

**To be published in the Part 1 Section 1 of Gazette of India, Extraordinary**

**Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti Dumping & Allied Duties)  
Jeevan Tara Building, 5, Parliament Street  
New Delhi 110001**

Date 2<sup>nd</sup> July, 2015

**Notification**

**Final Finding**

**Subject: Second Sunset Review (SSR) anti-dumping investigation concerning imports of 'Certain Float Glass' originating in or exported from China PR and Indonesia.**

**F. No. 15/24/2013-DGAD:-** Whereas having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter 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, (hereinafter referred to as the Rules) thereof, on the basis of the duly substantiated application filed on behalf of the domestic producers of float glass in India and in accordance with section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Designated Authority in the Ministry of Commerce and Industry, Department of Commerce, Govt. of India, appointed under the Rules supra, (hereinafter referred to as "the Authority"), initiated a sunset review investigation, vide Notification No. 15/24/2013-DGAD dated 3<sup>rd</sup> January, 2014, to examine whether the expiry of the duty in force on import of certain float glass originating in or exported from China PR and Indonesia, is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

**A. Background of the Case**

1. Having regard to the above Act and Rules the Designated Authority had, vide Notification No. 14/19/2002-DGAD dated 05<sup>th</sup> July, 2002, initiated an anti-dumping investigation concerning import of "Certain Float Glass" (hereinafter referred to as subject goods), originating in or exported from China PR and Indonesia (hereinafter referred to as "subject countries").
2. The Preliminary Findings were issued by the Authority, vide Notification No. 14/19/2002-DGAD dated 20<sup>nd</sup> November, 2002 and provisional duty was imposed by the Central Government, vide Notifications No. 7/2003-Customs,

dated 7<sup>th</sup> January, 2003. The Final Findings were issued by the Authority vide Notification No. 14/19/2002-DGAD, dated 22<sup>nd</sup> August, 2003. On the basis of the recommendations made by the Authority in the final findings, definitive anti-dumping duties were imposed by the Central Government, vide Notifications No. 165/2003-Customs, dated 12th November, 2003 on the imports of the of the above goods, originating in or exported from the subject countries.

3. Before expiry of the said duty M/s Saint-Gobain Glass India Limited, the major domestic manufacturer of the subject goods in India, filed a duly substantiated application in 2007 before the Authority, on behalf of the domestic industry, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the above goods, originating in or exported from subject countries and consequent injury to the domestic industry in the event of cessation of duty, and requested for a review of the same for continuation and enhancement of the anti-dumping duties imposed on the imports of "Certain Float Glass", originating in or exported from the subject countries.
4. On the basis of duly substantiated application filed by the domestic industry, Authority vide Notification No. 15/01/2007-DGAD, dated 13<sup>th</sup> December 2007, initiated a sunset review of the antidumping duty in force on import of "Certain Float Glass", originating in or exported from the above named countries. The Final Findings were issued by the Authority vide Notification No. 15/01/2007-DGAD dated 02<sup>nd</sup> December 2008. On the basis of the recommendations made by the Authority in the final findings, definitive anti-dumping duties were extended by the Central Government, vide Notifications No. 04/2009-Customs dated 06<sup>th</sup> January, 2009 on the imports of the above goods, originating in or exported from the subject countries for a further period of five years i.e., upto 5<sup>th</sup> January 2014.
5. In 2013 M/s Gold Plus Glass Industry Limited, M/s HNG Float Glass Limited and M/s Saint-Gobain Glass India Limited, the major domestic manufacturers of the subject goods in India, filed a duly substantiated application before the Authority, on behalf of the domestic industry, in accordance with the Act and the Rules, alleging likelihood of continuation or recurrence of dumping of the above goods, originating in or exported from subject countries and continuation or recurrence of injury to the domestic industry in the event of cessation of duty, and requested for a review of the same for continuation and enhancement of the anti-dumping duties imposed on the imports of the subject goods originating in or exported from the subject countries.
6. On the basis of the duly substantiated application filed on behalf of the domestic industry and in accordance with section 9A(5) of the Act, read with Rule 23 of the Anti-dumping Rules, the Authority initiated a sunset review investigation, vide Notification No. 15/24/2013-DGAD dated 3<sup>rd</sup> January, 2014, to examine whether

the expiry of the duty in force is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. The validity of the anti-dumping duty on the imports of the subject goods from the subject countries was extended by the Central Government up to and inclusive of 5<sup>th</sup> day of January 2015, vide Notification No. 07/2014-Customs (ADD) dated 23<sup>rd</sup> January, 2014.

7. On the request of the Authority, the Central Government extended the time for completion of the Investigation by six months, i.e., up to 02<sup>nd</sup> July, 2015, in terms of Rule 17 of the AD Rules.
8. The scope of the present review covers all aspects of the original investigation concerning imports of the above goods, originating in or exported from the subject countries.

## **B. Procedure**

9. The procedure described below has been followed with regard to the subject investigation:
  - i. The embassies of the subject countries in New Delhi were informed about the initiation of the investigations in accordance with Rule 6(2).
  - ii. The Authority provided copies of the non-confidential version of the application to the known exporters and the embassy of the subject countries in accordance with Rules 6(3) supra. A copy of the non- confidential version of the application was also made available in the public file and provided to other interested parties, wherever requested.
  - iii. The Authority forwarded a copy of the public notice to the following known manufacturers/exporters in the subject countries (whose names and addresses were made available to the Authority) and gave them opportunity to make their views known in writing within forty days from the date of the letter in accordance with the Rules 6(2) & 6(4):

### **CHINA**

1. M/s Luoyang Float Glass Group Co., Ltd.
2. M/s Qinhuangdao Huazhou Glass Co. Ltd., China

### **INDONESIA**

1. M/s. PT Mulia Industrindo
2. M/s. PT Tensindo
3. M/s PT Abdi Rakyat Bakti

10. China being a Non-Market Economy country, a Market Economy Treatment (MET) questionnaire was also forwarded to all the known producers/exporters in China PR and the Embassy of China PR with the request to provide relevant information to the Authority within the prescribed time limit. While for the purpose of initiation the normal value in China was considered based on the cost of production of the subject goods in India, duly adjusted, the Authority informed the known producers/exporters from China PR that it proposes to examine the claim of the applicant in the light of Para 7 and Para 8 of Annexure I of Anti-dumping Rules, as amended. The exporters/producers of the subject goods from China PR were, therefore, requested to furnish necessary information as mentioned in sub-paragraph (3) of paragraph 8 of Annexure I referred above to enable the Authority to consider whether market economy treatment can be granted to the cooperative exporters/producers in that country. However, no response has been received from any producer/exporter from China PR in this regard.

11. No exporter's questionnaire has been filed by any of the producers/exporters from the subject countries.

12. The Authority forwarded copies of the public notice to the following known importers/consumers of subject goods in India (whose names and addresses were made available to the authority) and advised them to make their views known in writing within forty (40) days from the date of issue of the letter in accordance with the Rule 6(4):

- (i) Mahavir Mirror Industries
- (ii) Impact Safety Glass Works (P) Ltd.
- (iii) Liberty Glass House
- (iv) Monika Exim International Ltd.
- (v) Chinoy Chibhani & Co.
- (vi) M/s T.L. Verma & Co.
- (vii) Rajvi Enterprises/Samarth Industries

13. No response to the prescribed questionnaire has been submitted by any of the importers/users/other interested parties. However, legal submissions have been filed with regard to injury etc., by the following:

- (i) Federation of Safety Glass Manufacturers, India (hereinafter referred to as "FOSG").
- (ii) M/s Ajanta Pvt. Limited, India

14. Transaction-wise imports data procured from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) has been relied upon for the analysis in present SSR investigation. Further, the Authority has also examined

the Post-POI (July 2013 - December 2013) import data to analyze the trends for the purpose of likelihood assessment.

15. Exporters, producers, importers and other interested parties, who have neither responded to the Authority nor supplied information relevant to this investigation, have been treated as non-cooperating interested parties by the Authority.
16. 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.
17. Non-confidential versions of the evidence presented by interested parties were made available in the form of a public file kept open for inspection by the interested parties as per Rule 6(7). Pursuant to the orders of the Hon'ble Delhi High Court in SanDisk matter, non-confidential version of the import data procured from DGCIS has been kept in the public file open for inspection by the interested parties without prejudice to the appeal filed by the Authority before the Hon'ble Supreme Court of India in that matter.
18. The Authority has examined the information furnished by the domestic producer to work out the cost of production and determined the non-injurious price of the subject goods in India, as per its consistent practices, so as to ascertain whether anti-dumping duty, lower than the dumping margin, would be sufficient to remove injury, if any, to the domestic industry.
19. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 29.04.2015. The interested parties were requested to file written submissions of their views expressed orally.
20. The submissions made by the interested parties during the course of the investigation have been addressed in this finding to the extent they are relevant and backed by evidence.
21. Verification of the information and data submitted by the participating domestic producer was carried out to the extent deemed necessary.
22. 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 used "best

information available" and has treated such parties as non-cooperative.

