

**To be published in Part-I Section I of the Gazette of India Extraordinary**  
**F. No.14/23/2015-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**(Directorate General of Anti-Dumping & Allied Duties)**  
**4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001**

**NOTIFICATION**

**Dated 2<sup>nd</sup> September, 2017**

**(Final Findings)**

**Subject: Anti-dumping investigation concerning imports of Non-Woven Fabric, originating in or exported from Malaysia, Indonesia, Thailand, Saudi Arabia and China PR.**

F. No. 14/23/2015-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;

**A. BACKGROUND**

1. No.14/23/2015-DGAD: Whereas M/s Global Nonwovens Limited (hereinafter referred to as ‘petitioner’ or “ the applicant” ) has filed an application (also referred to as petition) before the Designated Authority (hereinafter referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped articles and for Determination of injury) Rules, 1995 as amended from time to time (hereinafter referred to as the AD Rules) for initiation of Anti-Dumping investigation concerning imports of “Non-Woven Fabric”, originating in or exported from Malaysia, Indonesia, Thailand, Saudi Arabia and China PR (hereinafter also referred to as subject countries).
2. Whereas, the Authority, on the basis of sufficient evidence submitted by the applicant, and after prima facie satisfaction with regard to existence of dumping causing injury to the Domestic Industry, issued a Notification No. 14/23/2015-DGAD dated 15<sup>th</sup> June, 2016, published in the Gazette of India, initiating the subject investigations in accordance with the Rule 5 of the above Rule to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from Malaysia, Indonesia, Thailand, Saudi Arabia and China, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the Domestic Industry.

## **B. PROCEDURE**

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
  - i. The Designated Authority, under the above Rules, received a written application from the Applicant on behalf of the domestic industries, alleging dumping of “Nonwoven fabric made of Polypropylene of GSM 25 or less” from Malaysia, Indonesia, Thailand, Saudi Arabia and China PR.
  - ii. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicants. The application was, therefore, considered as properly documented.
  - iii. The Authority notified the Embassy of subject countries in India about the receipt of the antidumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.
  - iv. The Authority issued a public notice dated 15th June 2016 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
  - v. The Authority sent a copy of the initiation notification to the Embassy of the subject countries in India, known producers/exporters from subject countries 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. The embassy of the Subject Countries in India was also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit.
  - vi. The Authority provided a copy of the non-confidential version of the application to the known exporters and the embassies of the subject countries in India in accordance with Rule 6(3) of the Anti-dumping Rules. A copy of the Application was also made available other interested parties, upon request.
  - vii. The Authority sent questionnaires to elicit relevant information to the following known exporters in subject countries in accordance with Rule 6(4) of the Antidumping Rules:
    - a. Fibertex Personal Care SDN BHD, Malaysia
    - b. CNC International, Thailand
    - c. Pt Multi Spunindo Jaya, Indonesia
    - d. Pt Toray Polytech Jakarta, Indonesia
    - e. Pt Hasil Damai Textile, Indonesia
    - f. Huizhou Jinhaocheng Non-Woven Fabric Co., Ltd. China
    - g. Dongxiang Chemical & Light Industrial Textile Co., Ltd., China
    - h. Dongguan Jinchon Nonwoven Co., Ltd. China PR
    - i. Guangzhou Xinlong Nonwoven Co., Ltd. China PR
    - j. Sunshine Nonwoven Fabric Co., Ltd. China PR
    - k. Shenzhen Lifeng Zend Technology Co., Ltd. China PR
    - l. Advanced Fabrics (SAAF), Saudi Arabia
    - m. Mada Nonwovens Company Ltd. Saudi Arabia

- n. Saudi German Co. For Nonwoven Products Saudi Arabia
- viii. The following producers/exporters from the Subject Countries filed exporter's questionnaire response in the prescribed format:
  - a. Fibertex Personal Care SDN BHD, Malaysia
  - b. Saudi German Co. For Nonwoven Products Saudi Arabia
  - c. Toray Polytech (Nantong) Company Limited, China PR
  - d. Toray Polytech Jakarta, Indonesia
  - e. Asahi Kasei Spunbond (Thailand) Co., Ltd
  - f. Itochu Thailand Limited
  - g. Itochu India Limited
  - h. Hubei Gold Dragon Nonwoven Fabrics Co.,Ltd
- ix. Questionnaires were sent to the following known importers/users / associations of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Anti-dumping Rules:
  - a. Procter & Gamble, India
  - b. Johnson & Johnson Limited
  - c. Kimberly Clark Lever Pvt. Limited.
  - d. SCA Hygiene Products India Pvt Ltd
  - e. Unicharm India Private Limited
  - f. Nobel Hygiene Pvt. Limited
- x. Importer's questionnaire response have been filed by the following:
  - i. Unicharm India Private Limited
- xi. Directorate General of Foreign Trade - Indonesia had also filed their submission in addition to the submission made by various know exporters, importers, users, Domestic Industry and other domestic producers.
- xii. The Authority made available non-confidential version of the evidence presented by interested parties in the form of a public file kept open for inspection by the interested parties as per Rule 6 (7).
- xiii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and also to DG Systems, to arrange for details of import data of subject goods for the past three years, including the period of investigation. The Authority has, therefore, relied upon the DGCI&S data and the detailed information submitted by cooperative exporters for computation and required analysis.
- xiv. 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) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry. The NIP has been determined by the Authority in terms of the principles laid down under Annexure III to the Antidumping Rules.
- xv. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has

accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non-confidential version of the information filed on confidential basis.

- xvi. In accordance with Rule 6(6) of the Anti-dumping Rules, the Authority also provided opportunity to the interested parties to present their views orally in a public hearing held on 12th May, 2016. The parties, who presented their views in the oral hearings, were requested to file written submissions of their views expressed orally by 19th May, 2017, followed by rejoinder submissions by 24th May, 2017.
- xvii. Verification of the information provided by the applicant domestic industries, to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of present final findings.
- xviii. The period of investigation for the purpose of present investigation is from 1st July 2015 to 31st March 2016 (9 months) considering that Petitioner has commenced trial production in Feb 2015 and commercial production in July 2015 only. However, the injury analysis has been carried out on the basis of quarter to quarter comparison of actual performance and projected estimates/targets. Further, the import and demand data for the period from April 2012 – March 2013, April 2013-March 2014, April 2014-March 2015, April 2015-June 2015 has also been considered for injury analysis.
- xix. The submissions made by the interested parties during the course of the present investigation and considered relevant by the Authority have been addressed in this final findings.
- xx. 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 findings on the basis of the facts available.
- xxi. A Disclosure Statement was issued on 2.08.2017 containing essential facts under consideration of the Designated Authority, giving time up to 16.08.2017 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
- xxii. \*\*\* In this final finding notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxiii. The exchange rate adopted by the Authority for the subject investigation is 1 US \$= Rs 66.58 for the period of investigation.

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

4. The submissions have been filed by DI and exporters regarding the scope of PUC and exclusions. The same are summarized as below:

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

5. Submissions made by the Domestic Industry are as follows:
- a. The product under consideration in the petition is “Non-woven fabric made of Polypropylene, having basis weight not exceeding 25 GSM”.
  - b. Nonwoven fabrics are broadly defined as sheet or web structures bonded together by entangling filaments mechanically, thermally, or chemically. They are flat, porous sheets that are made directly from molten plastic. They are not made by weaving or knitting and do not require converting the fibers to yarn.
  - c. The product under consideration can be produced in a number of different types or varieties, which essentially differ in thickness of fabric denominated in GSM, or in the manner in which fabric is formed. The production process involves passing of molten polypropylene through pair of hot cylinders which act as a bonding agent. This can be either in spun-bond technique or in melt blown technique.
6. Not all types of non-woven fabric are the subject goods for the present investigation. Only the non-woven fabric produced primarily from polypropylene are within the scope of product under consideration. It has been further mentioned that only Non-woven fabric which contains following essential characteristics which are present in the imported product.
- a. Produced using polypropylene, and
  - b. Having basis weight not exceeding 25 GSM, and
  - c. Produced either by spun bond or spun melt technology/production process, and
  - d. For hygiene applications in hygiene products, and
  - e. Produced using production technology, plant & equipment, manufacturing facilities, which permits
    - i. Production in closed loop controlled environment necessary to obtain uniformity and consistency in specification,
    - ii. Zero level of contamination in the form of foreign particle, dust particles,
    - iii. Prescribed levels surface defects such as patches, holes, lumps, etc.,
    - iv. Production in over pressurised conditions,
    - v. Using process control instrumentation to ensure compliance with desired specifications.

- f. The Product should have following technical properties
  - i. Spunbond (S / SS / SSS) – Only Spun bond technique is used. Fabric is strong having air permeability.
  - ii. Spun Melt (SMS / SMMS / SSMMS) – Spunbond and Melt blown techniques are used and respective layers are sandwiched to produce soft and multi-utility fabrics. Fabric has barrier properties
  - iii. Hydrophobic – Repel water and enhances barrier properties by chemical nature, product under consideration is Hydrophobic therefore it does not require any additional treatment.
  - iv. Hydrophilic – Attracts water and increases absorption. This property is imparted by adding suitable chemicals into the filament sheet after Calendaring. Both Spun bond and spun melt fabric can be treated to have hydrophilic property.
- g. The Petitioner uses machinery and technology such as Reicofil machine supplied by Reifenhauer – Germany, which is also being used by exporting producers, thus producing the same product as of the Petitioner, namely Uniform and Consistent thickness because of the production in closed loop controlled environment, Zero level of contamination (in the form of foreign particle, dust particles) Produced in over pressurized conditions, Process control instrumentation to ensure compliance with desired specifications.
- h. Thus such essential features make the product of the Petitioner distinct from the similar products of other producers in India, and same as the dumped products manufactured by exporting producers from other countries.
- i. The product under consideration performs specific functions such as absorbency, liquid repellence, stretch, softness, strength, abrasion resistance, lint and sterility. These properties of fabrics are often combined to create fabric suited for specific jobs while achieving a good balance between product use-life and cost.
- j. The product under consideration is primarily used in Hygiene application. The fabric is white but sometimes it can be coloured as well by adding master batches. Apart from this these fabrics can be soft, super soft and section coated also.
- k. Along with it, several technical properties like Spun bond, Spun melt, Hydrophobic, Hydrophilic make it a novel product produced in India.
- l. None of the producers in India have deployed the facilities mentioned here, thus not able to produce the desired product needed by the consumers in India.
- m. The goods produced by the other producers and produced by the petitioner are poles apart. Only petitioner's product can be treated as like product to the product being imported into India. The manufacturing facilities installed and available to the petitioner is far more advanced than that of the other domestic producers.

- n. This fact gets more established with the fact that petitioner is selling the product in the range of Rs.135-170 per Kg and the other non-woven fabric produced by the other producers are being sold at much below price. The pricing of a product is very important in determining the likeness of two products. The fact that the two products are very differently priced makes them different.
- o. The product types for which exclusion is being demanded should not be excluded, as these constitute product under consideration within the meaning of the definition of PUC in the present investigation. The scope of PUC was not defined as nonwoven fabric made of 100% Polypropylene only. The product under consideration was defined as "nonwoven fabric made of Polypropylene" and so long as the fabric is primarily produced using polypropylene, the same is within the scope of the product under consideration.
- p. The products claimed for exclusion are being manufactured by the Domestic Industry. "Non woven fabric SS, HO (soft)" is spun bond, hydrophobic soft material and is comparable to "non woven loft". Printed NWF made out of NWF produced by the petitioner has also been sold in the market. The printing has not been done by the company and was given to associate company of the petitioner.
- q. The exporter had not identified a PCN for these types at the time when the Authority sought comments from the interested parties after devising PCN, nor has made any claims regarding this. It has not been stated that these types were exported by Fibertex to India during the investigation period. If these products have not been exported to India, there demand for exclusion is totally baseless.
- r. It is too late to raise preliminary issues of product exclusion/inclusion. Sufficient opportunity has been granted by the Authority to all interested parties to make submissions. FibretEx had made submissions as well, however, these new facts are being put on records by them with mischievous objective and to derail the whole investigation process. These submissions should be rejected on this ground alone.

