

**F. No. 6/9/2019-DGTR  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
Directorate General of Trade Remedies  
Jeevan Tara Building, Parliament Street, New Delhi.**

Dated 17<sup>th</sup> June, 2020

**NOTIFICATION**

**CASE NO: ADD-OI 7/2019**

**FINAL FINDINGS**

**Subject: Final Findings in anti-dumping investigation concerning imports of Coated/Plated Tin Mill Flat Rolled Steel Products originating in or exported from the European Union, Japan, USA and Korea RP.**

**A. BACKGROUND OF THE CASE**

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:

1. M/s. JSW Vallabh Tinplate Private Limited (hereinafter also referred to as "JSW Vallabh") and M/s. The Tinplate Company of India Limited (hereinafter also referred to as "TCIL") (hereinafter also collectively referred to as the "Domestic Industry" or "Applicants") have filed an application before the Designated Authority (hereinafter also referred to as the "Authority") in accordance with the Act and the Rules for imposition of Anti-dumping duty on imports of "Coated/Plated Tin Mill Flat Rolled Steel Products" ( hereinafter referred to as the "product under consideration" or "PUC" or "subject goods"), originating in or exported from European Union, Japan, USA and Korea RP (hereinafter also referred to as the "subject countries").

2. The Authority, on the basis of prima facie evidence submitted by the Applicants, issued a public notice vide Notification No. 6/9/2019 -DGTR dated 28th June, 2019, published in the Gazette of India, initiating the subject investigation in accordance with Rule 5 of the Rules to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject countries, and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

## **B. PROCEDURE**

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:

- a) The Authority notified the Embassies of the Subject Countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
- b) The Authority issued a public notice dated 28<sup>th</sup> June 2019 published in the Gazette of India Extraordinary, initiating the anti-dumping investigation concerning imports of the subject goods.
- c) The Authority sent a copy of the initiation notification to the Embassies of the Subject Countries in India, known producers/exporters from the subject Countries, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the Applicants and requested them to make their views known in writing within 40 days of the initiation notification.
- d) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of the subject countries in India in accordance with Rule 6(3) of the Rules supra.
- e) The Embassies of the subject countries in India were also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
- f) The Authority sent Exporters questionnaires to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the Rules:

### European Union

1. ArcelorMittal Belgium
2. ArcelorMittal France
3. ThyssenKrupp Rasselstein
4. ArcelorMittal Spain
5. Nicomet Tinplate

### USA

1. Ohio Coatings Company
2. US Steel
3. ArcelorMittal Weirton

4. USS Posco

Japan

1. JFE Steel Corporation
2. Nippon Steel Corporation
3. Toyo Kohan Co. Ltd.

Korea

1. Dongbu Steel Co. Ltd.
2. POSCO
3. TCC Steel

g) In response, the following exporters/producers from the subject countries filed exporter's questionnaire response:

1. JFE Steel Corporation, Japan
2. JFE Shoji Trade Corporation, Japan
3. Metal One Corporation, Japan
4. Marubeni Itochu Steel (MI Steel), Japan
5. Nippon Steel Corporation, Japan
6. Nippon Steel Trading Corporation, Japan
7. Ohmi Industries Limited, Japan
8. Tetsusho Kayaba Corporation, Japan
9. Toyto Tsusho Corporation, Japan
10. American International Corporation, USA
11. Ferreum NV, Belgium (EU)

h) The Authority sent Importer's/User's Questionnaires to the following known importers/users of product under consideration in India calling for necessary information in accordance with Rule 6(4) of the Rules:

1. M/s. Shri Ram Impex (India) Pvt. Ltd.
2. Zarhak Steels Pvt. Limited
3. Shetron Limited
4. GP Global Energy Pvt. Limited
5. M/s. New Gujarat Tin Circle Depot Pvt. Ltd.
6. Oriental Containers Limited
7. Modern Packaging
8. Hi-Can Indsl. Pvt. Ltd.
9. Hindustan Tin Works Ltd.
10. Carter Containers Co. Pvt. Ltd.
11. Bharat Containers Pvt. Ltd.
12. Asian Containers
13. Standard Retail Pvt. Ltd.
14. Kaira Can Company Ltd.
15. Cans Manufacturing Co.



16. Shiriniwas Tin Industries
  17. Zenith Tins Pvt. Ltd.
  18. Petrox Packaging (I) Pvt. Ltd.
  19. Mamram Ltd.
- i) In response, the following importers/users have responded and filed importer's questionnaire response:
1. Hindustan Tin Works Limited
  2. Oricon Enterprises Limited
  3. Asian Containers
  4. Kaira Can Company Limited
  5. Mercury Industries Limited
- j) The Association of Tinplate Users also made submissions during the course of the investigation which have been incorporated and duly addressed in these Final Findings.
- k) The Authority made available non-confidential version of the evidences presented by various interested parties in the form of a public file for the inspection by interested parties.
- l) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of product under consideration for the past three years, and the period of investigation. The same was provided by DGCI&S to the Authority. The Authority has relied upon the DGCI&S transaction-wise data for computation of the volume of imports and other relevant analysis.
- m) The Non-Injurious Price (NIP) has been determined based on the cost of production and cost to make & sell the product under consideration in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- n) Physical inspection through on-spot verification of the information provided by the Applicants, 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.
- o) Verification of the information provided by the producers/exporters, to the extent deemed necessary, was carried out by the Authority and has been relied upon for the purpose of present final findings.
- p) The Period of Investigation for the purpose of the present anti-dumping investigation is from 1st January 2018 to 31st December 2018 (12 Months). The injury investigation



period has however, been considered as the period from April 2015-March 2016, April 2016-March 2017, April 2017-March 2018 and the POI.

- q) In accordance with Rule 6(6) of the Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 11th October 2019. Subsequently, another oral hearing was held on 6th December 2019 on account of change of the Designated Authority. All the parties who had attended the oral hearing were provided an opportunity to file written submissions, followed by rejoinders, if any.
- r) The arguments made in the written submissions/rejoinders received from the interested parties have been considered in the present Final Findings.
- s) The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority in these Final Findings.
- t) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- u) Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the Final Findings on the basis of the facts available.
- v) In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 8<sup>th</sup> May 2020 and comments received thereon, considered relevant by the Authority, have been addressed in the Final Findings. The original deadline for filing comments on the disclosure statement was 15<sup>th</sup> May 2020 which was extended till 23<sup>rd</sup> May 2020 on the request of the interested parties. The interested parties were granted 15 days to file comments on the disclosure statement. The Authority notes that most of the post-disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post-disclosure submissions to the extent considered relevant are being examined in these Final Findings.
- w) \*\*\* in this Final Findings represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- x) The exchange rate adopted by the Authority for the subject investigation is US\$ 1 = ₹69.02.

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

4. The product under consideration ("PUC") in the present investigation is tin mill flat rolled steel products that are coated or plated with tin or chromium / chromium oxides, either on one side or both sides, whether lacquered and/or printed or not. Tin mill flat rolled steel products include Tinplate as well as Tin-free steel, which is also known as Electrolytic Tin Plate (ETP) or Tin Free Steel (TFS) or Electrolytic Chromium Coated Steel (ECCS). The product under consideration may be supplied in coil form or sheets / scrolls. The sheets / scrolls may be supplied in various shapes including, but not limited to, square, rectangle, circle or any other shape, with or without blanking.

5. The product under consideration is generally used for versatile packaging solutions including, but not limited to food packaging, i.e. edible oil, processed food, fruits, vegetables, beverages, etc. as well as used for non-food packaging, i.e. paints, chemicals, non-edible oil, geometry/compass box, shoe polish, aerosol sprays, batteries, etc

#### **C.1. Submissions made by the Domestic Industry**

6. The submissions made by the domestic industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:

- a) The PUC in the present investigation is *"Tin mill flat rolled steel products that are coated or plated with tin or chromium / chromium oxides, either on one side or both sides, whether lacquered and/or printed or not. Tin mill flat rolled steel products include Tinplate as well as Tin-free steel, which is also known as Electrolytic Tin Plate (ETP), Tin Free Steel (TFS), Electrolytic Chromium Coated Steel (ECCS). The product under consideration may be supplied in coil form or sheets / scrolls. The sheets / scrolls may be supplied in various shapes including, but not limited to, square, rectangle, circle or any other shape, with or without blanking."*
- b) The product under consideration is classified under tariff item 72101110, 72101190, 72101210, 72101290, 72105000, 72109010, 72121010, 72121090, 72125020, 72125090 and 72259900 of the Customs Tariff Act, 1975. However, imports of the PUC have also been observed in certain other HS codes viz. 72109090, 72107000, 72103090, 72255010, 72124000 of the Act.
- c) It has been the consistent practice of the Authority to include both prime and non-prime goods in the scope of the product under consideration, particularly in investigations covering steel products, and not make any distinction between them based on their quality.
- d) There are a number of findings of the authority wherein both prime and non-prime products have been covered within the scope of PUC. In the following investigations, both prime and non-prime quality goods were included within the scope of the PUC:



Investigation	PUC Defined
Anti-dumping investigation concerning imports of “Cold-Rolled flat products of alloy or non-alloy steel” originating in or exported from China PR, Japan, Korea RP and Ukraine-reg	<i>“The PUC includes cold rolled / cold reduced flat steel products in coils or not in coils including slit coils or sheets, blanks whether or not annealed or box annealed or batch annealed or continuously annealed or any other annealing process or full hard or partially hard. <b>The product concerned covers cold-rolled / cold-reduced flat steel products conforming to prime or non-prime quality whether or not rolled [..]</b>”</i>
Anti-dumping investigation concerning imports of “Wire Rod of Alloy or Non-Alloy Steel” originating in or exported from China PR-reg.	<i>“The product under consideration in the present investigation is bars and rods, hot rolled, in irregularly wound coils, of iron or non-alloy steel or alloy steel (commonly known as “Wire Rods”). <b>These products are of prime and non-prime category and are in all sizes.</b> These products conform to various qualities of steels including but not limited to electrode, free cutting, forging, cold heading, low / medium / high carbon steels, drawing, ball bearing steel, case hardening steel, spring steel, corrosion resistant steel, weathering steel, structural steel and many more qualities of steel. [...]”</i>
Anti-Dumping Investigation concerning import of Hot Rolled Flat Products of Stainless Steel 304 series from the People’s Republic of China, the Republic of Korea, and Malaysia.	<i>“Hot Rolled austenitic stainless steel flat products; whether or not plates, sheets or coils (hot rolled Annealed and pickled or Black) of rectangular shape; of grade either 304 or 304H or 304L or 304N or 304LN or EN 1.4311, EN 1.4301, EN1.4307 or X5CRNI1810 or X04Cr19Ni9, or equivalents thereof in any other standards such as UNS, DIN, JIS, BIS, EN, etc.; whether or not with number one or Black finish; <b>whether or not of quality prime or non-prime</b>; whether or not of edge condition with mill edge or trim edge; of thickness in the range of 1.2mm to 10.5mm in Coils and 3mm to 105mm in Plates &amp; Sheets; of all widths up to 1650mm(width tolerance of + 20mm for mill edge and + 5mm for trim edge).”</i>

- e) In fact, in the *Anti-Dumping Investigation concerning import of Hot Rolled Flat Products of Stainless Steel 304 series from the People’s Republic of China, the Republic of Korea, and Malaysia*, the Authority observed:

*"The interested parties have argued that non-prime materials should be excluded from the PUC. The Authority notes that in the production process both prime and non-prime materials are produced universally and are sold as such. They are used as substitutable products by users in many areas of usage. The cost of production of prime and non-prime goods is not different though the non-prime may be sold at a different price. All the previous investigations conducted, including the safeguard investigation, did not distinguish product on the basis of prime and non-prime nature of the products. Therefore, the Authority does not find any merit in the arguments of the interested parties in this regard."*

- f) Anti-dumping investigations concerning "Nylon Filament Yarn (Multi Filament) originating in or exported from European Union and Vietnam" and "PVC Suspensions Resin from European Union (EU) and Mexico" the Authority held that second-grade/off-grade products cannot be excluded from the scope of the PUC since they are not different in terms of physical characteristics, manufacturing process, raw materials, functions, usage, cost of production, and tariff classification.
- g) The non-prime products imported into India are competing with the prime products offered by the domestic industry and are displacing the prime products offered by the domestic industry. It has been acknowledged by the Association of Tin-Plate Users in one of its submissions that both prime and non-prime products are substitutable for the same end use applications.
- h) Non-prime products are merely those products which have not been able to meet the customers' requirement in the manufacturing process and are therefore classified in various nomenclature such as waste, seconds, defective, non-prime. etc. Non-prime tin plates also comprise of prime overrun. In fact, it has been admitted in the submissions made by various interested parties that imported non-prime material is equally good in quality as the domestically supplied prime material.
- i) There is no difference in the physical and technical characteristics, manufacturing process, raw materials, functions, usage, cost of production, and tariff classification between prime and non-prime products of the subject goods. Exclusion of non-prime goods would not present the correct situation of the imports of product under consideration and consequent injury caused to the domestic industry.
- j) Food Safety and Standards Authority of India (FSSAI) has mandated quality conformity for food packaging in Food Safety and Standards (Packaging) Regulations, 2018. Clause 7.5.1 of IS 1993:2018 and IS 12591:2018 allow supply of material with surface imperfections and even damage that renders the material unsuitable for intended use subject to a special agreement between the users and producers. Given this exception, even non-prime PUC is being used even in food packaging applications.



- k) Importers/users using non-prime imported products are also buying prime products from the domestic industry. This further substantiates the fact that there is no tangible difference between prime and non-prime products and both of them are directly substitutable.
- l) Exclusions have also been requested of certain grades from the scope of PUC on the ground that the DI does not have the capacity to produce such grades and therefore the same should be excluded.
- m) For granting any exclusion from the scope of PUC, the Authority needs to verify the following:
- Whether the product/grade for which exclusion is being sought has been imported into India in commercial quantities by the parties seeking exclusion;
  - Whether there is any actual end use application of the product/grade for which exclusion is being sought or the exclusion is being sought only for creating a way for future circumvention; and
  - Whether interested parties have placed any orders on the domestic industry for the products/grades for which exclusion is being sought and whether the domestic industry has shown inability to supply the same.
- n) The interested parties who are seeking exclusions from the scope of PUC have not satisfied any of the three standards and have provided no evidence for any of their claims.
- o) The product scope submitted in the Application only covers products that are either produced by the Applicants or can substitute their product range as a like product. It is submitted that all the exclusions from the PUC requested by the interested parties are either produced by the domestic industry or have not been produced merely because no orders have been placed due to lack of demand in the Indian market:

<b>Products/Grade Requested to be Excluded</b>	<b>DI's Status on the Production of the Grade</b>
Double Reduced tinplate of thicknesses below 0.15 mm and above 0.21 mm	DI produces these grades. Relevant documents have been submitted to the Authority.
Soft double reduced tinplate of thickness below 0.18 mm and above 0.23 mm	DI produces these grades. Relevant documents have been submitted to the Authority.

Tinplate with bright finish surface	DI produces this grade. Relevant documents have been submitted to the Authority.
Tinplate with coating exceeding 11.2 gm/Sqm	DI produces this grade. Relevant documents have been submitted to the Authority.
Tinplate with width exceeding 1020 mm	DI produces this grade. Relevant documents have been submitted to the Authority.
Tinplate with width below 700 mm	DI produces this grade. Relevant documents have been submitted to the Authority.
Tin-Free Steel/Electrolytic tinplate	DI produces this grade. Relevant documents have been submitted to the Authority.
Polymer Laminated tinplate that are Bisphenol-A / BPA Free	Neither have any orders have been placed for the same on DI, nor have any imports been made for the same. There is no demand in India for the same.
Chromium-free tinplate	Neither have any orders have been placed for the same on DI, nor have any imports been made for the same. There is no demand in India for the same.

