

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 TRADE REMEDIES)
JEEVAN TARA BUILDING, 4TH FLOOR
5, PARLIAMENT STREET, NEW DELHI-110001

Dated: 15th September, 2020

NOTIFICATION

(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 remanded by Hon'ble CESTAT through Final Order No. 50231/2020 dated 12th February 2020.

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") 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 15th 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.

3. After detailed investigation and examination, the Authority recommended termination of investigation vide its final findings dated 2nd September 2017.
4. Aggrieved by the recommendations of the Authority in the above referred final findings, the petitioner in this investigation filed writ petition before the Hon'ble Delhi High Court on 13th September 2017. Hon'ble Delhi High Court vide judgment dated 20th September 2018 disposed of the writ petition by stating that the Appellant had an equitable and efficacious alternate remedy before the Hon'ble CESTAT to challenge the final findings dated 2nd September 2017.
5. The petitioner thereafter filed an appeal before the Hon'ble CESTAT on 2nd November 2018 challenging the final findings of the Authority. On 12th February 2020, the Hon'ble CESTAT issued the final order. The Hon'ble CESTAT set aside the final findings and remanded the case to the Designated Authority vide its final order directing the Authority for:
 - a. Issuing a fresh disclosure with complete details/data/information/methodology which may constitute "essential facts under consideration."
 - b. To afford an opportunity to the interested parties to submit their comments;
 - c. After analyzing the disclosure statement and the comments, if any, give fresh final findings; and
 - d. Liberty is also given to the Designated Authority to reconsider the status of the Malaysian exporter and the genuineness of its representation.

B. PROCEDURE

6. The procedure described herein below had 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 to 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 Jinchun Nonwoven Co., Ltd. China PR
 - i. Guangzhou Xinlong Nonwoven Co., Ltd. China PR
 - j. Sunshine Nonwoven Fabric Co., Ltd. China PR
 - k. Shenzhen LifengZend 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:
- 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 had, 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 had 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 had accepted the confidentiality claims, wherever warranted and such information had 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. 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.
 - xvii. The period of investigation for the purpose of present investigation is from 1st July 2015 to 31st March 2016 (9 months) considering that Petitioner had commenced trial production in Feb 2015 and commercial production in July 2015 only.

However, the injury analysis had 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 had also been considered for injury analysis.

- xviii. The procedure described herein below has been followed by the Authority with regard to the subject investigation post-remand proceedings:
- xix. In compliance with the Hon'ble CESTAT orders dated 12th February 2020, and in accordance with Rule 6(6) of the Anti-dumping Rules, the Authority provided opportunity to the interested parties to present their views in the oral hearing through video conferencing held on 17th July, 2020. The parties, who presented their views in the oral hearings, were requested to file written submissions of their views expressed orally by 24th July, 2020, followed by rejoinder submissions by 31st July, 2020. A notice to this effect was also posted on the website of DGTR for information to all interested parties.
- xx. The hearing was held through video conferencing on 17th July 2020 in view of the special circumstances arising out of the COVID- 19 pandemic.
- xxi. The Authority requested interested parties *vide* email dated 17th July 2020 that due to unprecedented situation of COVID -19, no interested parties are allowed to inspect public file kept in the Directorate and therefore, to comply with the requirement of Rule 6 (7), the non-confidential version of the submissions submitted by interested parties to the Authority should be copied to all the other interested parties for their inspection. The following interested parties filed submissions pursuant to the oral hearing:
 - a. Jindal Poly Films Limited (Division Global Non-wovens)
 - b. Fibertex Personal Care SDN BHD, Malaysia
 - c. Asahi Kasei Spunbond (Thailand) Co., Ltd
 - d. Itochu Thailand Limited
 - e. Itochu India Limited
 - f. Hubei Gold Dragon Nonwoven Fabrics Co, Ltd.
 - g. Directorate General of Foreign Trade, Ministry of Trade, Government of Indonesia
- xxii. 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 were directed to provide sufficient non-confidential version of the information filed on confidential basis.

- xxiii. In accordance with Rule 16 of the Rules Supra, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 17th July 2020, sufficient time to all interested parties was granted to enable them to provide comments on the disclosure statement.
- xxiv. Pursuant to the disclosure statement, the Domestic Industry filed an Application in the Hon'ble CESTAT seeking to:
- a. Direct the Designated Authority to implement the final order No. 50231/2020 dated 12th February 2020 in the true letter and spirit and issue the disclosure statement afresh,
 - b. Restrain the Designated Authority not to proceed further pursuant to the disclosure statement dated 17th August 2020.
 - c. Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.
- xxv. The application has been filed against the 3 working days' time given by the Authority to submit comments on disclosure statement dated 17th August 2020. In pursuance to this, the Authority provided extension of time to the Domestic Industry for submission of post disclosure comments by 28th August, 2020. However, no comments have been submitted by the Domestic Industry.
- xxvi. Comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The post-disclosure submissions, to the extent considered relevant, are being examined in these Final Findings
- xxvii. All the relevant submissions made by interested parties during the original investigation, which resulted in final findings dated 2nd September 2017, submissions during the present remand proceedings pursuant to the Hon'ble CESTAT order dated 12th February 2020 and the observations made by Hon'ble CESTAT have been taken into account in this Final Findings.
- xxviii. Wherever an interested party refused access to, or otherwise not provided necessary information during the course of the present investigation, or significantly impeded the investigation, the Authority considered such parties as non-cooperative and recorded the findings on the basis of the facts available.
- xxix. *** In this Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- xxx. 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

C.1 Submissions made by the Domestic Industry

7. 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.
8. 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 had 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 had also been sold in the market. The printing had 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 had made any claims regarding this. It had not been stated that these types were exported by Fibretex 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 already 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.

C.2 Submissions made by Producers/Exporters/Importers/Other interested parties

- 9. Submissions made by producers/exporters/importers/other interested parties are as follows:
 - a. The petitioner and the Authority had 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 as well as in the public hearing. For the same reason, non-woven fabric below 8 GSM should be excluded from the scope of product under consideration.
 - c. While defining the customs classification, the petitioner erroneously included the Heading 56031200 weighing more than 25 g/m² but not more than 70 g/m². 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 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 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 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 had 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 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, Polypropylene 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.

C.3 Examination by the Authority:

10. No interested parties including domestic industry has submitted any fresh submission after fresh oral hearing conducted on 17th July' 2020 under the direction of Hon'ble CESTAT with regard to PUC and like product. However, the submissions made prior to the remand proceedings are taken for examination here under.
11. 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 had a dedicated HS code 5603 1100, however, it had 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.

12. 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.
13. 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.
14. 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 had 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 had 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.
15. PCN was decided by the authority after taking into consideration the parameters like: GSM, polar characteristics, and, chemical treatment of different Non-woven fabric made of Polypropylene.
16. 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.

17. The Authority considered the submission that neither the petitioner nor the foreign producers currently produce non-woven fabric below 8 GSM, nor it had been imported into India. Since the product is not being produced either by petitioner or by the foreign producers nor the product 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.
18. The Hon'ble CESTAT has not made any specific observations with regard to scope of product under consideration and like Article in its order dated 12th February 2020. The Authority further notes that none of the interested parties have raised any new issues with regard to the product under consideration and like article in the present remand proceedings.
19. In view of the above fact, the Authority therefore confirms its examination with regard to the product under consideration, and considers the PUC as "*Nonwoven fabric, made of Polypropylene, of 8 to 25 GSM*".

D. DOMESTIC INDUSTRY AND STANDING

D.1 Submissions made by the Domestic Industry

20. 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 with the production facilities to produce the subject goods.
 - b. Petitioner started commercial production in 2015 at Nashik, Maharashtra and dumping by exporting producers impeded 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, they have 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 were provided with annual reports of number of these companies and on the same basis it was 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 had been sought by the petitioner. Factual data being 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.