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

- 7. Submissions made by producers/exporters/importers/other interested parties are as follows:
  - a. The petitioner and the Authority has not defined the product under consideration sufficiently.
  - b. The petitioner does not manufacture Non-woven fabric below 8 GSM and the same is accepted by them in their petition well as in the public hearing. For the same reason, non-woven fabric below 8 GSM should be excluded from scope of product under consideration.
  - c. While defining the customs classification, the petitioner has erroneously included the Heading 56031200 weighing more than 25 g/m<sup>2</sup> but not more than 70 g/m<sup>2</sup>. The same should be excluded. Product under consideration should be classified under 56031100.

- d. The Product under consideration should be defined as “Non-woven fabrics made of polypropylene having thickness greater than 8 GSM and less than 25 GSM, classifiable under customs tariff act under heading 56031100”.
- e. The price of Product under consideration’s price is impacted by raw material prices, not by imports. The market decides the prices as the consumer market for the subject good is a “buyer’s market”.
- f. The petitioner has failed to bring on record either conversion cost or international prices of polypropylene. It is required to give international price for polypropylene prevailing during the POI. Overall decline in international prices of polypropylene cannot be attributed to dumping.
- g. The petitioners have not provided properly segregated data to understand the actual situation of imports vis-à-vis domestic consumption or of the Domestic Industry due to imports.
- h. The Domestic Industry has claimed that the Product under consideration produced by them is significantly different than the product produced by the other producers because they are selling the product at much higher price than the other producers but it is nowhere mentioned that both the products are not like products. For determining the like product the Authority needs to examine the commercial substitutability and not the price difference between the products being sold by the other domestic producers. The goods produced by the petitioner and the other producers are like products.
- i. Since the product under consideration has a buyer’s market and the product under consideration being a hygiene product, the petitioner is facing tough competition with the established producers in the market.
- j. The exporter from Malaysia has claimed that the following types of products should be excluded from the scope of the PUC under the present investigation on the basis of their technical superiority, price band and usage segments.
  - (i) **Non-Woven Loft:** It is manufactured using two raw materials, polypropylene and copolymer, unlike the normal non-woven fabric which is manufactured using only polypropylene.
  - (ii) **Non-Woven Dual:** It is manufactured using two raw materials, Poly-propylene and Polyethylene unlike the normal non-woven fabric.
  - (iii) **Printed Non-woven:** It requires a separate printing technology to print directly on the non-woven products. Fibertex uses flexographic printing technology to print on product ranging from 8 gsm to 100 gsm.

Further, it is stated that the Domestic Industry does not produce these products. Therefore, Non-woven loft, Non-woven dual and Printed Non-woven should remain outside the scope of PUC under investigation.

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

8. The product under consideration in the present investigation as per the initiation notification is “Nonwoven fabric made of Polypropylene of GSM 25 or less”. The PUC has a dedicated

HS code 5603 1100, however, it has been seen from Import data that imports are also taking place under other HS codes 5603 1200 etc. Therefore, the description of the product is determining factor for the purpose of this investigation and HS code is only indicative.

9. The petitioner request for distinction of PUC for hygiene application as against the other applications was considered but the Authority does not agree for such distinction. The subject goods for different applications are covered with in the scope of PUC and the like articles thereof.
10. The exporters request for exclusion of certain product type namely "non woven loft", "non woven dual" or "printed nonwoven" was considered but not agreed to by the Authority. This issue besides being raised at such belated stage of the investigation are also not substantiated properly with evidence. The descriptions given by the exporter are not scientific description or technical specifications. The exporter could be calling a certain product as non woven loft and it may be known by some other description for other producers. The Designated Authority cannot consider exclusion without sufficient description and specifications.
11. The Authority notes that the first step in an antidumping investigation is determining the scope of the product under consideration. Having decided the scope of the product under consideration, the Domestic Industry is required to first identify like article to the product under consideration and then establish the scope of the Domestic Industry. Scope of the Domestic Industry can only be decided from amongst domestic producers of like article. After consideration of the submissions made by the Petitioner, the Authority has decided not to distinguish the subject goods on the basis of their usage or application as the implementation of such a distinction would be difficult and it will only complicate the outcome of the investigation. The Authority has decided the product specification or variants of the subject goods as already clarified to all the interested parties by the Authority in the initial stages of the investigation. The PUC is to be identified with respect to the GSM, treated/untreated (hydrophobic/hydrophilic) and spun bond/melt blown technology of manufacturing.
12. The Authority notes that the subject goods produced by the petitioner and the subject goods imported from the subject countries are like articles. Non-woven fabric produced by the Domestic Industry and imported from subject countries are comparable in terms of essential product characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. There is no known difference between the subject goods exported from subject countries and that produced by the petitioner. Consumers can use and are using the two interchangeably. Both are technically and commercially substitutable and hence should be treated as 'like article' under the Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the applicant in India are being treated as 'Like Article' to the subject goods being imported from the subject country.
13. The Authority considered the submission that neither the petitioner nor the foreign producers currently produce non-woven fabric below 8 GSM, nor it has been imported into India. Since the product is not being produced either by petitioner or by the foreign producers nor the product has been imported in India, it would be appropriate to exclude the product below 8

GSM. However, in case the foreign producers develop this product and start exporting to India in future and the Domestic Industry also do so, the interested parties shall be entitled to seek review at that stage. Therefore, modification is required in the scope of the product under consideration for exclusion of such product type.

14. The Authority has therefore redefined the PUC as “*Nonwoven fabric, made of Polypropylene, of 8 to 25 GSM*”.

#### **D. DOMESTIC INDUSTRY AND STANDING**

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

15. The submissions made by the Domestic Industry are as follows:
  - a. The petition is filed by M/s Global Nonwovens Limited who is the sole producer of the subject goods in Domestic Tariff Area (DTA) in India and no other producer in India has the production facilities to produce the subject goods.
  - b. Petitioner has started commercial production recently in Nashik, Maharashtra and dumping by exporting producers is impeding the growth of the newly incorporated company. Petitioner suffered material injury to the extent of its production and sale in the market during the period of its existence.
  - c. The uniqueness and the technical differences of the product of the Petitioner make it stand apart from the products of the already established producers. Thus, the industry of non-woven fabrics for sanitary purposes in India was not established before, and the Petitioner remains the sole producer of the PUC and therefore material retardation applies.
  - d. There is one more producer called M/s Ahlstrom Fiber Composites India Pvt Limited, who has given their support letter. The company is situated in Special economic Zone (SEZ), hence, manufactures primarily for the International market and caters a very small volume to the domestic market. Considering estimated sales of the SEZ unit in Indian market and taking it into account the total production of subject goods in India, the petitioner still accounts for major proportion of production of subject goods in India.
  - e. There are various other companies in India, who may claim to manufacture the subject goods; but the claim is not correct. Non-woven fabric produced by the petitioner and imported from subject countries are the same but materially different from the nonwoven fabric produced by these other Indian producers and the same can be verified from the fact that the subject goods are sold by the petitioner at much higher rate as compared to the non-woven fabric sold by these other Indian producers.
  - f. The SEZ unit sells very small amount to DTA. An SEZ can claim the status of DI only to the extent of its sale in the DTA. The fact that a producer inside a SEZ can make sales in the DTA does not mean it is established for that purpose. M/s Ahlstrom produces goods for health applications and Petitioner produces goods for hygiene and sanitary applications, thereby the products are different. Moreover, Ahlstrom group

uses Wet laid technology and spunliad technology whose application is not in hygiene sector and total output of spunmelt is less than 12% of the total output. Therefore, M/s Ahlstrom should not be considered a producer of like articles.

- g. M/s Alpha Foam should not be considered as producer of like articles because of the difference in their products. The Petitioner produces a product with various technical and material differences from that of Alpha Foam. Also, Alpha Foam despite being an old producer does not sell to major consumers of the subject goods in India, whilst the Petitioner in the short span sells to several major consumers of the subject goods in India and Abroad.
- h. The petitioner has provided annual reports of number of these companies and on the same basis it has established that these companies in fact do not even have the manufacturing facilities and could not have been engaged in the manufacturing of the like article to the product under consideration referred in the petition and on which duty has been sought by the petitioner. Factual data has been provided with respect to the producers who claim to produce the PUC showing why they should not be included as DI for the current PUC.
- i. The petitioner fulfils the requirement of Domestic Industry, as prescribed under Rule 2 (b) of the Anti-dumping Rules, 1995 and eligible to be the Domestic Industry.

#### **Submissions made by Producers/Exporters/Importers/Other Interested Parties**

16. Submissions made by Producers/Exporters/Importers/Other Interested Parties are as follows:

- a. The petitioner M/s Global Non-woven, who claims to be the sole producer of the product under consideration lacks standing to initiate the present investigation but got the investigation initiated by misrepresentation.
- b. The most important element of the Domestic Industry namely “major proportion” and “domestic producers as a whole” should be checked very closely. the claim of Major proportion cannot be accepted if the proportion is very low. At the same time domestic producers as a whole means all the domestic producers of the subject good should be included in the scope of the Domestic Industry and the same was held by the Appellate Body in the matter of *European Communities- Definitive Anti-Dumping measures on certain Iron and Steel Fasteners from China PR*.
- c. The petitioner has not included all the domestic producers who constitute producers as a whole and this is sufficient ground that the investigation should be terminated or the scope of Domestic Industry should be altered and should include all the other domestic producers.
- d. The claim of the petitioner of being the sole producer in DTA is patently untrue. Other domestic producers have been producing the like products since last many years. The domestic demand has been met by domestic producers like M/s Fiberweb India, M/s Alpha Foam, M/s Surya Textech, along with imports. Data of the other domestic

producers should be called and examined. The goods produced by these companies are exactly same as the products being manufactured by the petitioners.

- e. Where an established industry exists, it is not open for each new entrant to claim material retardation. The petitioner cannot claim itself to be at nascent stage or developing stage after 10-15 years of commercial production by the other Indian producer. This cannot be a case of material retardation because of pre-existence of a producer in SEZ. An SEZ unit should be treated as the Domestic Industry. The Authority has done so in various cases in the past. There is other producer in SEZ unit which has DTA clearance and the DTA clearance unit should be treated as domestic production for the purpose of rule 2 (b) of the Anti-Dumping rules.
- f. The applicant does not meet standing requirement enumerated in Rule 2(b) of the Anti-Dumping Rules. The production share of the Petitioner is only 20.39% as per the calculations of the opposing interested parties which are based on a conservative assumption that all other Domestic producers are operating at only 30% of their respective capacities.
- g. Domestic Industry's total output should constitute major proportion of the domestic production i.e. more than 51%. The petitioner has failed to take into account the total production of the 29 producers mentioned in their petition who claim to make the product under consideration. One of those 29 producers named in the petition, M/s Alpha Foam was present in the hearing. Alpha Foam increased its capacity from 3000 tonne per annum to 6000 tonne per annum. Also they mentioned that they have the capability of producing the Product under consideration from 10 GSM to 150 GSM. The importers M/s Unicharm claimed that they have procured Non Woven fabric of less than 25 GSM in India and that evidence shall be submitted by them to that effect. This fact clearly shows that the Product under consideration is being produced by other producers as well.

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

17. The Application has been filed by M/s Global Nonwovens Limited claiming that the petitioner accounts for 100% of the production of the Product under consideration and the like product produced in DTA in India.
18. At the stage of initiation, and based on information on record, the authority considered that the product under consideration is produced in India only by the petitioner as far as production in DTA is concerned. Further, the product under consideration is produced by Alstrom Fibre Composites existing in SEZ and who have subsequently supported the petition. The initiation was therefore based on a petition filed by M/s Global Non Woven on behalf of Domestic Industry.
19. Post initiation and during the hearing a number of interested parties have contended that the petitioner does not have a standing and there are a number of other producers who produced the product in the country. It has also been contended that since the product is being produced by a number of other producers in the country, the case cannot be initiated on the grounds that dumped imports are causing material retardation to the establishment

of Domestic Industry. Prior to initiation, the Authority wrote to the Textile Commissioner's office seeking details of known producers of nonwoven fabric. However, no such details were made available to the Authority. Therefore, the Authority had no reason to believe that there are other producers for the same product at the time of initiation. The information brought subsequently to the notice of the Authority has been duly considered and addressed appropriately.