- p) Japanese producers have provided technical specifications in confidential version. Such specifications have not been provided in a non-confidential version in order to enable the domestic industry to comment on the same.
- q) The Authority must not exclude grades which may enable the importers to circumvent the duties in the future.
- r) It has been the consistent practice of the Authority not to grant an exclusion from the scope of the product under consideration unless it is demonstrated that the product for which exclusion is being sought has actually been imported by the person seeking exclusion. This position was taken in the final findings of the anti-dumping investigation concerning “*Aluminium Foil originating in or exported from China PR*”. This was further affirmed by the Hon’ble CESTAT in the case of *G.M. Alloys Pvt. Ltd. & Ors. v. Union of India*, where the Hon’ble CESTAT did not find any reason to interfere with the findings of the Authority.
- s) Without any actual imports of materials for which exclusion requests are being made by importers, it is submitted that the said interested parties do not have any locus standi for making a request for exclusion of a given grade from the scope of the PUC.

## **C.2. Submissions made by the other interested parties**



7. The submissions made by the exporters, importers, users and other interested parties with regard to product under consideration and like article, and considered relevant by the Authority, are as follows:

- a) The product scope identified by the initiation notification is “tin mill flat rolled steel products that are coated or plated with tin or chromium / chromium oxides, either on one side or both sides, whether lacquered and/or printed or not”.
- b) It is an admitted fact that the prime and non-prime material of the product under consideration are commercially different products having different costs, selling price and applications. Therefore, the comparison of prime and non-prime product is not possible.
- c) The domestic industry has tried to mislead the authority by hiding the fact that the majority of imports happening in India are non-prime waste category which is supposed to be cheaper than regular grade subject goods. There are evidences which indicate that the import of the product under consideration from subject countries majorly comprises of non-prime/waste material. In such a scenario, the price comparison and subsequent injury information, cannot be considered as representative of true market condition in India.
- d) It is submitted that, there are two broad categories of products in the primary sector of the PUC: (i) Products manufactured to standard specifications, and (ii) tailor-made products manufactured to customer-specific requirements. The products exported to India fall under the second category i.e. tailor-made products. Some manufacturers in India specifically use said tailor-made products for export- oriented manufacturing. Domestic Industry's products fall under the first category i.e. products manufactured to general industry standards. Upon comparing the technical and commercial parameters concerning domestic and imported products, it is evident that there is a case for exclusion of certain grades in the present investigation.
- e) In the process of making tinplate for specific end uses, many a times products don't meet the stringent requirements of the customers. However, this material is perfectly suitable for other end uses, and are sold as 'Non- Prime' products. Such materials are in mixed specifications and have to be adapted to applications. Non-Prime products cater to users who can afford to be more flexible with the specifications of the product and are able to create the end-products based on the material available at their disposal.
- f) There is a perfect market for such non-prime materials to be sold through tenders or auctions regularly by the Mills. The buyers of such materials generally produce low volume products. These are generally niche and less sophisticated products, which are very essential and support many other small industries. Such manufacturers are labour intensive and employ people with skills-sets suitable for producing products by using Non-prime Tinplate.

- g) Non-prime material is used to manufacture low end products such as calendar strips, geometric box, shoe polish box, kajal box, lantern, lamps, hair clips, stamp pads, curtain rings, file clips, metal cans and can components, auto ancillary parts, paper clips, agarbatti stands, Puja items, stencils, imitation jewellery, washers for various uses, etc.
- h) It may be noted that nearly half of the consumption of tinplate in India is of non-critical use which is not the case as of any other steel products. Such non-critical products which are mainly produced by the small and cottage industries, are found all over India and do not require Prime Tinplate for the desired end use and applications.
- i) These industries use the Non-Prime Grade Tin Mill Flat Rolled Steel which is produced during the manufacturing of prime grade Tin Mill Flat Rolled Steel. The steel being off grade are available in said countries to various suppliers, through bidding. These suppliers supply it to these small enterprises which is further supplied to small industries at competitive prices.
- j) The Applicants admit that there are two segments of product i.e. prime and non-prime. TCIL clearly states in its annual report for the year 2018-19 that it holds 68% prime tinplate domestic market share. If there were no difference between prime and non-prime products, there would be no requirement to make such a distinction in their Annual Report.
- k) The Chart provided as Attachment-II of the Written Submissions filed by the Association is merely a synopsis of the domestic user industry. However, the same has been incorrectly read by the Applicants to mean that both prime and non-prime products are used by the user industry and thereby both are imported. Applicants have ignored that the procurement is 'mostly indigenous' i.e. procured from the domestic industry and is not affected by imports.
- l) Non-prime products from Europe and USA, are not sold directly by the producers in the subject countries. They are sold in market on auction/tender basis. The exporters collect the winning from the mills in a warehouse and then sell in various markets including domestic markets. Hence, the exporters are unable to provide data of individual purchases for the material being supplied. They are breaking bulk (like wholesalers do while selling to retailers). Consolidated material won over the period of auctions are sold to the highest price paying buyer/ market. The price is comparatively lower than Prime because the specifications are different. The buyers are generally small units and have to compromise on size, thickness, specification, finish and have limited applications.
- m) China is not present in this anti-dumping investigation. This is because China rarely exports non-prime products as they are used within China especially in less developed provinces.



- n) There is no direct competition between the Applicants' products and a majority of Japanese exports – which, at the outset, should be a sufficient ground to establish that the products exported by the Japanese Mills cannot cause or threaten to cause injury to the Applicants.
- o) Prime and Non-prime products are completely different and cannot be used interchangeably. Prime Tinplate, when ordered as per clause 6 of IS 1993 of 2018 and ISO 11949: 2016, requires information to be provided by the purchaser to the supplier. The standard makes it mandatory under Clause 6.2(g) to provide the end use. Note to clause 6.2 mentions that the appropriate steel selection is dependent on the shaping operations such as stamping drawing, folding, beading and bending and assembly work such as joint forming, soldering or welding. Under clause 6.3, the manufacturer is to be provided with information, which makes the order requirement consistent with the end use of the product. Importance is given to the fabrication operation as these are becoming very critical with sophisticated manufacturing operations.
- p) More than 90% of the imports of the PUC are composed of Non- Prime tinplate and Tin free steel. Almost all imports from USA and EU are non- prime. So, a wrong comparison is being made between Prime products of domestic mills and imported non-prime prices.
- q) Prime tinplate is for food application and for use in high speed production lines.
- r) India is a natural choice of non-prime tinplate.
- s) Manufacturers of quality tin cans and components import 50% of their raw material prime tin plate from Nippon Steel in Japan. Despite the higher prices of Nippon Tin plate as compared to domestic prices, tin plate is imported from Japan, and not procured domestically, because of superior quality and timely delivery of goods.
- t) The Association of Tinplate Users categorically supports FSSAI and BIS standards pertaining to tinplate used for food, food additives and medicinal applications.
- u) The DGTR Manual of Operating Practices for Trade Remedy Investigations notes that the PUC should include those products which are produced and commercially sold by the domestic industry. The Japanese Mills submit that the present product scope includes products which are not being commercially produced and manufactured by the Applicants. Accordingly, the said products not produced and commercially sold by the Applicants ought to be outside the scope of PUC.
- v) The Designated Authority in previous investigations has consistently relied upon certain critical parameters while determining likeness between the imported product from subject countries and the domestic industry's product. Such critical parameters are: Physical and chemical characteristics; Product specifications; Manufacturing process and production technology including plant and equipment; Functions and End-

uses; End-user requirement; End-user perception; Distribution and marketing; Technical and commercial substitutability.

- w) Particularly, in one of the past investigations, the Designated Authority has, in fact, specifically excluded certain grades from the scope of investigation as the domestic industry did not show sufficient evidence to prove that they supplied such grades in the period of investigation and did not show equivalence of its grades with the grades that were sought to be excluded by the exporters therein. Further, in another investigation, the Designated Authority has excluded certain products from the scope of PUC as it was not produced by the domestic industry.
- x) Tin free steel should be excluded from the scope of product under consideration in the present investigation.
- y) The characteristics of the Japanese products set them apart on technical grounds:
  - i. For example, one of the grades exported by one of the Japanese Mills is a polymer laminated steel product – the product is Bisphenol-A / BPA free, that is much better suited to food packaging. It is relevant to note that BPA content in food packaging has been banned in many countries worldwide, and some of the Indian customers specifically use Japanese products which are BPA free for their export manufacturing.
  - ii. One of the Japanese Mills also offers Chromium Free products to their customers in India, which have similar safety concerns as authorities across the world are starting to regulate / restrict Cr content in products.
  - iii. The Applicants cannot manufacture BPA-free or Cr-free product or provide a technically/ commercially viable substitute to the other Japanese products. Indeed, this is why Indian buyers are willing to pay a higher price for Japanese products – a fact clearly apparent in the landed price calculations provided by the Applicants.
  - iv. There are many other bespoke products like this, in respect of which the Japanese Mills charge premium. Japanese Mills have sought exclusion of such products, specifically by way of their Questionnaire responses filed on September 21, 2019.
- z) The domestic industry is admittedly not producing or has not sold several grades or sizes of the product during the period of investigation. It is submitted that the same are required to be excluded from scope of investigations as per the practice of Authority:
  - i. Double reduced tinplate of thickness below 0.15MM and above 0.21 MM
  - ii. Soft double reduced tinplate of thickness below 0.18MM and above 0.23MM



- iii. Tinplate with bright finished surface
- iv. Tinplate with coating exceeding 11.2 gm/SqM
- v. Tinplate with width exceeding 1020 MM
- vi. Tinplate with width below 700 MM

aa) These products are not produced by the domestic producers and therefore, Authority must exclude them from the ambit of product under consideration.

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

8. The PUC in the present investigation is Tin mill flat rolled steel products that are coated or plated with tin or chromium / chromium oxides, either on one side or both sides, whether lacquered and/or printed or not. Tin mill flat rolled steel products include Tinplate as well as Tin-free steel, which is also known as Electrolytic Tin Plate (ETP), Tin Free Steel (TFS), Electrolytic Chromium Coated Steel (ECCS). The product under consideration may be supplied in coil form or sheets / scrolls. The sheets/ scrolls may be supplied in various shapes including, but not limited to, square, rectangle, circle or any other shape, with or without blanking.

9. The product under consideration imported into India has come either as a prime product or as non-prime product. It is understood that Tinplate requires customization as per the requirement/demand of the customer. During the manufacturing process, if there is any non-conformity with the requirement of the customer such as surface finishing, printing, thickness, coating etc. then such products are sold as non-prime at a lower price since they do not meet the requirement of the originally intended customers. In other words, non-prime products are merely products which have not been able to meet the customization requirement in the manufacturing process and are, therefore, classified in various nomenclatures such as waste, seconds, defective, misprint, non-prime, etc. Non-prime tin plates also comprise of prime overruns.

10. Some interested parties have made submissions that non-prime goods should be excluded from the scope of the PUC on account of following broad reasons:

- a) The imported non-prime and domestic produced prime products are not like articles
- b) Prime goods are not substitutable by non-prime goods due to low quality and cheaper price. Non-prime products are used for low end items.
- c) Prime and non-prime goods are used in different industries and for different end-use application.
- d) There is no direct competition between prime and non-prime products.

11. With regard to like articles, Rule 2(d) of the Rules provides as under:

*"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;*

12. As per the consistent practice of the Authority, non-prime products are considered as part of product under consideration as long as they meet the criteria specified for product under consideration. There is no reason to exclude them from the scope of product under consideration and to place them on different footing in view of the fact that basic manufacturing process, the applications and uses of the imported product (in both prime and non-prime grades) and that manufactured by the Applicants are the same. The cost of manufacture also remains the same for both prime and non-prime products and it does not change with the resultant type manufactured.

13. After considering the information on record, the Authority notes that the basic manufacturing process, the applications, uses and cost of manufacture of the imported product (for both prime and non-prime grades) and that manufactured by the Applicants are the same. The Authority further notes that there are no firm physical attributes or technical distinctions that differentiate the prime material from the non-prime or secondary qualities of the subject goods. Exclusion of such products from the scope of the product under consideration would give rise to the scope for circumvention by the exporters and foreign producers. Therefore, the Authority includes both prime and non-prime under the product under consideration and not make any distinction between them based on their quality.

14. Some interested parties have sought exclusion of certain specialized grades/ categories with specific technical parameters from the purview of product under consideration

- Double Reduced tinplate of thicknesses below 0.15 mm and above 0.21 mm
- Soft double reduced tinplate of thickness below 0.18 mm and above 0.23 mm
- Tinplate with bright finish surface
- Tinplate with coating exceeding 11.2 gm/Sqm
- Tinplate with width exceeding 1020 mm
- Tinplate with width below 700 mm
- Tin-Free Steel or Electrolytic tinplate
- Polymer Laminated tinplate that are Bisphenol-A / BPA Free
- Chromium-free tinplate

15. The submissions made by these interested parties and the technical details provided by the domestic industry in this regard have been examined. The domestic industry has established that it produces Double Reduced tinplate of thicknesses below 0.15 mm and above 0.21 mm, Soft double reduced tinplate of thickness below 0.18 mm and above 0.23 mm, Tinplate with bright finish surface, Tinplate with coating exceeding 11.2 gm/Sqm, Tinplate with width



exceeding 1020 mm, Tinplate with width below 700 mm, and Tin-Free Steel. Therefore, no exclusions are required for these products. With regard to Polymer Laminated tinplate that are Bisphenol-A/BPA Free and Chromium-free tinplate, the Authority notes as follows:

- a) The domestic industry has submitted that there are no imports of these two types of products into India during the POI and there is no demand for these two types of products in India. On the basis of the examination carried out during the course of the investigation, the Authority prima facie agrees with the submissions made by the domestic industry.
- b) The request for exclusion of these two types of products has been made by the Japanese exporters and not by any Indian users. No evidence has been placed before the Authority by any Indian user establishing the fact that orders have been placed on the domestic industry for these two types of products and the domestic industry has shown its inability to produce and supply these two types of products.

16. In view of the above, the Authority concludes not to exclude Polymer Laminated tinplate that are Bisphenol-A/BPA Free and Chromium-free tinplate from the scope of product under consideration. The Authority also notes that unwarranted exclusions from the scope of product under consideration may lead to circumvention of the measures.

17. On the basis of submissions made by various interested parties and the information on record, the Authority holds that the product under consideration be described as under:

*“Tin mill flat rolled steel products that are coated or plated with tin or chromium / chromium oxides, either on one side or both sides, whether lacquered and/or printed or not. These products are of prime and non-prime category and in all sizes. Tin mill flat rolled steel products include Tinplate as well as Tin-free steel. The product under consideration, depending on coating/plating material used is known as Electrolytic Tin Plate (ETP) or Tin Free Steel (TFS) or Electrolytic Chromium Coated Steel (ECCS). The product under consideration may be supplied in coil form or sheets / scrolls. The sheets / scrolls may be supplied in various shapes including, but not limited to, square, rectangle, circle or any other shape, with or without blanking.*

18. The product under consideration is classified under tariff headings 72101110, 72101190, 72101210, 72101290, 72105000, 72109010, 72121010, 72121090, 72125020, 72125090 and 72259900 of the Customs Tariff Act, 1975. Imports of the PUC have also been observed in certain other HS codes viz. 72109090, 72107000, 72103090, 72255010, 72124000 of the Customs Tariff Act, 1975. However, the classification is indicative only and not binding.

19. With regard to like article, Rule 2(d) of the Rules provides that "like article " means *an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the article under investigation.* After considering the information on record, the Authority holds that the subject goods



produced by the domestic industry is comparable to the product under consideration exported from subject countries in terms of physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods and that the two are technically and commercially substitutable. Thus, the Authority holds that the subject goods produced by the Applicant domestic industry are like article to the product under consideration imported from subject countries.