D.2 Submissions made by Producers/Exporters/Importers/Other Interested Parties

21. 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 did not include 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 had 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. The 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 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.

D.3 Examination by the Authority

22. The Application being 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 Domestic tariff area (DTA in India. The petitioner provided information in the petition with regard to other producers but also mentioned that these producers are producing non-woven fabric but of different GSMs which cannot be used for hygiene and health applications. The petitioner reiterated their claim that the product produced by the petitioner is different than the product produced by other domestic producers in the market and there is a significant difference in the product properties and resultant prices of the product sold by the Domestic Industry and the other producers.
23. 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 Ahlstrom Fibre Composites existing in SEZ and who subsequently supported the petition. The initiation was therefore based on a petition filed by M/s Global Non-Woven on behalf of Domestic Industry.
24. 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 also had 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.
25. Further, it is noted that the petitioner neither imported the product under consideration, nor they are related to any importer or exporter of the product under consideration. None of the producers have responded to the initiation notification which was notified in the public domain on 15th June, 2016. Amongst various producers listed by the petitioner, M/s. Alpha Foam had filed submissions and also supported petition for imposition of antidumping duty.

26. Authority 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.
27. 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.
28. On the basis of the definition of the product under consideration and like article, it is seen that only petitioner and M/s Alpha Foam qualify as a domestic producers of the like article. M/s Alpha Foam furnished information regarding their production and have also supported the petition. Therefore, Authority 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.
29. 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.
30. The Hon’ble CESTAT has not made any specific observations with regard to scope of domestic industry and like Article in its order dated 12th February 2020. The Authority further notes that none of the interested parties have raised any new issues with regard to the scope of domestic industry and standing in the present remand proceedings

E. CONFIDENTIALITY

The Hon'ble CESTAT has not made any specific observations with regard to the issue of confidentiality of information in its order dated 12th February 2020. Submissions made by the domestic industry and the other interested parties during the investigations including the Post-remand are noted herein.

E.1 Submissions made by the Domestic Industry

31. Submissions made by the domestic industries are as follows
 - a. The questionnaire responses 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 did not provide the data.
- 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.

E.1.1 Post-Remand Submissions made by the Domestic Industry

- a. The domestic industry is participating in the investigation without access to those information and documents that the Designated Authority intends to rely/adopt in the investigation.
- b. The Authority should inform about submissions of interested parties for which no non-confidential version is provided.
- c. Copy of producer/exporter verification report, communication from Authority, replies filed by interested parties, break up of NIP, normal value and export price determination for non-cooperating producer/exporter, actual dumping margin and actual data adopted for injury analysis should be provided to the domestic industry so that the domestic industry can provide its comments.

E.2 Submissions made by Exporters, Importers, Users and other Interested Parties

32. 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*.

E.2.1 Post-Remand Submissions by Exporters, Importers, Users and other Interested Parties

- a. The domestic industry has access to all the non-confidential submission of interested parties filed during the original investigation because the Authority maintained public file at the time of original investigation for inspection by interested parties.
- b. The non-confidential version of submissions filed by interested parties should be provided to other interested parties as per the consistent practice of the Authority. The verification report issued to the producer/exporter is not disclosed to the domestic industry and vice-versa as per the consistent practice of the Authority.

E.3 Examination by the Authority

33. The Hon'ble CESTAT has not made any observation with respect to the confidentiality of information in the final findings by the authority dated 2nd September 2017. 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 rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

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

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

34. 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 during the original investigation and through e-mail communication during the remand proceedings.

F. MISCELLANEOUS SUBMISSIONS

F.1 Submissions made by the Domestic Industry

35. The following are submissions made by the domestic industry

- 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.

F.1.1 Post-Remand Submissions made by the Domestic Industry

- a. Claims made by the producers/exporters regarding export volume and price do not corroborate with the customs data. The Authority should verify information provided by the exporters/producers with the DG Systems data.
- b. Domestic industry has suffered injury in the post POI period despite increase in production and sales in the domestic market.

F.2 Submissions made by Exporters, Importers, Users and other Interested Parties

- 36. The following are submissions made by Exporters, Importers, Users and other Interested Parties:**

- a. The present petition is in violation of Trade notice 2/2004 dated 12th 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.
- h. 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.

F.2.1 Post-Remand Submissions made by Exporters, Importers, Users and other Interested Parties

37. Domestic Industry comprised of M/s Global Nonwovens Limited at the time of original investigation. After the issuance of final findings, Ktex Nonwovens & Toray Industries India Pvt Ltd have also started production. Due to increase in domestic supply, imports from Malaysia have declined by almost 50% in last three financial years. Therefore, the claim of the domestic industry regarding material retardation to the establishment of domestic industry is not established.

F.3 Examination by the Authority

38. 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.

39. 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 determination on the basis of questionnaire responses filed by the foreign producers/exporters.
40. 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. However, the injury analysis has been carried out on the basis of quarter to quarter comparison of actual performance and projected estimates/targets.
41. 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.
42. 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.
43. The project report of the petitioner is 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 file. 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.

F.3.1 Post-Remand Examination made by the Authority

44. 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 exporters' data to the extent relevant was verified during on spot verifications conducted by the Authority. The Authority has, therefore, relied upon the DGCI&S data and the detailed information submitted by cooperative exporters for computation and required analysis.
45. In view of short history of the petitioner, performance of the Domestic Industry has also been considered in the period after investigation period. It is noted in this regard that the authority has been considering post POI performance in review cases and in fresh cases involving threat of material injury and material retardation to the Domestic Industry. Thus, the performance of the Domestic Industry for the period Apr-Dec 2016 has also been examined and considered in order to determine whether the dumped imports caused injury to the Domestic Industry.

G. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN.

G.1 Normal Value and Market Economy status for China PR

46. 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.

47. 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

48. Hon'ble CESTAT has not made any specific observation regarding the market economy status, normal value, export price and dumping margin related determination of the Authority for any subject country specifically. However, the Hon'ble CESTAT has generally observed that positive dumping margin was determined in the disclosure statement but the final findings were contrary to the disclosure statement.
49. CESTAT has observed that the Designated Authority in its final findings has recorded that there was an inadvertent error in the disclosure statement with respect to the calculation of dumping margin in some cases, which were corrected, but there is no explanation as to what the said inadvertent error was and how it was corrected.
50. Specific claims made by the domestic industry and other interested parties during the present remand investigation regarding normal value, export price and dumping margin determination are noted below

G.1.1 Submissions by Domestic Industry

51. Submissions by Domestic Industry are as follows:
- 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.
 - 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.
 - 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 of 1st Jan to 30th June for supplies made

from 1st July to 31st December and input prices from 1st July to 30th Sept for supplies to be made from 1st Oct to 31st Dec 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 11th 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.

G.1.2 Post-Remand Submissions by Domestic Industry

52. The following are the post remand submissions of the domestic industry

- a. Determination of the Authority regarding de-minimis dumping margin in the final findings has been reversed by the Hon'ble CESTAT. Hon'ble CESTAT has held that positive dumping margin determined in the disclosure statement is correct.
- b. The Authority completely ignored the specific finding of the Hon'ble CESTAT that PCN wise analysis would be applicable only in case of cooperative exporters and not for the non-cooperative/residual category.
- c. Adverse inference should be drawn against non-cooperating producers/exporters because they have withheld information. Dumping margin for non-cooperating producers/exporters should be determined based on the highest normal value and lowest export price without following PCN to PCN comparison methodology. In previous findings of anti-dumping investigations, the Authority has determined highest dumping margin by comparing highest normal value with lowest export price. The Authority does not take information on record regarding the PCNs sold by the non-cooperating producer/exporters and therefore the Authority cannot determine dumping margin based on PCN to PCN comparison.
- d. Questionnaire response of producer/exporter from Malaysia, M/s Fibertex Personal Care Sdn. Bhd., has been rightly rejected by the Authority as unreliable. The findings of the Authority were not challenged by the exporter in the Appeal and therefore they have attained finality. In any case, the producer/exporter has not provided timely information and the information has been suppressed. Therefore, their response cannot be accepted.

