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**F. No. 7/27/2023-DGTR**  
**Government of India, Department of Commerce**  
**Ministry of Commerce & Industry**  
**Directorate General of Trade Remedies**  
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**5, Parliament Street, New Delhi- 110001**

Date: 28 August 2024

**FINAL FINDINGS**

**Case No. – AD (AA) – 03/2023**

**Subject: Anti-absorption investigation of the anti-dumping duty imposed on imports of 'Polyethylene Terephthalate Resin' originating in or exported from China PR.**

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 OF THE CASE**

1. In accordance with the provisions of Rule 30 of the Anti-Dumping Rules, IVL Dhunseri Petrochem Industries Private Limited and Reliance Industries Limited (hereinafter referred to as the “applicants”) filed an application before the Designated Authority (hereinafter also referred to as the “Authority”) alleging absorption of anti-dumping duty imposed on imports of polyethylene terephthalate resin (hereinafter referred to as “PET Resin” or the “subject goods” or the “product under consideration”) originating in or exported from China PR (hereinafter referred to as the “subject country”) and produced by Wankai New Materials Co., Ltd. or Zhejiang Wankai New Materials Co., Ltd. (hereinafter referred to as “Wankai” or the “subject exporter”).

2. The anti-dumping investigation concerning imports of PET Resin from the China PR was initiated vide notification dated 1<sup>st</sup> October 2019. Vide final findings F. No. 6/24/2019-DGTR dated 28<sup>th</sup> December 2020, the Authority recommended the imposition of anti-dumping duty on imports of PET Resin for a period of 5 years. Such duties were levied by the Ministry of Finance vide Notification No. 18/2021-Customs (ADD) dated 27<sup>th</sup> March 2021. The said duties are set to expire on 26<sup>th</sup> March 2026. The exports by Wankai New Materials Co., Ltd. were subject to a duty of USD 15.54 per MT, while the duties applicable to other exporters ranged from USD 60.92 to USD 200.66 per MT.
3. In terms of Section 9A(1B) of the Act and Rule 29(2) of the Rules, where an article subject to anti-dumping duty is imported into India at such price or under such condition which is considered as absorption of existing anti-dumping duty, which is thereby or may be rendered ineffective, the Designated Authority may, after conducting a review, recommend modification in the form or basis of the duty and/or the quantum of antidumping duty after reassessing the dumping margin and injury margin. In accordance with the same, the Authority is required to review, based on an application with sufficient evidence, made by or on behalf of the domestic industry or any other interested party as to whether the existing anti-dumping duty is thereby or may be rendered ineffective because of absorption of duty.
4. On the basis of the duly substantiated written application submitted by the applicants and having satisfied itself based on the *prima facie* evidence submitted by the applicants concerning absorption of the anti-dumping duties imposed on the exports from China PR by Wankai, the Authority initiated an anti-absorption investigation to determine the existence and effect of absorption of the anti-dumping duty on exports of the product under consideration by the subject exporter from China PR and to recommend modification of the quantum or form of the anti-dumping duty, in accordance with Section 9A(1B) of the Act and Rule 30 of the Rules, vide Notification No. 7/27/2023-DGTR dated 4<sup>th</sup> March 2024.

**B. PROCEDURE**

5. The procedure described hereinbelow has been followed in the investigation.
  - i. The Authority vide Notification No. 7/27/2023-DGTR, dated 4<sup>th</sup> March 2024, published a public notice in the Gazette of India, Extraordinary, initiating an anti-absorption investigation against imports of the subject goods by the subject exporter, Wankai New Materials Co., Ltd. or Zhejiang Wankai New Materials Co., Ltd., from the subject country.
  - ii. Prior intimation was given to the embassy of China in India under Article 5.5 of the WTO Agreement and Rule 30(4) of the Anti-Dumping Rules regarding the initiation of an anti-absorption investigation.

- iii. A copy of the public notice was forwarded by the Authority to the embassy of China in India, the subject producer / exporter, Wankai, known importers and other interested parties, to inform them of the initiation of the subject investigation in accordance with Rule 6(2) of the Rules.
- iv. The Authority provided a copy of the non-confidential version of the application to the subject producer / exporter, and to the Government of China, through its embassy, and to other interested parties who made a request in writing in accordance with Rule 6(3) of the Rules supra.
- v. The Authority forwarded a copy of the public notice initiating the anti-absorption investigation to the subject producer / exporter in the subject country, and other interested parties and provided them an opportunity to file response to the questionnaire in the form and manner prescribed within time limit (including the extended time limit), as prescribed in the initiation notification, and make their views known in writing in accordance with the Rule 6(4) of the Rules.
- vi. Wankai New Materials Co., Ltd. has furnished a response to the questionnaire issued by the Authority.
- vii. The Authority forwarded a copy of the Notification to the following known importers/ users of the subject goods in India calling for necessary information, in accordance with Rule 6(4) of the Rules:
  - a. Varun Beverages Limited
  - b. Ganapati Fishing Lines Private Limited
  - c. Vinay Plastics
  - d. Cabisco Plast Private Limited
  - e. RGP Impex Private Limited
  - f. Goodway Chemicals Private Limited
  - g. Jebruna International Private Limited
  - h. National Polyplast India Private Limited
  - i. D P Enterprises
  - j. Tarajyot Polymers Limited
  - k. R K Trading Company
  - l. Ruptex Mineral Water Private Limited
  - m. Tricon Energy India Private Limited
  - n. Mayur Straps Packaging Industries
  - o. Ready Package
  - p. Sanjay Chemicals I Private Limited
  - q. Noble Exim
  - r. A C A Polymers
  - s. S L V Pet Industries
  - t. Voltson India
  - u. Hitaishi Creative Enterprises Private Limited
  - v. Jainson Cables India Private Limited
  - w. Madhu Plastics Private Limited
  - x. Aym Syntex Ltd

- y. Praveen Polymers Private Limited
  - z. Oswal International
  - aa. Glory Industries
  - bb. Annapurna Pet Private Limited
  - cc. U D Caps Private Limited
  - dd. Oracle Polyplast
  - ee. Shrinath Rotopack Private Limited
  - ff. RKG Polyplast Private Limited
  - gg. Amrit Polychem Private Limited
  - hh. SPC Life Sciences Private Limited
  - ii. Waterproof Corporation Private Limited
  - jj. Organic Industries Private Limited
  - kk. Krystals Impex
- viii. The Authority sent the importer's questionnaire to the following known Associations of the subject goods in India for circulation & calling necessary information in accordance with Rule 6(4) of the Rules:
- a. All India Plastic Manufacturers' Association
  - b. Federation of Indian Chamber of Commerce and Industry (FICCI)
  - c. Associated Chambers of Commerce and Industry of India
  - d. Confederation of Indian Industry (CII)
- ix. None of the importers/users have filed questionnaire response in the present investigation.
- x. A copy of the initiation notification and non-confidential version of the application was sent to the Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers on March 14, 2024. However, the Authority has not received any comments.
- xi. The absorption period was considered as 1<sup>st</sup> January 2023 to 30<sup>th</sup> September 2023 (9 months). The Authority compared the prices in such period to the prices in the period of investigation of the original investigation.
- xii. Transaction-wise imports data for the period of investigation and the preceding three years was procured from DG Systems. The Authority has relied upon the data from DG Systems for calculating the volume and value of imports of the subject goods in India and for comparison and reconciliation with the responses filed by the exporter.
- xiii. Further information was sought from the applicants and responding exporters to the extent deemed necessary.
- xiv. All the interested parties were requested to e-mail the non-confidential versions (NCV) of their submissions/responses/comments filed by them to all the other interested parties.
- xv. The non-injurious price (NIP) has been determined based on the optimum cost of production and the cost to make & sell the subject goods in India as per the information furnished by the domestic industry and in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules. Such non-injurious price has been considered to ascertain