23. In accordance with the Rules the Authority disclosed the essential facts of the case before it that would form the basis of its findings in the form of a disclosure statement dated 23<sup>rd</sup> June 2015 and the interested parties were allowed time upto 29<sup>th</sup> June 2015 to comment of the same. The comments of the interested parties, to the extent relevant, have been considered by the Authority and have been addressed in this finding.
24. In this finding \*\*\*\* represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
25. For the purpose of this investigation the period of investigation was July 2012 – June 2013 and for the purpose of injury investigation data for the period 2010-11, 2011-12, 2012-13 and POI has been considered.
26. The exchange rate for the POI has been taken by the Authority as Rs.55.15 = 1 US\$.

**C. Scope of Product under consideration and like article Submissions made by the Domestic Industry**

27. The product under investigation, in the original investigation and the subsequent sunset review investigation, was described as follows:

“Float Glass of thickness 2mm to 12mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including processed glass meant for decorative, industrial or automotive purposes, falling under heading 7005 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)”.

28. The petitioner claims that the subject goods are imported under tariff codes 70051010, 70051090, 70052110, 70052190, 70052910, 70052990, 70053010 and 70053090.
29. No submission has been made by the producers/exporters with regard to the scope of the product under consideration and like article. However, M/s Ajanta Pvt. Limited and Federation of Safety Glass (FOSG), in their submissions have *inter alia* argued
- That the applicant domestic producers, in their petition for initiation of anti-dumping investigation on imports of clear float glass originating in or exported from Saudi Arabia, Pakistan and UAE (initiated vide Initiation Notification No. 14/25/2012 dated 11th April 2013), have only requested

the inclusion of float glass of thickness 4mm-12mm within the scope of product under consideration. As a result of such definition of the PUC in the other investigation, it can be reasonably inferred that the Applicant Domestic Producers are not manufacturing float glass of less than 4mm thickness and have excluded it accordingly. Accordingly, scope of the product under consideration in this review investigation needs to be restricted in order to exclude float glass of thickness less than 4mm.

- That the float glass of thickness more than 4mm is not a “like product” to the float glass of thickness less than 4mm as they are not in commercial competition. In order to be a “like product”, products must be commercially and technically substitutable. Float glass of thickness more than 4mm is not commercially and technically substitutable with float glass of thickness less than 4 mm. The float glass production process differs widely with regard to the yield and cost involved in manufacturing float glass of different thickness. Therefore, float glass of thickness more than 4mm is neither commercially and technically substitutable nor like article to float glass of thickness less than 4mm.
- That the product scope can be changed in the sunset review and has been done by DGAD in past investigations due to reasons that the domestic producers were not producing the product in question.

30. The domestic industry, in its submissions with regard to product under consideration and like article, has inter alia argued:

- i. That the current investigation is a sunset review investigation. Accordingly, scope of the product under consideration in the present investigation should remain the same as in the original investigation. The Designated Authority has also upheld the view of the domestic industry on this issue in plethora of cases like the case of Acetone (SSR) from Korea RP.
- ii. That the domestic Industry has produced float glass thicknesses below 4mm also during the injury investigation period and the apprehension expressed by certain interested parties is baseless. Further, they had also submitted evidence in the form of sample invoices to support their claim. The Domestic Industry has reiterated that their submission is without prejudice to their claim that the Product under Consideration cannot be changed during the sunset review investigations.
- iii. That the scope of the product under consideration is based on the actual injury to the domestic industry from specific sources. While in case of China and Indonesia, dumped imports have been causing injury for thicknesses from 2mm to 12mm in the case of Saudi Arabia, Pakistan and

UAE, the product scope was restricted to 4mm to 12mm as the injury was for that segment.

### **Examination by the Authority**

31. The product under consideration in the original investigation as well as in the present investigation was defined as "Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes". "Reflective glass" was excluded from the definition of the product under consideration by Customs Notification No. 51/2009-Customs dated 22<sup>nd</sup> May, 2009. The product under consideration is classified under the category "Glass and Glassware" in Chapter 70 of the Customs Tariff Act, 1975 and further under 7005 as per Customs Classification. However, Customs classification is indicative only and not binding on the scope of the investigation.
32. As regards the issue of exclusion of thickness less than 4mm, the Authority notes that as per the information submitted by the domestic industry they have manufactured Float Glass of thickness less than 4 mm during the period of injury and float glass of thickness below 4 mm has also been imported from the subject countries during the injury investigation period and these are like articles. Accordingly, claim of the interested parties regarding exclusion of thickness less than 4 mm has no merit.
33. No other argument has been made by any interested party on the product under consideration and like article issue. The Authority therefore, confirms that the scope of the product under consideration in the present review remains the same as that of the original investigation.
34. The Authority notes that the subject goods being exported from the subject countries are alike in all respect to the goods being manufactured by the domestic industry. Therefore, the domestic goods are being held as like articles to the subject goods being imported within the meaning of the Rules.

### **D. Domestic Industry and Standing**

35. The current application for the sunset review has been filed by M/s Saint-Gobain Glass India Ltd., M/S HNG Ltd., and M/s Gold Plus Glass Industry Ltd. who collectively command 66% share in Indian production of the subject goods during the Period of investigation. As per the information available with the Authority there are two other known producers of the product under consideration in the country i.e., M/s Asahi India Glass Ltd and M/s Gujarat Guardian Ltd. who have fully supported the application. There is no opposition to the domestic industry's

application from any other producer in the country in the present investigation. Therefore, the petitioners command the standing to file the application and also constitute the domestic industry within the meaning of the term as per the AD Rules for the purpose of injury examination. None of the producers/exporters/other interested parties has made any submissions with regard to scope and standing of the domestic industry.

#### **E. Confidentiality**

36. The opposing interested parties have alleged that the Applicant Domestic Producers have claimed excess confidentiality on Production Process, Purchase Policy, Sales Policy, Inventory and Quality Control Procedure etc.
37. The domestic industry has submitted that they have claimed confidentiality on their business sensitive information with adequate reasons in accordance with the legal provisions and the guidelines prescribed by the Authority. The reasons and grounds for claiming confidentiality have been given in the non-confidential version of the application. Hence, the claim of certain interested parties alleging excessive confidentiality is without any substance.
38. It may be noted that there is no questionnaire response from any importer or exporter in this case. The confidentiality claims of the domestic industry have been examined and on being satisfied the claim of confidentiality on business sensitive information have been allowed. The Authority made available to all interested parties the public file containing non-confidential version of the evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

#### **F. Other issues raised by the interested parties**

##### **F.1 Submissions of Exporters/Importers and other interested parties**

39. None of the producers / exporters from the subject countries has made any submissions. However, M/s Ajanta Pvt. Limited and FOSG, in their respective legal submissions have submitted that:
- i. That M/s Ajanta Pvt. Ltd is an interested party in the present sunset review. Right of the petitioner as an interested party is not affected even if no imports are made during the period of investigation.
  - ii. That FOSG could not make the representation within the permitted time of 40 days as the management of the federation was facing internal issues and was in the process of transformation. In November 2014, the management of the said association has undergone a change and accordingly FOSG had

attempted to file its objections at the earliest available time. It is pertinent that at the time of filing the objections, the review proceedings were not completed and the period of the proceedings were extended by 6 months up to 03/07/2015. The designated Authority, being a quasi judicial authority and not a 'Court', there is no need to seek condonation of delay in filing their objections to the proceedings.

- iii. That the Applicant Domestic Producers, while disclosing the import data of the subject goods into India, have furnished only the refined data and not the raw data. Further, the Applicant Domestic Producers have not disclosed the methodology used to compile import data of the product under consideration in the petition.
- iv. That the Applicant Domestic Producers did not provide any evidence for the deductions made under the categories of ocean freight, marine insurance, port handling, inland freight, and sales commission, or bank charges.
- v. That the Respondent has requested the Authority to determine the dumping and injury margin for each thickness of float glass bearing in mind the vast differences in technical characteristics as well as end use of various thicknesses of float glass.
- vi. That the interested parties have submitted that during the POI the exchange rate for USD that has been adopted by domestic industry is Rs. 55.15. However, the prevailing rate of USD, as per the RBI, is currently Rs. 63.50. This means that imports into India currently are priced significantly higher than what they used to be during the POI. It is also submitted, that the applicant Domestic Producers alleged price undercutting is after considering the exchange rate of Rs. 55.15. Under such extraordinary circumstances where the domestic currency depreciated at an accelerated rate, the authority is duty bound to consider this factor while making any determinations with regard to injury.
- vii. That the domestic industry has received adequate protection from DGAD since the imposition of provisional duty in the original investigation. The protection was increased further by enhancement of duty in the last sunset review investigation. Despite such adequate protection for the last ten years, the domestic industry has failed to improve its weaknesses and is becoming increasingly dependent on the protection given by the authority. Hence, the Respondent has requested the DGAD not to extend the antidumping duty any further.
- viii. That the sunset review is required to be terminated because review proceedings cannot be carried on beyond one-year period. Section 9A(5)

read with Rule 23(2) empowers the Central Government to extend the levy of the anti-dumping duty for a period of one year only, if the sunset review is not concluded before the expiry of the five years from the date of imposition of the duty.