20. Further, it is noted that the petitioner has neither imported the product under consideration, nor they are related to any importer or exporter of the product under consideration. The initiation notification which was notified in the public domain on 15<sup>th</sup> June, 2016, however only M/s. Alpha Foam had filed submissions and supported petition for imposition of antidumping duty. No other producer listed in the petition or claimed as producers by the opposing interested parties responded to the Notification, either supporting or opposing the petition.
21. Authority has also sent communication to various importers and users in India. However, only M/s Unicharm responded by filing questionnaire response. During oral hearing M/s Unicharm claimed that there are other producers of the subject goods and they would furnish the evidence for the same. However, they have filed the submissions but without substantiating their claim with any documentary evidence regarding production/procurement of subject goods in India during the POI or the previous year. This indicates that there may not be other producers of the subject goods in India who may like to oppose or support the petition.
22. As far as inclusion of SEZ unit under the scope of Domestic Industry is concerned, the Authority notes that the SEZ units are set up with specific purposes and the focus of such unit is to cater to the demand of International market rather than focusing on domestic market.
23. On the basis of the definition of the product under consideration and like article, it is seen that only petitioner and M/s Alfa Foam qualify as a domestic producers of the like article. M/s Alfa Foam has furnished information regarding their production and have also supported the petition. Therefore, Authority has considered their production for calculating the total production of subject goods in India and after taking it into account, the petitioner still accounts for major proportion of production of subject goods in India
24. Since the production of the petitioner accounts for "a major proportion" in the total production of the product under consideration in DTA in India, the petitioner satisfies the standing and constitutes Domestic Industry within the meaning of AD Rules.

#### **E. CONFIDENTIALITY**

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

25. Submissions made by the domestic industries are as follows
  - a. The exporter questionnaire submitted by the exporters/importers has no information available. They have claimed excessive confidentiality.

- b. Most of the information has been claimed confidential and some of them have filed blank formats.
- c. The submissions filed by them are beyond comprehension and the petitioner is not in a position to give any comment on that.
- d. All requirements under Rule 7 are fulfilled and there is no instance pointed out when the Petitioner has not provided data where it was not entitled to.
- e. Confidentiality claimed is as per the practice permitted by the Designated Authority. Costing information Needs confidentiality as it constitutes highly business proprietary information of the petitioner.
- f. The interested parties and the exporters themselves have claimed excessive confidentiality themselves and this argument is only used to shy away with that fact.
- g. The main objective of such a demand by the exporters is to procure sensitive and confidential business information with regards to costing of the PUC in India, since the exporters wish to establish production of PUC in India. The exporters very well know that if they do not dump goods in India, the Petitioner shall establish itself and capture the domestic market.

#### **Submissions made by Exporters, Importers, Users and other Interested Parties**

26. Submissions made by Exporters, Importers, Users and other Interested Parties are as follows:

- a. Excessive confidentiality has been claimed by the petitioner, therefore, it is impossible to understand injury on various parameters.
- b. Parameters prescribed in format B, CI and CII, D and E have been entirely claimed confidential.
- c. Proforma IV A and IV B is either not provided or have entirely been claimed confidential. This includes average selling price for Malaysia, Indonesia and Saudi Arabia.
- d. The petition clearly violates the requirements specified in Rule 7 of the Customs Tariff Act.
- e. Any information cannot be kept confidential only because the party claims it confidential as was decided in the case of *Sterlite Industries (India) Pvt Ltd V Designated Authority , 2003 (158) ELT 673*

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

27. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:-

*Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7)of rule 6, sub-rule(2) of rule12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other*

*information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*

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

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

28. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis 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.

## **F. MISCELLANEOUS SUBMISSIONS**

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

29. Submissions made by the Domestic Industry are as follows:

- a. It is not specified that which part of the petition does not provide sufficient understanding.
- b. The product of the Petitioner has been approved by a large no. of consumers and if all the demand of such consumers is combined, the petitioner would be able to achieve more than 80% capacity utilization, which is currently unable to establish itself in the domestic market because of the dumped imports.
- c. Projections in the presentation submitted to NSE were on the basis of consideration that Govt. of India shall impose interim AD duties on such dumped imports. As against the projections, the Petitioner has suffered actual and significant losses in 2016-17
- d. All the relevant information was provided in the petition and the Authority initiated the Investigation only after sufficient prima-facie evidence.
- e. Merger with Jindal Polyfilms Ltd will not change the legal status of the Petitioner which shall affect the current investigation as the Petitioner who was earlier 61% owned

subsidiary becomes a wholly-owned subsidiary of the same group. Moreover, legal status is not relevant to an Anti-Dumping investigation, as can be clearly suggested from the Application Performa.

### **Submissions made by Exporters, Importers, Users and other Interested Parties**

30. Submissions made by Exporters, Importers, Users and other Interested Parties are as follows:

- a. The present petition is in violation of Trade notice 2/2004 dated 12<sup>th</sup> may, 2004. There is a gap in information for 3 month viz. April 15-June 15. This is illegal and an investigation cannot be initiated on the basis of this data.
- b. An updated petition with supporting analysis of updated petition has not been filed. Petitioner has submitted only updated data annexures to the petition and not the updated petition. The petition is incomplete and information such as part VI of the petition was not filed along with the petition.
- c. The petition must be terminated in absence of supporting evidences. The petition does not contain information with regard to Normal Value, Export Price, Injury and Causal link.
- d. There is insufficient analysis of the fact in the petition. Costing information is missing and other information filed is grossly deficient. The data provided by the petitioner is full of error and inconsistencies. The data is confusing and unreliable and does not seem to have any adequacy or accuracy. The data is misleading and misrepresented.
- e. The petition has errors such as annualized figures are inflated. The comparative deficiencies in the correct figures of annualization and petitioner's figures are massive. Annualized figures are not even filled by the petitioner. Percentage calculated by the petitioner is also incorrect.
- f. The petitioner has claimed negative ROI, whereas, the profit constantly remained positive. Such contradictory figures cannot co-exist. .
- g. Presentation of Jindal Polyfilm submitted to NSE and explained how well the company has performed.

The applicant did not disclose the fact of merger with Jindal Poly Film Ltd and the same has led to change in legal status of the petitioner. The same is to be taken into consideration while determining injury.

### **Examination by the Authority**

31. As regards the argument of the responding parties that the petition is deficient and therefore the investigation needs to be terminated, the Authority notes that the present investigation was initiated on the basis of duly documented petition, containing sufficient prima facie evidence showing dumping, injury and causal link. There was sufficient evidence to justify the initiation of the investigation in accordance with the Act and Rules. The Authority has also called for additional information wherever required and verified the information furnished by the Domestic Industry.

32. It is a settled position that the initiation of an investigation is based on sufficient prima facie evidence and the petition need not contain all such information and evidence as is required for making a final determination. An investigation is a process where quality and quantity of evidence improves as an investigation progresses. The final determination is required to be based on the information made available by the Domestic Industry and other interested parties after proper examination and verification by the Authority. At the stage of initiation, the Authority relies only upon the information provided in the petition and the petitioner cannot be expected to provide information beyond what is reasonably available to it. The methodology for normal value used at the time of initiation recedes in the background and has no bearing on the outcome of the case. The Authority has made present determination on the basis of questionnaire responses filed by the foreign producers/exporters.
33. The period of investigation for the purpose of present investigation is from 1st July 2015 to 31st March 2016 (9 months) considering that the Petitioner has commenced trial production in March 2015 and commercial production in July 2015 only.
34. As regards the contention that the petition is incomplete and information such as part VI of the petition was not filed along with the petition, it is clarified that the petition contains relevant costing information. Since the information constitutes confidential business information of the petitioner, the petitioner has claimed confidentiality on the same.
35. As regards submissions concerning disclosure of costing information, the authority notes that the costing information is in the nature of confidential business proprietary information not amenable to summarization and the same has been consistently allowed as confidential information. In fact, both the Domestic Industry and the foreign producers have claimed confidentiality on costing information. Further, the authority has been accepting claim of confidentiality on costing information.
36. The project report of the petitioner is clearly a confidential business sensitive information concerning the business operations of the petitioner and therefore could not have been disclosed in the non-confidential version. As far as the samples of products are concerned, the petitioner has not claimed any confidentiality on the same and these samples have been placed in the public filed. In fact, petitioner has sent its product samples to number of consumers in the country and it is without any basis that the confidentiality has been claimed by the petitioner on samples.

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

##### **Normal Value and Market Economy status for China PR**

37. Under Section 9A(1)(c), normal value in relation to an article means:-

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

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

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

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

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

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

SN	Country	Company	Status
1	China PR	Toray Polytech (Nantong) Company Limited,	Producer
2	China PR	Hubei Gold Dragon Nonwoven Fabrics Co.,Ltd	Producer
3	Indonesia	Toray Polytech Jakarta,	Producer
4	Malaysia	Fibertex Personal Care SDN BHD,	Producer
5	Saudi Arabia	Saudi German Co. For Nonwoven Products	Producer
6	Thailand	Asahi Kasei Spunbond (Thailand) Co., Ltd	Producer
7	Thailand/India	Itochu Thailand Limited & Itochu India Limited	Exporter/Importer

### **Submissions by Domestic Industry**

39. Submissions by Domestic Industry are as follows:

- a. The product follows a pricing formula, where a proper pricing mechanism is followed for quality check and only after the required approval, the goods are eligible for commercial transaction. Product is primarily sold on the basis of pricing formula.
- b. Except Malaysia and Indonesia, most of the producers sell the product on quarterly pricing basis. Malaysia and Indonesia are exporting the subject good to India on 6 months agreement with customers and accordingly prices are determined on 6 months pricing formula.
- c. Producers from Thailand, China and Saudi Arabia are exporting the subject goods to Indian customers following 3 months pricing mechanism and further the prices are determined considering input prices during 1<sup>st</sup> January to 30<sup>th</sup> June for supplies made from 1<sup>st</sup> July to 31<sup>st</sup> December and input prices from 1<sup>st</sup> July to 30<sup>th</sup> September for

supplies to be made from 1st October to 31st December respectively. In such a situation it is important to keep these factors into consideration while determining the Normal value for the subject countries except China PR.

- d. China is a Non Market economy even after 11<sup>th</sup> December, 2016. China is not being treated as Market Economy by countries like EU and USA who are members of WTO. China is still being treated under a non-market economy situation.
- e. In India also, the Designated Authority has treated China as non-market economy. The Designated Authority has treated China as non-market economy in practically all the investigations initiated against China after the amendment dated 31st May, 2002. AD Rules have prescribed certain conditions that have to be satisfied in order to establish the claim of market economy treatment. It is to be noted that each and every condition must be fulfilled by an intending exporter in order to claim market economy treatment.
- f. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity.
- g. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values and their books are audited in line with international accounting standards. Both the parameters must be satisfied for granting Market Economy status.
- h. It is not for the Authority to establish that the responding companies are operating under market economy environment and are entitled for market economy treatment. But it is for the responding Chinese exporters to establish that they are operating under market economy conditions.
- i. 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.
- j. 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.
- k. In the present case, Normal Value cannot 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.
- l. Efforts were made to get information/evidence of price of subject goods in the domestic market of Malaysia, Indonesia, Thailand and Saudi Arabia. Efforts were also made to get price lists or quotations of producers of subject goods in Malaysia, Indonesia, Thailand and Saudi Arabia.
- m. Since the product under consideration is produced by few producers and sold to few consumers, there is no publicly available information/evidence of price of subject goods in the domestic market of Malaysia, Indonesia, Thailand and Saudi Arabia.

- n. Petitioner has determined normal value considering constructed value approach.
- o. The Petitioner agrees to adjustments to segregate losses by start-ups but only till the extent of determination of Normal Value and not Injury Margin and NIP.
- p. There is significant difference in cost and price of the fabric produced using different process.