- whether the anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- xvi. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity to the interested parties to present their views orally in a public hearing held on 7<sup>th</sup> May 2024 through video conferencing. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
  - xvii. The submissions made by the interested parties, arguments raised, and information provided by various interested parties during the course of the investigation, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this final finding.
  - xviii. The Authority, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of this final finding to the extent possible and verified the data/ documents submitted by the domestic industry to the extent considered relevant and necessary.
  - xix. The Authority issued a letter dated 15<sup>th</sup> July 2024 to the other interested parties regarding the deficiencies and queries in the response filed. The other interested parties have furnished a reply dated 18<sup>th</sup> July 2024. The Authority has considered the same for the purpose of the present final finding.
  - xx. The information provided by the interested parties on a confidential basis was examined with regard to the sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered as confidential and not disclosed to the other interested parties. Wherever possible, parties providing information on a confidential basis were directed to provide sufficient non- confidential version of the information filed on a confidential basis.
  - xxi. The Authority circulated the disclosure statement containing all essential facts under consideration for making the final recommendations to the Central Government, to all interested parties on 5<sup>th</sup> August 2024. The comments on disclosure statements received from the interested parties have been considered, to the extent found relevant, in the final finding.
  - xxii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non- cooperative and recorded this final finding on the basis of the facts available.
  - xxiii. \*\*\* in this final finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.

- xxiv. The exchange rate adopted by the Authority for the subject investigation is 1 US\$ = Rs. 83.32.

**C. SUBMISSIONS MADE BY SUBJECT EXPORTER ON VARIOUS ISSUES**

6. The following submissions have been made by Wankai New Materials Co., Ltd, during the course of the investigation.

**Scope of review**

- i. Initiation of an anti-absorption investigation can be made only against a country or countries and not selectively against a specific exporter.
- ii. As against the contention of the domestic industry, the interpretation of the word “an” used in Rule 29(1) is not plausible. In case, the intention of Rules was such, then the word “an exporter” would have been used and there was no need for words “country/countries”. If such interpretation is taken, then the initiation would never be possible against more than one exporter.
- iii. Rule 19 provides for imposition of duties on non-discriminatory basis on all imports and thus, imposition of duty against a selective exporter is not permitted. There are a number of producers in China and about 50% imports into India are from the producers other than Wankai.
- iv. The determination of whether or not there is absorption is made only with respect to anti-dumping duty imposed under Section 9A(1) and such duty under Section 9A(1) is imposed against an entire country. Rule 29(1) cannot override the provisions of the Customs Tariff Act and in case of any inconsistency the provisions of parent legislation shall prevail.
- v. Handbook titled “EC and WTO Anti-Dumping”, states that anti-absorption procedure is not limited to certain exporters but covers all imports of the product in the country.
- vi. Findings of European Commission also show that anti-absorption investigation can be initiated only against a country as a whole.
- vii. Contrary to the claim of the domestic industry, initiation of an investigation against only Wankai is prejudicial to its interests.
- viii. The grounds identified by the domestic industry are subject matter of a mid-term review investigation and not anti-absorption investigation.
- ix. Since the investigation is initiated only against imports of a single exporter, the allegation of the domestic industry that the goods produced by Wankai are also exported through other unrelated exporters cannot be examined.
- x. Wankai has not sold the product under consideration to any of the traders and has directly exported the product to India.
- xi. Grade WK-801 is one of the product codes of Wankai used for identifying and differentiating one type of the product from other types. The grade name “WK-801” is not the registered name and is not the exclusive brand

name. Other exporters are free to use the name "WK-801" for their own product without the knowledge of Wankai.

### **Confidentiality**

- xii. The domestic industry has claimed the volume and price of exports by Wankai confidential from the exporter itself.
- xiii. The domestic industry has not disclosed the source of information regarding imports from Wankai. Even the evidence with regard to increase in capacities, total imports from China, imports from Wankai, raw materials PTA and MEG price, landed value of Wankai and production of the domestic industry have been claimed confidential.
- xiv. The domestic industry has relied on sample description of import transactions with grade names. In the absence of access to source of information and the complete information itself, the exporter cannot comment on the same.

### **Evidence of absorption**

- xv. The application filed by the domestic industry is deficient and lacks evidence and information with regard to absorption of anti-dumping duty.
- xvi. The decline in landed price from Wankai is due to decline in raw material prices.
- xvii. Value of INR has depreciated by 16% between the original and current period of investigation. The European Commission terminated the anti-absorption investigation on Sodium Cyclamate since there was decline in export price due to currency fluctuations.
- xviii. There was a requirement to *prima facie* analyse the injury margin and dumping margin based on the adjusted non-injurious price and normal value, however, the application does not contain such details.
- xix. There is a need for adjustment of export price to determine absorption. Adjustment is required for depreciation of Chinese Yen (CNY), depreciation of Indian Rupee (INR) and change in ratio of product mix exported to India between the original and current period of investigation. There is no decline in export price of Wankai post making such adjustments.
- xx. The domestic industry has not provided any justification for not considering actual exchange rate for conversion of USD to INR. Since non-injurious price and landed price are in different currencies, one of them must be necessarily converted into the other currency, for determination of injury margin.
- xxi. The injury margin for Wankai is negative in the current investigation after adjusting the non-injurious price with respect to decline in raw material prices.

- xxii. The determination of absorption should be made on comparison of present absorption period with the period of investigation of the original investigation, without reference to intervening periods.
- xxiii. While the domestic industry has provided volume of exports made indirectly to India through unrelated exporters, it has not provided prices of the same to show that the price of indirect exports was lower than the price of direct exports.

**Special circumstances concerning delay in filing the application**

- xxiv. The domestic industry is required to show special circumstances which prevented it from filing an application and not grounds for filing post 2 years. The meaning of the word “Special Circumstances” in Rule 29(3) should be construed same as that in Rule 30(7).
- xxv. The grounds alleged by the domestic industry are not justified as Wankai has not undertaken any capacity expansion or changed its product profile due to increase in capacity.
- xxvi. While the domestic industry has stated that imports from Wankai are about \*\*\* of total imports from China, they are only \*\*\*%. Increase in imports cannot be a special circumstance warranting initiation of an anti-absorption investigation.
- xxvii. Even if the figures provided by the domestic industry are considered, the imports from Wankai are only \*\*\*% of imports from China during the original period of investigation and cannot be considered significant.
- xxviii. The capacity displayed on the website is for Wankai, and its subsidiary, Chongqing Wankai New Materials Co. Ltd., which started production in 2020.
- xxix. Increase in imports should be compared to the period of investigation of the original investigation, and reference to any other period is not relevant.

**D. SUBMISSIONS MADE BY THE DOMESTIC INDUSTRY ON VARIOUS ISSUES**

- 7. The following submissions were made by the domestic industry on various issues during the course of the investigation.

**Scope of review**

- i. The application has been filed only against imports from Wankai. There is no bar under the Rules for conducting an investigation against a single exporter.
- ii. As opposed to the submissions of the other interested parties, anti-absorption investigation is company specific which is evident from the word “an” used prior to “anti-dumping duty” in Rule 29(1).

