authority noting submissions and citation of earlier Anti-dumping cases on excluding a product not manufactured during period of investigation holds that since injury to domestic industry has been evaluated on material retardation and as well as material injury, only those product types i.e. compounds and FFKM for which Domestic industry has no capability to product are excluded from the scope of PUC.

129. The Authority further holds that for terpolymer Precompound, the Non-injurious price evaluation has been done on the basis of actual data of cost of domestic industry during POI with value addition included Raw Gum to precompound. The dumping margin and injury margin are compared on an apple to apple basis only.

130. The Authority notes the submission that domestic industry had filed different sets of data during the course of initiation and that initiation is bad. The Authority holds that data filed by any interested party is verified either on site or on desk study. The Authority considers the verified data for the purpose of final finding. If discrepancies in data are corrected and shared with all interested parties, no prejudice is caused and no natural justice right is violated.

131. The Authority notes the submissions of M/s CFSE on determination of Normal Value for determination of domestic prices as per Accession protocol of China. The producers/exporters had filed Questionnaire to illustrate the prevalence of market economy conditions in the industry.

Page 11 of rejoinder submissions of M/s CFSE draws attention to Section 15(a)(i) "*if the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO member shall use Chinese prices or costs for the industry under investigation in determining price comparability;…"*

132. The Authority has evaluated the information filed by the producer/exporter comprehensively. The Authority notes the submissions of the producer/exporter stating that value addition is not a criteria for granting dumping margin, injury margin or Market economy treatment. The Authority observes that in the instant case the producer/exporter is sourcing raw materials which itself is a Product under consideration type and a major cost of the PUC type manufactured by the producer/exporter and in this context 'MET' status for raw gum's manufacture is extremely vital to consider grant of MET to its value added product type i.e. pre compound. The sourcing of this raw material whether from related or unrelated is trivial as the issue to be settled is whether raw gum manufacture meets the MET requirements. Non-filing of response for this significant part of product does not enable grant of MET to the goods exported by the Producer/exporter. The Authority further notes that the producer/exporter has clarified sourcing of raw material from some suppliers at a higher price as quality is better. The price variations in the main raw material across suppliers also indicate that even the cost variations of suppliers of this PUC and whether they being operating under market economy conditions requires close examination for which concerned suppliers should file questionnaire responses. Under such circumstances, the Authority has not granted the MET to the producer/exporter.

133. The Authority also notes that producer/exporter has stated that there are discrepancies in purchase document and power bills which are of typo/clerical nature.

134. The Authority in the para 53 and 54 of the disclosure statement had held that

"…..*As regards the state inference, the producer/exporter has provided its share holding pattern wherein one of its shareholders i.e M/s Wuxi Guolian Junyuan Venture Investment Centre limited partnership who holds* ***% *of share of the producer/exporter infact has Government shareholding to an extent of* ***%. *This* ***% *shareholding is comprised of M/s Wuxi Guolian Industrial Investment Co. Ltd. (****%)*, *M/s Wuxi Newspaper Developer Co. Ltd. (****%), and M/s Wuxi New District Science and Technology Financial Venture Capital Group Co. Ltd. (****%), who further have 100% government shareholding. The investment trail of the producers/exporters investment portfolio therefore shows significant investment by the state enterprises both directly/indirectly. The Authority also notes the submissions by CFSE that M/s Wuxi Guolian Junyuan Venture Investment Centre (****%) has M/s Wuxi Junyuan Capital Management Centre (Limited Partnership) (****% Private) as a General partner who unlike other limited partners is authorised to take day to day management decisions and that there is no government interference in decision making. The Authority notes that the para 8(3) of Annexure 1 of AD rules states "the designated authority shall consider in each case the following criteria as to whether:*

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

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

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

(d) the exchange rate conversions are carried out at the market rate. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated

authority may apply the principles set out in Anti-Dumping Rules, 1995 in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph."