#### **D. SCOPE OF DOMESTIC INDUSTRY & STANDING**

##### **D.1. Submissions made by the Domestic Industry**

20. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing are as follows:

- a) There are only four known producers of the product under consideration in India. The status of these four known producers during POI is given below:

JSW Vallabh Tinplate Private Limited:	Applicant (Active)
The Tinplate Company of India Limited (TCIL):	Applicant (Active)
Steel Authority of India Limited (SAIL):	Did not produce in POI
GPT Limited:	Did not produce in POI

- b) The Tinplate Company of India Limited (TCIL) is a related company of Tata Steel Ltd. Till June 2017, Tata Steel Ltd. supplied hot rolled coils and tin to TCIL which was processed by TCIL into tinplate on job-work basis for Tata Steel Ltd. For this, Tata Steel Ltd. paid processing/job work charges to TCIL. The production as well as sales of Tinplate were accounted for in the books of Tata Steel Ltd.
- c) With effect from 1<sup>st</sup> July 2017, TCIL has started buying Hot Rolled Coils from Tata Steel Ltd. and producing and selling the product under consideration on its own account. Accordingly, Tata Steel Ltd. is not engaged in the production of the product under consideration during the POI.
- d) In the application, TCIL's information has been provided for the period starting from 1<sup>st</sup> July, 2017 onwards. The data/information for the period of 9 months (1<sup>st</sup> July, 2017 to 31<sup>st</sup> March 2018) has been annualized, wherever necessary for the year 2017-18 for appropriate comparison with other years.
- e) During the POI, there were only two producers of the products under consideration in India who were actually producing the PUC and both of them are before the Authority. Applicants' share in total eligible Indian production of PUC is 100% during the POI. Accordingly, Applicants clearly satisfy the requirement of standing and constitute 'domestic industry' in India for the product concerned in terms of Rule 2(b) read with



Rule 5(3) of the Rules and submit that they are fully competent to bring this petition for imposition of anti-dumping duty on subject goods.

- f) The Designated Authority has correctly found that the Applicants have standing under Rule 2(b) read with Rule 5(3)(a) of the Rules. However, some interested parties have contended that since the Applicants have not supplied information relating to M/s Tata Steel Ltd., the investigation stands vitiated. The domestic industry completely denies and objects to these contentions.
- g) There is no requirement under the Rules for providing information from a party who is not a producer of the PUC during the POI but was a producer of the PUC in the past. The Domestic Industry must only satisfy the 'major proportion' of the total domestic production standard. For a meaningful analysis, it is important to refer to Rule 2(b) of the Rules, which is extracted in relevant part below:

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

#### **D.2. Submission of other interested parties**

21. The submissions made by various interested parties with regard to scope of domestic industry & standing are as follows:

- a) It is evident that Tata Steel Ltd has been involved in the production of the PUC in most of the injury period (i.e. up to June 2017) along with TCIL.
- b) Prior to June 2017, the production activities for the product under consideration were split between Tata and TCIL. Even though production seems to have been recorded in the books of Tata, both of them jointly constituted a "producer" of the product under consideration. This is further corroborated by the Annual Report of TCIL for the year 2016-17, wherein TCIL is mentioned as a manufacturer of Electrolytic Tinplate.
- c) The cost and sales data of Tata Steel Ltd has not been provided by the Applicants for the period prior to July 2017, despite Tata and TCIL being related entities.
- d) Applicants have not provided any verifiable evidence in the non-confidential form to substantiate the job-work relationship that existed between Tata and TCIL for the purpose of enabling the interested parties to make meaningful comments.

- e) Since non-provision of data for the entire injury period by TCIL and Tata Steel Ltd will affect the initiation and injury determination and render TCIL and Tata Steel Ltd non-cooperative, the current investigation should be terminated.
- f) Pursuant to rendering TCIL and Tata non-cooperative, JSW Vallabh will no longer have the requisite standing for the purposes of present investigation. Therefore, for all purposes, the present investigation ought to be terminated.
- g) The cost of HR in the PUC is at least 60% of the cost of PUC (depending on the grade and finish). The price at which the raw material is transferred from Tata to TCIL must be assessed. It must be ensured that the HR cost considered for the domestic industry is reflective of the market price during the relevant period and that a bulk of the profit is not loaded on Tata in order to reflect greater injury in TCIL's records.
- h) A transfer pricing agreement between the parties would probably set the threshold for a minimum price, whereby the Designated Authority must carefully assess the transfer price and not allow the HR transfer cost between the two entities to be too high.

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

22. The application for imposition of anti-dumping duty has been filed by M/s. JSW Vallabh Tinplate Private Limited and M/s. The Tin Plate Company of India Limited. In the application, it has been stated that there are two more known domestic producers of the product under consideration, namely, Steel Authority of India Limited and GPT Limited. However, these two companies have not produced the product under consideration during the POI. In fact, Steel Authority of India Limited has not produced the subject goods during the entire injury period.

23. Up to June 2017, M/s Tata Steel Ltd supplied HR Coils to M/s. The Tin Plate Company of India Limited which was processed into Tinplate by M/s. The Tin Plate Company of India Limited on job-work basis for M/s Tata Steel Ltd. For this, Tata Steel Ltd. paid processing/job work charges to M/s. The Tin Plate Company of India Limited. The production as well as sales of Tinplate were accounted for in the books of Tata Steel Ltd. Since July 2017, M/s. The Tin Plate Company of India Limited started buying Hot Rolled Coils from Tata Steel Ltd. and producing and selling the product under consideration on its own account.

24. During the POI, there were only two companies, namely M/s. JSW Vallabh Tinplate Private Limited and M/s. The Tinplate Company of India Limited which produced the product under consideration in India, and therefore Applicants together account for 100% of the Indian production. Rule 2(b) of the Rules provides as follows:

*"domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such*



*case the term 'domestic industry' may be construed as referring to the rest of the producers"*

25. In view of the above, it is obvious that the Applicants constitute a major proportion of the total domestic production, and therefore have a clear standing for the purposes of this investigation. They have not imported the product under consideration and have claimed not to be related to any of the importers and exporters.

26. Accordingly, the Authority holds that the Applicants constitute 'a major proportion' of total Indian production of the like product and that the Applicants satisfy the requirements of 'standing' under Rule 5 of the Rules and constitute 'Domestic Industry' in terms of Rule 2(b) of the Rules.

27. As regards the submission that a holistic injury assessment cannot be made without the information of Tata Steel Ltd., it is noted that this issue has been examined in detail under the 'Injury and Causal Link' section of these Final Findings. Similarly, the issue of whether or not Hot Rolled Coil has been transferred to M/s. JSW Vallabh Tinplate Private Limited and M/s The Tinplate Company of India Limited by their related parties at an arm's length price has been also dealt with under the 'Injury and Causal Link' section of these Final Findings.

## **E. ISSUES RELATING TO CONFIDENTIALITY**

### **E.1. Submissions by domestic industry**

28. The following submissions have been made by the domestic industry with regard to confidentiality issues:

- a) Detailed submissions have been filed wherein the deficiencies in the responses filed by various interested parties have been highlighted and it has also demonstrated how the non-confidential version of the responses fail to disclose even the bare minimum information in the garb of confidentiality.
- b) It is submitted that various interested parties have committed gross breach of the guidelines issued by the Authority with reference to confidentiality requirements vide Trade Notice 10/2018 dated 7<sup>th</sup> September 2018.
- c) Applicants have disclosed all the essential information in the non-confidential version of the application in accordance with Rule 7 of Rules and Trade Notice no. 10/2018 dated 7<sup>th</sup> September 2018.

### **E.2. Submissions by other interested parties**

29. The following submissions have been made by other interested parties with regard to confidentiality issues:

- a) Submissions of the interested parties are in consonance with the Trade Notice No. 10/2018.

- b) The Applicants have alleged that several Japanese Mills have not provided the channel of sales to India, citing this as an instance of excessive confidentiality. However, Trade Notice 10/2018 does not require parties to provide channels of trade in non-confidential form in the first place, since it is sensitive commercial information.
- c) Annexure I of the said notice specifically illustrates how the information should be provided by the domestic industry in non-confidential version of their application/response.
- d) The Applicants have not complied with the trade notice, and this has impaired the respondents' ability to defend their interest.
- e) The information of transfer price of Hot Rolled Coil from both Tata Steel & JSW to their associate companies has been concealed as confidential. It has been observed from the attached audited balance sheet of Tata Steel that they enjoy EBITDA margin of 29% which is an abnormally high margin.
- f) Applicants have kept certain economic parameters as confidential and without such information a meaningful examination of injury parameters of the domestic industry is not possible.
- g) The claim of confidentiality by Applicants is excessive with respect to following factors:
  - i. Information relating to the individual production and sales of both the Applicants
  - ii. The information in format L
  - iii. Sales realization in format H
- h) The decision of Supreme Court in *Sterlite industries (India) LTD. v. Designated Authority* is relevant for the present case. The Hon'ble Supreme Court in Sterlite Industries case has held that confidentiality under Rule 7 cannot be "automatically assumed". Under Rule 7, the Designated Authority has to be satisfied regarding the confidentiality of the material. Even if the material is confidential, the Designated Authority has to ask the parties providing the information, on confidential basis, to furnish a non-confidential summary thereof. Under Rule 7(3), Designated Authority can also come to the conclusion that confidentiality is not warranted and it may, in certain cases, disregard that information.
- i) A statement of reasoning with regard to the same is to be submitted. A mere statement which states "summarization of legal documents is not possible" cannot fulfil the legal requirement.



- j) It is a requirement under the trade notice and Rule 7 of the Rules that the non-confidential version of the Application is required to have confidential data indexed and summarized.
- k) The non-confidential summary is supposed to give details to permit a reasonable understanding of the substance of information furnished on confidential basis. Paragraph (vi) of Trade notice explicitly states that any submission made without a meaningful non-confidential version of confidential version shall not be taken on record by the Authority.

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

30. With regard to confidentiality of information, Rule 7 of 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.*

*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."*

31. The Authority made non-confidential version of the information provided by various interested parties available to all interested parties for inspection through the public file containing non- confidential version of evidences submitted by various interested parties

32. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. The Authority has also duly noted the submissions made by interested parties citing the decision of the Hon'ble Supreme Court of India in the Sterlite Industries case and emphasizing the point that confidentiality under the Rules cannot be automatically assumed. The Authority notes that the information provided by the interested parties on confidential basis was duly 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. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

## **F. MISCELLANEOUS SUBMISSIONS**

### **F.1. Submissions made by domestic industry**

33. The following miscellaneous submissions have been made by the domestic industry:

- a) The Respondents have submitted that levy of anti-dumping duty will create a monopoly for the Applicants and will not be in public interest. The Applicants do not want to create any kind of monopoly in India. The imposition of anti-dumping duty would allow the domestic producers to survive which would ultimately be in the interest of Indian users as they would not be left at the mercy of imports. A healthy and thriving domestic industry in India would be in everybody's interest. The imposition of anti-dumping duty would therefore be in public interest.
- b) On 31st May 2019, the Pakistani National Tariff Commission imposed a definitive anti-dumping duty on imports of tinplate from China, EU, South Africa, and USA to protect their domestic industry from the dumped imports.
- c) The Indonesian authorities have also extended a definitive anti-dumping duty on imports of tinplate coil/sheet from China, Chinese Taipei and Korea RP.
- d) The US Department of Commerce imposed anti-dumping duties on imports of certain tin mill products from Japan in the year of 2000 and the same is continuing even after the third sunset review investigation conducted by US Department of Commerce recently in 2017.
- e) It is clear that the subject countries are export oriented and have been dumping their products into many countries including India.

### **F.2. Submissions made by other interested parties**

34. The following miscellaneous submissions have been made by other interested parties:

- a) There are more than 7000 units across India which use non-prime tinplate. These units create employment for around 2 lakh people. There are customers who buy daily/weekly and are walk-in customers whose businesses survive because of the accessibility to non-prime tinplate products.
- b) FSSAI Guidelines prohibit 15-liter edible oil cans from being reused. Effective enforcement will increase the requirement by about 200,000 MT of tinplate.



- c) Plastic is being replaced by tinplate. Lube oil and enamel paint manufacturers are in discussion with the Association for assisting them in replacing plastic with tinplate. This requirement will be about 100,000 MT. There is a natural growth in consumption in existing sectors of about 10% which is about 75,000 MT per annum. There is an untapped market for food cans, crowns for glass bottles, closures, decorative cans and increasing use in Aerosol cans. Accordingly, the demand for PUC is going to increase significantly in the coming years. The domestic industry does not have the capability of meeting this increase in demand.
- d) Tinplate is a key packaging material for paints, insecticides and many other products, which cannot be stocked and must be immediately packed and sent to the market. Any anti-dumping duty will break this supply chain.
- e) The imposition of anti-dumping will disproportionately hurt the large number of people employed in the small and micro segment who will not have alternative employment opportunities.
- f) The tinplate user industry has suffered from high tinplate prices and is not able to face competition from substitute materials. This has resulted in leaders like Poysha, Metal Box shutting operations.
- g) The tinplate user industry is suffering in terms of capacity utilization, profitability and are struggling to survive. Customs duties must be reduced so that tinplate is available at more competitive price to be an effective and environment friendly packaging material.
- h) Levy of duty will establish monopoly of Applicants and will not be in public interest.
- i) In case an anti-dumping duty is imposed, it will increase the input and final cost of products, making them unviable and uncompetitive in comparison to other countries such as China, Bangladesh and ASEAN nations. This will result in the closure of thousands of small-scale units manufacturing products using non-prime material in India.
- j) It will further result in sharp increase in direct import of final products from China, Bangladesh, Pakistan, etc.
- k) Europe and USA should be excluded from the scope of subject countries. Europe has 12.5% import duty plus cess, plus bank charges, plus clearing charges, plus bank finance, plus inland cost. Similarly, USA has a punitive import duty of 27.5% plus cess, plus bank charges, plus clearing charges, plus bank finance, plus inland cost. Also, the figures of imports have not gone up significantly in the years of investigation. Therefore, USA and Europe should be excluded.
- l) Indian mills are already protected by an import duty of 12.5% plus cess plus clearing charges, plus local port charges, plus domestic inland transport. There is a minimum

additional cost of 25%. Many countries have zero percent import duty even with local production because tinplate is considered packaging material and not regular steel. Tinplate is niche product with limited production across the world.

- m) The duties that USA has imposed on Japanese tin mill products have been in existence from around the year 2000. However, there has been no change in the volume of Japanese exports of tin mill products to the USA despite the existence of anti-dumping duties. Accordingly, it can be reasonably deduced that there could be no trade diversion of Japanese exports to India due to the existence of duties in the USA on Japan.

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

35. With regard to the contention of the interested parties that imposition of anti-dumping duty will not be in public interest, the Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

36. Fair competition in the Indian market will not be adversely impacted by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or even more sources of supply. Monopoly cannot be created, since there are already two producers of the product under consideration in the country.

37. With regard to exclusion of USA and EU from the investigation, it is noted that the Authority examines whether the imports are coming into India at dumped prices and whether these dumped imports are causing injury to the domestic industry. Merely because imports from USA and EU are subjected to higher duty as compared to other subject countries, it cannot be a ground to exclude USA and EU from the scope of the investigation.

38. The Authority recognizes that the imposition of anti-dumping duties might affect the price levels of the product in India. However, fair competition in the Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods.

39. The Authority notes that the imposition of the anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the end user. The end user could still maintain two or even more sources of supply. The purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.



Imposition of anti-dumping measures would not affect the availability of the subject goods to the consumers.

**G. NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN**

40. 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.*

**G.1. Submissions by the Domestic Industry**

41. The following submissions have been made by the domestic industry:

- a) Since no producer/exporter from Korea RP, USA and EU has filed the questionnaire response and no information has been provided by them, it is clear that producer/exporter of the product under consideration from Korea RP, USA and EU have accepted that they are dumping the product under consideration into India.
- b) It is submitted that the Authority should calculate the dumping margin for Korea RP, USA and EU based on the information provided by the Applicants.
- c) Significant dumping margin exists in respect of imports of product under consideration from each subject country.

- d) Dumping margin for the producers/exporters from Japan shall be calculated based on the exporters' questionnaire response filed by them provided their response is complete and satisfies the requirement of the Authority.
- e) The cost for producing prime and non-prime products is the same and does not affect the calculation of normal value and/or dumping margin.