- iii. Since there is different anti-dumping duty on different producers, the behaviour of each producer is different and cannot be clubbed together.
- iv. Rule 29(3) allows any interested parties including exporters to file an application against absorption of duties. In case, the inference is that an anti-absorption investigation can be initiated only against a subject country that would lead to an exporter filing an application against itself.
- v. Rule 30 states that an anti-absorption investigation can be initiated based on *prima facie* evidence. In case, the Rules are inferred as that an anti-absorption investigation can be initiated only against a subject country, the applicants will not be able to provide *prima facie* evidence as absorption by a single exporter may be masked by non-absorption of duties by other exporters.
- vi. In case duty is levied on multiple countries, the absorption by one exporter from one subject country will be completely masked by imports from all the subject countries.
- vii. The use of word "prices" in the Rules refer to price of multiple import transactions from a single exporter which is similar to the use of the same word under Rule 18. Even in Rule 18(iii) refers to "dumped prices" which means the existence of multiple transactions from the same exporter. Similarly, Annexure I refers to "prices" in context of normal value for a single producer and Annexure II refers to "prices" of a single domestic industry. Article 2.4.2 and Para-7 of Annexure I also refer to prices in context of a single exporter.
- viii. The present investigation is practically against all imports from China since 87% imports from China are from the subject exporter.
- ix. While an anti-absorption investigation can be conducted against the country as a whole, absorption is an exporter specific behaviour and it is necessary to determine whether a single exporter is involved in absorption or it is common to all producers in the subject countries.
- x. As opposed to the submissions of the other interested parties, the present review is not under Rule 19. Further, the requirement of Rule 19 is fully complied with since anti-dumping duty was imposed by the Central Government on non-discriminatory basis. Even an anti-dumping investigation can be conducted against imports from a single exporter. European Union and Türkiye have initiated anti-dumping investigation against imports of the product from individual exporters, where such exporters were found not to be dumping in the original investigation.
- xi. Contrary to the contention of the other interested parties that absorption can only be against anti-dumping duty imposed under Section 9A(1) against entire country, such an interpretation will preclude the Authority from conducting mid-term reviews and new shipper reviews.
- xii. The handbook titles "EC and WTO Anti-Dumping" is opinion and not a legal principle.

**Confidentiality**

- xiii. The information claimed confidential by the domestic industry is either business proprietary information or based on information from third party, which the applicants are not authorised to disclose.
- xiv. While Wankai has claimed information with regard to raw material has been claimed confidential by the domestic industry, it has not disclosed the same information in its response.

**Absorption of anti-dumping duty**

- xv. Wankai has absorbed the anti-dumping duty in force.
- xvi. The volume of imports from other exporters from the subject country is low and the price of imports has increased.
- xvii. The import price from Wankai has reduced in the current period of investigation as compared to the original period of investigation.
- xviii. While the cost of production has declined due to decline in cost of raw material, the landed price has declined more than decline in cost of production.
- xix. As opposed to the contention of the other interested parties, the applicants had provided *prima facie* evidence of absorption of anti-dumping duty in the application based on which the present investigation was initiated.
- xx. Absorption has to be seen in USD and not INR or CNY as the exporter did not transact the business or export the product in INR or CNY and the customer did not make payment in INR or CNY. The entire transaction related to import is in INR.
- xxi. As opposed to the contention of the other interested parties, EC in Sodium Cyclamate terminated the investigation because on denominating the prices in USD, they determined that there is no absorption. By contrast, in the present investigation, the imports from China are in USD which has not depreciated.
- xxii. With regard to product mix, the other interested parties did not claim PCN in the original investigation and thus, the exporter cannot claim a difference in the product mix in the present investigation.
- xxiii. The domestic industry has provided detailed calculation of injury margin for Wankai and the same is positive and significant.

**Special circumstances concerning delay in filing the application**

- xxiv. There were compelling reasons for filing of the application after expiry of two years as Wankai has set up new capacities for production of subject goods. While Wankai was producing and exporting in lower quantities, the imports from Wankai increased significantly post commencement of new capacities.

- xxv. As opposed to information provided by Wankai, well known international publications such as Technon Orbichem Report and Wood Machenzie Report show that Wankai has undertaken capacity expansion.
- xxvi. Contrary to the information filed by Wankai, it has a related party, Chongqing Wankai New Materials Technology Co. Ltd., which is involved in production of subject goods. Wankai has made capacity addition in Chongqing province.
- xxvii. As evident from the website of Wankai, it does not recognize the two companies as separate legal entities, and only states that there are two plants of Wankai.
- xxviii. The imports from Wankai have increased in the period of investigation and have more than doubled as compared to 2022-23.
- xxix. As opposed to the contention of the other interested parties, the application was not filed prior to expiry of two years since no producer was absorbing the anti-dumping duty in that period.
- xxx. The other interested parties have not provided information with regard to the grounds that have not been fulfilled by the domestic industry for initiation of the present investigation. Merely because re-quantification is permissible in mid-term review, it cannot be contended that the present grounds are applicable only for mid-term review.
- xxxi. As opposed to the contention of the other interested parties, there is no significant of volume of imports from Wankai in the original anti-dumping duty. In any case, imports from Wankai have increased by \*\*\*% in the period of investigation as compared to 2019-20.

#### **Other issues**

- xxxii. Wankai has suppressed information in its response as it has not provided information with regard to capacity expansion.
- xxxiii. Wankai has stated that it has exported the product directly to India, however, \*\*\*% of its imports into India are through unrelated exporters which have not participated in the present investigation.
- xxxiv. The description of imports by unrelated trader states the grade "WK-801" which is a grade produced by Wankai. If these imports have been cleared after payment of anti-dumping duty applicable to Wankai, and Wankai claims that these supplies were not made by it, the DGTR may refer the matter to DRI, as it establishes large scale evasion of anti-dumping duty.
- xxxv. Since the value chain is incomplete, it cannot be considered that Wankai has filed a complete response.

### **E. EXAMINATION BY THE AUTHORITY**

#### **E.1. Product under consideration and like article**

8. The product under consideration in the present anti-absorption investigation is “virgin polyethene terephthalate (PET) resin”, defined as polyethene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher. The product scope is the same as that in the original investigation. The scope of the product under consideration does not include recycled PET Resins.
9. The product under consideration is classified under Chapter 39 under sub-heading 3907. The product under consideration has been imported under the tariff items 3907 61 10, 3907 61 90, 3907 69 30 and 3907 69 90. The customs classification is only indicative and is not binding on the scope of the present investigation.
10. The original investigation revealed that there are no known significant differences in the goods produced by the applicants and those exported from the subject country. Both products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification. The two were found to be technically and commercially substitutable. Therefore, for the purpose of the present review, the subject goods produced by the applicants are being treated as “like article” to the subject goods imported from Wankai.

## **E.2. Scope of Review**

11. The present review was initiated in accordance with Section 9A(1B) of the Act and Rule 30 of the Anti-Dumping Rules. The present review was initiated to determine the existence and effect of absorption of the anti-dumping duty on imports of the product under consideration by Wankai New Materials Co., Ltd. or Zhejiang Wankai New Materials Co., Ltd. from China PR and to recommend modification of the quantum or form of anti-dumping duty, if required.
12. The applicants had provided *prima facie* evidence in their application regarding absorption of anti-dumping duty by Wankai New Materials Co., Ltd. or Zhejiang Wankai New Materials Co., Ltd. The applicants had provided *prima facie* evidence with regard to decline in prices of the product under consideration from Wankai without commensurate decline in the cost of production in the current period of investigation as compared to the period of investigation in the original investigation.
13. The other interested parties have claimed that an anti-absorption investigation can be initiated only against a subject country as a whole and not against imports from a single exporter. The Authority notes that that the present investigation was

initiated only against imports from Wankai from China PR. Rule 29(1) of the Anti-Dumping Rules states as follows:

*“RULE 29. Anti-absorption review. - (1) An anti-dumping duty imposed under section 9A of the Act may be considered to be absorbed when export prices of an article from the exporting country or countries decrease post imposition of the anti-dumping duty without any commensurate change in cost of production of such article or export prices of such article to countries other than India or resale price of such article in India imported from the exporting country or countries.”*