- ix. That FOSG is a federation/association of manufacturers of processed glass in India. The members of the association are representatives of “processed glass industry” manufacturing toughened, insulated and laminated glasses. The market size of the goods produced by the members of the association is about Rs. 2800 Crores in a year in India whereas the size of float glass industry is about Rs. 4000 crores in a year. This industry consumes almost 35-40% of the total float glass market in India. In value terms it is about Rs. 1500 Crores of the total market size of float glass industry of about Rs. 4000 Crores in a year. Therefore, any levy on the float glass directly affects the process glass industry.
  - x. The domestic industry which has made the representation essentially is dominated by the three members who have made this representation for continuation of antidumping duty. These 3 industries viz, Gold Plus Glass Industry Limited, HNG Float Glass Limited and Saint-Gobain Glass India Ltd account for about 68% of the total production (as admitted in their petition) of the float glass in India. Therefore, their entire ploy is to maximize their production and profits by mis-utilising the tool of anti-dumping duty by suppressing/ misrepresenting the facts in the matter.
40. Apart from the above interested parties, M/s PT Muliglass, Indonesia, has also made a brief submission at the stage of the public hearing in which it has inter alia submitted that the domestic industry in India has already enjoyed antidumping protection for 12 years which is more than enough for them to adjust the production parameters to make their production more efficient. Long protection has potential to create a cartel situation which will not be good for downstream industry in India. It has been argued that their export to India during the injury investigation period is miniscule which proves that while they wish to participate in the development process in India they do not intend to dump the goods in India. The Directorate General of Foreign Trade (DGFT), Govt. of Indonesia, through its Embassy, has also filed a brief submission after the public hearing and has argued that second imposition of the antidumping duty is not acceptable because it is impossible that the petitioners still suffer material injury caused by the dumped products while Indonesian producers did not export float glass to India. At the same time DGFT has also submitted that M/s Saint Gobain has imported the subject goods from the exporters in Indonesia and therefore, they are not eligible to be treated as domestic industry. The Authority notes that the above two statements are contradictory to each other and are not supported by data.

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

41. The domestic industry, in its various submissions, has *inter alia* argued that

- i. That M/s Ajanta Pvt. Ltd have admitted that they have not submitted the importer's questionnaire response apparently on the ground that they had not made any imports during the entire period of investigation. The said party could not give any reason as to why the remaining parts of the importer's questionnaire has not been filled in wherein information has been called for the preceding three years as well. It is a settled position of law that to qualify as an interested party in terms of Rule 2(c) of the Anti-dumping Rules, the concerned party has to be an importer during the period of investigation. It may, however, be added that the Hon'ble Authority has the discretion to allow any party as an interested party on good cause been shown. In the absence of any such grounds or request, it was submitted that the said party cannot be considered as an interested party within the meaning of Rule 2(c).
- ii. That the submissions of FOSG should be rejected outright as it has accepted in their submissions that they are not able to file the response within stipulated 40 days from the date of initiation as the management of the federation was facing internal issues. In this context, domestic industry invited attention of the Authority to the fact that the Authority had initiated the investigation on 3<sup>rd</sup> January, 2014 while the FOSG has filed their submission on 5<sup>th</sup> January, 2015 i.e., almost 11 months after the due date. Moreover, they have not even sought condonation of delay after showing good reasons for this inordinate delay.
- iii. That import data of the subject goods have been sorted based on the description given in each transaction in the transaction-wise import data. Basis of compilation of the import data for PUC has been explicitly mentioned in the Petition. Further, as regards raw data the source, period and tariff headings have been indicated in the application itself. There is no legal requirement to provide the raw data so long as the entries pertaining to the PUC as well as the headings from which the same have been taken out are disclosed in the non-confidential version of the submissions. Further, the domestic industry has submitted that if the plea of the interested parties is accepted, then it would actually mean that the Domestic Industry would be required to file details even of those sub-headings which have not been used for compiling the import data.

- iv. That the domestic industry has submitted all the evidence which is reasonably available to it particularly considering the fact that the domestic industry itself has not imported the subject goods from the subject country during the investigation period. The domestic industry has claimed the adjustments to the export price as per its market intelligence which is considered to be sufficient evidence for initiation of an investigation as per consistent practice of the Designated Authority.
- v. That the costing data has been provided on a per ton basis to address the differences in terms of thickness, etc. on the costs and prices of the product under consideration and for proper comparison.
- vi. That adopting the exchange rate of the POI for calculating Normal Value, Non-injurious Price etc. is the standard practice being followed by the anti-dumping Authorities that are based on logic, sound economic and accounting rationale. This practice is being followed consistently by the Authority in plethora of cases like Sheet Glass from China PR and Float Glass from Pakistan, UAE & Saudi Arabia etc. Further, these parties have not stated any legal or logical infirmity in the said approach.
- vii. That the claim of the interested parties that sunset review is required to be terminated because review proceedings cannot be carried on beyond one-year period as section 9A(5) read with Rule 23(2) empowers the Central Government to extend the levy of the anti-dumping duty for a period of one year only is without any legal or logical merit. In this context, reference has been drawn to the provisions of Section 9A(5) wherein the chapeau itself prescribes that the duties shall remain in effect for a period of five years from the date of its imposition. In terms of the first proviso, this period can be extended by another five years period subject to the satisfaction of the conditions mentioned therein. The second proviso allows collection of duties for another one-year period pending conclusion of the investigations. Accordingly, it is important to note that there is no specific bar, direct or indirect, on the investigations continuing beyond the six-year period though there may be a bar under the second proviso that duty may continue to remain in force not exceeding one year. Clearly, the term “not exceeding one year” could at best be read in the context of duty and not in the context of review investigation.
- viii. Further, domestic industry has invited the attention of the Authority to Rule 17 of the Anti-dumping Rules, which allows a time period of upto 18 months to complete the investigations. Furthermore, Rule 23 (3) clearly states that the provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review investigation. Accordingly, provisions of Rule 17 are also applicable to a sunset review

case. First proviso to Rule 17(1) categorically states that the Central Government may extend further the period of one year by six months for the completion of the investigation.

- ix. Attention of the Authority was invited to recent decision of the Hon'ble Delhi High Court [NBR case of Kumho Petrochemicals Co. Ltd. V/s UOI] wherein the Authority was permitted to continue the investigations despite the fact that the anti-dumping duties beyond the period of five years was set aside. It is further submitted that the only harmonious interpretation of the provisions of Section 9A(5), Rules 23 and 17, would be to read the provision of collection of duty disjunct from the period permissible for the completion of the investigation proceedings. Any other interpretation would invariably violate the vested rights of the Domestic Industry provided in Section 9A (5) itself. In any case, Rule 23 cannot be read in a manner that it takes away rights that are vested by Legislature. It is settled principle of law that a Rule cannot be interpreted in a manner that it frustrates the object and purpose of the main Act. Therefore, it is amply clear that even in the sunset review case proceedings can be carried on beyond one-year period and the embargo, at best, can be applied only to the collection of duties beyond a period of six years. Thus, there is no legal infirmity or lacuna in the proceedings before the Authority.
- x. That the Authority has taken a consistent view that the purpose of anti-dumping duty is to create a level playing field and to provide relief to domestic industry due to injurious effect of dumped imports from the subject countries or the threat of likelihood of continuation/recurrence of dumping and injury once the duties are withdrawn.

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

42. The Authority has examined the issues raised by the domestic industry and other parties before it as follows:

- i. As regard the import data is concerned, the Authority has already placed the transaction-wise data in the public folder pursuant to the orders of the Hon'ble High Court of Delhi in SanDisk matter without prejudice to the appeal in Hon'ble Supreme Court.
- ii. As regards the contention of some interested parties regarding the exchange rate used for various determinations the Authority notes that all determinations in an antidumping investigation is carried out for a specified period as a snap shot picture of the situation that existed during that period. It is no body's argument that data for one period and exchange rates for another period (current period) should be considered. This would only

distort the picture. Therefore, the exchange rate for the period of investigation is used for all determinations in accordance with the consistent practice followed by the Authority.

- iii. With regard to the claim of the interested parties that sunset review is required to be terminated because review proceedings cannot be carried on beyond one-year period, the Authority notes that constructive interpretation of Section 9 A (5) of the Act and Rule 23 of the Rules indicates that there is no specific bar on the continuation of the review investigations beyond one year from the date of initiation. Further, the Authority notes that the issue has been agitated by various parties before the Hon'ble Courts and the Courts have not yet ruled against this interpretation. In view of the aforesaid, the Authority accepts the contentions of the Domestic Industry that the only harmonious way to read the various provisions mentioned above is to hold that sunset review proceedings can be carried on beyond one-year period without infringing upon any specific provision of law.
- iv. As regards the issue that the domestic industry has received adequate protection for last 12 years and continuation of the duty will adversely impact the user industry as the petitioners are using this protection to maximize their profits the Authority notes that the purpose of anti-dumping duty is only to create a level playing field and to provide relief to domestic industry due to injurious effect of dumping. Further, it is also noted that the anti-dumping duty is not envisaged to provide undue protection to the domestic industry. Moreover, none of the interested parties has provided any evidence whatsoever as to how the continuation of duties against imports from the subject countries would be detrimental to the larger interests of the economy or the country. However, the issue of undue protection, if any, has been examined in the relevant section so that the duty is not unduly imposed for a period beyond which it is required.

43. All other issues raised by the parties to the investigation have been dealt in the respective sections in this findings to the extent they are relevant.