#### **G.1. Submissions by the other interested parties**

42. The following submissions have been made by other interested parties:

- a) Participation of a producer/exporter is a solely commercial decision and the same cannot be used against them. The submission that non-participation amounts to dumping is flawed.
- b) The Japanese Mills submit that some of the major producers from Japan have filed their questionnaire responses in prescribed format within prescribed timelines and the same may be taken into consideration by the Designated Authority for the purposes of calculating the normal value and export price. Accordingly, the averment of the Applicants that the dumping margin is significant ought to be rejected.
- c) Dumping occurs when the export price of goods imported into India is less than the normal value of goods sold in the domestic market of the exporter. The Applicants have not given the domestic price of materials sold in the domestic market abroad. This is surprising because TATA Steel has its own sister company in Europe.
- d) Imports at cheap or low price does not per se indicate dumping. The imported materials are 'waste' products since they are not in the desired specification of the customer. Non-prime materials imported are compromised materials available in all kinds of specification which cater to the requirements of small and micro industry.
- e) Producers/ exporters are not exporting the products at low prices. They sell the products through auctions. Normal bidding procedure is followed, and the products are sold at "normal values". These products are also available to domestic users.
- f) Interested parties disagree with the computation of "normal value." These goods are sold in open auctions and tenders and are available at same prices to domestic customers of exporting country. The method, which is used by the Applicants, will result in the price of prime tinplate. However, 95% of the material used by India is non-prime which is not comparable with prime tinplate.
- g) It is submitted that it is not possible for TCIL to have no access to prevailing prices in Europe when Tata Group is producing tinplate in Europe also. The Applicants have calculated the normal value of the goods by taking the pricing of Prime HRC in subject countries and adding utilities and cost of conversion and a decent profit of margin as



per their initial petition. There is no detailed information available as to how the Applicants have computed the normal value.

- h) The non-prime products are sold on auction or tender basis and participants include domestic service centres and local Can companies, international traders. The winners of auction or tender are free to sell within their domestic market. The auctions and tenders are highly competitive and products are sold at the highest price. Non-Prime material sold to other countries is at prices similar to the prices to India.
- i) The Prime prices from EU, USA, Korea and Japan are higher than domestic prime prices of the Applicants.

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

43. The Authority sent questionnaires to the known exporters from the subject countries, advising them to provide information in the form and manner prescribed. However, barring the following producers and exporters, none of the other producers/ exporters from subject countries co-operated in this investigation by filing the prescribed questionnaire responses:

- i. JFE Steel Corporation, Japan
- ii. JFE Shoji Trade Corporation, Japan
- iii. Metal One Corporation, Japan
- iv. Marubeni Itochu Steel (MI Steel), Japan
- v. Nippon Steel Corporation, Japan
- vi. Nippon Steel Trading Corporation, Japan
- vii. Ohmi Industries Limited, Japan
- viii. Tetsusho Kayaba Corporation, Japan
- ix. Toyto Tsusho Corporation, Japan
- x. American International Corporation, USA
- xi. Ferreum NV, Belgium (EU)

#### **G.3.1. Determination of Normal Value and Export Price for producers and exporters in EU**

44. The Authority notes that none of the producers/exporters of the product under consideration from the European Union have participated in the subject investigation. Since none of the producers and exporters in EU has submitted any evidence with regard to the normal value and export price of the subject goods, the dumping margin is proposed to be determined based on best facts available.

#### **G.3.2. Determination of Normal Value and Export Price for producers and exporters in Korea RP**

45. The Authority notes that none of the producers/exporters of the product under consideration from Korea RP have participated in the subject investigation. Since none of the

producers and exporters in Korea RP has submitted any evidence with regard to the normal value and export price of the subject goods, the dumping margin is determined based on best facts available.

### **G.3.3. Determination of Normal Value and Export price for producers and exporters in USA**

46. The Authority notes that none of the producers/exporters of the product under consideration from the USA have participated in the subject investigation. Since none of the producers and exporters in the USA has submitted any evidence with regard to the normal value and export price of the subject goods, the dumping margin is determined based on best facts available.

#### **Methodology for determination of normal value for producers and exporters in EU, Korea RP and USA**

47. In the absence of any reliable price and cost details for the subject goods in subject countries, the Designated Authority has constructed the normal value for EU, Korea RP and USA by taking into account the HR prices prevailing in each subject country and adopting consumption norms, other raw material cost, conversion cost, primary packing cost, selling, general & administrative cost of the most efficient constituent of the domestic industry. A reasonable profit margin has been added for constructing the normal value. Accordingly, the Normal Value for all the producers/exporters from EU, Korea RP and USA for the subject goods has been determined and the same is shown in the Dumping Margin Table below.

#### **Methodology for determination of export price for producers and exporters in EU, Korea RP and USA**

48. In the absence of co-operation by any producer from EU, Korea RP and USA, the authority has determined the net export price based on official transaction-wise DGCI&S import data after making appropriate adjustments for ocean freight, insurance, inland freight, bank charges and commission and the same is shown in the Dumping Margin Table below.

### **G.3.4. Determination of Normal Value and Export Price for producers and exporters in Japan**

#### **JFE Steel Corporation, Japan**

49. JFE Steel Corporation filed its exporter's questionnaire response on September 21, 2019 and upon perusal of the same, it was found that the response filed by them was not in line with the prescribed questionnaire format. The Authority also issued a deficiency letter to JFE Steel Corporation citing the discrepancies in the response filed by them. However, JFE Steel Corporation did not respond to the deficiency letter issued by the Authority and did not provide the complete information. In fact, they have not provided any information relating to their cost of production of the product under consideration.



50. In the absence of information relating to cost of production, it would not be possible for the Authority to examine whether or not the domestic selling price is in the ordinary course of trade for JFE Steel Corporation.

51. Therefore, in the absence of complete information from JFE Steel Corporation, the exporters questionnaire response submitted by them is rejected and no individual dumping margin and injury margin is determined for JFE Steel Corporation.

### **Nippon Steel Corporation ("NSC")**

#### **Normal Value**

52. During the POI, NSC has sold the subject goods in the domestic market to related and unrelated parties. The domestic sales are in sufficient volumes when compared with exports to India.

53. To determine the normal value, the authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods. Since the profit-making transactions were more than 80%, the authority has considered all the transactions in the domestic market for the determination of the normal value.

54. NSC has claimed adjustments on account of inland freight, insurance, credit cost, storage and other expenses. The authority has accepted all the adjustments. The normal value at ex-factory level for NSC has been determined accordingly, and the same is shown in the Dumping Margin Table below.

#### **Export Price**

55. NSC has filed a questionnaire response along with its related/unrelated trading companies, namely, Nippon Steel Trading Corporation ("NSTC"), MI Steel, Metal One Corporation ("Metal One"), Toyota Tshusho Corporation ("TTC") and Tetsusho Kayaba Corporation ("TKC"). The Authority notes that one of the related trader, NSTC has exported directly to Indian customers and also through other unrelated traders, namely, TKC and Kowa Company Ltd ("Kowa"). NSC has submitted that during POI, it has exported \*\*\* MT to India through above mentioned related/unrelated traders. The traders have reported that they have exported \*\*\* MT to India during the POI (the difference being on account of timing difference). The quantity reported by traders has been adopted by the Authority as exports to India by NSC for determining the dumping and injury margin.

56. The various channels of exports to India and the quantity exported through these channels is shown in the table below:

Export Channel	Exports to India (MT)	Quantity%	Cooperating (Yes/No)
NSC-NSTC-India	***	***	Yes
NSC-NSTC-TKC-India	***	***	Yes

NSC-Metal One-India	***	***	Yes
NSC-MI Steel-India	***	***	Yes
NSC-TTC-India	***	***	Yes
NSC-NSTC-Kowa-India	***	***	No
Total	***	***	

57. The Authority notes that one of the traders, namely, Kowa has not submitted the exporters questionnaire response containing the requisite information for the said \*\*\* MT quantity exported to India.

58. The Authority, while calculating the export price for the producer has considered verified actual data of the producer NSC for \*\*\* of the quantity (\*\*\* MT) shipped to India by NSC for which complete chain of responses has been submitted with the Authority. NSC has claimed adjustment on account of shipping, storage, credit cost and insurance and the same have been allowed. The authority notes that some of the traders have exported the subject goods to India at a price which does not cover for traders' expenses. The authority has, therefore, made appropriate adjustments on account of traders' expenses also.

59. With respect to the determination of export price, the Authority notes the provisions enshrined in Explanation (b) to sub-section (1) and sub-section (6A) of Section 9A of the Act which read as follows:

*“(1) Explanation (b) “export price”, in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6).*

*(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under enquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided by such producer or exporter:*

*Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.”*

60. Further, Rule 6(8) of the Rules provides as under in this regard:

*“(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.”*



61. In view of the above provisions, as regards the export price for \*\*\* of the export quantity (\*\*\* MT) for which complete chain of responses containing the requisite necessary information have not been submitted to the Authority, export price of this quantity has been calculated based on the facts available, in terms of Rule 6(8) of the Rules and in terms of Section 9A (6A) of the Act. The Authority has used adverse facts available for determination of net export price and landed value with respect to \*\*\* of the quantity (\*\*\* MT) exported to India by the producer NSC.

62. Accordingly, the export price for NSC, the Japanese producer has been determined based on the weighted average export price of exports for which complete information in the chain for exports to India has been provided and exports to India for which complete chain of information has not been provided. The export price so determined for the producer NSC is shown in the Dumping Margin Table below.

### **G.3.5. Dumping Margin Table**

63. The dumping margin during the POI for all producers/exporters from the respective subject countries is given in the table below:

Country of Origin and/or Export	Producer	Normal Value/ CNV (USD)	Net Export Price	Dumping Margin (USD)	Dumping Margin	Dumping Margin % Range
Japan	Nippon Steel Corporation, Japan	***	***	***	***	30-50
Japan	Other than Nippon Steel Corporation	***	***	***	***	80-100
USA	Any	***	***	***	***	140-160
EU	Any	***	***	***	***	110-130
Korea RP	Any	***	***	***	***	40-60

64. The Authority notes that the dumping margin is not only above the *de-minimis* level but also significant for all the subject countries.

## **H. INJURY ASSESSMENT AND CAUSAL LINK**

### **H.1. Submission made by the Domestic Industry**

65. The domestic industry has made the following submissions in this regard:

- a) Rule 11 of the Rules read with Annexure II pertain to the principles governing the determination of injury during an anti-dumping investigation. Paragraph (i) & (ii) of Annexure II read as follows:

*“(i) A determination of injury shall involve an objective examination of both (a) volume of the dumped imports and the effect of the dumped imports on prices in the domestic like article and (b) consequent impact of these imports on domestic producers of such products”*

*(ii) While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. 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 products 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.”*

- b) The domestic industry has already supplied all the relevant data/information to the Designated Authority establishing dumping, injury and causal link between dumping and injury. The evidence provided by the Domestic Industry was, thus, sufficient to justify commencement of the present investigation. Further, the Authority, in the initiation notification dated 28th June 2019, has duly noted that sufficient evidence of dumping, injury and causal link between dumping and injury exists to justify initiation of the present investigation.
- c) The interested parties' contention that the domestic sales of the Applicants have moved up from 100 to 512 indexed points from the base year to the POI is flawed, since TCIL only commenced sales w.e.f. July 2017. For an accurate analysis of sales, the trend of domestic sales of all Indian Producers must be taken into account. If seen in that context, the rise in sales during POI has only been by 6 indexed points from the base year.
- d) There is no requirement under law to examine the rise in imports vis-a-vis the rise in demand. The law requires examination of imports in absolute and relative terms, which has clearly been done in this case. The subject imports have increased by 13 indexed points in absolute terms and by 6 indexed points in relation to consumption.
- e) Even though the domestic sales have increased, the market share of the domestic industry has remained flat in the POI, while the share of imports has risen by 12 points in 2016-17 and 2017-18, and by 6 indexed points in the POI as compared to the base year. A rise in demand has not benefitted the Domestic Industry in any manner, as the additional demand has been captured by low-priced dumped imports.



- f) Applicants submit that the dumped imports coming from subject countries in significant volumes is the only cause of injury being suffered by them and there exists a causal link as between the injury suffered by the domestic industry and increasing low priced dumped imports coming into India.
- g) Domestic Industry has demonstrated that the imports coming into India from all the subject countries are above de-minimis level. Producers from USA, EU, and Korea have not even participated in the said investigation and have not rebutted any of the claims made by the Applicants. The claims made by Japan for an individual assessment are invalid for the following reasons:
  - i. Japan has not refuted dumping by its producers/exporters into India. Applicants have made detailed submissions regarding dumping being done by Japanese producers/exporters, which are above the de-minimis mark.
  - ii. Cumulative assessment of the effect of imports is appropriate since the exports from the subject countries directly compete through comparable sales channel under similar commercial conditions with the product under consideration offered by the domestic industry in the Indian market. Japan's imports of the PUC are competing with the like articles of the domestic industry as well as other imported goods. In fact, significant portion of the Japanese imports consist of non-prime goods.
- h) Cumulative assessment of the effect of imports is appropriate since the exports from the subject countries directly compete through comparable sales channel under similar commercial conditions with the like article offered by the domestic industry in the Indian market.

## **H.2. Submission by other interested parties**

66. The submissions made by other interested parties with regard to injury and causal link, considered relevant by the Authority, are as follows:

- a) Applicants have averred that cumulative assessment of the effect of imports is appropriate as per Article 3.3 of the AD Agreement and Rule 11 read with Annexure II (iii) of Rules.
- b) Applicants have completely disregarded the fact that the DGTR manual as well as the AD Agreement specify that conditions of competition between imported products should be considered while determining whether cumulation is appropriate.
- c) The Applicants have failed to provide any reliable evidence to show that it is appropriate to conduct a cumulative assessment of the effect of subject imports despite the differences between import behaviour and product categorization between subject countries.

- d) The factual matrix of the present case justifies a de-cumulated assessment of injury for the imports from Japan. The price movement is completely different w.r.t. Japanese imports. As compared to imports from other subject countries, Japan's price declined while price from the other subject countries increased. On the other hand, in 2017-18, price from other subject countries declined while the price from Japan increased. In the period of investigation, the price from the other subject countries increased slightly while the price from Japan increased notably.
- e) As per Article 3.3 of the AD Agreement and Rule 11 read with Annexure II (iii) of Rules, the Designated Authority may conduct a cumulative assessment of the effect of imports if the following conditions are satisfied:
  - i. The margin of dumping from each of subject countries is above de minimis;
  - ii. The volume of imports from subject countries is above the prescribed limits; and
  - iii. Cumulative assessment of the effect of imports is appropriate in light of conditions of competition between imported products inter-se and also between the like domestic article and the imported articles.
- f) It is submitted that with the existence of the word "and" in the above provision, it becomes necessary that all the above elements co-exist to justify the determination of cumulative assessment of effect of subject imports on domestic industry.
- g) Further, according to the Manual of Operating Practices for Trade Remedy Investigations, various other parameters are relevant for determining if it is appropriate to cumulatively assess the effect of imports in light of conditions of competition.
- h) The Japanese Mills submit that the imports in the present investigation have not increased in either absolute or relative terms. It is specifically submitted that the imports from the Subject Countries have decreased in the POI in comparison to the previous year. Moreover, when there was an alleged increase in imports from the Subject Countries in the POI in comparison to the base year, there was a significant improvement in the Applicants performance. The improvement can be evidenced from the data provided by the Applicants. Increase in imports can be attributed to increase in demand.
- i) The Applicants may aver that the increase in sales is on account of the absence of Tata Steel Ltd.'s data in their injury statement – however, the Japanese Mills submit that the Applicants cannot be allowed to have it both ways. Either the data for Tata Steel Ltd should be filed for the first two years of the injury period, or the absence of the data should not be used as an excuse for the improvement in the Applicants' performance.
- j) The analysis conducted by the Applicants is inconsistent for each parameter. The Applicants have considered the trend between the POI and base year to represent injury,



whereas, in other instances, they have conveniently assessed the trend between the POI and previous year to represent injury. It is respectfully submitted that this is a transparent attempt by the Applicants to manipulate figures to maximize their depiction of injury.