14. The Authority notes that in an original investigation, the Authority determines individual anti-dumping duty for all cooperating producers as per the response filed by such producers in case such response is considered complete and accurate. Further, the Authority also determines residual duties which are applicable to all non-cooperative and non-participating producers. Hence, there are different anti-dumping duties imposed on different producers in an original investigation. Rule 29 refers to “an” anti-dumping duty imposed on an individual producer under Section 9A.
15. The Authority further notes that the use of “export prices” in Rule 29 has to be interpreted as export prices of various transactions by the same exporter. This is evident from the fact that the interpretation of the word “prices” as prices from multiple exporters will defeat the purpose of a number of provisions under the Anti-Dumping Rules. The “prices” referred to in Rule 29 is in reference to multiple transactions from the same exporter and not transactions from multiple exporters. Since there are a number of export transactions with different prices, the word “prices” has been used in Rule 29. This is also evident from the usage of the word “prices” in Rule 18(3) which refers to “dumped prices”, Annexure I of the Anti-Dumping Rules which refers to “prices” in the context of normal value, which is relevant to individual foreign producer, Para-7 of Annexure I refers to “costs” and “prices” in terms of an individual foreign producer and Annexure II refers to “prices” of a single domestic industry.
16. The Authority further notes that absorption of anti-dumping duty is a producer-specific behaviour which is also dependent upon the amount of anti-dumping duty imposed on such producers. While some of the producers from the subject country may absorb duties, some may refrain from doing so. Since the anti-dumping duty levied on each of the producers is different, there is a high likelihood that the absorption will be different.
17. The Authority notes that the Rules should be interpreted to fulfil the purpose intended by them. Rule 29(3) of the Anti-Dumping Rules states the following:

*“(3) The domestic industry or any other interested party shall file the application seeking initiation of anti-absorption investigation normally within two years from the date of imposition of definitive anti-dumping duty”*

Rule 2(c) of the Anti-Dumping Rules states as following regarding interested parties.

*“(c) “interested party” includes -*

*(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;*

*(ii) the government of the exporting country; and*

*(iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;”*

In light of Rule 29(3) and Rule 2(c), the Authority notes that any interested party including the foreign producer or exporter of the product can file an application against alleged absorption of anti-dumping duty. In case, it is considered that anti-absorption investigation can be initiated against a subject country, that would render significant portion of Rule 29(3) ineffective. In case of such an interpretation no exporter or foreign producer will file an application against absorption of duties by any other foreign producer/exporter since such an application will lead to initiation of an investigation against the applicant exporter itself. Thus, the interpretation that an anti-absorption investigation can be initiated only against a subject country as a whole is not plausible and such an interpretation defeats the purpose of the Rules.

18. With regard to the submissions that the imposition of duty against a selective exporter is not permitted under Rule 19, the Authority notes that the present investigation is under Rule 29, Rule 30 and Rule 31 of the Anti-Dumping Rules. While Rule 6 is applicable for the present investigation, Rule 19 is not applicable. The anti-dumping duty was imposed on imports of the product under consideration from the subject country on a non-discriminatory basis as per the requirements of Rule 19. Thus, the Authority has already fulfilled the requirements of Rule 19 and the same is not applicable for the present investigation. The Authority also conducts new shipper review and limited mid-term reviews against an individual producer, thus, there is no bar on conducting an anti-absorption review on an individual producer.

19. The Authority notes that the other interested parties have provided a handbook titled "EC and WTO Anti-Dumping" which states that anti-absorption investigations are against a subject country. The Authority notes that the said handbook and text given in such handbook is not a legal principle but merely an opinion of the authors.
20. The other interested parties have submitted findings of the European Commission and have submitted that such findings show that anti-absorption investigation is against a country as a whole, the Authority notes that there is no denying that an anti-absorption investigation can be initiated against a country as whole. However, such an initiation is possible only in a case where all or at least majority of exporters from the subject country are involved in absorption of anti-dumping duty. There is no bar in the Rules against initiation of an anti-absorption investigation against an individual producer / exporter. In the present case, since the *prima facie* evidence of absorption was available only for an individual producer, the Authority has initiated the case against one producer.
21. With regard to the submissions that the grounds identified by the domestic industry are the subject matter of the mid-term review, the Authority notes that the grounds identified by the domestic industry are also applicable for an anti-absorption investigation. In a situation where re-quantification of duty is warranted on account of absorption by an exporter, the appropriate relief to be sought would be initiation of an anti-absorption investigation. If a mid-term review were to be sought in every case, it would defeat the very purpose of the provisions introduced to address absorption of duty.

### **E.3. Confidentiality**

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

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

*(2) The designated Authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in*

*the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated Authority a statement of reasons why summarization is not possible.*

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

23. The information provided by the interested parties on a confidential basis was examined with regards to sufficiency of such claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, the parties providing information on a confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

**E.4. Special circumstances for delay in filing application**

24. Rule 29(3) of the Anti-Dumping Rules states as following:

*"(3) The domestic industry or any other interested party shall file the application seeking initiation of anti-absorption investigation normally within two years from the date of imposition of definitive anti-dumping duty:*

*Provided that in view of special circumstances in a given case, for reasons to be recorded in writing, the designated Authority may accept an application for such initiation after expiry of the said period of two years:*

*Provided further that no such application shall be accepted in cases with less than twelve months' period remaining for the anti-dumping duty to expire"*

25. The Authority notes that the original anti-dumping duty on imports of the product under consideration from the subject country was imposed on 27<sup>th</sup> March 2021. The applicants have stated the following special circumstances for delay in filing the application:

- i. Wankai has set up new capacities for the production of the subject goods. Post commencement of such capacities, the producer has started absorbing the anti-dumping duty in force.
  - ii. The imports from Wankai have increased significantly in the period of investigation as compared to 2022-23.
26. The Authority notes that the domestic industry has claimed that there was no absorption of anti-dumping duty by the producer in the past and thus, there was no reason for the domestic industry to approach the Authority for an anti-absorption investigation. The Authority has assessed the volume of imports in the period of investigation and compared it to the previous years.

Particulars	Unit	OI	2020-21	2021-22	2022-23	POI(Ann.)	POI
Imports from Wankai	MT	***	***	***	***	***	***
Trend	Indexed	100	101	88	140	416	312

*As per DG Systems Data*

27. The Authority notes that the volume of annualised imports in the period of investigation from Wankai have increased by 197% as compared to 2022-23, 370% when compared to 2021-22 and 311% as compared to 2020-21. Further, the imports have increased by 315% in the current period of investigation as compared to the original investigation.
28. The Authority notes that Wankai has stated that it has not undertaken capacity expansion. However, as per the evidence on record, Wankai has a related party, namely, Chongqing Wankai New Materials Technology Co., Ltd. which is engaged in the production and sales of the product under consideration. As per the evidence on record, Wankai has undertaken capacity expansion in the Chongqing district. The Domestic Industry claims that such capacity expansion is a reason for increased imports from Wankai in the recent period, and why the exporter has resorted to absorption of duty during this period. The exporter has clarified in email dated 18<sup>th</sup> July 2024, that Chongqing Wankai is a related company which began manufacturing in 2020 and set up production lines with annual capacities of 12,00,000 MT. Thus, the Authority concludes that the exporter has undertaken capacity expansion post-imposition of anti-dumping duty.
29. In view of the same, the Authority notes that the domestic industry has provided sufficient evidence with regard to special circumstances justifying the application for anti-absorption investigation after the expiry of 2 years from the imposition of anti-dumping duty.