In the instant case, the provision under of 6.4 of the partnership agreement of M/s Wuxi Guolian Junyuan Venture Investment Centre, the major shareholder in CFSE stipulates the role of all Shareholders in investment decision making which appropriately clarifies State interference in investment decision making in CFSE. Therefore with decision making for investment by producer/exporter having interference of the state entities, the condition under para 8 (3) (a) is not met to claim MET status. Also the Authority notes that exchange rate as regards foreign currency transactions the producer/exporter has stated that exchange rate's reflected in their financial accounts are based on rate published by people's bank of China. However there are no submissions on the aspect as to whether the exchange rate is controlled by the Government. The Authority recalls its earlier finding no.14/14/2014-DGAD dated 8/4/2017 wherein in para 108 the continued control of exchange rate by Government was underscored. The issues on cost of production, shareholding pattern and claim of market economy treatment being limited only to value added component of PUC and further with no participation of raw material suppliers/producers do not qualify and justify grant of market economy status to the producer/exporter i.e. M/s CFSE."

135. The Authority notes that M/s CFSE has reiterated the earlier submissions to justify that there is no state interference in investment decision making, or day to day control. The Authority recalls its observations in the disclosure statement as also reproduced above and holds that the producers/exporters claim for MET falls short of establishing no significant state interference in decision making process of investment. Further with sourcing of significant proportion of PUC i.e. raw gum for which no questionnaire being filed by suppliers for claiming MET and deficiencies of technical mismatches in cost of production records as stated above, the Authority does not grant MET status to M/s CFSE for the subject goods under consideration.

136. As regards submissions on the injury parameter, the Authority notes that the volume of imports from China have increased in absolute terms and also relative to consumption/demand. However with reference to production there has been a decline in imports.

137. The Authority has also noted that though fact of price of subject goods from China being about 60% of the prices from non-subject countries may seem trivial

but manifestation of this aspect is observed in increase of imports from China which the Authority has underscored in analysis.

138. The domestic industry has been able to increase its market share from 2015 to POI by displacing the market share of non-subject countries whose prices are almost 70% higher than China. The low prices level of imports from China on one hand led to increase in market share of subject goods from China and at the same time led to a price depression effect on selling prices of domestic industry. It is noted that only in the first quarter of injury period, the price undercutting by imports from China was positive which later led to a retarding effect on selling prices of domestic industry which continued over the injury period. The volume parameters of domestic industry i.e. production, sales, market share, capacity utilization though increased over injury period, the volume growth is at the expense of price depression.

139. The Authority notes the submissions of interested parties that it is the positive price undercutting that is responsible for price suppression and depression whereas negative price undercutting implies that selling price of the Domestic Industry is not under any pressure. The Authority in this regard holds that although price undercutting is negative since the domestic industry had to succumb to the pressure of import prices from China PR.

140. The Authority notes that it has been submitted by one of the interested party that the PUC is a highly specialized product and that the domestic industry would take time to increase its market share and that its present performance on volume parameters is quite satisfactory. The Authority in this regard notes that the domestic industry has no doubt increased its market share but it has made its place by displacing imports from non-subject countries, and that growth of dumped imports from China remain unabated. The price retardation effect stated earlier cannot get arrested if unfair imports from subject country remain unaddressed. The Authority therefore holds that both phenomenon of material retardation and material injury are witnessed in this case. As has been submitted by one of the interested party that in the recent WTO Panel report in matter titled ***Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey,*** it has been held that all parameters of article 3.4 need to be examined. The Authority has examined all parameters under Article 3.4 in this finding.

The Authority holds that it is also pertinent to note that it is not mandatory that all factors show negative trend or decline as has been held by WTO in the Panel Report **EC- Bed Linen case**. Rather, the analysis and conclusions must consider

each factor; determine the relevance of each factor in the context of the particular industry at issue, to make a reasoned conclusion as to the state of the domestic industry.

As far as relevance of SBR case is concerned, the Authority notes that the concept of domestic industry has to be seen as domestic producers as a whole as per Rule 2(b) of the Rules. While it may happen that in a case there are two units of domestic industry but altogether they form the domestic industry. In SBR case, the Authority has recommended that one of the units of the domestic industry has suffered from material injury and the other unit has suffered from material retardation. In essence, the domestic industry has suffered from both material injury and material retardation. The same has been upheld by CESTAT and Supreme Court. Thus, it cannot be the case that SBR case is not relevant here.

141. After examining all parameters under Article 3.4 there is no bar for authority to also look at post POI data to validate whether the retardation in domestic industry's performance noted in injury period is still continuing or has undergone a change. In this regard, the Authority notes the submission made by one of the interested parties that post POI is not relevant and that designated authority has only considered 6 months post POI when a larger duration data was available. The Authority holds that a post POI of 6 months is normally considered for different types of anti-dumping investigation i.e. Sunset review, examining threat of injury or material retardation. In this case also the Authority has not departed from this practice, and has taken note of 6 months post POI data as indicative only.