- k) The profits have been fluctuating even though the price undercutting has been stable in most of the injury period. Applicants have been making profits in the years where there was alleged price undercutting, indicating that there is no correlation between the alleged imports and the performance or prices of the Applicants.
- l) The disparity between undercutting and profitability is even greater for Japan. The profitability of the Applicants appears to have moved erratically and in complete dissonance with imports from Japan.
- m) It is further submitted that the landed price of the subject imports has not impacted the sales realization or the prices of the Applicants, thus not causing any price suppression/depression in the present investigation.
- n) It is submitted that the Non-injurious price must be determined in accordance with the Rules and the consistent practice.
- o) The Applicants have failed to prove the threat of material injury to Domestic Industry on account of alleged dumped imports from the Subject Countries, specifically, Japan.
- p) The imports as presented by the Applicants have been steady in quantity, with marginal change in trend in line with the growing consumption in India. The Applicants have had a higher Y-O-Y growth compared to the imports in the period of investigation. Thus, there is no volume effect.
- q) The Applicants have been able to increase their price during the period of investigation and there is no sign of depression/ suppression. In TCIL annual statement, they have mentioned about rise in cost of raw material and they have been able to pass on the higher cost to their customers. Prices of the imported goods have also spiked during the POI in line with the global trends.
- r) Imports of non-prime products did not affect the domestic prices of the mills as Non-Prime is a separate market segment. Import of prime is negligible and at higher price than domestic producers.
- s) There has been no decline in output for the Indian producers. On the contrary, best ever production figures for TCIL have been achieved.
- t) There is no loss of sales for the domestic producers. The sales of domestic industry have increased substantially from 100 in the base year to 512 during the period of investigation. Thus, imports from subject country are not causing any harm to domestic industry.

- u) The capacity of the Applicants has also increased every year during the injury period. Applicants are operating at more than 100% capacity utilization which clearly shows no injury. Sales in domestic market have also increased from base year to the POI and so has the market share. Additionally, the overall performance of domestic industry has improved significantly. No negative impact has been shown on employees and the productivity has increased too.
- v) There is no loss of market share. On the contrary, there is an increase in the market share of the local producers. TCIL sells 68% of the Prime Tinplate consumed in India.
- w) There is a very slight decline in cash profits of the producers. The PAT has declined mainly due to the increase in depreciation charge. TCIL in its report for of 2018-2019 has itself mentioned that company's profitability has declined due to a higher raw material cost. Tata steel, which is a raw material supplier to TCIL as well as a majority shareholder in TCIL, is enjoying gross profit margins of 29% in 2018-2019. The Applicants have tried to mislead the Authority by blaming imports as a reason for reduction in profits.
- x) There is no decline in productivity. As stated above, both the Applicants are selling almost everything they can produce as per their capacity. TCIL produced \*\*\* MT in 2018-2019 having a capacity of \*\*\* MT. JSW Vallabh Tinplate Co. Pvt. Ltd. produced \*\*\* MT in 2018-2019 having a capacity of \*\*\* MT.
- y) Both producers are enjoying the increase in consumption of Prime tinplate in India. In fact, because of the new FSSAI enforcement for non-reuse of 15 litres oil cans, it is estimated that another 200,000 MT of Prime tinplate will be required by edible oil companies. Both the Applicants, TCIL and JSW Vallabh Tinplate Pvt Ltd (through its parent company JSW steel), are on expansion mode and increasing capacity.
- z) The Applicants have mentioned that the domestic industry is facing significant accumulated inventories. The Authority should consider and evaluate the amount of inventory in comparison to the company's revenue. TCIL's revenues from operations in 2017-2018 were Rs. 1918.69 crores whereas their finished good inventory was only Rs. 45.28 crores as of 31st March 2018 which includes goods in transit. This is just 2.35% of their overall sales. Also, it may be noted that during the last financial year 2018-2019, the sales were Rs. 2584.50 crores and the inventory for finished goods is Rs. 33.96 crores which also includes goods in transit. This inventory accounts for a mere 1.31% of the entire sales. The Applicants are trying to hide this information by making it confidential.
- aa) The reason for increase in trend of inventory from 100 to 593 is that during the year 2015-2016, TCIL used to do job work for Tata Steel and hence, has 0.76 lacs worth of finished goods inventory in 2015-2016 with revenues from operations Rs. 833.90 Crores. They never used to keep any stock. The Applicants have just tried to take benefit



of low inventory in the base year and are trying to mislead the Authority by showing a rising trend.

- bb) TCIL is employing more than 1400 employees and the number has remained the same over the POI and no decline in number of employees can be seen.
- cc) Applicants claim that dumped imports from subject countries is significant and is the only cause of injury to domestic industry by giving examples of GPT and SAIL. It is submitted there exists no causal link between subject imports and injury:
  - i. The Annual Report 2018-2019 of TCIL at page 10 and 28 has noted that the profitability of TCIL declined because of higher raw material costs.
  - ii. According to CRISIL, JSW's profitability was impacted due to delay in passing on the increase in raw material prices. Also, temporary plant shutdown and demonetization have impacted the performance of JSW.
  - iii. According to the Annual Report 2016-17 of JSW at page 25, the revenue of the company dropped due to certain regulatory measures announced by the government.
  - iv. In respect of SAIL and GPT Limited ceasing their production because of imports from the Subject Countries, the Applicants have not provided any evidence whatsoever. Accordingly, the same is a mere conjecture and unsubstantiated.
- dd) Applicants have mentioned that they will soon not be able to repay debts if dumping continues. However, TCIL is debt free. Balance sheets of TCIL and JSW STEEL are extremely healthy.
- ee) No effective information on injury to the domestic industry can be claimed in absence of information regarding Tata Steel. In terms of Rule 11 and Annexure II of Rules, the determination of injury to the domestic industry involves positive evidence and objective examination of the dumped imports in the domestic market for like products and consequent impact of these imports on the domestic producers of such product. In present case, no dumping or consequent injury has been shown.
- ff) It is submitted that the claim of threat of material injury is merely hollow as mandatory grounds under Annexure II of Rules have not been satisfied:
  - i. Significant rate of increase of dumped imports
  - ii. Depressing or suppressing effects of imports
  - iii. Sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter, taking into account the availability of other export markets to absorb any additional exports

iv. Inventories of the article being investigated

- gg) It is evident that Tata Steel Ltd has been involved in the production of the PUC in most of the injury period (i.e. up to June 2017) along with TCIL. Prior to June 2017, the production activities for the product under consideration were split between Tata and TCIL (though production seems to have been recorded in the books of Tata), whereby both of them jointly constituted a “producer” of the product under consideration. This is further corroborated by the Annual Report of TCIL for the year 2016-17, wherein TCIL is mentioned as a manufacturer of Electrolytic Tinplate.
- hh) The cost and sales data of Tata Steel Ltd have not been provided by the Applicants for the period prior to July 2017, despite Tata and TCIL being related entities.
- ii) Applicants have not provided any verifiable evidence in the non-confidential form to substantiate the job-work relationship that existed between Tata and TCIL for the purpose of enabling the interested parties to make meaningful comments.
- jj) The cost of HR in the PUC is at least 60% of costs of PUC (depending on the grade and finish). The price at which the raw material is transferred from Tata to TCIL must be assessed. It must be ensured that the HR cost considered for the domestic industry is reflective of the market price during the relevant period and that a bulk of the profit is not loaded on Tata in order to reflect greater injury in TCIL’s records.
- kk) A transfer pricing agreement between the parties would probably set the threshold for a minimum price, whereby the Designated Authority must carefully assess the transfer price and not allow the HR transfer cost between the two entities to be too high.

**H.3. Examination by the Authority**

67. The Authority has taken note of the submissions made by the interested parties and has examined the various parameters in accordance with the Rules after duly considering the submissions made by the interested parties.

68. The interested parties have made submissions concerning the requirement of a closer examination of the transfer pricing of hot-rolled steel products between TCIL and Tata Steel. In this regard, the Authority has duly examined the transfer pricing of hot-rolled steel products for both JSW Vallabh and TCIL in detail. The authority notes that the pricing of hot-rolled steel products between Tata Steel and TCIL and also between JSW Steel and JSW Vallabh has been done appropriately and at arm’s length pricing.

69. Interested parties have also made submissions concerning the requirement of cost and pricing data of Tata Steel, prior to July 2017. The Applicants in the present investigation are JSW Vallabh and TCIL. Both of them have jointly made the application and have submitted all the required information in the prescribed formats. The information provided by both the applicants has been thoroughly verified and the verified information has been considered for the purposes of this investigation. The Authority does not find any merit in the submissions



made by interested parties concerning the requirement of cost and pricing data of Tata Steel prior to July 2017 as Tata Steel is not the applicant in the present case. The Authority has exercised appropriate due diligence and verification concerning the pricing of hot-rolled steel products between Tata Steel and TCIL and satisfied itself regarding the correctness of such pricing to take care of the concerns of interested parties.

70. Para (iii) of Annexure II of the Rules states the following:

*“(iii) In cases where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when it determines that (a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as a percentage of export price and the volume of imports from each country is three per cent of the import of like article or where the export of individual countries less than three per cent, the imports collectively accounts for more than seven per cent of the import of the 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.”*

71. The Authority notes that:

- a) The product under consideration is being dumped into India from subject countries. The margins of dumping from each of the subject countries 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 thus appropriate as the exports from the subject countries not only directly compete inter se but also with the like articles offered by the domestic industry in the Indian market.

72. In view of the above, the Authority considers that it would be appropriate to assess injury to the domestic industry cumulatively from imports of the product under consideration from the subject countries.

73. Rule 11 of the 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 to 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, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.

74. The submissions made by the domestic industry and other interested parties during the course of investigations with regard to injury and causal link and considered relevant by the Authority are examined and addressed as under:

#### **H.4.1. Volume Effect of Dumped Imports on the Domestic Industry**

##### **a. Assessment of Demand/Apparent Consumption**

75. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed shows that it has increased throughout during the injury investigation period and the POI, albeit marginally.

Particulars	Unit	2015-16	2016-17	2017-18	POI
Sales of JSW Vallabh	MT	***	***	***	***
Sales of TCIL	MT	-	-	***	***
Domestic Sales of Applicants	MT	***	***	***	***
Trend	Indexed	100	105	474	512
Sales of Other Indian Producers	MT	***	***	***	-
Trend	Indexed	100	90	0.31	-
Total Domestic Sales of all Indian Producers	MT	***	***	***	***
Imports from subject countries	MT	1,88,023	2,11,775	2,16,089	2,12,498
Other imports	MT	57,343	60,500	50,728	50,267
Demand/Apparent Consumption	MT	***	***	***	***
Trend	Indexed	100	100	102	106

##### **b. Import Volumes from subject countries in Absolute Terms**

76. 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 from subject countries, either in absolute terms or relative to production or consumption in India.

Particulars	Unit	2015-16	2016-17	2017-18	POI
EU	MT	89,502	98,823	1,05,419	1,15,681
Japan	MT	47,292	52,594	45,504	41,017



Particulars	Unit	2015-16	2016-17	2017-18	POI
USA	MT	35,017	36,164	47,253	36,805
Korea RP	MT	16,212	24,193	17,913	18,995
<b>Dumped imports from subject countries</b>	MT	<b>1,88,023</b>	<b>2,11,775</b>	<b>2,16,089</b>	<b>2,12,498</b>
Other Countries	MT	57,343	60,500	50,728	50,267
<b>Total Imports</b>	MT	<b>2,45,366</b>	<b>2,72,274</b>	<b>2,66,817</b>	<b>2,62,766</b>

77. The Authority notes that dumped imports of the product under consideration from the subject countries have increased in absolute terms during the POI as compared to the base year.

**c. Subject Country Imports in relative terms**

Particular	Unit	2015-16	2016-17	2017-18	POI
Dumped imports from subject Countries in relation to Production in India	%	***	***	***	***
Trend	Indexed	100	110	104	100
Dumped imports from subject Countries in relation to Demand in India	%	***	***	***	***
Trend	Indexed	100	112	112	106

78. It is seen that the volume of dumped imports in relation to Indian production and demand has kept fluctuating during injury investigation period and POI, with insignificant or no change in the POI as compared to the base year.

**d. Market Share**

79. The Authority notes that the market share of the subject imports increased in the POI as compared to base year (2015-16).

Particulars	Unit	2015-16	2016-17	2017-18	POI
Domestic sales of Petitioners	MT	***	***	***	***
Trend	Indexed	100	105	474	512
Domestic Sales of other producers	MT	***	***	***	-
Trend	Indexed	100	90	0	-
Domestic sales of Indian	MT	***	***	***	****

Particulars	Unit	2015-16	2016-17	2017-18	POI
producers					
Trend	Indexed	100	93	98	106
Import from Subject Countries	MT	1,88,023	2,11,775	2,16,089	2,12,498
Trend	Indexed	100	113	115	113
Import from Other Countries	MT	57,343	60,500	50,728	50,267
Trend	Indexed	100	106	88	88
Demand	MT	***	***	***	***
Trend	Indexed	100	100	102	106
<u>Market Share</u>					
Share of Petitioners	%	***	***	***	***
Trend	Indexed	100	105	462	481
Share of other Producers	%	***	***	***	***
Trend	Indexed	100	90	0	-
Share of all Indian producers	%	***	***	***	***
Trend	Indexed	100	93	96	100
Share of Subject countries	%	***	***	***	***
Trend	Indexed	100	112	112	106
Share of Other countries	%	***	***	***	***
Trend	Indexed	100	105	86	82

#### H.4.2 Price Effect of Dumped Imports on the Domestic Industry

80. With regard to the effect of the dumped imports on prices, it is required to be analysed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the dumped imports from subject countries has been examined with reference to price undercutting, price underselling, price suppression and price depression, if any. For the purposes of this analysis, the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed price of imports of the product under consideration from the subject countries.

##### a. Price Undercutting



81. For the purposes of the price undercutting analysis, the net selling price of the domestic industry has been compared with the landed value of imports from the subject countries. While computing the net selling price of the domestic industry all taxes, rebates, discounts and commissions have been deducted and sales realization at ex works level has been determined for comparison with the landed value of the dumped imports. Accordingly, the price undercutting effect of the dumped imports from the subject countries works out as follows:

Particulars	UOM	USA	Korea RP	Japan	EU
Landed price of imports	Rs/MT	44,299	50,069	55,771	45,973
Domestic Selling price excluding freight	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
	%	***	***	***	***
Range		35 – 55	15 – 35	10 – 30	30 – 50

82. From the aforesaid table, it can be seen that the price undercutting from the subject countries during POI is not only positive but significant. This is creating significant price pressure on the domestic industry.

#### **b. Price Suppression and Depression**

83. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the changes in the costs and prices over the injury period, were compared as below:

Particulars	Unit	2015-16	2016-17	2017-18	POI
Cost of Sales	Rs/MT	***	***	***	***
Trend	Indexed	100	112	112	125
Selling price	Rs/MT	***	***	***	***
Trend	Indexed	100	107	111	121
Landed Value	Rs./MT	42,960	42,063	42,367	47,942
Trend	Indexed	100	98	99	112

84. From the above table, it can be seen that the cost of sales has increased by 25 indexed points during POI as compared to 2015 – 16 but selling price has just increased by 21 indexed points during the same period. It is to be noted that landed value of dumped imports has been lower than cost of sales of domestic industry throughout the injury investigation period thereby exerting price pressure on the domestic industry.