**E.5. Absorption of anti-dumping duty**

30. Rule 29(1) of the Anti-Dumping Rules states as follows:

*“RULE 29. Anti-absorption review. - (1) An anti-dumping duty imposed under section 9A of the Act may be considered to be absorbed when export prices of an article from the exporting country or countries decrease post imposition of the anti-dumping duty without any commensurate change in cost of production of such article or export prices of such article to countries other than India or resale price of such article in India imported from the exporting country or countries.”*

31. The Authority notes that the domestic industry has submitted *prima facie* evidence of a decline in price of imports from Wankai without a commensurate decline in cost of production.
32. The Authority notes that a response has been filed by Wankai New Materials Co. Ltd. As per the evidence on record, Wankai New Materials Co. Ltd. has a related party, namely, Chongqing Wankai New Materials Technology Co., Ltd. which is engaged in production and sales of the product under consideration. However, the related party has failed to file a response in the present investigation. The other interested party have stated that there was no requirement for Chongqing Wankai to file a response in the present investigation as it has not exported the product under consideration directly or indirectly through traders to India and Wankai has not claimed market economy treatment in the present investigation. The Authority notes that the other interested party has stated that Chongqing Wankai is subject to residual duties and the same will prevail post the anti-absorption investigation as well.
33. The Authority further notes that Wankai New Materials Co. Ltd. has submitted that it has made [ \*\*\*MT ] of direct exports to India during the period of investigation. It has further stated that the producer has only made direct exports to India and no exports have been made by related or unrelated entities. The Authority has verified the information from DG Systems data and it is seen that a number of unrelated exporters have exported the material with the description WK-801 which is a grade produced by Wankai. The Authority notes that as per DG Systems data \*\*\*MT of imports have been made directly from Wankai New Materials Co. Ltd., and \*\*\* MT of grade WK-801 has been imported into India from other exporters.
34. Wankai has filed a reply to the deficiencies issued by the Authority. As per the reply by Wankai dated 18<sup>th</sup> July 2024, the producer has stated that it has not sold the product under consideration to any trader that has exported the product to

India. Further, it has stated that WK-801 is a grade used by Wankai for identifying product characteristics. However, WK-801 is not a registered name and is not exclusive brand name of Wankai. The other exporters are free to use the said name for their products as well. Accordingly, the Authority considers only direct exports as reported by the producer in its response to exporter's questionnaire.

35. The Authority notes that PTA and MEG are the major raw material for manufacturing the subject goods. The applicant had provided information as per Trademap data on international prices of PTA and MEG. Based on the information provided by the applicant, it is seen that the prices of both PTA and MEG have declined during the period of investigation as compared to the original period of investigation. The landed price from Wankai has also declined over the said period.

Period	Unit	Landed price	PTA global price	MEG global price	Raw material cost
Oct'18 – Jun'19	US\$/MT	***	1,055	740	1,131
Jan'23 – Sept'23	US\$/MT	***	973	551	999
Change	US\$/MT	(***)	-82	-189	-132
Change	%	(10-20)	-8%	-25%	-12%
Absorption	US\$/MT	***			

*\*Considering consumption of 0.84 units of PTA and 0.33 units of MEG*

36. It is noted that:
- The raw material cost during the original period of investigation was USD \*\*\* per MT and has reduced to USD \*\*\* per MT during the current period of investigation.
  - The raw material cost has declined by \*\*\*% or USD \*\*\* per MT during the current period of investigation as compared to the original period of investigation.
  - The landed price of Wankai has declined by \*\*\*% or USD \*\*\* per MT during the current period of investigation as compared to the original period of investigation.
37. With regard to the submissions that the absorption should be considered in INR and not USD, the Authority notes that the absorption has been determined and quantified in USD in the present investigation. The Authority notes that using INR is not appropriate as exports have been made by Wankai in USD and not INR and Wankai has realised payment from customers in India in USD and not INR. Thus, for the purpose of determination of absorption of anti-dumping duty, the Authority has considered prices in USD.

38. With regard to the submissions that there is a need to make adjustments for change in ratio of product mix, the Authority notes that there were no PCN determined by the Authority in the original investigation. Since the anti-dumping duty for Wankai were determined on the basis of dumping margin and injury margin without considering product mix, there is no basis for considering the same for absorption of such anti-dumping duty in force.

**Determination of dumping margin and injury margin**

39. The Authority notes that in the original investigation, China PR was considered as a non-market economy and accordingly, the normal value for producers from China PR was determined as per provisions under Para 7 and 8 of Annexure I to the Anti-Dumping Rules.

*“7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated Authority in a reasonable manner [keeping in view the level of development of the country concerned and the product in question] and due account shall be taken of any reliable information made available at the time of the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in a similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay of the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*

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

*(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an antidumping investigation by the designated Authority or by the competent Authority of any WTO member country during the three-year period preceding the investigation is a non-market economy country. Provided, however, that the non-market economy country or the concerned firms from*

*such country may rebut such a presumption by providing information and evidence to the designated Authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3)*

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

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

40. The Authority notes that in the original investigation, the normal value for the producers in China PR was determined on the basis of the price payable in India considering the cost of production of the domestic industry, duly adjusted for selling, general and administrative expenses and addition of reasonable profits.
41. Rule 29(2) of the Anti-Dumping Rules states as follows:

*"(2) Where an article subject to anti-dumping duty is imported into India at such price or under such condition which is considered as absorption of the existing anti-dumping duty, and such duty is thereby rendered or maybe rendered ineffective, the designated Authority may, after conducting review, recommend modification in the form or*

*basis of the anti-dumping duty, or the quantum of anti-dumping duty, or both, after reassessing the dumping margin and injury margin and appropriate changes or adjustments in previously determined normal value and injury, if necessary, in accordance with the provisions of rule 10 and Annexure III to these Rules, respectively, may be done”.*

42. In accordance with Rule 29(2), the Authority has considered the normal value previously determined for Wankai New Materials Co., Ltd. and duly adjusted the same for necessary changes. The normal value so determined has been given below:

Particulars	Unit	Amount
Constructed Normal Value as per Original Investigation	\$/MT	***
Adjustments in previously determined normal value	\$/MT	(***)
Adjusted Constructed Normal Value	\$/MT	***

43. The Authority has determined the export price for Wankai based on the direct exports reported by the producer in the response filed. The exporter has claimed adjustment on account of ocean freight, insurance, inland transportation, port and other related expenses, credit cost and bank charges for determination of export price. The export price so determined is mentioned in the dumping margin table below.
44. Considering the normal value and export price for the subject goods, the dumping margin for the subject goods from Wankai has been determined as follows:

Producer	Normal value	Export price	Dumping margin	Dumping margin	Dumping margin
	\$/MT	\$/MT	\$/MT	%	Range
Wankai New Materials Co., Ltd.	***	***	***	***	10-20%

45. The Authority notes that the non-injurious price of the domestic industry was determined in the original investigation on the basis of principles laid down in Anti-Dumping Rules read with Annexure III, as amended. The non-injurious price of the product under consideration was determined by adopting the verified information/data relating to the cost of production for the original period of investigation.

46. In accordance with Section 29(2) of the Anti-Dumping Rules, the Authority has adjusted the non-injurious price of the domestic industry for necessary changes. The Non-Injurious Price determined is given below:

Particulars	Unit	Amount
Non-injurious price as per original investigation	\$/MT	***
Adjustments in previously determined non-injurious price	\$/MT	(***)
Adjusted non-injurious price	\$/MT	***

47. The non-injurious price of the domestic industry so determined has been compared with the landed price of Wankai from the subject country for calculating injury margin.