142. The Authority notes the submissions regarding US not treating an industry with 2-3 years of existence eligible for Material retardation case. However, the circumstances under which such a consideration is done may be different in different countries. The criteria of an established industry would also therefore vary from country to country. In the instant case, the domestic industry filed a petition in December, 2017, alleging dumping with POI considered as July, 2016 – June, 2017. Therefore the domestic industry has claimed injury especially material retardation after one year of its starting the commercial production in July 2015. The authority therefore holds that in the present case circumstances, the domestic industry's claim for material retardation seems justified and has appropriately analyzed in this finding.

143. The Authority notes that it has been submitted by one of the interested party

that the domestic industry in its annual report has reported that it has the ability to comfortably raise more capital at any time as per the need as and thus, its ability to raise capital investment has not been jeopardized. The Authority in this regard notes that GFL is a multi-product company and the annual report of a multi-product company reflects the performance of all the products and segments and about the overall operations of the company and is not limited to one segment. The information related to product under consideration is only relevant for the purpose of present investigation.

N. Conclusions

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

i. The product under consideration has been exported to India from the subject country below its normal value, resulting in dumping.

ii. The Domestic Industry has suffered material injury and material retardation due to dumping of the product under consideration from the subject country.

iii. The aforesaid injury has been caused by the dumped imports from the subject country.

O. Recommendations

145. The Authority notes that the producers/exporters from the Subject Country have been found to be dumping the subject goods during POI and that there has been a price injury due to retarding effect caused by dumping on the domestic selling price of domestic industry. The performance of domestic industry on price parameters in context of material injury and material retardation has been subdued resulting in financial losses.

146. The Authority further notes that domestic industry's establishment has got retarded in terms of price but it has been able to enhance its capacity utilisation, and domestic sales. The analysis of injury in the case has been limited to only 24 months of injury period. Further 6 months of post POI has also been examined which is only intended to capture whether the domestic industry has been able to overcome the retarding effect. The price depression continues in post POI. The Authority holds that on the basis of 2 years injury period if may not be justified to recommend levy of AD measure for a 5 year tenure. The Authority therefore considers it appropriate to recommend AD measure only for a period of 18

months from the date of notification. The Authority holds that by that time the performance data of domestic industry for almost 5 years would be available which can enable the domestic industry to file a petition if they so desire. The Authority at that time would be in a position to examine the complete injury period data for evaluating injury to domestic industry.

147. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of Definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of subject goods from the subject country for 18 months in the form and manner described hereunder :

DUTY TABLE

No.	Heading/ Sub-heading**	Description of goods *	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	China	China	Inner Mongolia 3F Wanhao Fluorochemical Co., Ltd.	Shanghai Huayi 3F New Materials Sales Co., Ltd.	3.85	Kg	US$
2.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	China	China	M/s Solvay Specialty Polymers (Changshu) Co Ltd.	M/s Solvay (Shanghai) Co. Ltd.	4.24	Kg	US$
3.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	China	China	Chenguang Fluoro & Silicone Elastomers Co., Ltd.	Chenguang Fluoro & Silicone Elastomers Co., Ltd.	3.6	Kg	US$
4.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	China	China	Daikin Fluorochemicals (China) Co. Ltd.	Uni Alliance Limited	0.078	Kg	US$
5.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	China	China	Zhonghao Chenguang Research Institute of Chemical	Zhonghao Chenguang Research Institute of Chemical	3.56	Kg	US$

					Industry Co. Ltd.	Industry Co. Ltd.			
6.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	China	China	Any Combination other than mentioned in S.No. 1 to 5 above		7.31	Kg	US$
7.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	China	Any country other than China PR	Any	Any	7.31	Kg	US$
8.	39046990, 39049000 & 39046910	Fluoro elastomers (FKM)	Any country other than China PR	China	Any	Any	7.31	Kg	US$

*FKM compound and Perfluoroelastomer (FFKM) are excluded from the scope of the subject goods.

**The imports also happen under ITC head 39045090

P. <u>Further procedure:</u>

148. An appeal against this notification shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975

(Sunil Kumar)
Additional Secretary &Designated Authority