#### **c. Price Underselling**

85. The non-injurious price (NIP) of the domestic industry has been determined and compared with the landed value of the product under consideration to arrive at the extent of price

underselling. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation on the basis of principles mentioned in Annexure III of the Rules. The analysis shows that during the period of investigation, the landed value of subject imports was below the non-injurious price of the domestic industry, as can be seen from the table below, demonstrating positive price underselling effect:

Particulars	Unit	POI (Rs/MT)	POI (USD/MT)
<b><u>EU</u></b>			
Landed Price	Per MT	45,973	666
Non-Injurious Price (NIP)	Per MT	***	***
Price underselling	Per MT	***	***
Price underselling	%	***	***
Price underselling	% Range	35 – 55	35 – 55
<b><u>Japan</u></b>			
Landed Price	Per MT	55,771	808
Non-Injurious Price (NIP)	Per MT	***	***
Price underselling	Per MT	***	***
Price underselling	%	***	***
Price underselling	% Range	10-30	10-30
<b><u>Korea RP</u></b>			
Landed Price	Per MT	50,069	725
Non-Injurious Price (NIP)	Per MT	***	***
Price underselling	Per MT	***	***
Price underselling	%	***	***
Price underselling	% Range	25-45	25-45
<b><u>USA</u></b>			
Landed Price	Per MT	44,299	642
Non-Injurious Price (NIP)	Per MT	***	***
Price underselling	Per MT	***	***
Price underselling	%	***	***
Price underselling	% Range	40 – 60	40 – 60

#### **H.4.3. Economic Parameters of the Domestic Industry**

86. Annexure II to the Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on domestic producers of such products. With regard to consequent impact of dumped imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports



on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

87. The Authority has examined the injury parameters objectively taking into account various facts and arguments made by the interested parties in their submissions. It is to be noted that up to June 2017, Tata Steel Ltd. supplied hot rolled coils and tin to TCIL which processed them into tinplate on job-work basis for Tata Steel Ltd. With effect from 1st July 2017, TCIL has started buying Hot Rolled Coils from Tata Steel Ltd. and producing and selling the product under consideration on its own account. Accordingly, Tata Steel Ltd. is not engaged in the production of the product under consideration during the POI. During the POI, there were only two producers of the products under consideration in India, namely, TCIL and JSW Vallabh, who were actually producing the PUC.

88. In the application, TCIL's information has been provided for the period starting from 1<sup>st</sup> July, 2017 onwards. The data/information for the period of 9 months (1<sup>st</sup> July, 2017 to 31<sup>st</sup> March 2018) has been annualized wherever necessary for the year 2017-18 for appropriate comparison with other years.

89. Given the peculiar facts of the case, the economic parameters of the domestic industry have been analysed in the following manner:

- A comparison has been done only between 2017-18 and the POI because TCIL started production and sales on its own account in July 2017; and/or
- Separate assessment has been done for JSW Vallabh and TCIL.

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

90. Capacity, production, capacity utilization and sales of the domestic industry over the injury period is given in the following table: -

Particulars	UOM	2015-16	2016-17	2017-18	POI
Capacity of Domestic Industry	MT	***	***	***	***
Trend	Indexed	100	100	445	445
Capacity of JSW Vallabh	MT	***	***	***	***
Trend	Indexed	100	100	100	100
Capacity of TCIL	MT	-	-	***	***
Trend	Indexed	-	-	100	100
Production of Domestic Industry	MT	***	***	***	***
Trend	Indexed	100	102	566	581

Particulars	UOM	2015-16	2016-17	2017-18	POI
Production of JSW Vallabh	MT	***	***	***	***
Trend	Indexed	100	102	112	112
Production of TCIL	MT	-	-	***	***
Trend	Indexed	-	-	100	103
Capacity Utilisation of Domestic Industry	%	***	***	***	***
Trend	Indexed	100	102	127	131
Capacity utilization of JSW Vallabh	%	***	***	***	***
Trend	Indexed	100	102	112	112
Capacity utilization of TCIL	%	-	-	***	***
Trend	Indexed	-	-	100	103
Domestic Sales of Domestic Industry	MT	***	***	***	***
Trend	Indexed	100	105	474	512
Domestic Sales of JSW Vallabh	MT	***	***	***	***
Trend	Indexed	100	105	112	110
Domestic Sales of TCIL	MT	-	-	***	***
Trend	Indexed	-	-	100	111

**b. Profitability, return on investment and cash profits**

91. Profitability, return on investment and cash profits of the domestic industry over the injury period is given in the table below: -

Particulars	UOM	2015-16	2016-17	2017-18	POI
Profit/(Loss) – Applicants	Rs/MT	***	***	***	***
Trend	Indexed	100	5	92	52
Profit/(Loss) - JSW Vallabh	Rs/MT	***	***	***	***
Trend	Indexed	100	5	(47)	(66)
Profit/(Loss) – TCIL	Rs/MT	-	-	***	***
Trend	Indexed			100	62
Profit/(Loss) – Applicants	Rs lacs	***	***	***	***
Trend	Indexed	100	5	434	265
Profit/(Loss) - JSW Vallabh	Rs lacs	***	***	***	***



Particulars	UOM	2015-16	2016-17	2017-18	POI
Trend	Indexed	100	5	(52)	(73)
Profit/(Loss) – TCIL	Rs lacs	-	-	***	***
Trend	Indexed	-	-	100	69
Cash Profits – Applicants	Rs Lacs	***	***	***	***
Trend	Indexed	100	38	399	318
Cash Profits- JSW Vallabh	Rs Lacs	***	***	***	***
Trend	Indexed	100	38	7	(7)
Cash Profits – TCIL	Rs Lacs	-	-	***	***
Trend	Indexed	-	-	100	83
ROCE – Applicants	%	***	***	***	***
Trend	Indexed	100	48	71	44
ROCE - JSW Vallabh	%	***	***	***	***
Trend	Indexed	100	48	23	8
ROCE – TCIL	%	-	-	***	***
Trend	Indexed	-	-	100	62

92. From the above table, it is noted that:

- On a comparison of the figures from 2017-18 to the POI, it can be seen that the profit per unit as well of total profit of the Applicants has reduced to almost half.
- In the case of JSW Vallabh, it can be seen that the company was making profits till 2016-17. However, since 2017-18, it has been making huge losses. TCIL's profits have also reduced as compared to 2017-18.
- Following a similar trend as that of profitability, cash profits of the domestic industry have reduced significantly from 399 indexed units in 2017-18 to 318 indexed units in the POI.
- It can be seen that the ROCE of the domestic industry has dropped by 27 indexed units from 2017-18 to the POI. Similarly, ROCE has also reduced if seen individually for JSW Vallabh and TCIL.

**c. Employment, productivity and wages**

93. Employment, productivity and wages of Domestic Industry over the injury period is given in the table below.

Particulars	UOM	2015-16	2016-17	2017-18	POI
Employment - DI	Nos	***	***	***	***
Trend	Indexed	100	102	569	563
Wages	Rs. Lacs	***	***	***	***
Trend	Indexed	100	106	1,086	1,174

Particulars	UOM	2015-16	2016-17	2017-18	POI
Productivity per employee	MT/Nos	***	***	***	***
Trend	Indexed	100	100	99	103
Productivity per day	MT/Day	***	***	***	***
Trend	Indexed	100	102	566	581

94. It is noted that the productivity per employee of the domestic industry has remained constant with negligible change through-out the injury investigation period and the POI.

**d. Inventories**

95. Inventory position with the domestic industry over the injury period is given in the table below:

Particulars	UOM	2015-16	2016-17	2017-18	POI
Average stock	MT	***	***	***	***
Trend	Indexed	100	85	179	593

96. It is noted that the inventories with the domestic industry have increased during the POI.

**e. Growth**

97. Profitability and ROCE of the domestic industry has deteriorated during the POI, as compared to 2017-18.

Particulars	UOM	2015-16	2016-17	2017-18	POI
Growth (year to year)					
Production	Y/Y %	-	2%	452%	3%
Capacity Utilization	Y/Y %	-	2%	24%	3%
Domestic Sales	Y/Y %	-	5%	351%	8%
Cost of Sales	Y/Y %	-	12%	1%	11%
Selling Price	Y/Y %	-	7%	4%	9%
Profit/ Loss	Y/Y %	-	-95%	1679%	-44%
Return on investment	Y/Y %	-	-52%	46%	-38%

**f. Ability to Raise Capital Investments**

98. Domestic Industry has claimed that the current state of its financial position does not allow them to raise capital for fresh investment.



**g. Factors affecting domestic prices**

99. The domestic industry is able to maintain its selling price in a range. The primary factor not allowing the domestic industry to increase its prices in consonance with the increase in cost and earn a decent return on its investments is the price pressure exerted by dumped imports from subject countries.

**H.4.4. Magnitude of Injury and Injury Margin**

100. The Authority has determined Non-Injurious Price for the domestic industry on the basis of principles laid down in Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The NIP of the domestic industry has been worked out and it has been considered for comparing the landed price from each of the subject countries for calculating injury margin. For determining NIP, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been done with the utilities. The best utilisation of production capacity over the injury period has been considered. The production in POI has been calculated considering the best capacity utilisation and the same production has been considered for arriving per unit fixed cost. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. Average Net Fixed Assets plus Average Working Capital) for the product under consideration was allowed as pre-tax profit to arrive at the NIP as prescribed in Annexure-III and being followed. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries to determine the injury margin as follows:

Country of Origin/ Export	Producer	NIP (USD/MT)	Landed Value (USD/MT)	Injury Margin (USD/MT)	Injury Margin %	Range
Japan	Nippon Steel Corporation, Japan	***	***	NIL	NIL	NIL
Japan	Other than Nippon Steel Corporation	***	***	***	***	20-40
USA	Any	***	642	***	***	40-60
EU	Any	***	666	***	***	40-60
Korea RP	Any	***	725	***	***	25-45

**H.5. Conclusion on Injury**

101. Based on the above, the Authority notes that the dumped imports of the product under consideration from the subject countries have increased in absolute terms during the POI.

Imports of the product under consideration are undercutting the prices of the domestic industry. The imports are also suppressing the prices of the domestic industry in India.

102. The Authority notes that the domestic industry has suffered injury on account of volume as well as price effect of imports, as a result of which the profitability of the domestic industry has declined. Return on capital employed, cash profits and profits deteriorated significantly during the POI. The above analysis overwhelmingly indicates that the Domestic Industry is suffering material injury due to increasing dumped imports of PUC into India. Thus, the Authority holds that the domestic industry has suffered material injury.

#### **I. CAUSAL LINK AND NON-ATTRIBUTION ANALYSIS**

103. 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 patterns 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.

##### **(a) Volume of imports from third countries**

104. The Authority notes that the imports of the product under consideration from non-subject countries are not in significant quantity.

##### **(b) Export Performance**

105. The Authority has considered the data for domestic operations of the Applicants for its injury analysis.

##### **(c) Development of Technology**

106. None of the interested parties has raised any issue with regard to developments in technology as being the cause of injury to the domestic industry.

##### **(d) Performance of other products of the company**

107. The Authority notes that the performance of other products being produced and sold by the Applicants does not appear to be a possible cause of injury to the domestic industry.

##### **(e) Trade Restrictive Practices and Competition between the Foreign and Domestic producers**



108. The import of the product under consideration is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

**(f) Contraction in Demand and Changes in pattern of consumption**

109. It is noted that the demand for the product under consideration has increased in the period of investigation as compared to the base year.

**I.1. Conclusion on causal link**

110. Based on the above, the Authority, thus, concluded as under:

- a) Imports of the product under consideration have increased in absolute terms during the period of investigation. Imports of PUC from subject countries have increased in absolute terms from 1,88,023 MT in 2015-16 to 2,12,498 MT in POI.
- b) There is significant price undercutting/underselling due to low priced dumped imports coming into India. There is price suppression due to low priced dumped imports coming into India.
- c) The Domestic Industry's profitability has been affected. From a total profit of 434 indexed units in 2017-18, profits have reduced significantly to 265 indexed units in the POI.
- d) From cash profit of 399 indexed units in 2017-18, cash profits have reduced significantly to 318 indexed units in the POI.
- e) The return on capital employed (ROCE) of the domestic industry has declined from 71 indexed units in 2017-18 to 44 indexed units during the POI.
- f) There are no trade restrictive practices, technology issues, export performance issues, productivity issues or any other factor which can be attributed to the injury being suffered by the domestic industry.
- g) The demand for the product under consideration has increased during the POI as compared to base year. Accordingly, fall in demand cannot be the reason for injury to the domestic industry.
- h) The imports from countries other than subject countries are not significant in volume terms so as to cause or threaten to cause injury to the domestic industry. Moreover, the price at which goods are coming from other countries is much higher than the price at which goods are coming from subject countries.

**J. POST-DISCLOSURE STATEMENT SUBMISSIONS**

### **J.1. Submissions by Domestic Industry**

111. The submissions made by the domestic industry on the disclosure statement are as follows:

- a) The Domestic Industry has requested the Authority to confirm its proposals made in the disclosure statement regarding the scope of product under consideration, standing of domestic industry, dumping analysis and injury analysis in the final findings.
- b) The Domestic Industry has submitted that Chromium-free coatings is just another type of passivation on tinplate and are yet to be accepted universally by various tin-mills in absence of sound credentials. The product has also not been approved by International Tinplate Research Institute, London. Therefore, there is no demand for the product. As and when demand comes in, Indian tin-mills are well placed to produce the same.
- c) The Domestic Industry has also submitted that Bisphenol A free products are nothing but a polymer coating on Tin Free Steel which is part of PUC. Such products are neither in demand in India nor being demanded world over due to its limitations to various can making applications, welding in particular. Existing tin-mill products in India use varieties of Bisphenol A free lacquers. This is well accepted by customers and quality assurance bodies.
- d) The Domestic Industry has requested the Authority to verify if any non-PUC product has been included for the calculation of the landed value and consequent injury margin for Nippon Steel Corporation, resulting in a NIL injury margin. Nippon Steel Corporation exports a product called "Ecokote" to India in which coating or plating is done with a mix of zinc and tin. Another such product manufactured by Nippon Steel Corporation is "Ecotrio" which is a mix of zinc, nickel and tin. These products are quite expensive as compared to the PUC of the present investigation and if such products are included in landed value calculation, it will certainly bring down the injury margin significantly, despite existence of a significant dumping margin.
- e) Pursuant to the India-Japan CEPA, basic customs duty on the imports of PUC from Japan is NIL. Therefore, the Domestic Industry has submitted that the Authority must be cautious while calculating the landed value of imports coming in from Japan. No basic customs duty should be added while calculating the landed value of Japanese imports. If basic customs duty has been added while calculating the landed value of imports from Japan, the landed value will be inflated, and consequently the injury margin will be lower.

### **J.2. Submissions by other Interested Parties**

#### **Submissions by M/s. Ohmi Industries Ltd.**



- a) Tin Free Steel customers use Japanese origin material for keeping high productivity and stable quality for making crown caps. If anti-dumping duty is added on JFE/Toyo Kohan's TFS material, end-consumers will have to bear the burden.

**Submissions by Economic Law Practices on behalf of M/s. Nippon Steel Corporation, JFE Steel Corporation, Toyo Kohan Co. Ltd., Japanese Mills**

- b) Nippon Steel Corporation has requested the Authority to confirm the injury margin determined for it in the Final Findings. In line with the lesser duty rule applicable to the anti-dumping investigations in India, the Authority is requested to abide by the said rule and accord NIL duty to Nippon Steel Corporation in the final findings.
- c) The Authority has not considered the verified figures that Nippon Steel Corporation and its corresponding traders / exporters have filed. The difference appears to arise predominantly due to the calculation of landed price for a channel comprising of Kowa Company Ltd. which has not participated in the present investigation. The injury margin has been calculated for all channels of sales (including Kowa), even though this company has not participated in the investigation. The Designated Authority is requested to accordingly remove the channel of sales for Kowa from the injury margin calculation.
- d) Request has been made to recommend a fixed form of duty (i.e. NIL USD/MT for NSC) rather than a reference price form for Nippon Steel Corporation.
- e) (i) Polymer Laminated Tinplate that are Bisphenol-A/BPA Free and (ii) Polymer Laminated Tin Free Steel that are Bisphenol-A/BPA Free (collectively, referred to as "PLT") products are a film laminated product and does not fulfill the criteria "whether lacquered and / or printed or not" provided under the definition of PUC. The observations made by the Authority in its Disclosure Statement have been limited to "Polymer Laminated Tinplate that are Bisphenol-A/BPA Free".
- f) PLT is technically and commercially different and not substitutable with Domestic industry's products.
- g) The question of determining the demand, production or importation of PLT does not arise. The Authority merely needs to confirm that the above characteristics cause PLT products to fall outside the product scope definition.
- h) As per the questionnaire response submitted by JFE Steel Corporation, there have been imports made of PLT during the POI, contrary to the observation made by the Authority.
- i) The Domestic Industry does not commercially manufacture or produce PLT. Furthermore, the capability to produce this product by the Domestic Industry alone, even if assessed, does not justify the inclusion of this non-PUC within the scope of present investigation.