## **G. Determination of Normal Values, Export Prices and Dumping Margins**

### **G.1 Legal Positions**

44. Section 9A (5) of Customs Tariff Act, 1975 provides that:-

*“The anti dumping duty imposed under this Section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:*

*Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension;*

*Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the Anti dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.”*

45. Accordingly, a sunset review investigation is to examine:

- Whether the dumping continues after imposition of the antidumping duty and if so, whether it is likely to continue;
- In cases where dumping did not continue, whether the dumping would recur in the event of revocation of anti dumping duties;
- Whether the domestic industry continued to suffer material injury and if so, whether injury to the domestic industry is likely to continue if the duties are removed;
- In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti dumping duties.

46. Therefore, continuation of dumping and injury has been examined first before examining whether dumping is likely to continue or recur if the duties are revoked, and injury is likely to continue or recur in such a situation.

## **G.2 Examination of Continuation of Dumping: Determination of Normal Values, Export Prices and Dumping Margins**

47. It is noted that none of the producer or exporters of the subject goods in the subject countries has filed any questionnaire response to provide any information on their normal values and export prices. No other interested party has made any submissions with regard to the determination of normal values and export prices of the subject goods from the subject countries.

48. The domestic industry has submitted that China being a non market economy, normal value of the subject goods in that country cannot be determined on the basis of price prevailing in that country and therefore, needs to be constructed. With regard to determination of a normal value in China the domestic industry has *inter alia* argued that:

- i. Market economy status cannot be granted unless the responding exporter/company and its group as a whole make a claim. In the present

case, there is no claim for market economy treatment. None of the Chinese exporters have filed questionnaire response, nor claimed market economy treatment.

- ii. The normal value in China can be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit as per procedure described in Para 7 of Annexure I and consistent practice being followed by the Authority in case when no response has been filed by the exporter. Normal Value in China should be determined based on the cost of production in India, duly adjusted.
- iii. The normal value in China may be constructed by considering international price of the raw material and adopting the consumption norms and conversion cost as per the best information available, including that of the domestic industry.

49. As far as Indonesia is concerned, domestic industry has submitted that there is no response from any exporter, or any other interested party, providing any information about the normal values in that country. In the absence of response from Indonesia, the normal values for this country should also be constructed by considering international price of the raw materials and adopting the consumption norms and conversion cost as per the best information available, including that of the domestic industry.

### **G.3 Determination of Normal Value for China PR**

50. At the stage of initiation, the Authority proceeded with the presumption that China PR is a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/exporters for rebutting presumption of non-market economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise the producers/exporters in China to provide the relevant information. However, none of the Chinese producers/exporters has filed any response. The Authority notes that in the past several years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members.

51. In view of the above position and in the absence of rebuttal of non-market economy presumption by any Chinese exporting company, the Authority considers it appropriate to treat China PR as a non-market economy country in the present investigation and proposes to proceed with Para 7 of Annexure I to

the Rules for determination of normal value in case of China PR.

52. Para 7 of Annexure I of the Anti-dumping Rules provide that:

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

53. In this connection possibility of determination of the normal value in China in terms of first and second option in Para 7 of Annexure I of the AD Rules has been examined. In this regard it is noted that none of the interested parties have provided any meaningful information for selection of an appropriate third country as a surrogate for construction of the normal value on the basis of cost and prices in that country or price from such country to other countries, including India as the normal value in China as per the first two alternatives in the Para-7 referred above.

54. Therefore, the normal value in China has been determined as per the third alternative provided in the Rules referred above and normal value has been constructed on the basis of the cost of production of the efficient domestic producer/plant in India after making due adjustment for the international prices of major raw material. The Authority has also provided for reasonable profit as per its consistent practice. Accordingly, constructed normal value for Chinese exporters has been determined as follows:

	Rs/MT
Raw Material cost as per International Prices, including consumables	****
Cost of Utilities	****
SGA including Interest	****

Cost to make and sell	****
Profit @ 5%	****
Constructed Normal Value	****
CNV US\$/MT	****

#### **G.4 Determination of Normal Value for Indonesia**

55. Since none of the producers and exporters in Indonesia has submitted any evidence with regard to the Normal Values of the subject goods in Indonesia, the normal values in Indonesia has been determined based on best facts available, including the information contained in the petition of the domestic industry. Accordingly, the normal value for Indonesia has been constructed on the basis of the cost of production of the efficient domestic producer/plant in India after making due adjustment for the international prices of major raw materials, as the best information available, with due provision for a reasonable profit. Accordingly, proposed normal value of the subject goods in Indonesia has been determined as follows:

	Rs/MT
Raw Material cost as per International Prices	****
Cost of Utilities	****
SGA including Interest	****
Cost to make and sell	****
Profit @5%	****
Constructed Normal Value	****
CNV US\$/MT	****

#### **G.5 Export Prices**

56. The domestic industry, in its application had provided the transaction-wise import data obtained from Infodrive Pvt. Ltd. for the purpose of dumping and injury estimation. The Authority has obtained transaction-wise import data from DGCI&S. As none of the exporters of the subject countries has provided any information that can be used for determination of the export price the export prices for all exporters from subject countries have been determined on the basis of CIF prices of imports as reported in DGCI&S data. Since transaction-wise import data provided by DGCI&S contained both the product under consideration and other excluded items or non-subject goods the data has been analysed and volume and value of the product under consideration has been determined after pruning the data for excluded items and non-subject goods. Since a large number of transaction lines in the DGCI&S data do not show complete description of the product imported a reasonable method of segregation of those lines into PUC and Non-PUC items have been adopted for the purpose of dumping and injury examination.

57. It is noted that as per DGCIS import data as stated above 3846 MTs of the subject goods were imported from China PR and only 101 MTs were imported from Indonesia during the POI. In the absence of concrete information from the respective exporters in the subject countries export prices from the China PR and Indonesia have been calculated on the basis of applicable adjustments for Ocean freight, Marine insurance, Port expenses, Commission, Inland transportation in the country of export, and Bank charges as per best information available to arrive at the export prices at the ex-works level.

58. Accordingly, the export price for China and Indonesia for the subject goods has been determined as follows:

Particulars	Unit	Indonesia	China PR
Import Volume	MT	101	3,846
Import Value	Rs	14,93,750	458,55,018
CIF Price	Rs/MT	14,790	11,923
FOB Price	Rs/MT	****	****
Adjustments	Rs/MT	****	****
Net Export Price	Rs/MT	****	****
Net Export Price	US\$/MT	****	****

Exchange Rate: Rs55.15 = 1 US\$

## G.6 Dumping Margins

59. Comparing the Constructed Normal Value and the Export price at ex-factory level determined as above, the Dumping Margin for the producers/exporters in the subject countries are determined as follows:

Country	Normal (USD/MT)	Net Export Price (USD/MT)	Dumping Margin (USD/MT)	Dumping Margin (%)	Dumping Margin (Range)
China	****	****	****	****	165-175%
Indonesia	****	****	****	****	100-110%

60. The dumping margin so determined is above *de minimis* and significant.

## H. **Determination of Injury and Causal Link and Likelihood of Continuation or recurrence of Injury to the domestic industry**

### H.1 **Legal Position**

61. As noted earlier, in a sunset review investigation, with regard to injury examination, the Authority is required to examine:

- Whether the domestic industry continued to suffer injury and if so, whether injury to the domestic industry is likely to continue;
- In cases where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti dumping duties.

62. The domestic industry has *inter alia* submitted that there is continued dumping of the product under consideration from the subject countries though the volume of dumped imports has declined as a result of current anti-dumping duties and dumping is likely to intensify should the current anti-dumping duty be revoked.

63. Therefore, the Authority has first examined whether the domestic industry continues to suffer material injury on account of dumped imports from the subject countries before proceeding to examine the likelihood of continuation or recurrence of injury to the domestic industry in the event of revocation of the duties from the subject country. Examination of material injury to the domestic industry is in accordance with the Article 3 of the AD Agreement and Annexure II to the AD Rules, 1995.

## **H.2 Examination of Current injury to the domestic industry and Causal Links**

64. Rule 11 of Antidumping Rules read with Annexure –II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

65. It is noted that the application for continuation of antidumping duty has been filed by M/s Gold Plus Glass Industry Limited, M/s HNG Float Glass Limited and M/s Saint-Gobain Glass India Limited, who collectively command a major proportion of total production of the subject goods in India. In terms of Rule 2(b) of the Rules, the petitioners have been treated as the domestic industry for the purpose of this investigation. Therefore, for the purpose of this determination the cost and injury information of the petitioner, constituting the domestic industry as defined in Rule 2(b), has been examined.

## H.2.1 Views of the responding Exporters and Importers on the injury claims of domestic industry

66. None of the producer/exporters had made the submissions with regard to the injury and causal link. For the sake of brevity the submissions of the parties to the investigation have been summarized in the following paragraphs.