Producer	Non-injurious price	Landed Price	Injury margin	Injury margin	Injury margin
	\$/MT	\$/MT	\$/MT	%	Range
Wankai New Materials Co., Ltd.	***	***	***	***	0-10%

#### **F. POST DISCLOSURE COMMENTS**

48. The Authority circulated the disclosure statement containing all essential facts under consideration for making the final recommendations to the Central Government, to all interested parties on 5<sup>th</sup> August 2024. The Authority has examined all the post-disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority has not been repeated for the sake of brevity.

##### **F.1. Submissions by other interested parties**

49. The other interested parties reiterated their submissions with regard to the scope of review, provisions of Section 9A(1) versus Rule 29(1), reference to country or countries in Rule 29, imposition of duty on a non-discriminatory basis, reiterated reliance on EC and WTO Antidumping Law, meaning of special circumstances, and excessive confidentiality claimed by the domestic industry. Additionally, the following submissions have been made by interested parties.
- a. The rationale of the decision of the Supreme Court in the case of Bhogilal Chunilal Pandya Vs. The State of Bombay Court has been overlooked. When

an anti-dumping investigation is initiated against a country, anti-absorption investigation can also be initiated only against a country.

- b. Merely because exporters may have different absorption behaviour, the same is not grounds for investigation against selective exporters. As per the spirit of the law, the allegation of absorption may be against only certain exporters, but the investigation has to be initiated against all exporters.
- c. Since normally, the application for absorption of duties would be filed only by the domestic industry, and only in exceptional circumstances by other parties, the provisions of Rule 29(3) are not defeated by interpreting that an anti-absorption investigation can be initiated only against the subject country as a whole. Law cannot be overturned based on remote possibility of difficulty to one party.
- d. The quantum of absorption has not been determined by the Authority.
- e. In an anti-absorption investigation, the level of duty imposed is decided on the basis of lower of the dumping margin and injury margin which is further subject upto the maximum of 100% of the amount of the absorption of anti-dumping duty. Thus, the maximum duty imposed can be limited to twice the present duties.
- f. Increase in imports and increase in capacities can only be examined in mid-term review, and not anti-absorption review which is limited to re-assessment of margins.
- g. Capacity of related producer, Chongqing Wankai, cannot be treated as grounds for absorption by Wankai, particularly when the capacity expansion took place 2 years prior to the imposition of duties, and capacities of Wankai are self-sufficient to cater to the Indian demand. Goods produced by Chongqing Wankai cannot be exported by the producer due to residual duty, and cannot be exported by Wankai due to high freight cost.
- h. Factors affecting export prices, such as change in product mix, CNY/USD exchange rate depreciation and INR/USD exchange rate have not been examined. Mere decline in prices does not constitute absorption, and other factors impacting prices must be examined.
- i. Non-injurious price, landed price and injury margin should be compared in INR. While it has been considered that dumping margin should be seen in USD, since exporter sells the goods in USD; it has been overlooked that the domestic industry and landed price of imports compete in INR.
- j. Since INR has depreciated over the period, the consideration of non-injurious price in USD and adjustment of raw material cost in USD, has resulted in the resultant non-injurious price in INR being higher than that determined in the original investigation.
- k. The correct average exchange rate applicable for the period is ₹ 83.37 / USD, and not ₹ 83.32 per USD.
- l. Wankai has asked for adjustment for product mix only for purpose of absorption, and not for purpose of determination of margins.

- m. Since the exporter first determines whether the price in CNY is appropriate, and then converts the same into USD, the depreciation of CNY vs. USD is relevant to the exporter.
- n. Normal value for China should be determined based on the cost of production of the exporter.
- o. The adjustments made to normal value and non-injurious price have not been disclosed.

## **F.2. Submissions by domestic industry**

50. The domestic industry has reiterated its submissions with regard to scope of review, significant share of exports of Wankai, imports of product bearing grade WK-801, request for rejection of response filed by Wankai, and in public interest. Additionally, the following submissions have been made by interested parties.
- a. The exporter has attempted to mislead the investigation by making a fabricated claim that WK-801 can be produced and sold by other producer/exporter and due to this, the volume of subject imports has increased. The grade is a distinctive mark of Wankai, and the imports have been cleared on payment of duty applicable to Wankai.
  - b. There is an increase in the cost of utilities. If the same is considered, the absorption amount would be higher.
  - c. The normal value and non-injurious price should further be adjusted for increase in cost of utilities.
  - d. There is no provision for termination of anti-absorption investigation on grounds of the absorption amount being too low. The quantum of absorption is not relevant in business and economics as well. Since 85-90% of the total cost is raw material cost, even a small decline in price has a significant adverse impact on the exporters.
  - e. There is no demand-supply gap in the country, and the performance of user industry has improved since imposition of duty. Increase in quantum of duty for only one exporter does not affect availability of the goods.
  - f. Owing to the dumping of imports into India, the capacity utilization of the applicant has declined and the plant operations have been rendered unviable.

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

51. The Authority has examined the post-disclosure submissions made by the domestic industry and the other interested parties and notes that some of the comments are reiterations which have already been examined suitably and addressed adequately in the relevant paras of the final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and the domestic industry and considered relevant by the Authority are examined below.

52. With regard to the contention that the provisions of Section 9A can be interpreted to mean only that an investigation can be initiated only against a country, and not an exporter, it is noted that the Authority had previously initiated a mid-term review against certain exporters, in the case of Aluminium Road Wheels from China. Further, investigating authorities in European Union and Türkiye also initiated an investigation against individual exporters, where certain exporters are found not to be dumping in original investigations. Therefore, the initiation of an investigation against individual exporters has not been found incompatible with the provisions of Customs Tariff Act or Anti-Dumping Agreement in the previous investigations. Accordingly, adoption of the interpretation that an anti-absorption investigation can be initiated against an individual exporter or selective exporters is in compliance with the legal provisions and the practice of the Authority.
53. The Authority considers that, by its very nature, the behaviour of absorption is exporter specific. Once anti-dumping duty is imposed, it is quite likely that some foreign producers resort to absorption, while others do not. Further, even when the original investigation is initiated against a country, the Rules obligate determination of individual dumping margin, which clearly shows that even for original investigation, the Authority is required to determine dumping margin *qua* foreign producers. Similarly, in case of a mid-term review, the Authority can entertain request for review from a particular exporter. The Authority notes in this regard that the behaviour of dumping is exporter specific, and it is for this reason alone that the Rules obligate determination of individual dumping margin. By the same, the behaviour of absorption is producer specific.
54. The fact that it was appropriate to limit the present absorption to individual exporter is established by the very peculiar factual matrix of the present case. DG Systems data shows that 77% of the imports are in the name of Wankai. While Wankai has disputed that its exports are only \*\*\*MT (as per its response) and it is open for other Chinese producers to use Wankai grade name and supply the goods, the domestic industry has contended that these goods have been cleared by payment of anti-dumping duty as was applicable to Wankai. Thus, from absorption point of view, if these exports are considered as exports made by Wankai, then, the present investigation includes 77% of total imports into India. If these exports are not considered as exports made by Wankai, then in any case, these are attracting residual duty and need for absorption investigation against such imports is not established. Even then, the direct exports to India, by Wankai, constitute 49% of the total exports to India, as per DG Systems data.
55. The Authority thus does not find merit in the contention that an investigation should be initiated against all exporters, irrespective of whether certain exporters have engaged in absorption or not. The Authority further notes that such an interpretation would tantamount to a situation wherein the Authority would initiate

an investigation based on weighted average prices. However, in a situation where only certain exporters may be engaged in absorption, the trend of average prices would be misleading, and may show that no absorption has taken place in a situation where indeed one or more exporters might have absorbed duty. This would make the provision ineffective and incapable of addressing its intended objective. The law cannot be read, interpreted and applied in a manner where it defeats the purpose of the law, rather than meeting its objective. Further, if, alternatively, the Authority considers exporter-wise prices, and initiates investigation against all exporters, including those not found to be absorbing duties, such an initiation itself would be without jurisdiction *qua* the exporters not found to be absorbing the duties.