G.2 Submissions made by other interested parties

53. 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 Polytech Nantong (TPN), 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 Polytech 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 was adduced by the petitioner and the same is a clear violation of the evidentiary requirement under the WTO ADA.

G.2.1 Post-Remand Submissions made by Exporters, Importers, Users and other Interested Parties

54. Following are submissions made by other interested parties

- a. The domestic industry raised all the claims regarding the incorrectness of dumping margin before the Hon'ble CESTAT in appeal. However, the argument of the domestic industry in appeal before the Hon'ble CESTAT regarding the incorrectness of dumping margin per se has not been accepted. Determination of dumping margin by the Authority for producers/exporters from subject countries has not been held as incorrect by the Hon'ble CESTAT.

- b. Hon'ble CESTAT has merely observed that the final findings did not contain adequate explanation regarding the 'inadvertent error' found in the dumping margin disclosed in the disclosure statement. Authority should disclose the methodology applied for determining de-minimis dumping margin for producers/exporters clearly in the disclosure statement and the final findings.
- c. If the Hon'ble CESTAT wanted the Authority to determine existence of dumping, it would have clearly observed that the assessment of the Authority in the final findings regarding determination of dumping is incorrect. In several previous decisions, the Hon'ble CESTAT has clearly observed that the assessment of the Authority regarding a particular aspect of the investigation is incorrect and is required to be reversed.
- d. Authority adopted PCN methodology in this anti-dumping investigation. Therefore, PCN to PCN comparison methodology should be used for determining dumping margin for all producers/exporters including non-cooperating producers/exporters. This is in accordance with the consistent practice of Authority to determine dumping margin based on PCN to PCN comparison when PCN methodology is adopted. Dumping margin based on PCN to PCN comparison is required to fulfil the legal requirement of 'fair comparison' between normal value and export price under the Anti-dumping Rules and the WTO Anti-dumping Agreement.
- e. Producer/exporter from Malaysia, M/s Fibertex Personal Care Sdn Bhd., filed questionnaire response and provided complete information. Therefore, the Authority should consider M/s Fibertex Personal Care Sdn. Bhd. as co-operating producer/exporter. Hon'ble CESTAT has also specifically granted liberty to the Authority to reconsider the status of M/s Fibertex Personal Care Sdn. Bhd.
- f. Petition filed by the domestic industry itself provided PCN wise information by providing separate normal value for different types of products. If PCN by PCN comparison was not required while determining dumping margin based on facts available, then there was no requirement for the domestic industry to provide information in the petition regarding normal value based on different PCNs.
- g. Even when PCN methodology is not adopted, the Authority does not use highest normal value and lowest export price if there is no cooperating producer/exporter from the subject country. All the anti-dumping investigations relied upon by the domestic industry to claim that Authority determines dumping margin for non-cooperating producers/exporters based on highest normal value and lowest export price are examples of investigations wherein at-least one producer/exporter from the concerned subject country participated and there was a requirement to create difference in the dumping margin of cooperating exporter and non-cooperating exporter. If M/s Fibertex Personal Care Sdn. Bhd. is treated as non-cooperating

producer/exporter, there will be no cooperating producer/exporter from Malaysia whose highest normal value and lowest export price can be adopted. Therefore, the claim of the domestic industry regarding the use of highest normal value and lowest export price for determining dumping margin for non-cooperating producer/exporter is not applicable to Malaysia for this reason as well.

- h. Rejection of questionnaire response of M/s Fibertex Personal Care Sdn. Bhd. by the Authority on two grounds mentioned in the final findings was incorrect. The fact of Indian office was never suppressed by the Respondent and the same was disclosed in the questionnaire response. Regarding mismatch between sales quantity reported in Kgs in the questionnaire response and sample invoice, it is to be noted that the accounting records are maintained by the Respondent on the basis of the "square meter" since the product is a fabric. Invoicing and pricing for the product are also based on square meter. In any case, M/s Fibertex provided revised and corrected figures in KGs along with its comments on disclosure and the same are also provided again to the Authority.
- i. As per Article 6.3 of the WTO Anti-dumping Agreement, "cooperation" is indeed, a two-way process involving joint effort. Annex II to Article 6.8 of WTO Anti-dumping Agreement provides that even though the information provided by M/s Fibertex Personal Care Sdn. Bhd may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.
- j. M/s Fibertex Personal Care Sdn. Bhd has acted to the best of its abilities in providing complete response. If Authority believes that there is any deficiency in the response or that it requires further clarification, the Authority can request further information and clarification by issuing deficiency letter. In other anti-dumping investigations, the Authority has granted opportunity to interested parties to submit further information after the initial date of filing of questionnaire response has passed.
- k. The decision of Hon'ble CESTAT does not impact the dumping margin determination for Asahi Kasei Spunbond (Thailand) Co., Ltd., Thailand, Itochu (Thailand) Ltd., Thailand, and Itochu India Pvt. Ltd., India because in the disclosure statement as well as in the final findings issued by the Authority, there was no change in the dumping margin.
- l. Hubei Gold Dragon Nonwoven Fabrics, China PR was the only participating producer and exporter from China PR for whom DGTR found and calculated negative dumping margin. There was no change in the final findings from the disclosure statement issued by the authority regarding dumping margin for Hubei Gold Dragon Non-woven Fabrics, China PR.

- m. Arguments of the domestic industry only target the DM and IM of residual category and requesting adverse inference to be drawn on residual category.

G.3 Examination by Authority

55. Upon initiation of the original investigation, 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

56. 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.
57. The Authority notes that barring 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. However, the Authority has not granted them market economy status on account of non fulfilment of conditions prescribed in Rule 8 (Para 8 (3) of Annex I).
58. 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.

59. 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.
60. 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 verified to the extent possible.
61. The Authority has considered PCN wise analysis for determination of dumping margin to ensure apple to apple comparison.
62. After examining the submissions of interested parties, in the instant case, the Authority has considered lowest net export price for the PCN imported from the country concerned where cooperation has been received from the exporters, and its corresponding normal value of the same PCN to determine dumping margin for non-cooperating exporters of that country. Where, no cooperation has been received from any producer and exporter from subject country, weighted average of the constructed normal value and net export price of total import from that country as per DGCI&S data is considered for determining dumping margin.

(I). CHINA PR

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

Normal Value

63. The Authority notes 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 non-fulfillment 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 Constructed Normal value at ex-factory level has been calculated PCN wise for fair comparison with the export price for the comparable PCN.

. Export price

64. 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.

Dumping Margin

65. The Authority has calculated dumping margin by doing a PCN to PCN comparison for each PCN exported to India. Thereafter, the authority has calculated weighted average dumping margin for the producer/exporter as a whole. The weighted average Constructed Normal value (CNV), Net export price (NEP), and dumping margin for all the PCNs exported to India are mentioned in the table below.

HUBEI GOLD DRAGON NONWOVEN FABRICS CO. LTD, CHINA PR

Normal Value and Export Price

66. 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 normal value has been constructed on the basis of facts available under Rule 6(8) of the Antidumping Rules.