67. M/s Ajanta Pvt. Limited and FOSG have *inter alia* made the following submissions with regard to the injury and causal link:

- i. That there is no injury on account of the subject imports as its volume is miniscule compared to the volume of imports from other countries. It is only the imports from non-subject countries which are posing a problem to the Applicant Domestic Producers.
- ii. That any injury that may be suffered by the Applicant Domestic Producers is due to *inter se* competition among them. In fact, one Applicant Domestic Producer, M/s. HNG Float Glass Limited has submitted information in Case No. 51/2011 before the Hon'ble Competition Commission of India against M/s. Saint Gobain Glass India Ltd. (SGGIL) putting forth a slew of allegations against them, including abuse of dominant position, aggressive and unfair pricing strategy, anti-competitive and abusive marketing strategies.
- iii. That the Applicant Domestic Producers have alleged that there has been a decline in sales volume despite an increase in demand. As per the data given by the Applicant Domestic Producers, this is not possible. Therefore, the data presented by the Applicant Domestic Producers contains inaccuracies. The demand in the year 2012-13 was actually 1218169 MT and not 1085463 MT as has been presented by the Applicant Domestic Producers. When the correct figures are analyzed, it can be clearly seen that the total demand has undergone a reduction from 1218169 MT in 2012-13 to 1089279 MT in the POI. It is not unusual for a decline in sales volume to occur when there is a decline in demand. Thus, it is proved that any reduction in the sales volume is only due to the decline in demand and not linked to the subject imports in any way.
- iv. That the argument of the Applicant Domestic Producers that it is fixing its price based on import prices is an absolute falsity. As can be perused from the petition filed by the Applicant Domestic Producers, the domestic industry sold 623283 MT during POI. During the same period, with a market demand of 10,89,279 MT, imports from subject countries holds a market share of mere 0.04%. Compared to the miniscule share of imports from the subject countries, the domestic industry commands 92% of the

market share. The claim of domestic industry is mere rhetoric and needs to be rejected by the Authority.

- v. That a dominant player in the market acquired a loss-making unit which was also manufacturing the subject good during the period of injury, there is a high probability that the losses of Sezal Glass Ltd. have been passed off as the losses of the Applicant Domestic Producers.
- vi. That there is no development at all in the float glass manufacturing industry in the past 10 years as alleged. The claim of the domestic industry that development of the industry in last 10 years is mainly due to the levy and continuance of the antidumping duty on the imports from the subject countries holds no water. The domestic industry mainly comprises of three companies, including the applicant Saint –Gobain, who among themselves control the oligopolistic market. These companies manufacture float glass at an exorbitant cost compared to the landed cost of the import price. The landed cost of the import price including the anti-dumping duty is about 20-25% higher than the local price.
- vii. It is an admitted position that domestic industry cannot produce float glass at a competitive cost in the near future under any circumstances. In these circumstances continuance of the levy of anti-dumping duty will enable only these three companies to enrich their coffers at the cost of Indian consumers, including FOSG. Injury to Indian consumers is not caused by the subject imports from the subject countries but by encouraging these companies to produce at an exorbitant cost by levying the anti- dumping duty on the subject imports and thereby depriving the Indian consumers to buy the product at cheaper cost.
- viii. That traditionally India used to import float glass from other countries rather than producing the same in India. The companies like Saint-Gobain (France), Ashai Glass Company (Japan) and Guardian Glass (USA), having worldwide presence, were unable to produce and supply to India from their overseas plants because of their high cost and therefore, they entered India through FDI route and have been using antidumping protection to sustain their high cost production in India and thereby depriving Indian customers from buying the same material at cheaper price from other producers in countries like China.
- ix. That during these 10 years the domestic industry had only fleeced the Indian consumers by providing float glass at an exorbitant rate and thereby increasing their profits, without making any effort to improve the situation by offering the product at a competitive cheaper rate. Now that, the domestic industry wants to continue the levy so that it can continue to make profits at

the cost of Indian consumers and Indian economy.

- x. That the anti-dumping duty investigation was started in Brazil at the instance of Saint-Gobain and Guardian in 2013, when Saint-Gobain established its plant in Jacrai in 2010 [Cebrace-Saint Gobain] and Guardian had put its plant in Tauti in 2008. It is submitted that the business model of these MNCs is to first enter the developing country under the garb of FDI and then to exploit the market situation to its advantage by resorting to anti-dumping law. The model is not to produce cheaper product but to produce costly product and then to block the entry of the cheaper products by invoking the anti-dumping provisions.
- xi. That due to the high cost of the local float glass the processing industry is facing the threat of extinction as customers are showing less interest to buy the processed glass from the local manufacturers and cheaper imported processed glasses are now entering India. If this trend continues, the processed glass industry will vanish from the scene and around 12,500 families will be out in the street due to unemployment.
- xii. That there is no provision for perpetually continuing the imposition of anti-dumping duty and certainly there is no legal justification at all to continue the levy for the third consecutive five year block merely based on the false and misleading data submitted by the domestic industry. The facts clearly show that the imports from the subject countries are much less than the *de minimis* level of 3% and on this ground alone the continuance of the imposition of anti-dumping duty is not at all warranted.

## **H.2.2 Submissions by the domestic industry**

68. The domestic industry has made the following submissions with regard to the injury and causal link:

- i. That the price undercutting is significantly positive, and therefore, there is clear likelihood of increase in the demand of the imported subject goods in India from the subject countries in the event Authority reaches a conclusion to withdraw the Anti-dumping duty.
- ii. That the performance of the domestic industry, in terms of market share of domestic sales in demand, profits, return on investments, and cash flow, has deteriorated in the current Period of Investigation.
- iii. That the demand of the product under consideration has shown a growth throughout the injury period. Hence, the contraction in demand is not a possible reason, which could have contributed to injury to the domestic

industry.

- iv. That dumping margins are significantly positive, and therefore, there is clear likelihood of increase in the demand of the imported subject goods in India from the subject countries in the event of cessation of Anti-dumping duty. Similarly, injury margin is also positive clearly indicating that the Domestic Industry will suffer serious injury if the subject goods are allowed to be imported without the protection of the anti-dumping duties.
- v. That since the pattern of consumption with regard to the product under consideration has not undergone any change, changes in pattern of consumption is unlikely to contribute to the injury to the domestic industry.
- vi. That there is no trade restrictive practice, which could have contributed to the injury to the domestic industry.
- vii. That technology for production of the product has not undergone any change nor are there any likely changes in coming future. Developments in technology are therefore, not a factor of injury.
- viii. That the productivity of the domestic industry has remained almost at the same level during the entire period of injury. Hence, productivity is not a factor of injury.
- ix. That despite the anti-dumping duty in force the landed values of the subject goods, during the POI from the subject countries, are so low that in case the duties are withdrawn there is every possibility of continuation or recurrence of dumping and injury to the domestic industry.
- x. That with regard to the investigations by the Competition Commission of India, the interested parties had mischievously cited only the allegation part of the investigation and intentionally chosen to withhold the findings of the Commission. It is a matter of record that the CCI held that not only SGGIL is not abusing its dominant position; it is in fact not even a dominant player. The relevant portion of finding is reproduced below for the ready reference of the Authority:

*“Para 64*

*In the result, the Commission is of opinion that no case of contravention of the provisions of “Section 4 of the Act is made out against the opposite party and concurs with the findings of the DG in this regard.”*

- xi. That the reference to the CCI investigations by the exporters is only with the objective of creating confusion and has no merit. This is without

prejudice to the basic contention that a complaint by a co-applicant in fact proves that there is no collusive behavior within the industry and that there are healthy conditions of competition amongst them. Attention of the Authority has also been invited to the earlier decision of the Competition Commission, where the Commission has very categorically said that the glass industry is facing serious competition from the imported goods.

- xii. That there is a typo error in the domestic sales of the domestic industry for the year 2012-13. Domestic sales of the domestic industry during 2012-13 were 6, 11, 519 MT instead of 7, 44,226 MT.
- xiii. That as regards the issue of data relating to Sezal, it is submitted that Sezal was and is a part of the domestic industry irrespective of who owns it. The situation would be different if Sezal had been located outside India.

### **H.2.3 Examination by the Authority**

69. The various submissions of the interested parties and the domestic industry on injury to the domestic industry have been taken note of and have been examined as per the information available on record. All relevant issues concerning the facts and figures are addressed *ipso facto* in the injury analysis.

70. With regard to the submissions made by FOSG that major multinational producers are exploiting the antidumping provision to establish themselves in India using FDI route it is noted that the purpose of the antidumping law is to create a level playing field for production and consumption of the goods in the Indian market by protecting domestic production of the goods against unfair trade practices of producers in other countries. It is also noted that existence and sustainability of a domestic production base is important for general economic development and also is in the interest of the domestic consumers which will not be exposed to the monopolistic price behaviors of the foreign producers in the absence of domestic production base. However, the Authority has examined the cost and price behaviors of the domestic producers in this finding in an objective manner to arrive at the conclusion on injury and causal link to address the concerns of the consumer industry.

71. It is noted that the interested parties have argued that all examination should be done separately for each thickness range as the cost and prices vary as per the thickness. However, none of the interested parties has provided any information on the cost and prices in the exporting countries for such an analysis. Therefore, it is not possible to embark upon such an analysis.

72. It is further noted that data error brought out by the interested parties have been checked and appropriate data as verified has been used in the determinations.