- j) The Domestic producers, who are opposing the request for exclusions, are required to show that they are commercially producing and selling the products in respect of which an exclusion is sought by the producers from subject countries / users. The Domestic Industry has placed no verifiable evidence on record to show that they have commercially manufactured and sold PLT in India.
- k) Nippon Steel Corporation has submitted that there is a difference in the export price submitted by it and the export price that is being considered by the Authority to calculate the dumping margin. Since the data submitted by it has been verified, the Authority is requested to consider its data for the dumping margin calculation.
- l) The Domestic industry has failed to provide the details of the arrangement between JSW Vallabh and JSW Steel and TCIL and Tata Steel. At the same time, it is observed that the Authority has not provided the basis of its conclusion regarding the same in non-confidential form. Therefore, the interested parties are unable to make meaningful comments on the issue.

**Submissions by APJ SLJ on behalf of M/s. Hindustan Tin Works Ltd., M/s. Oricon Enterprises Ltd., M/s. Kaira Can Company Ltd., M/s. Asian Containers, M/s. Shetron Ltd., Metal Containers Manufacturers Association**

- m) The Authority has not dealt with submissions relating to (i) product usage, technical and commercial non-substitutability of Prime and Non-Prime products; (ii) separate comparison of the prime material and the non-prime material of the Product under Consideration to arrive at the dumping margin and injury margin; (iii) requirement of information from Tata Steel Ltd. in context of the consistent practice of the Authority and proper injury analysis; (iv) Submissions relating to clear violation of the Trade Notice No. 10/2018 by the Domestic Industry.
- n) The claim of confidentiality by applicant industry is excessive and in violation of Trade Notice No. 10/2018.
- o) The disclosure statement mentions that some documents with respect to transfer pricing of Tata Steel have been provided to the Authority by the Domestic Industry post public hearing. However, no such information has been provided to the interested parties. The respondents submit that in terms of Rule 7, any document that has been filed with the Authority is required to be provided to the interested parties in a non-confidential version. It is submitted that as per Rule 7, unless a non-confidential version of such documents is provided to the interested parties, the Authority cannot rely upon such documents in its decision-making process.
- p) As per the Gujarat High Court judgement in Nirma Ltd.vs.Union of India, all that information which has been used by the Authority in its decision-making process, must be provided to the interested parties for their comments.



- q) A non-confidential summary of the Authority's analysis of Job work charges charged by TCIL to Tata Steel pre-July 2017 and conversion charges claimed by TCIL while claiming injury post July 2017 must be provided to the interested parties.
- r) The case was initiated on June 28, 2019 and statutory time limit of 12 months is coming to an end on June 27, 2020. Therefore, the Authority still has 36 days to call for costing data from Tata Steel and do a proper analysis. It is also pertinent to mention that to properly evaluate the costing of Tata Steel for previous years, the Authority can always seek statutorily allowed extension of time post June 27, 2020.
- s) The Authority has consistently rejected the responses of the exporters wherever information relating to related parties has not been supplied. In this context, the investigation concerning "Flexible Slabstock Polyol" originating in or exported from Australia, EU and Singapore, F.No.14/1/2013-DGAD, dated 11.01.2015 is relevant.
- t) The Authority has in the past rejected the entire response of the exporter on the ground that one of the intermediary, even though unrelated, did not file the questionnaire response. The Authority may kindly refer to the investigation of "Uncoated Copier Paper" originating in or exported from Indonesia, Thailand and Singapore, F. No.6/32/2017-DGAD, dated 30.10.2018.
- u) The disclosure statement did not even explain as to how the present case is distinct from the investigation of "Uncoated Copier Paper" originating in or exported from Indonesia, Thailand and Singapore and the investigation concerning "Flexible Slabstock Polyol", originating in or exported from Australia, EU and Singapore. The respondents submit that in absence of distinction being drawn from the cases mentioned above, the Designated Authority was bound to follow the principles laid down in the above-mentioned cases.
- v) In terms of the provisions of Annexure II of AD Rules, the Designated Authority is required to look at the trend of the performance of the Domestic Industry. However, since the information pertaining to Tata Steel is not available, the trend regarding the performance of the Domestic Industry is bound to look distorted.
- w) It is important to note that Tata Steel (related party of TCIL) was a domestic producer before June 2017. Further, post introduction of GST, an arrangement was made between the related parties (TCIL and Tata Steel) to show TCIL as the domestic producer. However, apart from the buy-sell arrangement, the operations of both the related parties remained exactly the same. Therefore, the performance of Tata Steel in the period preceding June 2017 assumes relevance for the purpose of a proper injury analysis.
- x) The absence of imports or orders of a product is not a criterion to deny exclusion of a product from Product under Consideration. The Authority is requested to kindly exclude Bisphenol-A/BPA Free and Chromium-free tinplate from the scope of the Product under Consideration.

- y) It is submitted that none of the Indian manufacturers produce Tinplate of width lower than 600mm, T1 temper and bright finish.
- z) Non-prime material is used to manufacture low end products for which the usage of prime tin plates is not necessary. There are final goods for which prime tin plates are required to be used e.g., food items and there are products for which there is no requirement of usage of prime tin plates e.g., geometric box, lamps, hair clips, curtain rings, paper clips, etc.
- aa) Prime Tinplate requires information to be provided by the purchaser to the supplier when making an order as per clause 6 of Indian Standards 1993 of 2018 and ISO 11949: 2016. The Indian Standards makes it mandatory under Clause 6.2(g) to provide the end use. Note to clause 6.2 mentions that the appropriate steel selection is dependent on the shaping operations such as stamping, drawing, folding, beading and bending and assembly work such as joint forming, soldering or welding.
- bb) Under clause 6.3 of the Indian Standards, the manufacturer is to be provided with information, which makes the order requirement consistent with the end use of the product. Importance is given to the fabrication operation as they are very critical with sophisticated manufacturing operations.
- cc) Half of the consumption of tinplate in India is of non- critical use which is not the case as of any other steel products. Such non-critical products which are mainly produced by the small and cottage industries, are found all over India and do not require Prime Tinplate for the desired end use and applications.
- dd) The Authority also overlooked the important aspect of commercial substitutability of the prime products with non-prime products. There is a difference of around 30% between the commercial prices of the prime and non-prime tin plates.
- ee) While determining the dumping margin as well as the injury margin the Authority has not given due regard to the difference in the physical characteristics as well as the factors affecting price comparability of the prime and non-prime tin plates.
- ff) It is clear that as per Article 2.4 of the Anti-dumping Agreement, the Authority while determining the normal value is required to give due regard to the difference in physical characteristics and other differences affecting the price comparability. It is an admitted position that the prices of the prime and non-prime tin plates vary significantly.
- gg) The Domestic Industry has admitted to such distinction at various junctures and the Annual Report of TCIL for the year 2018-19 clearly mentions that that it holds 68% prime tinplate domestic market share. Further, Indian Standards also distinguish the prime tin plates with non-prime tin plates.
- hh) It has been the consistent practice of the Designated Authority and the Authorities worldwide to compute dumping margin and injury margin on the basis of the weighted



average of individually worked out dumping margin and injury margin for different grades.

- ii) While working out the injury margin the Authority should compare the landed price of prime products with domestic prime products, and non-prime products with domestic non-prime products. While working out the injury margin the Authority should compute the landed value of the imports taking the weighted average of the prime and non-prime tin plates sold by the Domestic Industry. This is for the reason that for determining injury to the Domestic Industry, the weighted average of the products sold by the Domestic Industry represents the correct level of the non-injurious price as well as the landed value sufficient to remove any injury caused to the Domestic Industry.
- jj) It is absolutely clear that the Authority has overlooked the mandatory requirement of Annexure II(iv) while analyzing the injury caused by the imports.
- kk) There is no increase in dumped imports in relation to production in India. In fact, the volume of dumped imports in relation to production in India has declined in the POI as compared to the previous year. Similarly, dumped imports in relation to consumption in India also declined in the POI as compared to 2016-17 and 2017-18. Similar trend is apparent with respect to the allegedly dumped imports in absolute terms where the absolute quantity of imports in POI has declined in the POI as compared to the previous year.
- ll) As regards price undercutting and price/suppression depression, the respondents cannot make any effective comments since the disclosure statement does not contain any analysis pertaining to prime and non-prime tin plates separately.
- mm) The sales of the Domestic Industry have increased from 100 trend points in the base year to 512 trend points in the POI. As compared to the previous year, the sales of the Domestic Industry have increased from 474 in 2017-18 to 512 in the POI.
- nn) TCIL is also exporting the subject goods in significant quantities at prices around USD 900/MT while their domestic selling price is around USD 1000/MT. It is submitted that the imports in India are also happening around 900 USD/MT. This demonstrates that the imports in India are happening at the internationally standard prices.
- oo) Imports from subject countries and other countries declined during the POI as compared to the immediately preceding year. Domestic sales also increased during the POI as compared to the immediately preceding year. It is unclear how inventory can increase so substantially during POI as compared to the immediately preceding year, particularly when demand has increased.
- pp) In 2015-16 and 2016-17, TCIL was producing subject goods (though on job work basis for Tata Steel). It is unclear how the Authority can ignore this fact and consider capacity, production and capacity utilization as “-” (nil) for TCIL in 2015-16 and 2016-17. Here, it is important to mention that conversion activities of TCIL do not change in

post and pre-July 2017. In both the periods they were converting Hot Rolled coils into subject goods.

- qq) There is no information in Section IV of the disclosure statement as to how actually the Authority has computed raw material cost, cost of utility, capacity utilization for normation of the cost.

#### **Submissions by Association of Tin-Plate Users**

- rr) The Authority's direction to file submissions by 23rd May 2020 by various interested parties is in violation of the order of the Hon'ble Supreme Court, especially when various interested parties had informed that their offices are closed due to lockdown in Mumbai and other parts of the country. The Authority is once again requested to reconsider its decision and give reasonable time to file comments on the Disclosure Statement.
- ss) In order to impose an anti-dumping duty on the imports, there must be material retardation/material injury to the domestic industry due to the subject imports. However, the economic parameters of the domestic industry have improved significantly.
- tt) Increase in cost of raw material has caused injury to the domestic industry and certainly not the imports from subject countries.
- uu) Capacity has increased from 100 during the year 2015-16 to 445 during the period of investigation. Accordingly, production has also increased sharply during the period of investigation to 581 from 100 during the base year 2015-16.
- vv) It is clear that the sales quantity has increased 5 times during the period of investigation from 100 during the base year 2015-16 to 512 during the period of investigation.
- ww) Market share of domestic industry has increased substantially from 100 during the base year 2015-16 to 481 during the period of investigation. Sales of other Indian producers have also declined significantly from 100 to NIL during the period of investigation. On the contrary, market share of imports from subject countries has remained almost same during the injury period i.e. 30-35%. Imports from other countries have also declined. Thus, the major proportion of market share is held by the domestic industry only.
- xx) No. of employees have increased significantly during the period of investigation to 563 as compared to 100 during the base year 2015-16. Thus, there is no negative trend shown in no. of employees.
- yy) Productivity of the domestic industry has increased substantially during the injury period to 581 as compared to 100 during the base year 2015-16. Thus, there is no injury to the domestic industry.



- zz) GPT Steel Industries Limited closed down because of high debts and an anti-dumping order on Cold rolled sheet/coils which did not allow them to import their substrate tin mill black plate at a competitive price.

#### **Submissions by Tamil Nadu Importers Association**

- aaa) The domestic industry is unable to service the entire MSME sector.
- bbb) The Present customs duty of 12.5% plus cess is already very high and is making the landed cost must higher. An imposition of anti-dumping duty will be injurious to the MSME sector.
- ccc) Prime products have a specific usage and non-prime material cannot be used in such specific usages. Prime products are produced as per end-user specific requirements and these are not available on the shelf. Non-prime materials are used by MSMEs. They employ skilled workers instead of high end machines to manufacture non-critical and small items.
- ddd) PUC is not being imported under HS Code 72109090 (Cladded plates used by automobile industry), 7107000 (Pre-painted Galvalume), 72103090 (Electrolytically Plated or coated with Zin), 72124000 (Color coated Steel) and 72259900 (Electrical Steel). These products have a different usage than the PUC. The inclusion of these imports under the PUC has shown an inflated quantity of imports.

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

112. The Authority has examined the post-disclosure comments/submissions made by the interested parties including reiterations which have already been examined suitably and adequately addressed in the relevant paras of these final findings. The issues raised for the first time in the post disclosure comments/submissions made by the interested parties and considered relevant by the Authority are examined below.

113. The Authority notes that many parties have made submissions before the Authority for the first time after the issue of the Disclosure Statement. Trade Notice No. 11/2018 dated 10<sup>th</sup> September 2018 requires interested parties to register themselves with the Authority within 40 days of initiation of investigation. The Trade Notice clarifies that any request for registration at a later stage shall not be entertained. The Authority however notes that such an approach on the part of parties to raise fresh set of issues at the fag-end of the investigation, that too without having participated at any stage of the investigation is not at all appreciated, since the Authority can only address such issues to a certain extent in a time-bound investigation. Further, it also prevents other parties from commenting on the submissions made by such unregistered parties. However, even such arguments have been taken on record and have been duly addressed to the extent possible by the Authority.

114. It has been submitted that Polymer Laminated Tinplate that are Bisphenol-A/BPA Free and Polymer Laminated Tin Free Steel that are Bisphenol-A/BPA Free (collectively, referred to as "PLT") products are a film laminated product and does not fulfill the criteria "whether



*lacquered and / or printed or not*” provided under the definition of PUC. In this regard, the Authority notes that this submission has been made by the interested parties for the first time at the stage of the post-disclosure comments. No such claim had been made in the past regarding PLT not fulfilling the criteria of the PUC due to the lamination on it. Interested parties have maintained throughout that PLT must be excluded since the domestic industry does not produce/manufacture the same in commercial quantities. In any case, the Authority has examined the submissions made by the interested parties, and it has been noted the PLT are tin plate and tin free steel products with a polymer coating on them. An additional coating on the PUC does not deprive the PUC of its essential characteristics and does not render the product to be beyond the scope of the PUC. Therefore, the Authority holds that PLT is a part of the PUC for the purpose of present investigation.

115. It has also been submitted by an interested party that imports of PLT have been made during the POI. The interested party has provided no credible evidence to substantiate its claim. The interested party has merely produced a section of its questionnaire response to show that it has exported PLT to India during the POI, without providing any supporting documents that the transaction actually pertains to export of PLT. The interested party has also not substantiated its claim by showing the transaction of PLT in the DGCI&S imports transaction data. In any case, the Authority has examined the evidence provided by the interested party, and it has been observed that PLT exports claimed to have been made by the interested party are of \*\*\* MT out of \*\*\* MT of exports of PUC made by the interested party to India during the POI. This shows that PLT exports claimed to have been made by the interested party constitutes merely 0.006% of the total PUC exports made by the interested party to India. The total imports of PUC from Japan into India during the POI are of 41,017 MT. This means that PLT exports claimed to have been made by the interested party constitutes merely \*\*\*% of the total imports of PUC from Japan during the POI. This is a negligible quantity and cannot be considered to be a ‘commercial quantity’ by any stretch of imagination. In fact, the submission made by the interested party concerning PLT exports to India fully supports the view taken by the Authority that there is no real demand in commercial sense for this product in India. The domestic industry has also submitted that as and when the demand for this product arises in India, the domestic producers are well placed to produce the same and meet the requirements of the users.

116. M/s. Nippon Steel Corporation has submitted that the Authority has taken into consideration a different landed value and export price than the one submitted by them for the calculation of dumping margin and injury margin. In this regard, the Authority notes the following provisions in this regard:

(a) Rule 6(8) of the Rules provides as under:

*“(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the*



*facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances."*

(b) Further, Paragraph 7 of Annex II pursuant to Article 6.8 of the WTO Anti-dumping Agreement provides as under:

*".....It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate."*

117. Hence, for the portion of export quantity for which complete chain of responses containing the requisite information have not been made available to the Authority, the individual dumping margin for such producers/exporters has been computed considering the above provisions.