**Submissions made by Exporters, Importers, Users and other Interested Parties**

40. Submissions made by Exporters, Importers, users and other Interested Parties are as follows:

- a. Petitioner has failed to calculate an appropriate Normal value. Normal Value has been completely redacted and claimed confidential.
- b. The data is impossible to read and cannot be analysed at all.
- c. Normal Value cannot be constructed for market economy countries, viz. Thailand, Saudi Arabia, Indonesia and Malaysia. These countries are market economy for which normal value cannot be construed based on the standard consumption norms of the petitioner or conversion cost, selling general and administrating expenses as per Domestic Industry. Normal value constructed for Thailand, Malaysia, Indonesia and Saudi Arabia should be rejected.
- d. Toray Ploytech Nantong, China PR may be treated as market economy. Over 100 WTO countries have given market economy status to China PR and during the last 30 years China PR has accomplished complete market economy status. Toray Ploytech Nantong, China PR,(TPN) has duly responded to MET Questionnaire and provided sufficient information to rebut the non-market economy presumption.TPN satisfies the criteria for market economy which is laid down in Law. In the present case TPN is not a state owned company and the company operations are strictly being followed in line of market economy situation, all the decisions are taken by TPN, independently. Accordingly, TPN should be treated as market economy and the Authority has done so in various cases in past such as CFL from China and Hong Kong, 2002, Copper Clad laminates from China, Chinese Taipei, Hong Kong, South Korea, Singapore, Philippines and Thailand, 2003, Borax Decahydrate from China, 2003 etc.
- e. Alternatively, they have suggested that Indonesia be considered as surrogate country for Toray Polytech Nantong. Both TPJ and TPN are part of the Toray Group and both are co-operative producers/Exporters in this investigation. Both are related entities situated in different countries namely Indonesia and China respectively.
- f. In the updated information filed by the petitioner, every figure is redacted and not even totals are supplied in the petition. Also, the constructed normal value is redacted and not even provided it as a range.
- g. Segregate losses by start-up and appropriate adjustments should be done for determining the normal value.

- h. The basis for adopting cost were adduced by the petitioner and the same is a clear violation of the evidentiary requirement under the WTO ADA.

### **Examination by Authority**

41. At the stage of initiation, the Authority proceeded with the presumption by treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/ exporters for rebutting presumption of nonmarket economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested the Government of China to advise the producers/exporters in their country to provide the relevant information.
42. The Authority notes that except Toray Polytech (Nantong) Company Limited, none of the producers and exporters of the subject goods from the subject countries have submitted the market economy treatment questionnaire response, consequent upon the initiation, notice issued by the Authority for rebutting the non-market economy presumption. The Authority has not granted M/s Toray Polytech (Nantong) Company Limited the market economy status on account of non fulfilment of conditions prescribed in Rule 8Para 8 (3) of Annex I).
43. In view of the fact that none of the producers/exporters are entitled for MET status and further, none of the interested parties, including the Domestic Industry, has made available any material fact to the Authority to select an appropriate market economy third country, the Authority has determined the normal value in respect of China PR on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules.
44. In view of the above, the normal value for the subject goods imported from China into India has been determined on the "any other basis" by considering best available information with regard to cost of production and after reasonable additions for selling, general & administrative expenses and reasonable profit margin. The normal value has been constructed considering consumption of major raw materials as per information provided by the Domestic Industry, international prices for major raw materials, conversion cost, interest, SGA, etc. at the levels allowed for the Domestic Industry. Further, 5% of cost of sales has been added towards reasonable profit.
45. As regards the producers and exporters from Indonesia, Malaysia, Thailand and Saudi Arabia are concerned, the Authority has relied upon the data furnished by the co-operative producers and verifies to the extent possible.

### **(I). CHINA PR**

#### **TORAY POLYTECH (NANTONG) COMPANY LIMITED ("TPN") CHINA PR**

#### **Normal Value**

46. The Authority noted that the Toray Polytech (Nantong) Company Limited, China PR had claimed market economy treatment but the same has not been granted by the Authority in

view of nonfulfillment of conditions prescribed in terms of Para 8(3) of Annexure 1 to the Anti-Dumping Rules. Further their request for considering Indonesia as surrogate country was considered, however the same has been rejected by the Authority because the various Indonesian producer does not produce and supply all the relevant product types (PCNs) as manufactured and sold by the Chinese producers. Therefore the purpose of taking comparable data will not be served. Hence, the Designated Authority is left with no alternative but to determine normal value estimated on the basis of price actually paid or payable in India for the like product, duly adjusted, to include a reasonable profit margin. Accordingly, the Normal value at ex-factory level has been calculated PCN wise for fair comparison. The weighted average has then been calculated and normal value is determined as mentioned in the table below.

### **Export price**

47. M/s Toray Polytech (Nantong) Company Limited (“TPN”), is a Producer/Exporter of subject goods from China PR and has exported subject goods to India directly during the POI. The sales to India are on CIF basis and details of the quantity and specifications have been furnished in Appendix 2 of the Questionnaire response. The producer/exporter has claimed adjustments on account of inland freight, ocean freight, marine insurance and credit and same have been allowed after due verification. The ex-factory price has been calculated PCN Wise for fair comparison. The weighted average CNV and NEP of various PCN is determined as mentioned in the table below.

### **HUBEI GOLD DRAGON NONWOVEN FABRICS CO. LTD, CHINA PR**

#### **Normal Value and Export Price**

48. M/s Hubei Gold Dragon Nonwoven Fabrics Co., Ltd., is a Producer/Exporter of subject goods from China PR and has exported subject goods to India directly during POI. They have not filed MET questionnaire responses and not asked for MET status. The sales to Indian customer is on CIF basis and for final determination of Net Ex-factory Export price, the exporter has claimed adjustments on account of handling, inland transportation, overseas transportation, insurance, credit and bank charges and the same have been allowed after due verifications. The ex-factory price has been calculated PCN Wise for fair comparison. The weighted average CNV and NEP of various PCN is determined as below.

#### **Normal Value and Export Price for all other Producers and Exporters from China PR**

49. For other producers/exporters from China who have not participated/co-operated in this investigation, the normal value and export price is determined on the basis of best facts available in terms of Rule 6(8) of the Antidumping Rules.

Sr. No	Producer/Exporter	Constructed Normal Value	Export price	Dumping Margin	Dumping Margin	Range
		US\$/MT	US\$/MT	US\$/MT	%	
1	Toray Polytech (Nantong) Company Limited (“TPN”)	***	***	***	***	5-15
2	M/s Hubei Gold Dragon Nonwoven Fabrics Co. Ltd.	***	***	***	***	(0-10)
3	All other	***	***	***	***	15-25

## **(II). INDONESIA**

### **M/S TORAY POLYTECH JAKARTA. PT (“TPJ”)**

#### **Normal Value**

50. M/s Toray Polytech Jakarta. PT (“TPJ”), is a Producer/Exporter of subject goods from Indonesia has large domestic sale of the subject goods. In the domestic market it has sold 100% of the subject goods to Non-affiliated parties. The 80/20 test has been conducted and more that 80% transactions are profitable. The producer/exporter has claimed adjustment on account of inland freight to customer, inland freight and credit expenses and same have been allowed after due verification. Accordingly, the Normal value at ex-factory level has been calculated PCN wise for fair comparison. The weighted average has been calculated and the normal value so determined is as mentioned in the table below.

#### **Export Price**

51. M/s Toray Polytech Jakarta. PT (“TPJ”) has exported subject goods to India directly during the POI. The sales to Indian customer are on FOB /C &F basis. They have claimed adjustments on account of inland freight, other expenses, ocean freight, credit expenses and bank charges and same have been allowed after due verification. The ex-factory price has been calculated PCN Wise for fair comparison. The weighted average has been calculated and NV & NEP is as mentioned in the table below.

#### **Normal value and Export price for all other producers and exporters of Indonesia**

52. For other producers/ exporters from Indonesia who have not participated / co-operated in this investigation, the normal value and export price for other exporters has been determined on the basis of best facts available in terms of Rule 6(8) of the Antidumping Rules. The normal value, net export price and dumping margin in respect of other producers/exporters of the subject goods so determined is as follows:

Producer	Normal Value	Export Price	Dumping Margin	Dumping Margin	Range
	US\$/MT	US\$/MT	US\$/MT	%	
M/s Toray Polytech Jakarta. PT Indonesia,	***	***	***	***	De-minimus (less than 2%)
All others	***	***	***	***	De-minimus (less than 2%)

## **(III). MALAYSIA**

### **FIBERTEX PERSONAL CARE SDN BHD**

#### **Normal value and export price**

53. During the POI, Fibertex has sold the subject goods in the domestic market and also exported to India directly. They had submitted detailed response annexing all the relevant appendices. The verification of the data was carried out in a table study with the assistance of legal counsel of the exporter. There were various deficiencies in the documentation which were duly informed to the legal representative. They had furnished the information as asked for. The analysis has shown that the quantum of sales to India (in kgs) as given in the appendix 2 are not matching with the sample invoices provided for verification. The examination of the data/documents also revealed that they had not disclosed the complete information, in fact, there appears to be a deliberate attempt on the part of the exporter to suppress information particularly with regard to the existence of India office. Therefore, the authority finds the information unreliable and considers it appropriate to reject the response. Accordingly, the normal value and export price for exports from Malaysia has been determined on the basis of best facts available in terms of Rule 6(8) of the Antidumping Rules. The constructed normal value, net export price and dumping margin in respect of producers/exporters of the subject goods so determined is as follows:

Producer/ Exporter	Constructed Normal Value	Export price	Dumping Margin	Dumping Margin	Range
	US\$/MT	US\$/MT	US\$/MT	%	
All producers / exporter	***	***	***	***	De- minimus (less than 2%)

#### **(IV). SAUDI ARABIA**

##### **SAUDI GERMAN CO. FOR NONWOVEN PRODUCTS**

###### **Normal value**

54. During the POI, M/s Saudi German has sold the subject goods in the domestic market. All sales in the domestic market were made to non-affiliated parties during the POI. The domestic sales are in sufficient volumes when compared with exports to India. The Authority notes that all domestic transactions were, therefore, the Authority has considered all domestic sales for the determination of the normal value. Saudi German producer exporter has claimed adjustment on account of Inland Freight & credit cost. However, the invoices shown for verification mention freight as zero, therefore, adjustments on account of inland freight has not been accorded. Accordingly, the PCN wise Normal value at ex-factory level has been calculated for fair comparison and the weighted average has then been calculated which is below.

###### **Export price**

55. M/s Saudi German has exported the subject goods to unrelated parties in India as per details given in Appendix 2. Saudi German had claimed the adjustments on account of inland and overseas freight, insurance, and credit cost. The Authority has verified the details of exports to India and various adjustments claimed by Saudi German in a table study. The ex-factory

price has been calculated PCN Wise for fair comparison. The weighted average NV and NEP of various PCN is determined as below.

**Normal value and Export price for all other producers and exporters of Saudi Arabia**

56. For other producers/ exporters from Saudi Arabia who have not participated / co-operated in this investigation, the normal value and export price for other exporters has been determined on the basis of best facts available in terms of Rule 6(8) of the Antidumping Rules. The normal value, net export price and dumping margin in respect of other producers/exporters of the subject goods so determined is as follows:

Producer	Normal Value	Export price	Dumping Margin	Dumping Margin	Range
	US\$/MT	US\$/MT	US\$/MT	%	
Saudi German Co. For Nonwoven Products	***	***	***	***	De-minimus (less than 2%)
All others	***	***	***	***	De-minimus (less than 2%)

**V. THAILAND**

**M/S ASAHI KASEI SPUNBOND (THAILAND) CO., LTD., (“AKST”)**

**Normal Value**

57. M/s Asahi Kasei Spunbond (Thailand) Co., Ltd., (“AKST”), is a producer of subject goods from Thailand and has exported subject goods to India through M/s Itochu(Thailand) Limited, Thailand, who then further exported subject goods to India through M/s Itochu India Pvt., Ltd., India during the POI. M/s Asahi Kasei Spunbond (Thailand) Co., Ltd., (“AKST”), has filed complete Exporters Questionnaire response, along with exporters/traders namely M/s Itochu(Thailand) Limited, Thailand and M/s Itochu India Pvt., Ltd., India (Exporters/Traders). The same has been considered for final determination. M/s Asahi Kasei Spunbond (Thailand) Co., Ltd., (“AKST”), has domestic sales and they have sold 100% of subject goods to Non-affiliated parties of different PCN. The 80/20 test have been conducted for relevant PCN and the sales are more than 80% profitable. The producer has claimed adjustment on account of inland freight to customers’ warehouse and credit expenses and same have been allowed. Accordingly, the Normal value at ex-factory level has been calculated PCN wise for fair comparison. The weighted average has been calculated for normal value of various PCN is below.