73. As regards the volume of imports from the subject countries the Authority notes that the focus of the sunset review is the likelihood examination. Therefore, *de minimis* limits are not applicable to such reviews. Accordingly, arguments of the interested parties in this regard are not valid.
74. All other issues raised by the parties to this investigation have been addressed in the appropriate places and therefore, not repeated here.
75. Annexure-II of the AD Rules provides for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like articles; and (b) the consequent impact of these imports on domestic producers of such articles. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
76. The subject goods are being exported from several other countries at dumped prices for which the Authority has imposed antidumping duties recently. All these imports clearly compete amongst themselves as well as with the domestic goods. Therefore, it is appropriate to assess the injury to the domestic industry cumulatively for imports from all sources found to be at dumped prices.
77. For the examination of the impact of the dumped imports on the domestic industry in India, 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 or investments have been considered in accordance with Annexure II of the Rules. All economic parameters affecting the Domestic Industry as indicated above have been examined as under: -

**(a) Volume effects of dumped imports**

**i. Import Volumes and share of dumped imports**

78. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. The imports of the subject goods from the subject countries and other countries have been examined based on the transaction-wise import data provided by DGCI&S as follows:

Particulars	Unit	2010-11	2011-12	2012-13	POI
Imports from China	MT	1512	1702	4508	3846
Trend		100	113	298	254
Imports from Indonesia	MT			101	101
Trend				100	100
Imports from subject countries	MT	1512	1702	4609	3947
Trend		100	113	305	261
Imports from other countries subject to ADD	MT	19846	12525	141676	136114
Trend		100	63	714	686
Imports from other countries	MT	1674	4103	12190	10219
Trend		100	245	728	610
Total Imports	MT	23032	18330	158475	150279
% share of subject countries in Imports	%	6.56%	9.28%	2.91%	2.63%
% Share of other countries subject to ADD in imports	%	86.17%	68.33%	89.40%	90.57%
% share of other countries	%	7.27%	22.38%	7.69%	6.80%
Total demand	MT	847048	1003146	1155358	1154836
Trend		100	118	136	136
% Share of subject countries in demand	%	0.18%	0.17%	0.40%	0.34%

79. The above data indicates that dumped imports from China continues and has increased significantly compared to the base year. However, there was no import from Indonesia in first two years of the injury investigation period and there are only three transactions of 101 MTs during the POI.

80. However, it is noted that antidumping duty is on force on the subject goods imported from Pakistan, UAE and Saudi Arabia and there is a significant volume of imports from those countries. Share of the countries attracting antidumping duty is over 90% of the total imports. There is also a significant increase in imports from other countries not attracting antidumping duty though their share in total imports is below 10%.

ii. **Assessment of Demand/Apparent Consumption**

81. Demand or apparent consumption of the product in India has been assessed based on the domestic sales of all Indian producers, and imports from all source. The Authority has taken note of the error in the sales volumes reported by the domestic industry and the correct volume of sales of the domestic industry as verified and the estimated sales of other domestic producers have been used for

estimation of domestic demand in India as follows:

Year	Unit	2010-11	2011-12	2012-13	POI
Domestic Industry sales	MT	531236	629767	615626	627180
Trend		100	119	116	118
Sales of other domestic producers	MT	292779	355049	381257	377376
Trend		100	121	130	129
Total domestic sales	MT	824015	984816	996883	1004556
Trend		100	120	121	122
Imports from subject countries	MT	1512	1702	4609	3947
Trend		100	113	305	261
Imports from other countries subject to ADD	MT	19846	12525	141676	136114
Trend		100	63	714	686
Imports from other countries not attracting duty	MT	1674	4103	12190	10219
Trend		100	245	728	610
Total Imports	MT	23032	18330	158475	150280
Trend		100	80	688	652
<b>Total demand</b>	MT	847048	1003146	1155358	1154836
Trend		100	118	136	136
Captive Consumption	MT	90246	99601	107324	111365
Demand with Captive Consumption	MT	937294	1102747	1262682	1266201
Trend		100	118	135	135
Market share of Domestic sales in demand	%	97%	98%	86%	87%
% Share of Subject countries in demand	%	0.18%	0.17%	0.40%	0.34%
% share of other countries attracting ADD in demand	%	2.34%	1.25%	12.26%	11.79%
% share of other countries not attracting ADD	%	0.20%	0.41%	1.06%	0.88%

82. The above data indicates that the demands of the subject goods show a healthy growth over the injury investigation period and has grown by about 36% over the base year. However, the growth in sales of the domestic industry and sales for all domestic producers have remained low compared to the growth of the demand. The growth in demand appears to have been cornered by dumped imports from all sources including the subject countries, which among themselves, has increased from less than 3% to over 12% in the injury period though the share of the subject countries in this investigation is very low at present in spite of increase from 0.18% to 0.34%. The market share of the domestic producers during the same period has declined from 97% to 87%.

**(b) Price effect to dumped imports and impact on domestic industry**

83. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price

undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

84. The impact on the prices of the domestic industry on account of imports of the subject goods from the subject countries have been examined with reference to price undercutting, price underselling, price suppression and price depression. For the purpose of this analysis the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed value of imports from the subject countries. A comparison for subject goods during the period of investigation was made between the landed value of the dumped imports and the domestic selling price in the domestic market. In determining the net sales realization of the domestic industry, taxes, rebates, discounts and commission incurred by the domestic industry have been adjusted.

**(i) Price Undercutting effect of dumped imports**

85. The price undercutting effects of dumped imports with and without antidumping duty have been examined to analyze different scenarios. The price undercutting so determined are as follows:

<b>China</b>	Unit	2010-11	2011-12	2012-13	POI
Net Selling Price of Domestic Industry	Rs/MT	****	****	****	****
Landed price <b>without ADD</b>	Rs/MT	15369	21287	13165	13282
Price Undercutting	Rs/MT	****	****	****	****
Price Undercutting	%	****	(****)	****	****
Undercutting Range		0-10	(10)-(20)	50-60	50-60
Landed price <b>with ADD</b>	Rs/MT	21511	27690	20435	20617
Price Undercutting	Rs/MT	(****)	(****)	****	(****)
Price Undercutting	%	(****)	(****)	****	(****)
Undercutting Range		(20)-(30)	(30)-(40)	0-5	0-(5)
<b>Indonesia</b>					
Landed price <b>without ADD</b>	Rs/MT	-	-	16458	16476
Price Undercutting	Rs/MT	-	-	****	****
Price Undercutting	%	-	-	****	****
Undercutting Range		-	-	20-30%	20-30%
Landed price <b>with ADD</b>	Rs/MT	-	-	24787	24879

Price Undercutting	Rs/MT			(****)	(****)
Price Undercutting	%			(****)	(****)
Undercutting Range				(10)-(20)	(15)-(25)

86. The above data indicates that the imports from the subject countries are significantly undercutting the prices of the Domestic Industry in the Indian market when compared with the landed values without the element of anti-dumping duties. The undercutting margins have increased since the base year and during the POI the undercutting without anti-dumping duty for China PR and Indonesia was \*\*\*% and \*\*\*% respectively. It is noted that there is negative price undercutting if the anti-dumping duties are taken into account. This indicates that if the anti-dumping duties are not there, the imports are likely to undercut the domestic prices.

**(ii) Price underselling effects of dumped imports**

87. The price underselling is also an important indicator of assessment of injury. The non-injurious price for the domestic industry has been worked out and compared with the landed values of imports from the subject countries to arrive at the extent of price underselling. The non-injurious price has been evaluated for the domestic industry in terms of the principles outlined in Annexure III by appropriately considering the cost of production for the product under consideration during the period of investigation.

Particulars	Unit	China	Indonesia
NIP	Rs/MT	****	****
Landed price of imports without ADD	Rs/MT	13282	16476
Price underselling Without ADD	Rs/MT	****	****
Price underselling Without ADD	%	****	****
Price underselling (Without ADD)	Range	85-95	50-60
Landed price of imports With ADD	Rs/MT	20617	24879
Price underselling with ADD	Rs/MT	****	****
Price underselling with ADD	%	****	****
Price underselling (With ADD)	Range	20-30	0-10

88. The price-underselling effect of the dumped imports is significantly positive both with and without anti-dumping duty for China PR as well as for Indonesia.

**(iii) Price Suppression and Depression effects**

89. To examine the price suppression and depression effects of the dumped imports on the domestic prices, the trend of net sales realization of the domestic industry has been compared with the cost of sales.

Particulars	2010-11	2011-12	2012-13	POI
Cost of domestic sales Rs/MT	****	****	****	****
Trend	100	116	125	125
Net Selling Price Rs/MT	****	****	****	****
Trend	100	108	125	122
Landed Value of dumped imports from the subject countries (without ADD)	15,369	21,287	13,237	13,364
Trend	100	139	86	87
Landed Value from the subject countries (with ADD)	21,510	27,690	18,436	18,610
Trend	100	129	86	87
Landed value of imports from other countries attracting duties (without ADD)	14,819	16,223	9,696	9,874
Trend	100	109	65	67
Landed value of imports from other countries attracting duties (with ADD)	19,794	21,410	15,586	15,817
Trend	100	108	79	80

90. The data above shows that though the cost of production as well as the selling price has increased during the period of injury investigation the landed value from the subject countries has declined substantially and domestic industry's selling price has remained below its cost of sales during this period. It is also noted that the landed value of imports from other countries attracting ADD are far below the cost of sales and selling price of the domestic industry. The dumped imports from all sources appear to have significant price suppression effect on the domestic industry and do not allow full price recovery.

**(c) Examination of other economic parameters of the domestic industry**

91. Annexure II to the Anti-dumping Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of like product. 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. The various injury parameters relating to the domestic industry are discussed below.