56. The exporter has also contended that the application for initiation of an anti-absorption investigation would normally be initiated based on application by the domestic industry, and thus, the provisions of Rule 29(3) would not be rendered redundant. However, the Authority notes that even if an application is filed by interested parties in certain circumstances, the provisions have to be read in a manner to allow filing of such application. If the provisions are read in a manner to construe that an application can be filed only against all exporters, an exporter would never be able to file an application for initiation of anti-absorption investigation against other exporters, thereby rendering the provisions ineffective. Further, even an importer would not be able to file an application against imports from a particular exporter, as it would imply an investigation into its own imports as well. The exporter had also emphasized that the opinion of eminent authors of EC and WTO Anti-dumping Law, a handbook cannot be brushed aside. The Authority notes that the opinions have not been summarily brushed aside, but have been duly considered by the Authority. However, any opinion of an author is not binding on the Authority, and has only persuasive value. Therefore, the Authority finds that an anti-absorption investigation can be conducted against a country, individual or selective exporters, depending on facts & circumstances of each case.
57. Contrary to the submissions of the exporter, the Authority has quantified the extent of absorption in the disclosure statement. The Authority notes that it had already disclosed the change in raw material cost, while the landed price was based on the information submitted by the exporter. The landed price considered and the calculation of the quantum of absorption was disclosed to the exporter as well, and the exporter was allowed an opportunity to offer comments.
58. With regard to the contention that the quantum of duty can be limited only to twice the original amount of duty, the Authority notes that the interpretation exceeds the specific legal provision. The Rules clearly require the Authority to determine and recommend modification in the form or basis of the anti-dumping duty, or the quantum of anti-dumping duty, or both, after reassessing the dumping margin and

injury margin and appropriate changes or adjustments in previously determined normal value and injury margin. Thus, the Rules clearly require the Authority to reassess the dumping margin and injury margin. Once the Authority has reassessed dumping margin and injury margin, it follows that lower of such dumping margin and injury margin shall become the duty. The Rules do not provide that the Authority should restrict the new anti-dumping duty to the twice the amount of anti-dumping duty earlier applicable.

59. The exporter has also contended that increase in imports and increase in capacities can only be examined in a mid-term review and not anti-absorption investigation. The Authority considers that the two parameters have not been examined to quantify existence of amount of absorption, but have been examined to evaluate whether special circumstances exist to justify acceptance of application post the expiry of two years from the date of imposition of duty.
60. With regard to the contention that the capacity of the related producer, Chongqing Wankai, cannot be treated as grounds for absorption by Wankai, the Authority notes that the increase in capacity by a related producer implies that the total capacity of the two affiliated companies has increased cumulatively. While Chongqing Wankai cannot increase its direct exports to India, being subject to residual duties, the availability of increased capacities with the affiliate implies that such capacities can be utilized to cater to other markets, while capacities of Wankai can be used to increase exports to India. Further, irrespective of the period in which the capacity increased, the volume may show an increase in a subsequent period. The imports from Wankai have shown an increase in the recent period. Wankai has given no explanation for such a significant increase in export volumes and how the exporter has been able to enhance the same on its own without disturbing or distributing its existing business with other Group company.
61. The Authority notes that on one hand, the exporter has conceded that product mix is not required to be considered for determination of dumping margin and injury margin, and on the other hand, it requested for it to be considered for absorption of duties. The same is clearly contradictory, inasmuch as different parameters cannot be applied for decline in export price, and for determination of margins.
62. Further, as stated above, the anti-dumping duty for Wankai were determined on the basis of dumping margin and injury margin without considering product mix. Where the exporter did not contend for consideration of product mix in determination of export price in the original investigation, there is no basis for considering the same for examining absorption of the anti-dumping duty imposed based on such export price in the present investigation.

63. With regard to the contention that decline in export price was on account of depreciation of CNY, the Authority notes that the exporter has provided no evidence to show that it quotes the prices, after consideration of the realization in CNY. On the contrary, from the evidence on record, it appears that all transactions with importers in India are quoted in USD, implying that prices are negotiated in USD. Further, the exporter has also not provided any cogent evidence demonstrating the impact of depreciation of CNY on the export price. It is not sufficient for the exporter to merely cite depreciation of CNY, without providing evidence of the same, or impact thereof on the export price. Moreover, if the exporter considers that the prices should be considered in CNY, then the cost of production is also required to be considered in CNY. It is not possible that while the decline in export price is examined in CNY, the raw material cost is examined in USD, as such an examination would render the figures incomparable. Further, if the exporter is evaluating realizations in CNY, it would naturally be evaluating procurements also in CNY. The Authority notes that the USD/CNY rate was 0.1465 in the original period of investigation, whereas the same is now 0.1412. Consideration of the same provides the trend of landed price and raw material cost as below and would continue to show absorption.

Period	Unit	Landed price	Raw material cost
Oct'18 – Jun'19	CNY/MT	***	***
Jan'23 – Sept'23	CNY/MT	***	***
Change	CNY/MT	(***)	(***)
Change	%	(10-20)%	(0-10)%
Absorption	CNY/MT	(***)	

64. With regard to the depreciation of INR, the same has absolutely no relevance to the determination of absorption. The exporter has itself conceded that it quotes the price in USD, or evaluates the same in CNY. There is no consideration of the prices in INR, while quoting prices. The price charged by the exporter is in USD. Therefore, the absorption has been correctly evaluated in USD.
65. Wankai has further contended that the non-injurious price should be considered in INR, and the landed price should also be compared in INR for determination of injury margin since the competition in Indian market is in INR. The Authority notes that non-injurious price was actually calculated in INR. Thereafter, the non-injurious price, as calculated in INR, converted into USD. The difference between the two has been considered as the decline on account of raw material cost.
66. The Authority has re-examined the exchange rate considered and found that the exchange rate has been correctly considered as 83.32. It is also noted that the exporter has provided no evidence to support the exchange rate stated by the

exporter. The Authority has considered exchange rate on the basis of exchange rates declared by the Customs authorities.

67. With regard to the contention that the Authority has not determined the normal value based on the cost of production of the exporter, it is noted that no market economy treatment has been claimed by the exporter in the present or the original investigation. Therefore, the normal value has been determined in accordance with the provisions of paragraph 7 of Annexure – I in the original investigation. The same has been duly adjusted by the Authority in the present investigation.
68. The exporter has contended that the adjustments made to normal value and non-injurious price have not been disclosed. The Authority notes that the disclosure statement clearly shows that the Authority has considered that there is a change in cost of raw material of the subject goods. Therefore, the adjustment is limited to the change in raw material cost.
69. With regard to the argument that the Authority was required to examine whether there were special circumstances which prevented the domestic industry from filing the application, the Authority notes that the requirement of special circumstances stated by the exporter does not emanate from the provisions of the Anti-Dumping Rules. The Rules merely require that the application should normally be filed within a period of 2 years from the date of imposition of duty. The Authority may, in special circumstances, for reasons to be recorded in writing, accept an application after the expiry of the period of 2 years. Such provisions could not be construed to mean that an application may be accepted after expiry of 2 years only where the special circumstances resulted in the domestic industry being prevented from filing an application earlier. Rather, the provision would appropriately be interpreted to imply that where, based on facts and circumstances, the need for modification of duty arose after the expiry of the period of 2 years, the Authority may accept such application.
70. The domestic industry has emphasized that Wankai has misrepresented that the exports by other exporters, labelled as WK-801 are not goods produced by Wankai. The domestic industry has also highlighted that such goods have been cleared on payment of duties applicable to Wankai. However, the exporter has disputed the same. But Wankai has claimed that the goods have not been produced by them. The Authority notes that collection of anti-dumping duty based on the individual duty margin allowed is beyond the scope of the present investigation or Director General. It is for the Customs authorities to determine correct quantum of duty and charge the same. DGTR is not the appropriate forum in this regard.