**Export Price**

58. M/s Asahi Kasei Spunbond (Thailand) Co., Ltd., (“AKST”) has exported subject goods to India through M/s Itochu(Thailand) Limited, Thailand, who then further exported subject goods to India through M/s Itochu India Pvt., Ltd., India (Exporters/Traders) to M/s Unicharm India Private Limited, India during the POI. The sales to Indian customer is on

CIF basis and for final determination total quantity exported to India has been considered. The producer & exporters have claimed adjustments on account of ocean freight, customs expenses, ocean insurance and credit expenses on grades/PCN's wise and same have been allowed. The ex-factory price has been calculated PCN Wise for fair comparison. The weighted average NV and NEP of various PCN is determined as below.

**Normal value and Export price for all other producers and exporters**

59. For other producers/ exporters from Thailand who have not participated / co-operated in this investigation, the normal value and export price for other exporters has been determined on the basis of best facts available in terms of Rule 6(8) of the Antidumping Rules. The normal value, net export price and dumping margin in respect of other producers/exporters of the subject goods so determined is as follows:

Producer	Exporter	Normal Value	Export price	Dumping Margin	Dumping Margin	Range
		US\$/MT	US\$/MT	US\$/MT	%	
M/s Asahi Kasei Spunbond (Thailand) Co., Ltd.	M/s Itochu (Thailand) Limited	***	***	***	***	0-10
All Others		***	***	***	***	0-10

**DUMPING MARGIN**

60. The dumping margin for subject goods has been determined by comparing PCN wise normal value (constructed wherever the actual normal value is not available/ acceptable) and net export price at ex-factory level for the subject goods. The table below shows the weighted average values for various co-operative producers/exporters from subject countries.

SN	Producer	NV/CNV	NEP	Dumping Margin		
		USD/MT	USD/MT	USD/MT	%	Range
1	Toray Polytech (Nantong) Company Limited, China	***	***	***	***	5-15
2	Hubei Gold Dragon Nonwoven Fabrics Co., Ltd, China	***	***	***	***	(Negative)
3.	All Others producers/exporters from China PR	***	***	***	***	15-25
4	Toray Polytech Jakarta, Indonesia	***	***	***	***	De-minimus (less than 2%)
5	All Others producers/exporters from Indonesia	***	***	***	***	De-minimus (less than 2%)
6.	All producers/exporters from Malaysia	***	***	***	***	De-minimus (less than 2%)

SN	Producer	NV/CNV	NEP	Dumping Margin		
		USD/MT	USD/MT	USD/MT	%	Range
7	Saudi German Co. for Nonwoven Products, Saudi Arabia	***	***	***	***	De-minimus (less than 2%)
8	All Others producers/exporters from Saudi Arabia	***	***	***	***	De-minimus (less than 2%)
9	Asahi Kasei Spunbond (Thailand) Co., Ltd through Itochu Thailand Limited /Itochu India Limited	***	***	***	***	0-10
10	All Others producers/exporters from Thailand	***	***	***	***	0-10

## **H. METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK**

61. The Authority notes that the petition for imposition of antidumping duty has been filed by Global Non-Woven Limited, which accounts for a major proportion of total Indian production of the subject goods in India. In terms of Rule 2(b) of the Rules, the petitioners have been treated as the Domestic Industry for the purpose of this investigation. Therefore, for the purpose of determination the cost and injury, information of the petitioners, constituting the Domestic Industry as defined in Rule 2(b), has been examined.

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

62. Submissions made by the Domestic Industry are as follows:

- a. The uniqueness and the technical differences of the product of the Petitioner make it stand apart from the products of the already established producers. Thus, the industry of non-woven fabrics for sanitary purposes in India was not established before, and the Petitioner remains the sole producer of the PUC and therefore material retardation applies.
- b. The foreign exporters are very aggressive in order to capture the large potential Indian market before the Petitioner establishes itself as a significant player in the domestic market.
- c. The commercial production started in July 2015 and there is no data present before that so the only performance that is relevant for the present purposes is the projected performance. As the Domestic Industry does not have past performance, the Designated Authority cannot assess past performance. Designated Authority is required to assess projected performance and compare it with actual performance in such cases. Accordingly, potential performance has been provided by considering its project report, current actual selling price and raw materials price.
- d. Demand for the product under consideration is quite positive in India, with increasing use of the product under consideration in these applications. There is a insignificant

import of second and off grade material. If the imports of second and off grade material are excluded, the data shall still show higher degree of price undercutting and injury to the Domestic Industry. Off grade production by the petitioner was considerably low even considering that the petitioner has commenced commercial production only recently.

- e. The industry is such that it requires significant investment to fulfill the needs of the consumers of contamination free products. The comparison of gross investment by the Petitioner and the other alleged producers of the PUC in India is not on the same scale, further showing how the products made by the Petitioner is different from the other producers.
- f. The technology, machinery and investment made by the Petitioner is in-line with the foreign exporters, showing that the investment by petitioner is not disproportionate.
- g. Despite the volumes, the petitioner has still not fulfilled its potential and projections. Also, the petitioner is suffering financial losses due to which it has to take the unwanted step of merging with the Holding company.
- h. Imports have increased significantly as compared to the base year from the subject goods throughout the injury period, except Saudi Arabia. But imports from Saudi Arabia also increased significantly during the period of investigation. Market share of imports has been significantly high despite commencement of commercial production started by the Domestic Industry. Market share captured by the subject countries were 100% during the period of investigation.
- i. As against present demand of 18480 MT, the Domestic Industry has the capacity of 18000 MT. Thus, the Domestic Industry has sufficient capacity to fulfil the market demand for the product concerned. The Domestic Industry has been unable to increase its market share due to dumped imports. Sales of the Domestic Industry have not increased in line with production by the Domestic Industry and the extent to which the petitioner can produce the product.
- j. Data clearly shows that domestic production capitalization is far lower than capacity utilization considered in the project report.
- k. The petitioner has made a new set up for manufacturing and selling of the product concerned. The product under consideration is sold on contract basis. Exporters in the subject countries are offering such low prices to obtain the order and the same shows that exporters are steeply declining their margin on raw material cost.
- l. In view of the practice being followed by the exporters the petitioner is unable to get fair prices and even if the petitioner lowers its price they are unable to get orders to the extent of its capacities. Low price offered by the petitioner is due to the dumped imports. The imports are depressing the prices of the Domestic Industry in the market.
- m. Dumped imports have remained significant in absolute terms and in relation to production and consumption in India. Exporters give various discounts on the invoice prices, which needs to be adjusted and reduced.

- n. Data shows how the product of the Petitioner has been approved by the consumers, but due to the dumping, it has not achieved a respectable production capitalization and has not been able to sell products.
- o. The petitioner only wishes to attain 60% production capitalization and far from it, has only achieved 22% during the POI at times. Instances of halt in production due to inventories piling up. Thus, the problems faced by the Petitioner are not because of any start-up problems, but because of the dumping by exporters.
- p. Exporters give long credit to the consumers. Cost of interests is required to be adjusted.
- q. There are several suppliers for the product in the country, the Domestic Industry cannot demand a price at it requires. It must follow the price as the consumers give. Since the Producers is new in the market, it has to sell the product in a market at a price lower than the price at which the product is already being sold in the market.
- r. Existence of negative price undercutting does not imply that there is no injury. The fact that petitioner is selling at a lower price means that dumped imports are depressing the prices.
- s. Domestic Industry is facing the problem of accumulated inventories. Productivity has remained too low, measured in terms of production per day.
- t. The Domestic Industry has been suffering significant financial losses despite not considering actual cost of production. Significant investment has not resulted in significant revenues. Despite commencement of commercial production recently, the Domestic Industry is not able to produce and sell the product to the extent of its abilities in the domestic market
- u. The dumping margin in respect of imports from the each of the subject country as determined by the petitioner is quite significant. The dumping margin from each of the subject countries is not only more than de-minimis but also very significant. The impact of injury on Domestic Industry is very significant.
- v. Dumping of the product in the country is materially retarding the establishment of the Domestic Industry. The Designated Authority is required to consider actual performance and compare with the performance projected at the time of setting up of the plant.
- w. WTO jurisprudence on the meaning of material retardation - while the test of material injury or a threat of material injury can be applied to an existing Domestic Industry, in the case of Domestic Industry yet to be fully established, the test to be applied is that of material injury to the extent of existence and material retardation to establishment of industry. The following two conditions are relevant where the test of material retardation may be applicable:
  - a. in case of “developing industry” which has not yet begun commercial production but substantial commitment to commence production has been made;

- b. in case of “nascent industry” whose commercial production although has begun but the industry has yet to find its place in the market.
- x. Cases done by the Authority in past such as PVC Flex, D (-) Para Hydroxy Phenyl Glycine Methyl potassium Dane Salt, Fused Magnesia, Bisphenol – A, Induction Hardened Forged Steel Rolls and D (-) Para Hydroxy Phenyl Glycine Base (PHPG Base) from EU shows that the Directorate has considered following methodology for analysis of injury in similarly placed case.
- y. Subject imports have remained significant in absolute terms in spite of new production in the country. The conditions in the market created by dumping practices are largely responsible for the significant financial losses suffered by Domestic Industry.
- z. The landed price of imports is not only below cost of production of the Domestic Industry, but also the non-injurious price of the Domestic Industry. Imports are severely depressing the prices of the Domestic Industry in the market.
- aa. Performance of the Domestic Industry in terms of production, sales and capacity utilization has been significantly below the projected levels. Despite commencement of new production in the Country, the levels achieved by the Domestic Industry are far lower as compared to what could have been achieved considering demand for the product under consideration in the market.
- bb. Performance of the Domestic Industry was quite adverse in terms of profits, return on investments and cash flow. The Domestic Industry is not able to realize non injurious price for the product.
- cc. The present high level of imports is despite presence of domestic product in the market and continued preference of the consumers to import the product because of the price attractiveness.
- dd. Since Domestic Industry is a new entrant in the market, the Domestic Industry is forced to obtain orders at a price comparable to the import price of the product. Thus, if the Domestic Industry has obtained orders at suppressed price, the same is because of dumping of the product in the country.
- ee. The Domestic Industry has been constrained to export the product because of absence of orders from the domestic customers. The Domestic Industry exported to a number of countries which establishes the quality of the product. A statement showing country wise exports by the Domestic Industry is enclosed, which shows exports to a number of markets, including in the developed countries.
- ff. Month by month analysis of production, sales, capacity utilization, and inventories shows that the Domestic Industry has been constraint to curtail the production and is faced with sales much lower than the level that could have been achieved by the Domestic Industry in the absence of dumping of the product under consideration in the country.

- gg. The Petitioner has qualified all the quality tests and has gained acceptance from the consumers but is denied orders because the consumers get easy access to the dumped goods.

**Submissions made by the Exporters/producers and other interested parties**

63. Submissions made by the producers/exporters/importers/other interested parties are as follows:

- a. The petitioner is not the sole producer so there cannot be a case of material retardation of the Domestic Industry.
- b. The petition is misleading as is no evidence in respect of AD Rules has been produced by the petitioner to satisfy its claim of sole producer of the subject good.
- c. In view of the pre-existence of an established player it cannot be a case of material retardation. It is an established industry in India and petitioner is a new comer. There are other producers in the market and the petition admits so. The company commenced production in July 2015 but has already achieved impossibly high capacity utilization.
- d. There is no mechanism to determine material retardation of the Domestic Industry unlike injury or threat of material injury to the Domestic Industry. The Authority should have first devised a mechanism to determine material retardation, then should have initiated the present investigation.
- e. In absence of any legal provision it is extremely difficult to point out if there is any violation of legal provision. Reference can be taken from the USITC cases. USITC adopts a market stabilization standard to determine whether the nascent industry can be considered to be established or not. If the industry already established, the applicable standard is that of material injury and not material retardation.
- f. In a material retardation case, Designated Authority should examine whether applicant was yet to find its way in the market or was already established. No sufficient data is submitted to justify the claim of material retardation.
- g. The data produced in the petition shows normal start-up conditions. Data shows that capacity utilization increased 5 times during July 2015 to December 2015. Domestic sales increased 7 times just in 6 months' time. This clearly cannot be case of material retardation.
- h. In 6 months times the market share has increased from zero to 10.66%. All the data till March 2016 should be brought on record to see a clear picture. It is impossible for a new player to meet 100% demand of the market merely within 6 months of its establishment.
- i. The petitioner is not suffering any material injury and its situation can be such because of it being a new entrant in the industry. If the petitioner was materially retarded, it would not have expanded its capacity. Such investments show that they are not injured.
- j. It has already been argued that the industry is not new, there are many established companies catering to the demand of the domestic market since last 10-15 years.