**(a) Actual and Potential Impact on Capacity, Production, Capacity Utilization and Sales**

92. Information on capacity, production, capacity utilization and sales volume of the domestic industry is given in the table below:

Year	2010-11	2011-12	2012-13	POI
Capacity (MT)	****	****	****	****
Trend	100	119	123	123
Production PUC only (MT)	740069	877086	912197	927683
Trend	100	119	123	125
Capacity utilization (MT)	****	****	****	****
Trend	100	99	100	102
Domestic Sales (MT)	531236	629767	615626	627180
Trend	100	119	116	118

93. The data indicates that the domestic industry has added capacity during the injury investigation period and production has increased with marginal improvement; in the capacity utilization. Domestic sales of the domestic industry have increased in the POI as compared to base year.

**(b) Actual and Potential Impact on Profitability, return on investment and cash flow**

94. The return on investment, profit/loss before and after interest and cash profit are as shown in the table below:

Year	2010-11	2011-12	2012-13	POI
Domestic selling price Rs/MT	****	****	****	****
Trend	100	108	125	122
Cost Rs./MT	****	****	****	****
Trend	100	116	125	125
Profit Rs/MT	(****)	(****)	(****)	(****)
Trend	100	-227	-127	-156
Profit before interest (Rs in Lacs)	****	(****)	(****)	(****)
Trend	100	-1813	-686	-1182
Cash Profit Rs/MT	****	(****)	(****)	(****)
Trend	100	-96	109	51
ROCE (%)	****%	(****)%	(****)%	(****)%
Trend	100	-1381	-532	-893

95. The data above indicates that in spite of improvement in production and sales the domestic industry continues to make losses in the domestic sales in the period of injury investigation. Cash profit has declined and the returns on capital employed are in the negative in most part of the injury investigation period.

**(c) Actual and potential impact on Market Share**

96. As noted earlier the market share of the domestic producers has dropped from

about 97% in the base year to 87% in the POI. However, this loss of market share of the domestic industry has been largely cornered by the dumped imports from other countries against which antidumping duties have been imposed. The share of the market share and gain of market share by the subject countries is marginal.

Year	2010-11	2011-12	2012-13	POI
Market share of Domestic sales in demand	97%	98%	86%	87%
% Share of Subject countries in demand	0.18%	0.17%	0.40%	0.34%
% share of other countries attracting ADD	2.34%	1.25%	12.26%	11.79%
% share of other un-dumped imports	0.20%	0.41%	1.06%	0.89%

#### **(d) Actual and potential impact on Employment, Productivity and Wages**

97. From the table given below, it is noted that employment have shown improvement in the injury period which is in tandem with the increase in capacity and production. However, wages per employee has reduced in the POI as compared to the base year. Productivity of the domestic industry has almost remained in the same level during the entire period of injury. Therefore, there is apparently no significant impact on these parameters.

Year	2010-11	2011-12	2012-13	POI
Employees	****	****	****	****
Trend	100	123	126	127
Wages/employee (Rs)	****	****	****	****
Trend	100	93	98	98
Production (MT)	740069	877086	912197	927683
Employees	****	****	****	****
Production/employee	****	****	****	****
Trend	100	97	98	99

#### **(e) Actual and potential impact on Inventories**

98. The data given in the table below shows that the inventory levels with the domestic industry have marginally come down in the POI as compared to the base year which is due to significant improvement in export sales volumes..

Year	2010-11	2011-12	2012-13	POI
Closing stock (MT)	****	****	****	****
Trend	100	97	116	95

#### **(f) Factors affecting domestic prices**

99. The data above indicates that there is a healthy growth in demand. The dumped imports from the subject countries, though low in volume, are still entering the

Indian market at prices much below the cost of production and selling prices of the domestic industry causing significant price undercutting and underselling in the Indian market. Volumes of import from other countries attracting duties are significantly high and at very low prices. Therefore, the domestic prices are affected by dumped imports from various sources against which antidumping duties are in force, including the subject countries. The cost of production of the domestic industry has also undergone change. It appears that the domestic industry, in order to prevent significant erosion of its sales volume in the domestic market through influx of dumped imports from various sources, including the subject countries, has maintained its price line resulting in financial losses.

#### **(g) Actual and potential impact on Growth**

100. It is noted that there is a healthy growth in demand of the product and the domestic industry has added capacity and increased production and sales. However, these physical performances have not translated to growth in financial parameters and the losses have increased due the presence of dumped imports at low prices from several sources including the subject countries.

#### **(h) Ability to raise capital investments**

101. It is noted that under antidumping duty protection against dumped imports from several countries and with a healthy growth in demand due to general macroeconomic conditions leading to increase in consumption of the subject goods the domestic industry has added significant capacities during the injury investigation period at substantial capital investment. The domestic industry has submitted that all these investments would be financially jeopardized if the dumped and injurious imports from the subject countries are allowed to enter into the country without the anti-dumping duties.

#### **(i) Level of dumping & dumping margin**

102. The margins of dumping of the imports of the subject goods from the subject countries, as determined in the previous section, are positive and substantial though the volume of imports from Indonesia is not very significant.

### **H.4 Overall Assessment of current Injury and Causal links**

103. The above analysis of various factors indicate that physical performance of the domestic industry in terms of capacity, production and domestic sales of the subject goods improved during the injury investigation period with a healthy growth in demand. However, the financial performances of the domestic sales have deteriorated because of the price pressure of dumped imports from several

sources against which antidumping duties have been imposed, including the subject country. Thus the domestic industry continues to suffer material injury in terms of financial losses and negative return on capital employed.

104. The interested parties have argued that this injury to the domestic industry is on account of other factors such as *inter se* competition between the domestic producers and has nothing to do with the imports from the subject countries as the volume of imports from these countries is very low. Therefore, the Authority has examined the other mandatory factors as well as the issues raised by the interested parties to see if other factors are responsible for the injury to the domestic industry.

**(i) Volume and prices of imports from other sources**

105. As noted earlier the imports from the countries against which antidumping duties have been imposed have increased significantly. The data below shows the volume of imports and their price trends.

Year	Units	2010-11	2011-12	2012-13	POI
Imports from subject countries	MT	1512	1702	4609	3947
Trend		100	113	305	261
Imports from other countries subject to ADD	MT	19846	12525	141676	136114
Trend		100	63	714	686
LV from other countries subject to ADD	Rs/MT	14819	16223	9696	9874
Trend		100	109	65	67
Imports from other countries not attracting duty	MT	1674	4102	12190	10219
Trend		100	245	728	610
LV from other countries not attracting duty	Rs/MT	22727	28428	19135	19675
Trend		100	125	84	87
Total Imports	MT	23032	18330	158475	150279
Trend		100	80	688	652

106. The above data clearly establishes that there is a significant increase in imports from other countries against which antidumping duties have been imposed and the prices from these countries are lower than the price from the subject countries. Imports from countries not attracting duties have also increased but their prices are substantially high. Therefore, imports from all the dumped sources appear to have affected the domestic industry.

**(ii) Contraction in demand and / or change in pattern of consumption**

107. It is noted that the demand of the subject goods in the country has grown consistently from base year to 2012-13 indicating a healthy demand situation in the country. It is noted that none of the interested parties has made any

submission about the change in the pattern consumption of the subject goods causing injury to the domestic industry. In fact with the growth in general economic performance the consumption of the subject goods is expected to increase which is reflected in the healthy demand position. Therefore, contraction in demand or change in consumption pattern is not a factor affecting the performance of the domestic industry.

**(iii) Trade restrictive practices of and competition between the foreign and domestic producers**

108. Other interested parties have argued that the injury, if any, suffered by the petitioner domestic industry, is due to the *inter se* competition amongst them and have cited the application filed by one of the domestic producers i.e., M/s. HNG Float Glass Limited before the Hon'ble Competition Commission of India against M/s. Saint Gobain Glass India Ltd. (SGGIL) alleging abuse of dominant position, aggressive and unfair pricing strategy, anti-competitive and abusive marketing strategies. In this connection the Authority notes that Competition Commission did not find a case of contravention of the provisions of Competition Act against Saint Gobain. Therefore the allegation of anti-competitive or trade restrictive practices against dominant players in the Indian market has not been proved. No other issue regarding trade restrictive practices has been brought to the notice of the Authority. There is no import restriction and Indian as well as foreign manufacturers are freely operating in the Indian market. Therefore, this factor could not have affected the performance of the domestic industry.

**(iv) Development in Technology**

109. The petitioner domestic industry is using the latest float technology to produce the subject goods and the investigation has not shown that there was any significant change in technology which could have affected the performance of the domestic industry.

**(v) Export performance of the domestic industry**

110. The export performance of the domestic industry during the injury investigation period is as follows:

Particulars	Unit	2010-11	2011-12	2012-13	POI July 2012- June 2013
Export Sales	MT	****	****	****	****
Trend		100	116	267	272
Export Prices	Rs/MT	****	****	****	****
Trend		100	106	122	120

111. The data indicates that the export volume of the domestic industry has

increased significantly during the injury investigation period and the price realization has also increased over the years. Therefore, export performance cannot be said to have affected the domestic industry adversely. However, the export performance of the domestic industry is not relevant since the Authority has considered only the domestic performance of the Domestic Industry for injury analysis.