71. As regards the contention that the cost of increase in utilities should also be adjusted, the Authority notes that the claim by the domestic industry is belated. The domestic industry has requested for such adjustment post issuance of the disclosure statement. At this stage, it is not possible for the Authority to verify the claims of the domestic industry. Therefore, the Authority does not find it appropriate to make such an adjustment.
72. With regard to the contention of the exporter that non-injurious price as well as normal value should be disclosed to it in order to make appropriate submissions, the Authority notes that normal value determined by the Authority is based on confidential business proprietary data of the domestic industry. Similarly, the non-injurious price of the domestic industry is business confidential information disclosure of which will have significant adverse impact on the domestic industry. Accordingly, both non-injurious price and constructed normal value are not being disclosed in the present investigation.
73. The domestic industry has also made detailed submissions with regard to public interest. However, the Authority finds that the imposition of duty was already found to be in public interest. In such a situation, modification in quantum of duty to offset the absorption of existing anti-dumping duty imposed would not be contrary to public interest. The Authority further notes that there is no demand-supply gap in the country. There is sufficient competition in the domestic market to ensure that the goods are available to customers at competitive prices. Further, none of the users have opposed the proposed modification in the duties in the anti-absorption investigation.

**G. CONCLUSIONS AND RECOMMENDATIONS**

74. After examining the submissions made by all the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes as below.
  - a. The application for initiation of anti-absorption investigation was filed by IVL Dhunseri Petrochem Industries Private Limited and Reliance Industries Limited as domestic producers of the subject goods.
  - b. The scope of product under consideration is the same as that in the original investigation, that is, "virgin polyethene terephthalate (PET) resin", defined as polyethene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher.
  - c. None of the interested parties, including the present exporter, sought differentiation in the grade supplied by the said exporter at the time of original investigation and grades sold by other suppliers. It is inappropriate for the exporter to now contend that it has supplied a grade different from what was sold at the time of original investigation.

- d. The application was filed and investigation was initiated to examine whether Wankai New Materials Co., Ltd. has engaged in absorption of anti-dumping duty imposed, and if so, to re-quantify the amount of anti-dumping duty after reassessment of normal value and non-injurious price.
- e. The law does not require that an investigation for absorption of duties be initiated only against the subject country as a whole, and it cannot be initiated against an individual exporter engaged in such absorption. An anti absorption investigation can be initiated either against one or limited exporters, or exporting country as a whole. In a situation where the applicant sought investigation only for one company from China, there is no reason for initiating investigation against entire country. Further, on fact, it was found that about 49% of imports in the present period are by the said exporter, thus establishing appropriateness of limiting investigation only to the said exporter.
- f. There were sufficient special circumstances warranting acceptance of application after expiry of a period of 2 years from the date of imposition of duty. These special circumstances are established by the enhancement of capacities of an affiliate of Wankai and increase in exports by Wankai.
- g. The Authority has considered only the direct exports, as reported in the response filed by Wankai New Materials Co., Ltd., for examination of absorption of duty. The Authority considers that the fact that there are significant imports into India, which were described using grade name of the present exporter does not in itself justify inclusion of those exports, particularly when the responding exporter has denied and submitted that these were not their exports. The Authority considers that possible under payment of anti-dumping duty by declaring exports with the description of grade name of the present exporter is beyond the scope and jurisdiction of the DGTR. The domestic industry has other remedy available to it in accordance with various laws in the country.
- h. While the raw material cost of the product has declined, the decline in the export price of exports by the said exporter is higher.
- i. The previously determined normal value and non-injurious price have been appropriately adjusted, for comparison to export price and landed price respectively.
- j. The dumping margin and injury margin determined for the exporter are higher than that determined in the previous investigation.
- k. The domestic industry contended that whereas raw material costs had declined, the utilities costs had increased, thus showing higher degree of absorption. The Authority has however not accepted the said contention, being significantly belated.
- l. The rules require the Authority to reassess the normal value and non-injurious price, and thereafter compute the new dumping margin and injury margin in order to quantify the fresh amount of anti-dumping duty that should be imposed. The same has been done by the Authority.

- m. The facts on record clearly establish that the anti-dumping duty in force has been absorbed by the said exporter by reducing the price. The said price reduction is more than what is justified by the decline in costs on account of raw materials.
75. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of absorption. Having initiated and conducted the investigation into absorption of duty by Wankai New Materials Co., Ltd., in terms of the provisions laid down under the Anti-dumping Rules, the Authority is of the view that modification of anti-dumping duty applicable on Wankai New Materials Co., Ltd. is required. Therefore, the Authority recommends modification of anti-dumping duty on imports of the subject goods from the subject country by Wankai New Materials Co., Ltd.
76. The Authority recommends modification of the quantum of duty imposed on imports of the subject goods originating or exported from China PR vide Final Findings Notification No. 6/24/2019-DGTR dated 28<sup>th</sup> December 2020 and Notification No. 18/2021 – Customs (ADD) dated 27<sup>th</sup> March 2021, as below. Having regard to the lesser duty rule, the Authority recommends modification of definitive antidumping duty based on lesser of margin of dumping and margin of injury, in respect of the exporter subject to the present investigation. As regards exporters not subject to the present investigation, the anti-dumping duty imposed earlier would continue. Accordingly, the definitive anti-dumping duties on the import of the subject goods, originating in or exported from China PR, incorporating the above recommendation of the Authority in the instant anti-absorption investigation, shall be as indicated in Col 7 of the duty table below. Such duties shall continue for a period of five years from the date of issuance of Notification No. 18/2021 – Customs (ADD) dated 27<sup>th</sup> March 2021.

**Duty table**

S.N.	Heading	Description	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Non-Confidential

1	39076190 and 39076990	“Polyethylene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher”	China PR	China PR	Jiangyin Chengold Packaging Materials Co., Ltd. / China Prosperity (Jiangyin) Petrochemical Co., Ltd	146.11	MT	USD
2	39076190 and 39076990	“Polyethylene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher”	China PR	China PR	Wankai New Materials Co. Ltd.	40.41	MT	USD
3	39076190 and 39076990	“Polyethylene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher”	China PR	China PR	Jiangsu Xingye Plastic Co. Ltd. / Jiangyin Xingyu New Material Co. Ltd. / Jiangsu Sanfame International Trade Co. Ltd.	60.92	MT	USD

4	39076190 and 39076990	“Polyethylene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher”	China PR	China PR	Any producer other than producers mentioned at serial numbers 1, 2 and 3 Above	200.66	MT	USD
5	39076190 and 39076990	“Polyethylene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher”	China PR	Any country other than China PR	Any	200.66	MT	USD
6	39076190 and 39076990	“Polyethylene terephthalate resin having an intrinsic viscosity of 0.72 decilitres per gram or higher”	Any Country other than China PR	China PR	Any	200.66	MT	USD

\* *Bottle-grade PET resin, excluding recycled PET resin*

#### H. FURTHER PROCEDURE

77. An appeal against the determination of the Designated Authority in these final findings shall lie before the Custom, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act/Rules.

  
Anant Swarup

(Designated Authority)