Dumping Margin

67. The Authority has calculated dumping margin by doing a PCN to PCN comparison for each PCN exported to India. Thereafter, the authority has calculated weighted average dumping margin for the producer/exporter as a whole. The ex-factory price has been calculated PCN Wise for fair comparison. The weighted average CNV, NEP and dumping margin for all the PCNs exported to India are mentioned in the table below

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

68. 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. The normal value at ex-factory level has been compared with the ex-factory export price for the same PCN while calculating the dumping margin for all other producers/exporters

from China PR. For this purpose, Authority took into consideration PCN with the lowest export price and compared it with the constructed normal value for the same PCN. At the time of issuance of the disclosure statement in the original investigation, the Authority inadvertently disregarded PCN methodology and compared highest normal value with the lowest export price of the co-operating exporter to determine dumping margin for all other producers/exporters. This inadvertent error was corrected in the final findings. When PCN methodology is adopted in an investigation, it is the consistent practice of the Authority to determine dumping margin for all other producers/exporters based on PCN wise comparison to ensure fair comparison between constructed normal value and export price.

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

69. 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 with the export price for the comparable PCN.

Export Price

70. 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.

Dumping Margin

71. The Authority has calculated dumping margin by doing a PCN to PCN comparison for each PCN exported to India. Thereafter, the authority has calculated weighted average dumping margin for the producer/exporter as a whole. The weighted average NV, NEP and dumping margin for all the PCNs exported to India are mentioned in the table below.

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

72. 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 at ex-factory level has been compared with the ex-factory export price for the same PCN while calculating the dumping margin for all other producers/exporters from Indonesia. For this purpose, Authority took into consideration PCN with the lowest export price and compared it with the normal value for the same PCN. At the time of issuance of the disclosure statement in the original investigation, the Authority inadvertently disregarded PCN methodology and compared highest normal value with the lowest export price of the co-operating exporter to determine dumping margin for all other producers/exporters. This inadvertent error was corrected in the final findings. When PCN methodology is adopted in an investigation, it is the consistent practice of the Authority to determine dumping margin for all other producers/exporters based on PCN wise comparison to ensure fair comparison between normal value and export price.

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

(III). MALAYSIA

FIBERTEX PERSONAL CARE SDN BHD (“Fibertex”)

Normal value and export price

73. 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 appeared to be a deliberate attempt on the part of the exporter to suppress information particularly with regard to the existence of India office.

74. Fibertex has submitted that the fact regarding existence of India office has been disclosed in their questionnaire response. Fibertex also notes that quantity reported in ‘square meter’ were matching with the quantity reported in invoice. The Authority has verified the claims and information provided by Fibertex. The Authority notes that Fibertex disclosed information regarding existence of branch office in India in its questionnaire response. However, the Authority notes that actual quantity in Kgs reported in Appendix 2 of the questionnaire response did not match with the sample invoices provided for verification. It has been claimed by Fibertex that correct quantity in Kgs was submitted to the Authority along with disclosure comments filed at the time of original investigation. The Authority notes that submission of correct information at such a belated stage of disclosure comments is not correct on the part of Fibertex. Therefore, the authority considers it appropriate to reject the response filed by Fibertex.
75. 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 weighted average normal value at ex-factory level for all producers and exporters has been calculated based on facts available i.e. as per the information provided by domestic industry. Similarly, the weighted average export price has been calculated for all export transactions for fair comparison. At the time of issuance of the disclosure statement in the original investigation, the Authority inadvertently did not include all export transactions to determine weighted average export price from Malaysia. The Authority identified export volume with lowest export price from Malaysia for determining the ex-factory export price. This volume of export represented only 24% of total exports from Malaysia. This inadvertent error was corrected in the final findings. When there are no cooperating producers/exporters from a subject country, it is the consistent practice of the Authority to consider all export transactions for determining dumping margin. 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- minimis (less than 2%)

(IV). SAUDI ARABIA

SAUDI GERMAN CO. FOR NONWOVEN PRODUCTS (“Saudi German”) Normal value

76. 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 80/20 test has been conducted and more than 80% transactions are profitable. 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 with the export price for the comparable PCN

Export price

77. 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.

Dumping Margin

78. The Authority has calculated dumping margin by doing a PCN to PCN comparison for each PCN exported to India. Thereafter, the authority has calculated weighted average dumping margin for the producer/exporter as a whole. The weighted average NV, NEP and dumping margin for all the PCNs exported to India are mentioned in the table below.

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

79. 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 at ex-factory level has been compared with the ex-factory export price for the same PCN while calculating the dumping margin for all other producers/exporters from Saudi Arabia. For this purpose, Authority took into consideration PCN with the lowest export price and compared it with the normal value for the same PCN. At the time of issuance of the disclosure statement in the original investigation, the Authority inadvertently disregarded PCN methodology and compared highest normal value with the lowest export price of the co-operating exporter to determine dumping margin for all other producers/exporters. This inadvertent error was corrected in the final findings. When PCN methodology is adopted in an investigation, it is the consistent practice of the Authority to determine dumping margin for all other producers/exporters

based on PCN wise comparison to ensure fair comparison between normal value and export price.

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

V. THAILAND

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

Normal Value

80. 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 and the sales are more than 80% profitable. Therefore, the Authority has considered all domestic sales for the determination of the normal value. 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 with the export price for the comparable PCN.

Export Price

81. 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 are 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.

Dumping Margin

82. The Authority has calculated dumping margin by doing a PCN to PCN comparison for each PCN exported to India. Thereafter, the authority has calculated weighted average dumping margin for the producer/exporter as a whole. The weighted average NV, NEP and dumping margin for all the PCNs exported to India are mentioned in the table below.

Normal value and Export price for all other producers and exporters

83. 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 at ex-factory level has been compared with the ex-factory export price for the same PCN while calculating the dumping margin for all other producers/exporters from Thailand. For this purpose, Authority took into consideration PCN with the lowest export price and compared it with the normal value for the same PCN. At the time of issuance of the disclosure statement in the original investigation, the Authority inadvertently disregarded PCN methodology and compared highest normal value with the lowest export price of the co-operating exporter to determine dumping margin for all other producers/exporters. This inadvertent error was corrected in the final findings. When PCN methodology is adopted in an investigation, it is the consistent practice of the Authority to determine dumping margin for all other producers/exporters based on PCN wise comparison to ensure fair comparison between normal value and export price.

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

84. 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 of the same PCN 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 and for the “All Others” category.

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-minimis (less than 2%)
5	All Others producers/exporters from Indonesia	***	***	***	***	De-minimis (less than 2%)
6.	All producers/exporters from Malaysia	***	***	***	***	De-minimis (less than 2%)
7	Saudi German Co. for Nonwoven Products, Saudi Arabia	***	***	***	***	De-minimis (less than 2%)
8	All Others producers/exporters from Saudi Arabia	***	***	***	***	De-minimis (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

85. 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 of injury, information of

the petitioners, constituting the Domestic Industry as defined in Rule 2(b), has been examined.

86. Hon'ble CESTAT has generally observed that the Authority determined existence of material injury and causal link between the dumped imports and material injury in the disclosure statement but the final findings were contrary to the disclosure statement.
87. Hon'ble CESTAT has observed that the Designated Authority in its final findings has recorded that there was an inadvertent error in the disclosure statement with respect to the calculation of injury margin in some cases, which was corrected, but there is no explanation as to what the said inadvertent error was and how it was corrected.

H1. Submissions made by the Domestic Industry

88. The following are submissions of domestic industry.

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) Demand for the product under consideration is quite positive in India, with increasing use of the product under consideration in these applications. There is an 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.
- (v) 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.

- (vi) 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.
- (vii) 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.
- (viii) 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.
- (ix) 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.
- (x) Data clearly shows that domestic production capitalization is far lower than capacity utilization considered in the project report.
- (xi) 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.
- (xii) 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.
- (xiii) 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.
- (xiv) 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.
- (xv) 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.