Petitioner is not the sole producer of the subject. There are at least 28 (source-petition) more other producers in the market who are exactly producing the same product as the petitioner.

- k. DI's situation has improved and it will further improve gradually. So much cost has been invested in the production of the PUC and it has a direct connection with the ROCE and profitability. Claim of 22% return on investment is without any reasonable basis. 22% Return on Capital Employed gives undue advantage and protection to the Domestic Industry. 41% profit margin on equity in no terms can be termed as reasonable. Right after commencement of commercial production the Domestic Industry started facing injury due to dumped import. Price of imported PUC is relatively higher than the Domestic Industry. In first month commercial production 42% capacity utilization was achieved and it increased after that.
- l. There is no causal link between the alleged dumped imports and injury to the petitioner.
- m. The petitioner is suffering because of other factors such as :
  - Start Up- The petitioner is suffering because of lack of experience in the industry. They don't have advance technology and have no idea about pricing.
  - International Price of Raw Material: The major raw material, polypropylene's price has declined internationally and losses due to that should not be blamed on imports.
  - Buyer's Market- the prices are determined by the buyers and petitioner's has newly come to the market and has not been able to establish quality standards required for the product.
- n. High client stickiness, long lead time for customer approval and technology are the main factors for slow growth of the company.
- o. Because of the type of PUC all the global companies are extremely brand conscious. It takes years to qualify the quality tests and go through all the process. Reason of injury is to fail to get quality certificates. The petitioners could not have sold their product to our customers in India because they are quality concerned people.
- p. Transaction by Transaction sales data should be examined in order to establish impact of seconds and off grade material.
- q. DI should be asked to give grade-wise production data with off-grade and prime material produced during the Period of investigation. The commercial production started in July 2015 and the company is facing entry barriers. The company could not have expected high capacity utilization and the same is said by Jindal global in it's letter to NSE.
- r. Domestic Industry is importing major raw material and increase in import duties increases the cost of production and the total raw material price is the 70% of the cost of production cannot allege dumping.

- s. Injury to the Domestic Industry cannot be complete without factoring in the injury, or lack of injury to the other producers.

**Examination by the Authority**

- 64. The interested parties have contended that since the product was already in production in the country, the provisions concerning material retardation to establishment of Domestic Industry cannot be attracted in the present case. The issue has been carefully examined. It is noted that rule 11 dealing with injury specifies that the designated authority shall record a finding whether dumped imports of such article into India cause or threaten material injury to any established industry in India or materially retards the establishment of any industry in India. Further, it specifies that the designated authority shall determine the injury to Domestic Industry, threat of injury to Domestic Industry, material retardation to establishment of Domestic Industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out under the rules. Recommendation by the WTO Committee on Anti-Dumping Practices suggests that as a general rule the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable, while the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation. Thus, while committee of anti-dumping practices prescribed minimum three years as the period of data collection for injury assessment, it also specified that the same shall be subject to the condition that the party should have existed for at least such a long period. Thus, in a situation where the Domestic Industry has a history of its existence for less than the minimum prescribed period, it is evident that the Authority is entitled to consider such shorter period for which the Domestic Industry existed.
- 65. In the present case, the petitioner commenced commercial production in July 2015 and therefore information for 3 year period is admittedly not available. However, considering that the period is lower than 3 year period, the petitioner has provided information on monthly and quarterly basis. On this basis, it is considered that it would be appropriate in the facts and circumstances of the present case to examine whether dumped imports caused material injury to Domestic Industry by considering the performance of Domestic Industry over the period of its existence and by undertaking month by month and quarter by quarter analysis. Since the petitioner is a new producer in the country and commenced commercial production in the injury period itself, the performance of the Domestic Industry could have been impacted by the start-up operations and further considering that the petitioner has a short history of existence, it was concerned appropriate to moderate the actual performance of the Domestic Industry in the POI
- 66. Further, in view of short history of the petitioner, performance of the Domestic Industry has been considered in the period after investigation period based on the available

information. Thus, the performance of the Domestic Industry for the period Apr-Dec., 2016 has also being examined and considered in order to determine whether the dumped imports caused injury to the Domestic Industry. It is noted in this regard that some information for post POI was provided by the petitioner in their post hearing written submissions. Further, additional information was called from the petitioner and the same was placed in public file and made available to the interested parties for their comments and defending their interests.

67. As far as existence of a producer in SEZ is concerned, the authority considers that the presence of an SEZ unit does not disentitle the petitioner to claim the status of a new producer in the country in a situation where there is no other producer of like article in DTA. The petitioner claims that they are the sole producers of PUC for hygiene and sanitary application. The domestic producer should not be denied the opportunity to seek protection under the law only because such unit in SEZ, who is primarily targeting its product in the export market and not willing to file an anti-dumping application.
68. The authority notes in this regard that the interested parties in general contended that the producers are in the buyer's market where buyers decide the kind of product they wish to buy, the properties in the product they require, the price at which they wish to purchase. Further, it is noted that they are handful of consumers in India and globally who are buying this product and many of these consumers are in fact multinational companies who are having manufacturing operations in India and globally. The petitioner provided information with regard to major consumers of the product to whom petitioner is supplying the product in India. While it is true that the Alstrom Fibre Composite is also a manufacturer of the product in the country, and the company has admittedly produced and supplied the product in the Indian market, considering the object and intent of the dumping law, it would be appropriate to consider that the petitioner is in fact a new producer of the product in the country and the petitioner is entitled to seek protection by claiming injury in the form of material retardation to establishment of Domestic Industry. Nevertheless, the authority has examined performance of the Domestic Industry to the extent of its existence and has determined whether the same shows that the Domestic Industry has suffered material injury.

### **Cumulative Assessment**

69. Article 3.3 of WTO agreement and Para (iii) of Annexure II of the Anti-dumping Rules provide that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:
- a. the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article and

b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

70. The Authority notes that:

- a. The margins of dumping from China (except one producer) and Thailand are more than the de minimis limits prescribed under the Rules.
- b. The volume of imports from each of the subject countries is individually more than 3% of total volume of imports.
- c. Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the Domestic Industry in the Indian market. It is noted that consumers are interchangeably buying from producers in subject countries. Further, consumers have one after approved the petitioner Domestic Industry's product for procurement.

71. In view of the above, the Authority considers that it would be appropriate to assess injury to the Domestic Industry cumulatively from exports of the subject goods from the subject countries.

72. Rule 11 of Antidumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the Domestic Industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the Domestic Industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-dumping Rules.

## **Volume Effect of Dumped Imports**

### **Import Volumes**

73. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the import data procured from DGCI&S. The volume of imports of the subject good from the subject countries has been analyzed as under:

Particulars	Unit	2012-13	2013-14	2014-15	2015-16	POI (Annualized)
China PR	MT	753	916	1,597	3,493	3,895
Indonesia	MT	18	547	3,759	3,544	3,483

Particulars	Unit	2012-13	2013-14	2014-15	2015-16	POI (Annualized)
Malaysia	MT	702	2,186	3,248	5,530	6,348
Saudi Arab	MT	738	83	-	2,388	3,027
Thailand	MT	526	1,526	2,347	3,353	3,337
Imports from subject countries	MT	2,737	5,258	10,951	18,309	20,090
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>192</i>	<i>400</i>	<i>669</i>	<i>734</i>
Imports from other countries	MT	390	139	71	316	417
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>36</i>	<i>18</i>	<i>81</i>	<i>107</i>
Total Imports	MT	3,127	5,397	11,023	18,624	20,507
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>173</i>	<i>353</i>	<i>596</i>	<i>656</i>
Domestic Sales of Applicant	MT	-	-	-	1,969	2,626
<i>Trend</i>	<i>Indexed</i>				<i>100</i>	<i>133</i>
Sale of other producers	MT	1,987	1,987	2,157	1,500	2,644
Demand	MT	5,114	7,384	13,180	22,094	25,777

74. Demand for the subject goods increased throughout the injury period and this increase in demand has been quite significant.

75. The volume of imports from subject countries is very significant in absolute terms as well as in relation to total imports and the overall demand in the country. Primarily this was due to the fact that the Domestic industry commenced commercial production only in July, 2015 only and the SEZ units were catering mainly to the export market.

76. Share of imports from the subject countries in total imports is quite significant over the entire injury period. The imports from subject countries constitute 98% of the total imports during injury period.

Particulars	Unit	2012-13	2013-14	2014-15	2015-16	POI (Annualised)
Subject Countries	%	87.53	97.43	99.35	98.30	97.96
China PR	%	24.09	16.96	14.49	18.75	18.99
Indonesia	%	0.58	10.14	34.10	19.03	16.98
Malaysia	%	22.44	40.50	29.47	29.69	30.96
Saudi Arab	%	23.60	1.54	-	12.82	14.76
Thailand	%	16.82	28.28	21.29	18.00	16.27
Others	%	12.47	2.57	0.65	1.70	2.04
Total	%	100.00	100.00	100.00	100.00	100.00

### **Price Effect of Dumped Imports on the Domestic Industry**

77. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows:

*"With regard to the effect of the dumped imports on prices as referred to in sub rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a*

*significant degree or prevent price increase which otherwise would have occurred to a significant degree."*

78. It has been examined whether there has been a significant price undercutting by the dumped imports compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The impact of dumped imports on the prices of the Domestic Industry has been examined with reference to the price undercutting, price suppression and price depression, if any. The analysis for various price parameters has been based on DGCI&S data.

**a. Price Undercutting**

79. In order to determine whether the imports are undercutting the prices of the Domestic Industry in the market, the Authority has compared the landed price of imports with the net sales realization of the Domestic Industry. It is observed that price undercutting during POI is negative.

Particulars	UOM	China PR	Indonesia	Malaysia	Saudi Arabia	Thailand
Landed price of imports	Rs./MT	1,70,236	1,58,893	1,49,184	1,56,155	1,74,511
Selling Price	Rs./MT	***	***	***	***	***
Price Undercutting	Rs./MT	***	***	***	***	***
Price Undercutting %	%	***	***	***	***	***
Price Undercutting	Range	Negative	Negative	Negative	Negative	Negative

**b. Price suppression/depression**

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

Particulars	UOM	2015-16 Q2	2015-16 Q3	2015-16 Q4
Import price from China	Rs./MT	1,91,930	1,74,064	1,30,408
Import price from Indonesia	Rs./MT	1,64,848	1,58,421	1,42,046
Import price from Malaysia	Rs./MT	1,57,091	1,67,448	1,20,568
Import price from Saudi Arabia	Rs./MT	1,65,505	1,77,647	1,19,538
Import price from Thailand	Rs./MT	1,87,727	1,78,834	1,30,919
Net Sales Realization	Rs./MT	***	***	***
Cost of sales	Rs./MT	***	***	***

81. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of cost of production and selling price of the Domestic Industry has been examined. It is noted that net sales realisation is far below the cost of sales

throughout the period thereby indicating clear effects of suppression and depression of prices.

**Economic parameters of the Domestic Industry**

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

83. The various injury parameters relating to the Domestic Industry are discussed herein below:

**i. Capacity, Production, Sales and Capacity Utilization**

84. The data relating to the Domestic Industry is shown in the following table:

Particulars	Unit	POI			Post POI			
		July-Sept	Oct.-Dec	Jan-Mar	Apr-June	July-Sept	Oct.-Dec	Jan-Mar
Capacity	MT	4,500	4,500	4,500	4,500	4,500	4,500	4,500
<i>Trend</i>	<i>Indexed</i>	<i>100</i>						
Production PUC	MT	***	***	***	***	***	***	***
Production NPUC	MT	***	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>668</i>	<i>137</i>	<i>279</i>	<i>173</i>	<i>164</i>	<i>133</i>
Production Plant	MT	***	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>481</i>	<i>262</i>	<i>394</i>	<i>463</i>	<i>498</i>	<i>546</i>
Capacity Utilization	%	***	***	***	***	***	***	***
Plant Utilization	%	***	***	***	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>481</i>	<i>262</i>	<i>394</i>	<i>463</i>	<i>498</i>	<i>546</i>
Domestic sales	MT	***	***	***	***	***	***	***
Export sales	MT	***	***	***	***	***	***	***
Total	MT	***	***	***	***	***	***	***

85. It is noted that

- a. The production of the Domestic Industry increased during the investigation period and in the post POI.