118. In this regard, it is noted that the Authority received the required data only for \*\*\* % of the quantity exported by NSC to India. The Authority has used facts available for determination of net export price and landed value with respect to the balance \*\*\*% of the quantity (\*\* MT) exported to India by the producer NSC.

119. The interested parties have laid emphasis and made elaborate submissions on the arrangement between TCIL and Tata Steel. Each of the concerns is addressed as follows:

- i. With regard to the transfer pricing of Tata Steel being provided to the Authority by the Domestic Industry, some interested parties have submitted that no non-confidential version has been provided to them. In this regard, the Authority notes that the transfer pricing details were provided to the Authority during the verification exercise conducted by the Authority. It is the consistent practice of the Authority that the documents collected during the verification exercise from both the domestic industry as well as foreign exporters are not provided to other interested parties. No non-confidential version is prepared for the confidential documents collected during the verification exercise. This practice is in accordance with the established global practices in trade remedy investigations.
- ii. The interested parties have contended that the Authority has consistently rejected the responses of the exporters wherever the value chain was incomplete due to the lack of information supplied by related and unrelated parties. They have relied on the investigation concerning "Flexible Slabstock Polyol" originating in or exported from Australia, EU and Singapore, F.No.14/1/2013-DGAD, dated 11.01.2015 to state that the Authority has consistently rejected the responses of the foreign producers/exporters wherever information relating to related parties has not been supplied. They have also stated that the Authority has in the past rejected the entire response of the foreign producer/exporter on the ground that one of the intermediary, even though unrelated, did not file the questionnaire response, and have relied on the Anti-dumping investigation concerning "Uncoated Copier Paper" originating in or exported from Indonesia, Thailand and Singapore, F. No.6/32/2017-DGAD, dated 30.10.2018. It has been argued that the



response of the domestic industry should also be rejected, since the information of Tata Steel, which is a related party of TCIL, has not been provided. In this regard, the Authority notes that the interested parties have not cited even a single case where the information provided by the domestic industry has been rejected on the ground that the related entity of the domestic industry, which is not engaged in production or sales of the subject goods during the POI but was engaged in the production and sales of subject goods in the past, has not provided complete details as required from a constituent of domestic industry. The interested parties have also not cited any case where complete details have been called for and collected by the Authority from the related entity which is not engaged in production or sales of the subject goods during the POI but was engaged in the production and sales of subject goods in the past. The interested parties are merely citing some cases concerning rejection of responses of foreign producers/exporters due to non-participation by related entities involved in production or sales of subject goods during the POI or unrelated traders involved in export chain to India during the POI of those investigations. The cases cited by the interested parties relate to completely different set of facts and are not at all applicable to the present case. In the cases cited by the interested parties, the responses of foreign producers/exporters were rejected due to (i) non-participation by related entities involved in production or sales of subject goods during the POI because of which the Authority did not have complete details to determine the normal value and dumping margin for the concerned producer/exporter and (ii) non-participation by unrelated traders involved in exports of subject goods to India during the POI because of which the Authority did not have complete details to determine the export price, landed value, dumping margin and injury margin for the concerned producer/exporter. The Authority notes that in the POI of the present investigation, Tata Steel is neither engaged in production of subject goods nor engaged in sales of subject goods and therefore the cases cited by the interested parties are not applicable to the present case.

- iii. One of the interested parties has stated that there is an increase in cost for Tata Steel/TCIL post-July 2017 as compared to the situation prevailing pre-July 2017 due to the change in the operating methodology of both these parties post-July 2017 wherein TCIL started purchasing hot rolled steel from Tata Steel and started producing and selling tinplate on its own account. Due to this change in operating methodology, Tata Steel/TCIL is showing deterioration in profits in the period post-July 2017 as compared to the situation prevailing pre-July 2017. The interested party has also given an example to substantiate its claim in this regard. Firstly, the Authority notes that the example provided by the interested party as a part of its submissions is based on unsubstantiated assumptions, and the figures used in the example do not seem appropriate or accurate. Secondly, in any case, the Authority has clarified in Para 89 of these final findings, that given the peculiar facts of the case, the trend has been analyzed from 2017-18 to the POI, and comparison has not been done between pre-July 2017 and post-July 2017 situation to assess injury to the domestic industry. The Authority has assessed how the economic parameters of TCIL have behaved after TCIL started producing and selling the PUC on its own account from July 2017 onwards.
- iv. It has been contended that the capacity, production and capacity utilization of TCIL should not be NIL in 2015-16 and 2016-17, since they were performing conversion activities for Tata Steel in those years. The Authority notes that TCIL started producing and selling the



PUC on its own account from July 2017 onwards and therefore the contention raised by the interested parties cannot be accepted.

120. With regard to the submission that the Authority has not provided any reasons regarding claims of confidentiality by the domestic industry, it is clarified that the provisions of claiming an information as confidential by an interested party are fully compliant with the WTO provisions. These provisions apply equally to all interested parties i.e. domestic industry, exporters, importers/users. To streamline the filing of non-confidential version of an information claimed confidential in accordance with relevant Rules, the Authority has issued Trade Notice No. 10/2018 dated 7/9/2018. The Authority has duly examined whether the non-confidential versions have been filed by various interested parties in accordance with the relevant Rules and the above Trade Notice and has accepted their claims wherever found suitable.

121. With regard to the contention regarding capability of the Indian manufacturers to produce Tin-plate of width lower than 600 mm, T1 temper and bright finish, the Authority has noted that this is a new claim brought by the interested parties. The interested parties throughout the course of the investigation had claimed that the domestic industry cannot produce tinplate of width lower than 700 mm and this aspect was duly examined and verified by the Authority. The interested parties cannot bring new claims at the end of the investigation. Multiple chances have been provided to the interested parties to present their views, and a new claim at this stage seems to be a tactic to delay the investigation procedure. It reiterated that the domestic industry has provided evidence to show that it produces tin-plate of width lower than 700 mm. No evidence has been provided by the interested parties to prove otherwise.

122. Some interested parties have reiterated their concerns with regard to the difference in the end-use between prime and non-prime products. On the basis of the submissions made by various interested parties, the Authority notes that the end-use for prime and non-prime products is the same in most of the applications. It has also been duly admitted by the Association of Tinplate Users that prime and non-prime tinplate are being used interchangeably in most of the applications. The Authority also notes that there are no firm physical attributes or technical distinctions that differentiate the prime material from the non-prime one. Therefore, excluding non-prime tinplate from the scope of PUC would open floodgates for circumvention. Prime products could be sold as non-prime products at a lower price and could easily circumvent the anti-dumping measures and make the entire exercise of conducting this investigation meaningless. The distinction between prime and non-prime grade of PUC is an issue that Authority has had to address in several investigations, and it has been the consistent practice of the Authority to include both prime and non-prime grade products within the scope of the PUC. In light of the same, the Authority rejects the request made by the interested parties for exclusion of non-prime products from the scope of the PUC.

123. Interested parties have also raised the issue that the Authority has not taken into consideration the difference in physical characteristics and price difference between prime and non-prime products while calculating the dumping and injury margin. In this regard, firstly the Authority notes that exporters/producers from EU, USA and Korea RP have not



participated in the subject investigation and therefore the Authority had to base its dumping margin and injury margin determination for these countries based on facts available. Secondly, in case of Japan, only one producer has been treated cooperative and the Authority has determined the dumping margin and injury margin for this co-operative producer based on the data submitted by this party except to the small extent of non-cooperation wherein the Authority has used facts available for this producer. The producer from Japan has in fact not even raised this issue of considering difference in physical characteristics and price difference between prime and non-prime products while calculating dumping and injury margin. Thirdly, it is noted that the request for considering difference in physical characteristics and price difference between prime and non-prime products while calculating dumping and injury margin has been made by importers in India who do not have any information regarding the cost of production and other details required for calculating the normal value, dumping margin, non-injurious price and injury margin. The Authority has duly examined the claims made by the interested parties and has noted that the cost of producing prime and non-prime products is the same. Non-prime products are merely products which have not been able to meet the customization requirement of the customer in the manufacturing process and are, therefore, classified in various nomenclatures such as waste, seconds, defective, misprint, non-prime, etc. Since the cost of production of both prime and non-prime tinplate is same, it is not possible to make hypothetical adjustments while calculating the dumping margin and injury margin as being claimed by the interested parties. The interested parties are essentially arguing for a situation where assuming if the cost of producing prime and non-prime products is USD 1000, and prime products are being sold at USD 1200 and non-prime at USD 800 due to a specification defect, the normal value/NIP for prime products should be calculated based on a price of USD 1200 and non-prime products based on a price of USD 800. Normal value cannot be determined based on loss making sales price because such sales are not deemed to be in the ordinary course of trade. Similarly, non-injurious price needs to be determined based on the actual cost of production in terms of Annexure III to the AD Rules and no hypothetical adjustments can be made to the actual cost of production based on lower selling price of non-prime products. Accordingly, this argument made by the interested parties is not acceptable as the same is against the legal provisions and established practice of the Authority. Further, the Authority holds that the injury and dumping margin have been calculated for the PUC as a whole. The established WTO jurisprudence under Article 2 of the AD Agreement requires the overall margin of the PUC to be determined.

124. With regard to the contention that Annexure II (iv) has not been complied with while analyzing injury, it is noted that there has been (i) an increase in dumped imports in absolute terms in the POI as compared to the base year; (ii) there is positive price undercutting and price underselling caused by the subject dumped imports; (iii) the domestic industry's economic parameters have deteriorated in the POI. A complete analysis has been done in the relevant portion of the Final Findings.

125. With regard to the contention that no information has been provided in Section IV of the disclosure statement as to how actually the Authority has computed raw material cost, cost of utility, capacity utilization for normation of the cost, it is noted that Section IV of the



Disclosure Statement clearly states the methodology adopted by the Authority to compute the NIP and all relevant costs.

126. With regard to the submissions made by the interested parties on the economic parameters of the domestic industry, the same have been elaborately dealt with in the relevant section of the Final Findings.

127. With regard to the contention of analyzing the price suppression/depression separately for prime and non-prime products, the Authority notes that it has analyzed price effect for the PUC as a whole, as per its consistent practice.

128. With regard to the import price being USD 900/MT, which is claimed to be the internationally standard price, the Authority notes that this claim is factually incorrect. The landed value of the imports is much lower than USD 900/MT in the POI, even with the addition of the basic customs duty:

Country	Unit	Landed Value (Rs/MT)	Landed Value (USD/MT)
EU	Per MT	45,973	666
Japan	Per MT	55,771	808
Korea RP	Per MT	50,069	725
USA	Per MT	44,299	642

129. With regard to the contention raised by one of the interested party that the Authority's direction to file comments on disclosure statement by 23rd May 2020 is in violation of the order of the Hon'ble Supreme Court, the Authority notes that it has provided ample opportunity to the interested parties to present their views. The original deadline for filing comments on the disclosure statement was 15<sup>th</sup> May 2020 which was extended till 23<sup>rd</sup> May 2020 on the request of the interested parties. The interested parties had thus ample time to file comments on the disclosure statement. The Authority being a quasi-judicial body is under statutory obligation to complete the anti-dumping investigation within 12 months' time-period.

130. The interested parties have argued that PUC is not being imported under certain HS Codes. Firstly, the interested parties have given some 7-digit HS Codes instead of 8-digit HS Codes, making the HS Code unclear. In any case, as per the Authority's understanding, it is noted that most of the said HS Codes are of the 'Others' category and from the DGCI&S transaction-wise import data, the Authority has noted that imports are made under these HS Codes as well. The Authority further clarifies that customs classification is not binding but only indicative in nature, and therefore, the description of the product shall prevail over customs classification. In regard to the contention that inclusion of imports under these HS codes has resulted in inflated quantity of imports, it is noted that while examining volume and

value of imports from DGCI&S data, the description of import item is also verified besides HS code and therefore there is no possibility of the import quantity getting inflated.

131. With regard to the submission made by the domestic industry regarding landed value calculation for Nippon Steel Corporation, the Authority has again revisited the workings and it is noted that no non-PUC item has been included in the landed value calculation for Nippon Steel Corporation and also that no addition for basic customs duty has been done while calculating the landed value for Nippon Steel Corporation.

132. Concerns regarding public interest have been adequately addressed in the relevant section of Final Findings.

#### **K. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES.**

133. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping duty would not restrict imports from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

134. It is recognized that the imposition of anti-dumping duty might affect the price levels of the product under consideration and downstream goods manufactured using the product under consideration. This might consequently have some effect on the relative competitiveness of the downstream products. However, since levy of an anti-dumping duty is restricted to the amount necessary to redress the injury to the domestic industry, fair competition in the Indian market will not be reduced by the anti-dumping measure. Imposition of anti-dumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the product under consideration.

#### **L. CONCLUSION**

135. Having regard to the contentions raised, information provided, and submissions made by the interested parties and facts available before the Authority as recorded in these final findings and on the basis of the above analysis, the Authority concludes that:

- a. The product under consideration has been exported to India from the subject countries below its associated normal value, thus resulting in dumping.
- b. The domestic industry has suffered material injury due to dumping of the product under consideration from the subject countries.
- c. Material injury has been caused to the domestic industry by the dumped imports from the subject countries.



## M. RECOMMENDATION

136. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Rules and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive antidumping duty is required to offset dumping and injury. The Authority, therefore, considers it necessary and recommends imposition of anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

137. In terms of provision contained in Rule 4(d) & Rule 17(1) (b) of the Rules, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive anti-dumping duty equal to the amount mentioned in Column 7 of the duty table below is recommended to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on all imports of subject goods originating in or exported from subject countries.

**DUTY TABLE**

S. No.	Heading/Sub-Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty Amount	Currency	Unit
1	2	3	4	5	6	7	8	9
1.	72101110, 72101190, 72101210, 72101290, 72105000, 72109010, 72121010, 72121090, 72125020, 72125090 72259900, 72109090, 72107000, 72103090, 72255010, 72124000*	Tin mill flat rolled steel products**	Japan	Any country including Japan	Nippon Steel Corporation	NIL	US\$	MT

S. No.	Heading/Sub-Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty Amount	Currency	Unit
1	2	3	4	5	6	7	8	9
2.	-do-	Tin mill flat rolled steel products**	Japan	Any country including Japan	Any other producer other than S.No. 1 above	222	US\$	MT
3	-do-	Tin mill flat rolled steel products**	Any country other than EU, USA, Korea RP and Japan	Japan	Any	222	US\$	MT
4	-do-	Tin mill flat rolled steel products**	EU	Any country including EU	Any	310	US\$	MT
5	-do-	Tin mill flat rolled steel products**	Any country other than EU, USA, Korea RP and Japan	EU	Any	310	US\$	MT
6	-do-	Tin mill flat rolled steel products**	USA	Any country including USA	Any	334	US\$	MT
7	-do-	Tin mill flat rolled steel products**	Any country other than EU, USA,	USA	Any	334	US\$	MT




S. No.	Heading/Sub-Heading	Description of Goods	Country of Origin	Country of Export	Producer	Duty Amount	Currency	Unit
1	2	3	4	5	6	7	8	9
			Korea RP and Japan					
8	-do-	Tin mill flat rolled steel products**	Korea RP	Any country including Korea RP	Any	251	US\$	MT
9	-do-	Tin mill flat rolled steel products**	Any country other than EU, USA, Korea RP and Japan	Korea RP	Any	251	US\$	MT

**\*Note:** Customs classification is only indicative, and the determination of anti-dumping duty shall be made as per the description of the PUC.

**\*\*Note:** Tin mill flat rolled steel products that are coated or plated with tin or chromium / chromium oxides, either on one side or both sides, whether lacquered and/or printed or not. These products are of prime and non-prime category and in all sizes.

#### **N. FURTHER PROCEDURE**

138. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

 17/06/20

**(Bhupinder Singh Bhalla)**

**Additional Secretary & Designated Authority**