- (xvi) Exporters give long credit to the consumers. Cost of interests is required to be adjusted.
- (xvii) 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.
- (xviii) 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.
- (xix) Domestic Industry is facing the problem of accumulated inventories. Productivity has remained too low, measured in terms of production per day.
- (xx) 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
- (xxi) 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.
- (xxii) 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.
- (xxiii) 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.

- (xxiv) 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.
- (xxv) 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.
- (xxvi) 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.
- (xxvii) 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.
- (xxviii) 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.
- (xxix) 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.
- (xxx) 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.
- (xxxi) 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.
- (xxxii) 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.

(xxxiii) 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.

H1.1 Post-Remand Submissions made by the Domestic Industry

- (i) The Hon'ble Tribunal has considered the period of data collection to be adequate for the purpose of determination of injury. No purpose would be served of remanding the matter back to the Authority if period of data collection was not adequate.
- (ii) The Authority has not found any factor, other than the dumped imports, responsible for the injury suffered by the domestic industry. The Authority has simply mentioned 'teething problems' without identifying such 'teething problems' being faced by the domestic industry in the final findings.
- (iii) Authority has itself noted in the final findings that the domestic industry is unable to increase its price or profits due to low price imports indicating clear causal link between imports and injury to the domestic industry. In any case, the Authority had moderated the actual performance of the domestic industry in the POI. The Authority has also moderated the capacity utilisation of domestic industry at 100% level.
- (iv) The Authority has examined all listed parameters to establish that injury to the domestic industry has not been caused by the other factors. Increase in imports from subject countries, steep decline in import price, inability of the domestic industry to charge its prices even at the level of optimum cost is due to presence of dumped imports. Authority should recommend imposition of anti-dumping duty in view of positive dumping, injury and causal link. Change of methodology from price comparison at the product level to that of PCN to PCN comparison, not accepted. PCN analysis not required for residual category.
 - a. The domestic industry continues to suffer injury in the post POI period on account of dumped imports.
 - b. The domestic industry is suffering injury, as their profits, cash flow and return on investment have declined. Steep decline in import price within the investigation period and the imports, causing positive price undercutting, price underselling and suppression/depression

H2. Submissions made by the Exporters/producers and other interested parties

89. 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 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 its 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.

H2.1 Post-Remand Submissions made by the Exporters/producers and other interested parties

- a. The domestic industry made detailed claims and submissions before the Hon'ble CESTAT regarding incorrectness of assessment of material injury to the domestic

industry and causal link by the Authority. However, the Hon'ble CESTAT has not accepted any of the claims and arguments of the domestic industry. The claims and argument of the domestic industry regarding existence of causal link has been rejected by the Authority, Hon'ble Delhi High Court and the Hon'ble CESTAT already. Therefore, there is no requirement to reconsider the same claims and argument once again for the fourth time.

- b. Hon'ble CESTAT has merely observed that the final findings did not contain adequate explanation regarding the 'inadvertent error' found in the injury margin disclosed in the disclosure statement. Authority should disclose the methodology applied for determining injury margin for producers/exporters clearly in the disclosure statement and the final findings.
- c. The Hon'ble CESTAT has also not made any specific observation regarding the assessment of material injury or causal link by the Authority in the final findings. If the Hon'ble CESTAT wanted the Authority to determine existence of material injury and causal link between imports and the injury to the domestic industry, it would have clearly observed that the assessment of the Authority regarding determination of causal link is incorrect. In several previous decisions, the Hon'ble CESTAT has clearly observed that the assessment of the Authority regarding a particular aspect of the investigation is incorrect and is required to be reversed.
- d. The decision of Hon'ble CESTAT does not impact the injury margin determination for Asahi Kasei Spunbond (Thailand) Co., Ltd., Thailand, Itochu (Thailand) Ltd., Thailand, and Itochu India Pvt. Ltd., India because in the disclosure statement as well as in the final findings issued by the Authority, there was no change in the injury margin.
- e. Hubei Gold Dragon Nonwoven Fabrics, China PR was the only participating producer and exporter from China PR for whom DGTR found and calculated negative injury margin. There was no change in the final findings from the disclosure statement issued by the authority regarding injury margin for Hubei Gold Dragon Non-woven Fabrics, China PR.
- f. There is no material retardation or material injury to the domestic industry currently because Jindal Poly Film Ltd. invested 400 crores and has installed and started production of second Nonwoven manufacturing line in 2020 to double the production capacity. Ktex Nonwovens has installed capacity and started commercial production of Nonwovens in Jamnagar, Gujarat on 01st July 2018. Toray Industries India Pvt Ltd has also started production of Nonwoven Fabrics in Sri City, Andhra Pradesh

H3. Examination by the Authority

90. The Hon'ble Tribunal has not made any specific observations regarding the adequacy of period of investigation for the purpose of determination of injury.

91. The issue regarding the adequacy of period of investigation has been carefully examined by the Authority. 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.
92. 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
93. 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- March 2017 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.

94. 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.
95. 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 Ahlstrom 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.
96. PCNs are prescribed in an investigation where distinct models or types are involved for the subject product. PCNs are intended to ensure fair comparison between export price and normal value of distinct models and types. Similarly, PCNs will also be used to ensure fair comparison of non-injurious price with landed value for the purpose of injury margin. There is no exception which states that PCN to PCN comparison or fair comparison need not be ensured for determining 'all others' rate.

Cumulative Assessment

97. 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.

98. The Authority notes that:

- a. The margin of dumping for all imports from Saudi Arabia, Malaysia and Indonesia is less than de-minimis prescribed under the Rules. Margin of dumping for imports from China PR (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.

99. 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.

100. 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

101. 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
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>-</i>	<i>-</i>	<i>-</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
Demand Growth	%	100	144	258	432	504
Share of Domestic Industry in Demand	%	-	-	-	8.91	10.18

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

103. The volume of imports from subject countries is 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 and the SEZ units were catering mainly to the export market.

104. It is noted that share of imports from subject countries in total imports of subject goods is around 98%. It is also noted that the demand in India has increased exponentially during the injury period from 100 in 2012-13 to 144 in 2013-14, 258 in 2014-15 and 504 in 2015-16 (A). Since, there was very nominal domestic supply, the entire demand was catered from the import. However, share of import reduced from 84% to 80% (A) of demand in 2014-15 and 2015-16 respectively due to presence of the domestic industry in Indian market. The domestic industry in the first 9 months of its operation has already captured 8.91 % for POI and 10.18% (A) in Indian market.

Share of imports of subject goods from subject countries in total imports

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

105. The share of un-dumped imports of subject goods from the subject countries has been examined. It is noted that all imports of subject goods from Saudi Arabia, Indonesia and Malaysia (which constitutes 64% of total imports) are un-dumped. It is also noted that share of all imports of subject goods from China PR and Thailand in total imports constitute 35.26 % of the total imports of subject goods during the POI, and within this share, the share of M/s Hubei Gold Dragon Nonwoven Fabrics Co. Ltd, China PR which constitutes ***% of imports from China PR and Thailand are un-dumped. Thus, imports of dumped subject goods from subject countries are not considered significant.

Price Effect of Dumped Imports on the Domestic Industry

106. 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."

107. 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 underselling, price suppression and price depression, if any. The analysis for various price parameters has been based on DGCI&S data.

Price Undercutting

108. 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. Though, the landed price of PUC was substantially higher, the domestic industry was not able to increase its selling price up to the landed price of import as because it might be due to teething problems faced by them in establishing the quality of the product.