- b. The Capacity utilization of the Domestic Industry improved within the investigation period.
- c. Sales volumes of the Domestic Industry improved within the investigation period and further in the post POI period. Hence, notwithstanding increased imports during this period, Domestic Industry has shown improved results on these parameters. However, three quarters are of a small period to fully judge the trend.

**ii. Profit, cash flow and return on investment**

86. The data relating to Domestic Industry is shown below:

Particulars	Unit	POI			Post POI			
		July-Sep	Oct.-Dec	Jan-Mar	Apr-June	July-Sept	Oct.-Dec	Jan-Mar
Cost of Sales	₹/Kg	***	***	***	***	***	***	***
Trend	Indexed	100	97	98	75	78	78	79
Selling Price	₹/Kg	***	***	***	***	***	***	***
Trend	Indexed	100	103	95	96	95	93	96
Profit/Loss	₹/Kg	***	***	***	***	***	***	***
Trend	Indexed	(100)	(86)	(102)	(34)	(43)	(48)	(44)
Profit/Loss	₹/Lacs	***	***	***	***	***	***	***
Trend	Indexed	(100)	(355)	(404)	(177)	(307)	(438)	(378)
Cash profit	₹/Lacs	***	***	***	***	***	***	***
Trend	Indexed	(100)	(75)	(129)	(219)	(255)	(198)	(308)
ROI	%	***	***	***	***	***	***	***
Trend	Indexed	(100)	(316)	(335)	(792)	(1,154)	(968)	(2,337)

87. It is seen that

- a. The cost of sales have decreased over the investigation period as also the selling price. Further it is noted that selling price is below the cost of sales.
- b. The Domestic Industry has been suffering losses. The extent of loss is quite significant. The losses suffered by the Domestic Industry increased over the period. However, nine months period after commencement of commercial production is too less to judge the performance, as it could be due to teething problems in setting up of a new industry.
- c. The Domestic Industry is suffering negative return on capital employed throughout the period.

**iii. Employment and Productivity**

88. The data relating to Domestic Industry shows as follows:

Particulars	Unit	POI		
		July-Sep	Oct.-Dec	Jan-Mar
Employee	No	***	***	***
Trend	<i>Indexed</i>	<i>100</i>	<i>102</i>	<i>107</i>
Productivity per Employee	MT/No	***	***	***
Trend	<i>Indexed</i>	<i>100</i>	<i>392</i>	<i>321</i>

89. It is noted that employment and productivity has shown improvement within the investigation period.

**iv. Inventories**

90. The Domestic Industry data is presented below:

Particulars	Unit	POI			Post POI			
		July-Sep	Oct.-Dec	Jan-Mar	Apr-June	July-Sept	Oct.-Dec	Jan-Mar
Opening Inventory	MT	***	***	***	***	***	***	***
Closing Inventory	MT	***	***	***	***	***	***	***

91. Authority observes that inventories with the Domestic Industry increased within the investigation period and even in the past POI period. Again, the period being too small no definite conclusion can be drawn from this parameter.

**v. Growth**

92. The growth of the Domestic Industry with regard to various parameters was as follows. It is seen that growth of the Domestic Industry was positive with regard to volume parameters and negative with regard to price parameters.

**vi. Ability to raise capital investment**

93. The Domestic Industry submitted that the future investment in this sector is marred by the presence of dumped imports from the subject countries. The negative profitability, negative cash flows and negative return on investment clearly indicate that the ability of the Domestic Industry to raise capital investment for the sector is jeopardised by the dumped imports. In the prevailing situation, it would not be possible for the Domestic Industry to make any further investment for the production and sale of the subject goods. The Domestic Industry submitted that the Domestic Industry is working on a plan to get itself merged into Jindal Poly Film Ltd., the company who is holding majority shareholding in the company in order to prevent itself become totally unviable.

**vii. Factors Affecting Domestic Prices**

94. Examination of the import prices from the subject countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the Domestic Industry in the domestic market, etc. show that the

landed value of imported material from the subject countries is below the selling price and the non-injurious price of the Domestic Industry, causing significant price undercutting in the Indian market. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the dumped imports of subject goods from subject countries.

**viii. Magnitude and Margin of Dumping**

95. The imports from the subject countries are above the de minimis level of dumping margin. However, wherever Dumping Margin was de-minimus in case of individual exporters, the same has been dealt as per the Rules.

**I. OVERALL ANALYSIS ON INJURY**

96. Having regard to the information on record and after examination of the performance of the Domestic Industry, the Authority notes that the dumped imports of the subject goods from subject countries have increased in absolute terms. The Import prices of the product as well as the selling price of the Domestic Industry have declined within the investigation period. The demand for the product increased significantly. After commencing commercial production in the new plant, the Domestic Industry has increased their production, capacity utilization and sales. However, the performance of the Domestic Industry was negative in respect of parameters such as, net sales realization, profits, cash flows and return on investments. Inventories increased significantly. However, the period of nine months may not be sufficient to judge the trend and the data related to dumping or injury margin for most of the producers/exporters does not clearly establish the causal link between the imports and injury.

**J. CAUSAL LINK AND NON ATTRIBUTIONAL ANALYSIS**

97. Having examined, no causal relationship with imports can be drawn as many of the parameters on which DI is suffering injury during POI could be due to teething problems in the initial stage of setting up a new industry and not necessarily due to dumped imports. POI period is of nine months after commencement of commercial production, which is too short to draw definitive conclusion on causal links between dumped imports from subject countries and injury suffered by DI. The performance of DI is likely to improve once initial teething problems are taken care of. It appears premature to link the injury to DI with dumped imports. Further, it was also brought to the notice of the Authority that the ownership structure of the company also changed subsequent to the POI due to merger. Accordingly, the following parameters have been examined:-

- i. **Volume and value of imports from countries other than the Subject Countries-** Imports from countries other than the subject countries are not significant in volumes. .Therefore, Imports from third countries are not causing any injury to the Domestic Industry.
- ii. **Contraction of demand or Changes in the pattern of consumption-** The Authority notes that there is a significant increase in demand for the subject goods in the country,...

Therefore, contradiction of demand and change in the pattern of consumption cannot be construed as the cause for injury to the Domestic Industry.

- iii. **Development in Technology-** None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the Domestic Industry.
- iv. **Trade restrictive practices and competition between supply from various sources-** The Authority notes that the subject goods are not subjected to any trade restrictive practices in India. Moreover, apart from the competition that is obvious in any market economy, no inter se competition or competition between supplies from various domestic and international sources exhibit any such impact that could be construed as injurious to the Domestic Industry.
- v. **Export performance-** Performance of the Domestic Industry has been segregated for domestic and export market. Petitioner has exported the product under consideration during the period. However, injury to product under consideration cannot be attributed to exports. Any possible decline in export performance is not a cause of injury to the Domestic Industry.

#### **FACTORS ESTABLISHING CAUSAL LINK:-**

98. All Parameters enumerated above indicate that the period of nine months after commencement of commercial production may be too short to arrive at any conclusive evidence regarding injury suffered by the DI. Therefore, it may be premature to link the injury suffered by the DI is due to the imports from the subject countries due to the following reasons.
  - i. The dumping margin or injury margin for most of the producers/exporters is negative or very minimal showing no causal link in imports and injury suffered by the DI.
  - ii. The capacity of the domestic industry is not enough to cater the demand in the domestic market. Further, the performance of DI is likely to improve once initial teething problems are taken care of.
  - iii. It was also brought to the notice of the Authority that the ownership structure of the company also changed subsequent to the POI due to merger.
  - iv. The DI has provided data only for the 9 months of its performance wherein very limited information is available for “best utilization of raw materials”, “best utilization of utilities”, “best utilization of production capacities”, as required under Annexure III of the Indian AD Rules
  - v. Once stabilized, the DI may experience better performance. It is natural that a certain amount of gestation period is reasonable.

#### **K. MAGNITUDE OF INJURY MARGIN**

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

Sr. no.	Producer	Landed Value	NIP	Injury Margin		
		USD/MT	USD/MT	USD/MT	%	Range
1	Toray Polytech (Nantong) Company Limited, China	***	***	***	***	0-10
2	Hubei Gold Dragon Nonwoven Fabrics Co., Ltd, China	***	***	***	***	Negative
3	All Others producers/exporters from China PR	***	***	***	***	10-20
4	Toray Polytech Jakarta, Indonesia	***	***	***	***	5-15
5	All Others producers/exporters from Indonesia	***	***	***	***	5-15
6	All producers/exporters from Malaysia	***	***	***	***	10-20
7	Saudi German Co. for Nonwoven Products, Saudi Arabia	***	***	***	***	0-10
8	All Others producers/exporters from Saudi Arabia	***	***	***	***	0-10
9	Asahi Kasei Spunbond (Thailand) Co., Ltd through Itochu Thailand Limited /Itochu India Limited	***	***	***	***	Negative
10	All Others producers/exporters from Thailand	***	***	***	***	less than 1%

## **L. POST DISCLOSURE STATEMENT**

100. The issues raised at post disclosure stage have already been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity the submissions by the interested parties have been summarised and again addressed as below:

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

101. The comments submitted by domestic industry are summarised as below:

- a. The Authority should clarify with regard to the product under consideration that “made of polypropylene” does not mean 100% made of polypropylene. The product under consideration is not “Nonwoven fabric made only of Polypropylene” or “Nonwoven fabric made of 100% Polypropylene”, or “Nonwoven fabric not having any other resin”. It should be clearly mentioned in the duty table.
- b. Such a clarification is highly imperative in view of possibility of evasion of proposed measure, a possibility symptom of which are clearly visible in the submissions filed by the exporters at such a belated stage of the proceedings. Possibility of bringing the goods by misusing the description by the exporter cannot be ruled out. Exclusion demanded by the exporters by their brand name is totally unjustified.
- c. Neither the petitioner nor the foreign producers currently produce non-woven fabric below 8 GSM, nor has it been imported into India. It can be excluded from the product under consideration except it is not used for duty evasion in future.
- d. The PUC is to be identified with respect to the GSM, treated/untreated (hydrophobic/hydrophilic) and spun bond/melt blown technology of manufacturing.

- e. Authority has decided not to distinguish the subject goods on the basis of their usage or application as such distinction will lead to complication in the outcome of the investigation.
- f. It is necessary for the exporters to give specific description of the product, even for the purpose of exclusion. The exclusions demanded by the exporters of “non-woven loft”, “non-woven dual” or “printed nonwoven” are not any type of product but only a loosely worded description which has no specific description. The Authority needs to be cautious while describing the products included under the scope of product under consideration. The Authority has held that "non-woven loft", "non-woven dual" and "printed nonwoven" falls within the scope of the product under consideration.
- g. The exporters simply gave name of the companies and claimed it that the product under consideration is being produced by the. The exporters are certainly aware that what all products are being exported by them and what all products are being supplied by India to them.
- h. The Authority considered the petitioner and M/s Alpha Foam both as domestic industry. Alpha Foam cannot be treated as domestic industry because the product being manufactured by Alpha Foam is different than what is being produced by the petitioner.
- i. The petitioner produces the goods for sanitary purposes and is the sole producer of the product under consideration.
- j. Rejection of questionnaire response by questionnaire response of Fibertex Personal Care SDN BHD, Malaysia on the basis of incomplete and unreliable information filed by them, is justified and domestic industry supports the same.
- k. The Authority should not have accepted the response filed by Asahi Kasei Spunbond (Thailand) Co., Ltd through Itochu Thailand Limited /Itochu India Limited. It can be seen that the dumping margin determined for the exporter is positive but injury margin is negative.
- l. The dumping margin determined for all the exporters except Fibertex Personal Care SDN BHD, Malaysia, is a matter of concern.
- m. The Authority should disclose the
  - i. non-confidential version of the verification report in order to enable the domestic industry to make meaningful comments on determination of dumping margin of the exporters.
  - ii. Non confidential version of the communication sent by the Authority and replies by the exporters.
  - iii. Detailed break-up of the NIP determined should be provided to the domestic industry to enable them to make comments on same.
  - iv. The actual dumping margin so the domestic industry can make comment on that. The dumping margin is disclosed at the time of finding and there is no option for the domestic industry to make any comment on the same.
  - v. The normal value of the non-cooperating exporters which is determined on the basis of the domestic industry's data .
  - vi. Rejection of response of Fibertax is justified because they have not adjusted the expenses of Indian office and had claimed that the same has been included in SGA of Fibertax Malaysia and apportioned on the basis of turnover of exports to India., which is completely wrong. The exporter intentionally did not file the actual data with the response. Later on the data filed by was again incomplete and the volume reported on invoice did not match the updated data. None of the annexures, necessary to determine the dumping margin, were updated by the exporters even after filing the updated information. Indian office has nothing to do with whole operation of the company. So allocation of Indian office expenses

to the whole sales is not justified. Fibertex's claim that they have reported the weight after converting the square meter is misleading. Each export consignment contains weight of the consignment, which cannot be determined unless complete weight of each item of the invoice is available. In any case, the statement shows the production of the company is not adequately and correctly established.