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

Price suppression/depression

109. 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	***	***	***

110. 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 landed price of imports and domestic selling price of domestic industry were declining quarter to quarter during the POI. It is further observed that the landed price of subject goods in every quarter from subject countries was more than the selling price of domestic industry excluding the 4th quarter when selling price of domestic industry was more in case of Malaysia and Saudi Arabia. However, their import volumes were un-dumped. It is also observed that cost of sales was also declining quarter to quarter. This shows that the domestic industry was improving in cost management or stabilizing their production process resulting in reduction of cost of sales. However, it is noted that net sales realisation is below the cost of sales throughout the period.

Price Underselling

111. The non-injurious price has been determined considering the cost of production of the Domestic Industry for the PUC during the POI, in accordance with Annexure III of the Antidumping Rules. Non-injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. It is noted that price underselling is positive during the POI.

Particulars	Unit	China PR	Indonesia	Malaysia	Saudi Arabia	Thailand
Import Volume	MT	2,921	2,612	4,761	2,270	2,503
NIP	Rs./MT	***	***	***	***	***
Landed Value of imports	Rs./MT	1,70,236	1,58,893	1,49,184	1,56,155	1,74,511
Price Underselling due to dumped imports	Rs./MT	***	***	***	***	***
Price Underselling due to dumped imports	%	***	***	***	***	***
Price Underselling due to dumped imports	Range	0-10	10-20	15-25	10-20	0-10

Economic parameters of the Domestic Industry

112. 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.

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

i. Capacity, Production, Sales and Capacity Utilization

114. 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	***	***	***	***	***	***	***

115. It is noted that

- a. The production of the Domestic Industry improved gradually from *** MT in July-September quarter in POI (2015-16) to *** MT in January-March quarter of

2016-17 in Post-POI. It is noted that the domestic industry was improving its performance continuously during the investigation period and in the post POI.

- b. The Capacity utilization of the Domestic Industry improved from 8% capacity utilization in July-September quarter of POI (2015-16) in POI to 59% in January-March quarter of 2016-17 in post POI.
- c. Sales of the Domestic Industry improved gradually from *** MT in July-September quarter in POI (2015-16) to *** MT in January-March quarter of 2016-17 in Post-POI. It is noted that the domestic industry was improving its performance continuously during the investigation period and in the post POI.

ii. Profit, cash flow and return on investment

116. 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)

117. It is noted that the cost of sales have decreased over the investigation period and also in the post POI as also the selling price. However, it is noted that selling price is below the cost of sales during POI as well as post POI.

118. The Domestic Industry has been suffering losses in the POI and also in the post POI. The losses could have been reduced, if the Domestic Industry was able to increase its selling price to the level of exporters. However, loss per MT has gradually reduced as the domestic industry is stabilizing continuously.

119. Therefore, the Domestic Industry is suffering negative return on capital employed throughout the POI and post POI.

iii. Employment and Productivity

120. 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>

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

iv. Inventories

122. 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	***	***	***	***	***	***	***

123. Authority observes that inventories with the Domestic Industry increased within the investigation period and even in the past POI period with increase in production.

v. Growth

124. It is seen that growth of the Domestic Industry was positive with regard to volume parameters like production, sales, capacity utilisation and negative with regard to price parameters like profitability, ROCE. However, as majority of the imports coming into India from subject countries are un-dumped imports and not undercutting the prices of domestic industry. It does not seem appropriate that the negative performance on price parameters can be attributed to dumped imports.

vi. Ability to raise capital investment

125. During the investigation, the Domestic Industry submitted that the future investment in this sector is marred by the presence of dumped imports from the subject countries, and 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. During the post-remand proceedings, it is brought to the notice of Authority that fresh investments for the production of subject goods

were announced in 2018 and were operationalised by the domestic industry in 2020. Other production plants by separate legal entities have also been established recently in India.

126. From the above analysis, it appears that the investment in the production of subject goods was not affected by the presence of imports into India.

vii. Factors Affecting Domestic Prices

127. Examination of the import prices from the subject countries show that the landed value of imported material from the subject countries is not below the selling price of the domestic industry. Comparison of landed value of dumped imports from China and Thailand and the non-injurious price of the Domestic Industry show that dumped imports are not causing significant price underselling 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 cannot be the dumped imports of subject goods from China PR and Thailand.

viii. Magnitude and Margin of Dumping

128. The imports from the China (except one producer) and Thailand are above the de-minimis level of dumping margin. Imports from all other subject countries are below de-minimis dumping margin.

I. MAGNITUDE OF INJURY MARGIN

129. The non-injurious price of the subject goods produced by the Domestic Industry determined by the Authority in terms of Annexure III to the AD Rules has been compared with the landed value of the imports from the subject countries for determination of injury margin during POI. The injury margin is shown in the table below:

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 Other producers/exporters from China PR	***	***	***	***	10-20
4	Toray Polytech Jakarta, Indonesia	***	***	***	***	5-15
5	All Other producers/exporters from Indonesia	***	***	***	***	5-15
6	All producers/exporters from Malaysia	***	***	***	***	10-20

Sr. no.	Producer	Landed Value	NIP	Injury Margin		
		USD/MT	USD/MT	USD/MT	%	Range
7	Saudi German Co. for Nonwoven Products, Saudi Arabia	***	***	***	***	0-10
8	All Other producers/exporters from Saudi Arabia	***	***	***	***	0-10
9	Asahi Kasei Spunbond (Thailand) Co., Ltd through Itochu Thailand Limited /Itochu India Limited	***	***	***	***	Negative
10	All other producers/exporters from Thailand	***	***	***	***	Less than 1%

J. EXAMINATION ON INJURY

130. Having regard to the information on record and after examination of the performance of the Domestic Industry, the Authority notes that:

- i. For most of the participating producers/exporters from subject countries the dumping margin is de-minimis or negative except for participating producers/exporters from Thailand and China PR.
- ii. In case of Asahi Kasei Spunbond (Thailand) Co., Ltd. even though dumping margin is positive, but injury margin is negative.
- iii. The dumped imports of the subject goods from subject countries are not significant in absolute terms as well as in relation to production and consumption of the subject goods in India.
- iv. Price undercutting is negative for imports from all subject countries.
- v. After commencing commercial production in the new plant, the Domestic Industry has increased its production, capacity utilization and sales.
- vi. Domestic industry has experienced negative trend in respect of price parameters such as profitability and ROCE. Domestic industry has suffered losses during the POI. However, losses per unit have reduced in the post POI period analyzed by the Authority. This shows that the initial heavy losses suffered by the domestic industry were primarily due to teething problems associated with startup operations.
- vii. Due to insignificant volume of dumped imports, and absence of price undercutting, the causal link between the dumped imports from subject countries and injury to domestic industry is not established.

K. CAUSAL LINK AND OTHER FACTORS

131. As per the Rules, the Authority, inter alia, is required to examine any known factors other than the dumped imports which at the same time are causing injury to the domestic industry, so that the injury caused by these other factors may not

be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the pattern of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than dumped imports could have contributed to the injury to the domestic industry:

i. **Volume and value of dumped imports from subject countries**

132. The present investigation covers imports from five countries. Imports from three countries out of the five countries are at un-dumped price as shown in table below.