**Submissions made by the Exporters/producers and other interested parties**

102. The comments submitted by domestic industry are summarised as below:

- a. The petitioner does not produce non-woven fabric below 12 GSM or above 22 GSM and the same be excluded from the scope of product under consideration.
- b. The petitioner's capability to produce certain good is completely irrelevant. In past authority has included the products being manufactured by the domestic industry.
- c. "Non-woven loft", "non-woven dual", and "printed non-woven" are beyond the product under consideration and now including non-woven made of other raw material, apart from polypropylene, is completely untenable. Non-woven loft", "non-woven dual", and "printed non-woven" are not substitutable or interchangeable with non-woven made of 100% polypropylene.
- d. There is a difference in raw material of Non woven lofts and non-woven duals and technically also both are different. But the authority neither did sought information from the domestic industry nor assessed the technical information provided by the exporter.
- e. Printed non- woven is not being manufactured by the domestic industry and accepted by the domestic industry that printing is done by associate company. So the product should be excluded.
- f. Reassessing the product under consideration can be allowed at this stage only in rare cases, the present case is not one and there is no prayer from the petitioner's end asking for allowing variation of subject good. Such delayed inclusion of variations violates principal of natural justice.
- g. The Authority cannot take arbitrary variation as 10%. There is no reason why authority should consider it in the absence of any such claim made by the interested parties.
- h. Since the authority has not distinguished the product under consideration on technical basis, the production of other identified domestic producer should be included in the Domestic industry's standing assessment as well in injury analysis. The authority must reassess the scope of domestic industry in light of the identified product under consideration.
- i. The differentiation between the PUC and the identical product produced by the other domestic producer on the basis of price only cannot be accepted and is against Anti-Dumping Regulations.
- j. The domestic industry has nowhere claimed that the product manufactured by them and the other producers are not identical and their characteristics are different. They have made false statement in the petition to be the sole producer of the product under consideration .
- k. Despite Authority's observation about the product under consideration and the like articles are comparable, no such comparison has been done which could have affected the claim of the domestic industry.
- l. There are contradictory statements given by the authority in the disclosure statement saying that he is not bothered about application factor while determining like articles and at the same time it is observed by the authority that they have used function and application factors while determining like articles. Authority's stand of not including application factor

due to complexity cannot be accepted. The clear purpose of not including application factor can be seen as to exclude other Indian producers.

- m. It is inappropriate to reject exclusion of goods because they were raised at the belated stage is completely non acceptable if the exclusion was asked on genuine ground.
- n. The domestic industry has claimed that they are the sole producer and there is one more company i.e. Ahlstrom Fibercomposites India Pvt. Ltd, having its plant in SEZ. DI has categorically mentioned that share of this SEZ unit is approximately 36 % of total Indian production.
- o. The petitioner has excluded another Indian producer of PUC because of its status as SEZ. Petitioner excluded 29 other domestic producers as their selling price is lower than the applicant's price. The Authority should verify the facts related to domestic industry before issuing final finding.
- p. The Authority did not make any efforts to know about the other domestic producers after the Textile Ministry did not reply to their message.
- q. Unicharm has provided documents to show that few of the 29 names mentioned in the list provided by domestic industry had approached Unicharm for sale of their products claiming it to be Non-Woven fabric upto 25 GSM.
- r. Domestic industry's output should constitute more than 51% of the major proportion of production. According to the petition of the domestic industry the production is 63.74% in case the DTA clearance of SEZ is taken into account.
- s. The petitioner has mislead the authority to get this investigation initiated the petitioner is not the only producer of the subject goods there are other producers in DTA apart from one in SEZ. This is not case of material retardation.
- t. The authority has not even analyzed petitioner's merger with the parent company. Merger is an important fact to be analyzed.
- u. The authority should consider injury parameters based on three companies M/s Alpha Foam, M/s AlstromFibercomposite and petitioner.
- v. The Authority has wrongly rejected the response filed by M/s Fibertex Malaysia. The reason for rejection is contrary to the facts on record and without any evidentiary basis. The fact of Indian office was never suppressed by the exporter and the same was disclosed in the EQR filed both in confidential and non-confidential version.
- w. The Indian office cost was already included in the SGA expenses and no further adjustment in export price was required. Backup documents were also file and with regard to description of goods, quantum of sales, invoice value and the per unit price exactly matches the Appendix 2 of EQR.
- x. The information filed Fibertex billing is done in square meter rather than in kgs. For the purposes of making uniformity square meter was converted into kgs. Any error in conversion can be easily addressed by the Authority.
- y. Quantum of sale has no bearing on determining dumping margin still the quantum of sales in kgs was provided to the Authority based on estimated quantity in kgs as reported in invoice. The officer did not raise any objection with regard to data then.
- z. The authority is requested to rectify the mistakes and use Fibertex data for determining individual dumping margin of Fibertex, Malaysia. Authority did not provide any opportunity to the exporter to address the alleged error which is against the principle of natural justice.
- aa. Toray Polytech Jakarta, Indonesia fully agrees with respect to the dumping margin determined for them.
- bb. Toray Polytech Nantong, China PR, has responded to the non market economy Questionnaire and still the MET claim has been rejected on the ground that they have not fulfilled the conditions prescribed para 8(3) of annex 1. There is no state interference and

- all the operational decision of TPN is taken independently by the company. TPN is a foreign capital enterprise and does not have state shareholding. TPN has furnished sufficient information about its basic inputs for production and has provided evidence to prove that its purchase price of major inputs reflects the prevailing market price of China.
- cc. It is clear from the confidential version of Authority's assessment of Normal Value, dumping margin and export price with respect to M/s Saudi German Co for Non-woven products, Saudi Arabia (SGN), the dumping margin is de minimis. .
  - dd. The Authority should terminate the investigation with regard to SGN. The Authority is required to assess injury pertaining to only dumped import. When all of its imports have been determined to have de minimus dumping margin, is misguided.
  - ee. M/ Unicharm has filed the questionnaire response and the data submitted confirms that there is no injury caused to the domestic industry and Unicharm is not involved in importing of dumped Product under consideration . No reason has been cited for rejection of importer questionnaire filed by M/s Unicharm.
  - ff. The Authority is required to consider the best utilization of raw materials, utilization of utilities and capacity utilization over the POI and the preceding three years period. The petitioner was not in existence for such a long period and has performed only nine months in Period of investigation. The procedure followed by authority must be explained.
  - gg. The Authority has assessed injury and injury analysis on a quarterly basis, therefore, the dumping margin and the injury margin should also be assessed on a quarterly basis.
  - hh. DGCI&S data should be provided and petitioner's import data is not correct.
  - ii. Authority has relied on post-Period of investigation data submitted by the petitioner in their post oral hearing written submission, the authority should have provided the same to the exporter and have given due opportunity to comment on the same.
  - jj. The Authority should assess post Period of investigation data only for the purpose of observing trends of import.
  - kk. The authority has failed to determine whether the material injury/threat to material injury is being caused to an established industry or material retardation to the establishment of an industry in India.
  - ll. The disclosure statement suggests that a new producer in an established industry is also entitled to claim material retardation, which is completely against the understanding of material retardation standard. It is not clear from the disclosure statement that whether the material injury assessment proceeds on the data of the petitioner at the time of its existence or on project reports.
  - mm. Non-confidential version or summary of or index of data provided in the project report. The project report is mentioned vaguely both by the petitioner and by the authority.
  - nn. Authority has kept the trends for analysis of price suppression and depression as confidential. It is impossible to comment on the same. The volume of imports as reported by the petitioner and determined by the authority is exactly same.
  - oo. The prices are determined by the market and not determined by imports. The petitioner has failed to bring on record the conversion cost of the product under consideration. Decline in international prices cannot be alleged as dumping.
  - pp. The factor affecting the domestic industry is the global cost of raw material. Authority has failed to consider the raw material prices decline and its impact.
  - qq. The authority is required to carry out non attribution analysis. International prices of raw material, buyer's market, inter se competition between petitioner and established producers and effect of ASEAN FTA should be analysed and discussed by the authority.
  - rr. The manufacturers of product require detailed test approval for using their product for hygiene purpose. The import quality is much superior to that of domestic industry.

- ss. There is no case of material retardation because the petitioner's production and sales were already stabilized and it continued the process during the POI and there was already an established producer M/s Ahlstrom in SEZ unit.
- tt. The growth of the capacity utilization rate of the petitioner is an evidence that its performance was well during the period of injury. The GOI further disagrees with the cash profit analysis of the DGAD in the Disclosure which is also misleading.
- uu. It is observed that the price and volume effect were not properly examined.

#### **Examination by Authority:**

103. It is noted that the issues raised at post disclosure stage have already been examined by the Authority in above relevant paragraphs. From the above, the Authority notes that in case of most of participating exporters from subject countries the dumping margin is de-minimus or negative except Toray Polytech (Nantong) Company Limited, China and Asahi Kasei Spunbond (Thailand) Co., Ltd . However, in some cases though the dumping margin is positive, the injury margin is negative. The authority has also corrected the inadvertent errors in the calculation of dumping and injury margin in some cases.

#### **M. CONCLUSION**

104. After examining the issues raised, submissions made therein, views expressed in oral hearing 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 countries is not below its normal value except in case of Toray Polytech (Nantong) Company Limited, China and Asahi Kasei Spunbond (Thailand) Co., Ltd . Further, there is only one producer from China PR for which dumping and injury margin is positive. Moreover, with regard to imports from Asahi Kasei Spunbond (Thailand) Co., Ltd the injury margin is negative. Therefore, the causal link required under the AD Rules is missing.
- ii. The price undercutting from all the subject countries is negative.
- iii. The DI has provided data only for the 9 months of its performance wherein very limited information is available for “best utilization of raw materials”, “best utilization of utilities”, “best utilization of production capacities”, as required under Annexure III of the Indian AD Rules
- iv. DI is suffering injury during POI could be due to teething problems in the initial stage of setting up a new industry and not necessarily due to dumped imports.
- v. POI period is of nine months after commencement of commercial production, which is too short to draw definitive conclusion on causal links between dumped imports from subject countries and injury suffered by DI. The performance of DI is likely to improve once initial teething problems are taken care of.
- vi. It was also brought to the notice of the Authority that the ownership structure of the DI changed subsequent to the POI due to merger with parent company. This may have some impact on cost and efficiency of the applicant.

## **N. RECOMMENDATIONS**

105. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted the investigation into dumping, injury and causal links in terms of the provisions laid down under the Anti-dumping Rules. The authority notes that there is no causal link between the dumped imports material injury to the domestic industry due to reasons give above. Therefore, in terms of Rule 14 (b), (e) and Rule 17(1)(iii) read with Rule 11(2) and para v of Annexure II of the Anti-dumping Rules, the Designated Authority decides to terminate the present investigation which was initiated vide Notification No. 14/23/2015-DGAD dated 15th June, 2016.

**(Dr. Inder Jit Singh)**

**Additional Secretary & Designated Authority**