Country	Total imports in POI (A)	Dumping Margin
Indonesia	3,483	De-minimis (Less than 2%)
Malaysia	6,348	De-minimis (Less than 2%)
Saudi Arabia	3,027	De-minimis (Less than 2%)
Total Un-dumped Imports	12,858	De-minimis (Less than 2%)

133. Un-dumped imports from three subject countries are significant in volumes. The injury, if any, on price parameters caused to the domestic industry from imports from subject countries is attributable to both these dumped and un-dumped imports. However, Authority notes that majority of the imports from subject countries are un-dumped imports from three countries.

ii. **Volume and value of imports from countries other than the Subject Countries –**

134. Imports from countries other than the subject countries are not significant in volumes or at higher prices.

iii. **Contraction of demand or Changes in the pattern of consumption-**

135. The Authority notes that there is significant increase in demand for the subject goods in the country, and therefore, contraction of demand cannot cause injury.

iv. **Development in Technology-**

136. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the Domestic Industry. In fact, petitioner has set up new production facility and has contended that majority producers of the product under consideration in subject countries are using the technology deployed by the petitioner.

v. **Trade restrictive practices and competition between supply from various sources-**

137. 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.

vi. Export performance-

138. Performance of the Domestic Industry has been segregated for domestic and export market. Petitioner has exported the product under consideration during the period. However, the claimed injury to the Domestic Industry is on account of domestic operations. Petitioner has provided costing and injury information for the product under consideration separately for domestic and export market. Other factors: There are two factors other than imports from subject countries which are relevant in the non-attribution analysis:
139. Petitioner has commenced trial production in Feb 2015 and commercial production in July 2015 only. Therefore, increase in trend of volume parameters of domestic industry is normal. However, it is also observed that price undercutting is negative during the POI. It indicates that the Domestic Industry could have increased their selling price to the level of imports. However, they did not increase the price during the POI and Post-POI. Domestic Industry also incurred losses during POI. However, post POI period data shows that losses per MT have reduced. This shows that the domestic industry started recovering from teething problems in setting up a new industry in the post POI period.
140. 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.
141. The Parameters enumerated above clearly establish that:
- i. For most of the participating producers/exporters from subject countries the dumping margin is de-minimis or negative except for participating producers/exporters from Thailand and China PR.
 - ii. In case of Asahi Kasei Spunbond (Thailand) Co., Ltd. even though dumping margin is positive, but injury margin is negative.
 - iii. The dumped imports of the subject goods from subject countries are insignificant in absolute terms as well as in relation to production and consumption of the subject goods in India.
 - iv. Price undercutting is negative for imports from all subject countries.
 - v. 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.
 - vi. During the investigation, Authority observed that the performance of DI is likely to improve once initial teething problems are taken care of. Once stabilized, the DI may experience better performance. It is natural that a certain amount of gestation period is reasonable. It is also brought to the

notice of the Authority that DI has started new production plant in India for subject product in 2020.

L. POST DISCLOSURE STATEMENT

142. 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 addressed as below:

L.1 Submissions made by the Interested parties

143. The following are post disclosure submissions of Government of Indonesia

- i.** GOI has acknowledged this finding as the same finding with the final one of original investigation; it has conclusively proven that Indonesian exporters did not dump the export of NWF to Indian market. The fresh Disclosure statement disclosed essential facts under consideration including the issues on which the Hon'ble CESTAT raised concerns and which have been presented before the Authority by various interested parties during the remand proceedings.
- ii.** It has been determined by the Authority that the injury and the causal link between the dumped imports from subject countries and injury to domestic industry is not clearly established due to insignificant volume of dumped imports, and absence of price undercutting.
- iii.** The Authority has also determined that the loss of the DI in the POI is due to the high cost in setting up a new industry in the POI and will recover in the near future. This condition shows that the DI started recovering in the post POI.
- iv.** The inadvertent error in the Final findings with respect to the calculation of dumping margin and injury margin has been corrected by the Authority in the disclosure statement. The fresh disclosure statement has clearly explained the said inadvertent error and how it was corrected.

144. The following are post disclosure submissions of exporters and related Indian importer from Thailand

- i.** There are no changes in the adjustments made for calculating NEP, and the Authority has taken the same adjustments. Therefore, it is understood that the Authority has not proposed any changes in dumping/injury margins calculations in respect of Asahi Kasei Spunbond (Thailand) Co., Ltd., Thailand, Itochu (Thailand) Ltd., Thailand and Itochu India Pvt. Ltd., India. Accordingly, request to the Authority to maintain the same findings as were recommended in the original final findings dated 2nd September 2017, whereby no anti-dumping duty was recommended for Asahi Kasei Spunbond (Thailand) Co., Ltd., Thailand is being made.
- ii.** Request is also being made to the Authority to maintain and re-affirm their findings in respect of Asahi Kasei Spunbond (Thailand) Co., Ltd., Thailand.
- iii.** The Authority has fully complied with the orders of Hon'ble CESTAT and provided all the interested parties sufficient time and opportunity to analyse the recommendations of the Authority.
- iv.** As per our understanding the order of Hon'ble CESTAT's only requires the Authority to provide all the interested parties an opportunity to provide their

comments, it does not order the Authority to change the facts or its findings. We fully endorse the conclusions arrived at by the Authority in the Disclosure Statement and humbly request them to notify the same in the Final Findings as well in respect of Asahi Kasei Spunbond (Thailand) Co., Ltd., Thailand, Itochu (Thailand) Ltd., Thailand and Itochu India Pvt. Ltd., India.

- v. Asahi Kasei Spunbond (Thailand) Co., Ltd., Thailand, Itochu (Thailand) Ltd., Thailand and Itochu India Pvt. Ltd. India vide their submissions dated 24th July 2020 (Written Submissions) and 31st July 2020 (Rejoinder Submissions) have raised and filed multiple submissions which have not been acknowledged/addressed in the Disclosure Statement. It is humbly requested that the same may please be addressed or acknowledged in the final findings to be issued by the Authority.

145. The following are post disclosure submissions of exporter from Malaysia

- i. Questionnaire response filed by producer/exporter from Malaysia should not be rejected because additional information was provided as part of disclosure comments. Information provided by the producer/exporter from Malaysia along with comments on disclosure was clarificatory in nature. Even in absence of such information, there is no mismatch between the information provided regarding sales quantity in the questionnaire response (in square meter) and the sales quantity noted in the actual invoices (in square meter). Moreover, even if information regarding actual quantity in Kg is considered as relevant, the practice of the Authority shows that Authority has accepted information from interested parties after the date of filing of questionnaire response in other anti-dumping investigations.
- ii. The Authority has rightly observed that weighted average normal value as per the information provided by domestic industry and weighted average export price based on all export transactions should be considered for determining dumping margin for 'all others' category of producers/exporters from Malaysia. The methodology adopted by the Authority is in accordance with the requirement of 'fair comparison' between normal value and export price provided in paragraph 6 of Annexure I of Anti-dumping rules.
- iii. Rule 14 (c) of the Anti-dumping Rules provide that Authority shall terminate an investigation immediately if it determines that the margin of dumping is less than 2%. Therefore, the Authority should terminate the anti-dumping investigation without recommending imposition of anti-dumping duty on imports from Saudi Arabia, Indonesia & Malaysia.
- iv. The Authority has conducted objective assessment of economic parameters of domestic industry while observing that there is improvement in volume parameters like production, sales, and capacity utilisation. The Authority has rightly observed that negative performance of domestic industry with regard to price parameters cannot be attributed to subject imports because majority of the

imports coming into India from subject countries are un-dumped imports and are not undercutting the prices of domestic industry.

- v. Authority should confirm in the final findings that due to insignificant volume of dumped imports and absence of price undercutting, the causal link between the dumped imports from subject countries and injury to domestic industry is not clearly established.
- vi. The disclosure statement recognizes that producers/exporters from Indonesia are not dumping the subject product. In this regard, the disclosure statement has also provided adequate explanation in accordance with the decision of the Hon'ble CESTAT. The finding regarding un-dumped imports from Indonesia should be confirmed in the final findings as well.
- vii. Para (iii) of Annexure II of the Anti-dumping Rules provide that cumulative assessment imports can be made only if the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price. Thus, the observation of the Authority is directly in contravention of Para (iii) of Annexure II of the Anti-dumping Rules. It is noted that imports from Saudi Arabia, Malaysia and Indonesia are un-dumped and cannot be clubbed with imports from other subject countries for the purpose of determination of material injury.
- viii. The Authority has further observed that there is negative performance in price parameters like profitability and return on capital employed. However, the Authority has also observed that there is no price undercutting due to imports from subject countries including Malaysia as landed price from subject countries including Malaysia was substantially higher than the domestic selling price. The Authority has also observed that the domestic industry was not able to increase its selling price up to the landed price of import as it may be facing problems in establishing the quality of the product. It is clear from the disclosure of aforementioned essential facts that negative performance of the domestic industry with regard to price parameters cannot be attributed to imports from subject countries including Malaysia.
- ix. The Authority has therefore conducted objective assessment of facts and has rightly observed that negative performance of domestic industry cannot be attributed to subject imports because majority of the imports coming into India from subject countries are un-dumped imports and are not undercutting the prices of domestic industry. The Authority has also acknowledged that performance of the domestic industry has improved during post-POI period and it has made substantial new investment for the production of subject goods. The observation by the Authority further substantiates that the domestic industry has been on the path of recovery and is not suffering any injury.
- x. India follows a lesser duty rule and injury margin is relevant only to determine the quantum of anti-dumping duty. Existence of injury margin is irrelevant while determining whether the domestic industry is suffering any injury or not because of dumped imports. In fact, the Authority need not even calculate injury margin when there is no material injury to the domestic industry. In any case, as already noted, no anti-dumping duty can be recommended on imports from Malaysia when margin of dumping determined for imports from Malaysia is de minimis i.e. less than 2%.

L2. Examination by the Authority

146. It is noted that the Domestic Industry has not offered any comments to the Disclosure Statement dated 17th August, 2020 though they were granted time till 23rd August 2020 which was further extended to 28th August 2020 vide e-mail dated 24th August 2020. However, the other interested parties submitted their comments within the given time. It is noted that most of the issues raised by the various interested parties at post disclosure stage have already been examined by the Authority under relevant paragraphs in this final findings. However, wherever required, the same are examined as below.
147. The Domestic Industry, in the submissions made before issuance of disclosure statement and during the hearing in the Hon'ble CESTAT had raised concern about the methodology adopted by the Authority for computation of dumping margin and injury margin and non-disclosure of normal value, export price etc. for "all other" category of exporters (also referred to as "residual") from the subject countries. Therefore, the Authority considers it appropriate to examine the issues once again.
148. From the detailed examination of dumping and injury as mentioned in relevant paragraphs of the final findings, the Authority notes that in case of most of the participating exporters from subject countries the dumping margin is de-minimis or negative except for 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.
149. Accordingly, in the disclosure statement dated 17th August 2020, the Authority has disclosed fully the methodology adopted for determining dumping margin and injury margin for all producers/exporters from subject countries including producers/exporters that are determined to be non-cooperative.
150. Thus, the Authority notes that the methodology adopted for determining dumping margin and injury margin for 'all others' category is different from the 'PCN by PCN analysis' or 'PCN wise analysis' that is applied in case of co-operating producers/exporters and that is alleged as not-permissible by domestic industry in the case of 'all others' category of producers/exporters. For dumping margin of cooperating producers/exporters, the Authority (i) determined all the PCNs exported by the participating producer/exporter (ii) calculated weighted average export price for each PCN (iii) compared export price so determined with normal value determined for corresponding PCN (iv) calculated PCN wise dumping margin by PCN to PCN comparison of normal value and export price and (v) determined final single weighted average dumping margin for the producer/exporter. For calculating dumping margin for 'all others' or residual category for China PR, Indonesia, Thailand and Saudi Arabia, the Authority simply took into consideration PCN with the lowest export price (i.e. adverse inference) and compared it with the normal value for the same PCN.

151. The Authority also notes that in the case of all producers/exporters from Malaysia, the weighted average normal value at ex-factory level for all producers and exporters was calculated based on facts available, and transaction wise data made available by DGCI&S. Similarly, the weighted average export price was calculated for all export transactions for fair comparison. It is the consistent practice of the Authority to rely on weighted average export price for all export transaction and compare it with weighted average normal value for determining dumping margin when there is no cooperation from the subject country.
152. Thus, as has already been made clear in the earlier paragraphs above, normal value and net export price for the “ all other” or residual category of exporters from subject countries have been determined under Rule 6(8) of ADD Rule’ 1995. The best available information/data includes information as is received from the co-operative exporters on confidential basis and/or from any other source which authority considers authenticated and reasonable, and the same has been considered for construction of normal value and net export price for “all other” or residual categories of exporters. Therefore, information/data considered for above purpose can’t be made public or disclosed to all interested parties due to the restrictions imposed under Rule 7(1) of ADD Rule.

M. CONCLUSION

153. After examining the decision of the Hon’ble CESTAT, issues and submissions made in the remand investigation and the original investigation and facts made available before the Authority as recorded in this finding, the Authority concludes that:
- a. Dumping margin is de-minimis for all imports from Saudi Arabia, Indonesia and Malaysia. Therefore, all imports from Saudi Arabia, Indonesia and Malaysia are un-dumped imports.
 - b. Dumping margin is positive for all imports from Thailand. However, injury margin is negative for Asahi Kasei Spunbond (Thailand) Co., Ltd. (participating producer/exporter) and less than 1% for “all others” category of producers/exporters from Thailand.
 - c. Dumping margin for producer/exporter Hubei Gold Dragon Nonwoven Fabrics Co. Ltd., China PR is negative. Thus, exports of Hubei Gold Dragon Nonwoven Fabrics Co. Ltd. from China are -dumped imports. Dumping margin is positive for Toray Polytech (Nantong) Company Limited, China PR and for ‘all others’ producers/exporters from China PR. Injury margin is also positive for Toray Polytech (Nantong) Company Limited, China PR and for ‘all others’ producers/exporters.

- d. The dumped imports of the subject goods from subject countries are not significant in absolute terms as well as in relation to production and consumption of the subject goods in India.
- e. The price undercutting from all the subject countries is negative.
- f. DI suffering injury during POI could be due to teething problems as examined under respective paragraphs of injury analysis above in the initial stage of setting up a new industry and not due to dumped imports.
- g. The landed price of dumped import of the subject goods is higher than the selling price of the Domestic Industry for POI and Post-POI excluding the 4th quarter when selling price of domestic industry was more in case of Malaysia and Saudi Arabia. Therefore, price undercutting for imports from subject countries were negative. It is concluded that though the normal market price of the PUC was more than the selling price of the Domestic Industry and growth of demand in the domestic market is increasing exponentially, the domestic industry was not able to increase its selling price as it might be facing problems in establishing the product. The performance of DI is likely to improve once initial teething problems are taken care of.
- h. 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.
- i. Due to insignificant volume of dumped imports, and absence of price undercutting, the causal link between the dumped imports from subject countries and injury to domestic industry is not established in accordance with Section 9B(b)(ii) of the Customs Tariff Act read with Rules 14(b) and 17(i)(iii) of the Anti-dumping Rules.

N. RECOMMENDATIONS

154. The Authority notes that the instant investigation was remanded by the Hon'ble CESTAT vide Final Order No. 50231/2020 dated 12th February 2020 directing the Authority to issue a fresh disclosure with complete details/data/information/methodology which may constitute "essential facts under consideration", to afford an opportunity to the interested parties to submit their comments, after analyzing the disclosure statement and the comments, if any, give fresh final findings; and liberty was also given to the Designated Authority to reconsider the status of the Malaysian exporter and the genuineness of its representation. Accordingly, a fresh disclosure was issued on 17th August, 2020 and after examining the comments received from the interested parties, the Authority notes that there is no causal link between the dumped imports and

the material injury to the domestic industry due to reasons given 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.

(B. B. Swain)
Special Secretary & Designated Authority