#### **H.5 Conclusion on the current injury and causal link**

112. The above examination indicates that the imports of the subject goods from the subject countries are entering the Indian market at dumped prices though the volume is low. It is also noted that there are significant imports from countries against which antidumping duties are in force. Landed values of the goods from all such sources, without antidumping duty, are significantly undercutting the domestic industry's prices. The underselling margins are also high. These imports from all such sources are causing price suppression and price depression effects on the domestic industry's prices. Further, the financial health of the domestic industry has deteriorated in spite of improvement in production and sales due to the price effects of significant imports from several dumped sources, including the subject countries though the imports from the subject countries are low. In view of the above, the Authority concludes that that the domestic industry has suffered material injury in terms of financial losses and the injury is on account of imports from several counties subjected to antidumping duty, including the subject countries.

#### **H.6 Magnitude of injury and injury margin**

113. Having regard to the lesser duty rule followed by the Authority margins of injury with respect to the importation of the subject goods from the subject countries have also been determined. For determination of injury margin the Authority has determined the Non-Injurious Price (NIP) for the domestic industry as per the procedures laid down in Annexure III of the Anti Dumping Rules. Accordingly, the NIP for the domestic industry and the margins of injury for the products under consideration have been determined as follows:

<b>Particulars</b>	<b>UOM</b>	<b>China</b>	<b>Indonesia</b>
NIP	US\$/MT	****	****
Landed Price	US\$/MT	241	299
Injury Margin	US\$/MT	****	****
Injury Margin	%	****	****
IM Range		85-95%	50-60%

#### **I. Likelihood of Continuation or Recurrence of Dumping and Injury**

114. It is noted that the subject goods continue to enter the Indian market from the subject countries at substantially dumped prices though volume of imports have significantly declined after imposition of duties; and the domestic industry continues to suffer injury on account of imports at very low prices from several countries against which antidumping duties are in force, including the subject countries. Rules require the Authority to examine if the dumping is likely to continue and whether the injury to the domestic industry is likely to continue or recur if the duties are revoked.

### **I.1 Views of the Domestic Industry**

115. The domestic industry, in its submissions, has argued that there is continued dumping of the products under consideration from China and Indonesia. Though the volume of dumped imports has declined, the dumping margin is significant. It has been submitted that dumping of the product under consideration is likely to intensify from the subject countries should the current anti dumping duty be revoked. It has been *inter alia* argued

- i. That the domestic industry is already suffering injury and revocation of anti-dumping duty shall lead to intensified injury to the domestic industry. Cessation of anti-dumping duty is likely to have significant suppressing and depressing effect on the prices of the product under consideration in the market.
- ii. That the producers in subject countries maintain huge capacities. In this regard the domestic industry has submitted the report of NSG Group to substantiate the claim of surplus capacities of the subject goods in China PR. As per these reports total capacity in China is about 28.8 Million MTs which is about 20 times the capacity in India without matching demand. Further, it has submitted that in the present case, neither the exporters from the subject countries nor their respective Governments have come forward with the information of their existing production and capacities. In case of revocation of anti-dumping duties, the volume of imports of the subject goods is bound to increase further, which is evident from the fact of continued dumped imports in spite of imposition of duty from the subject countries.
- iii. That there are 3 units with about 8 float lines in Indonesia with total capacity of about 1.46 Million MTs which is far in excess of the demand in Indonesia. One of the major producers in Indonesia i.e., M/s Mulia Glass has stated in its website that its exports volume reaching 65% of their production.
- iv. That decline in imports post imposition of duty and positive dumping margin in such imports implies likelihood of dumping in the event of withdrawal of duty and in itself justifies extension of anti-dumping duty.

- v. That clear Float Glass is also being imported from Pakistan, UAE and Saudi Arabia at dumped prices during the period of injury. Customs had levied anti-dumping duty against imports of Clear Float Glass from these countries, vide Notification No. 48/2014-Customs (ADD), dated 11<sup>th</sup> December, 2014. Under such circumstances, withdrawal of anti-dumping duties will certainly let the manufacturers and exporters of the subject goods in the subject countries to dump the subject goods at dumped prices in the domestic market.
- vi. That subject countries are facing anti-dumping investigation by Brazil, South Korea and Australia. In such case, withdrawal of the anti-dumping in force will provide a free market access to the manufacturers/exporters in the subject countries to dump the subject goods and accordingly, there is very strong likelihood of continuation or recurrence of dumping and injury.
- vii. That there are positive and significant injury & dumping margins even when calculated based on the prices from the subject countries to countries other than India.

116. The domestic industry has provided copies of few sample invoices of exports from China to Brazil and Bangladesh to demonstrate the price level at which the goods are expected to Indian market if the duties are revoked and these prices are at substantial dumped prices. The domestic industry has also produced sample invoice from Indonesia to Sri Lanka to demonstrate a similar trend.

117. In view of the above, domestic industry has submitted that there is every likelihood of continuation or recurrence of dumping and injury once the duties are withdrawn, as withdrawal of the anti-dumping duties will provide a free access to the manufacturers/exporters of the subject goods from the subject countries to dump the subject goods in India.

118. In its post disclosure submission the domestic industry has further argued

- That significant capacity exists in Indonesia as per the detailed information filed by the domestic industry regarding the capacities and exports orientation of the exporters from Indonesia vide letter dated 10<sup>th</sup> June 2015. As per the publicly available information and market intelligence, there are 3 units with about 8 float lines in Indonesia with total capacity of about 1.46 Million MT which is far in excess of the demand in Indonesia. In addition, PT Asahimas is in the process of capacity addition to the tune of 60,000 MT that will be operational by the end of 3rd quarter of 2016.
- Apart from the above one of the major producers in Indonesia i.e., M/s

Mulia Glass has stated in its website that its exports volumes are reaching 65% of their production. Furthermore, another producer, namely M/s Asahimas, stated in its Annual Report for the year 2014 that, while their domestic sales grew by 10%, their exports have grown by 19% during the same period. This clearly and unequivocally shows the aggressive export orientation of the producers from Indonesia.

- That the domestic industry has provided the best available information regarding the capacities and exports orientation of the exporters from Indonesia to show the likelihood of dumping and injury in the event duties are withdrawn.
- That the domestic industry is supposed to provide only positive information substantiating the need for review in terms of Rule 23(1A) which was adequately done leading to the initiation of sunset review investigations in this case.
- That in this context, it is equally important to refer to the decision of the Hon'ble Delhi High Court [2008 224 ELT 375 (DEL)] wherein it has clearly been held that the Domestic Industry can only submit one part of the required information. The other part obviously has to come from other opposing interested parties.
- That post initiation of a review investigation, it is obligatory for the producers/exporters from the subject countries as well as the respective governments to provide the information requested by the Authority, which they have evidently failed to do. Therefore, it would be factually incorrect to state that the Domestic Industry has failed to provide any information regarding the production capacities and other details in Indonesia.
- That as per the legal provisions the onus shift on the producers/exporters and other interested parties including the concerned government to provide such information.
- That during the public hearing, the Designated Authority had categorically asked the Officials of the Indonesian Embassy to provide the details regarding the capacity, production and exports of the product concerned or else an adverse inference may be drawn against them. Despite this, neither the Officials of the Indonesian Embassy nor any producers/exporters of the product concerned from Indonesia have provided any information regarding capacity, production and exports of the product concerned or with regard to the absence of likelihood of dumping and injury from exports from Indonesia. It would be a travesty of

justice if, despite specific instructions by the Hon'ble Authority, non-compliance and non-cooperation will get rewarded.

- That magnitude of actual imports is of not much importance in a sunset review case. Further, it is also submitted that the prices of the product concerned from Indonesia is very low despite the duties in force and this fact has also been categorically mentioned in the disclosure statement. In view of the above, the Hon'ble Authority should not draw any negative inference from this.

## **I.2 Submissions by producers/exporters/importers/other interested parties**

119. None of the producer/exporters has made any submissions with regard to the likelihood of continuation/recurrence of dumping and injury.

120. M/s Ajanta Pvt. Limited and FOSG have disputed the claims of the applicant domestic producers that there exist huge capacities in subject countries which would lead to a likelihood of recurrence of dumping from these countries and injury because of imports from subject countries. It has been argued that mere existence of huge capacity is not a ground for extension of antidumping duty as has been held by the Appellate Body. The petitioners should provide concrete evidence for the existence of huge capacities and mere conjecture must not be accepted by the DGAD.

121. Interested parties have further argued that China is the world's largest consumer of glass and accounts for more than 50% of global demand. Further capacity utilization of the Chinese exporter is more than 90%. Therefore, existence of huge capacity in China is not based on facts and therefore, removal of duty is not going to impact the domestic industry in India.

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

122. The present investigation is a sunset review of anti-dumping duties imposed on the imports of subject goods from China PR and Indonesia. Under the Rules, the Authority is required to determine whether revocation of the anti-dumping duty would lead to continuation or recurrence of dumping and injury.

123. The antidumping duties are in force on the subject goods imported from several countries and the volumes of imports from those countries were significant and rising during the POI. There are continued dumped imports of the subject goods from the subject countries despite imposition of the anti-dumping measures. However, while volume of imports from China remains substantial and has increased during the injury investigation, there is only three isolated transactions of a small volume from Indonesia during the Period of investigation

though the price was low. Therefore, in a situation where there are imports from several countries attracting antidumping duty the Authority has to examine the likely scenario if the duties are removed from one set of countries.

124. The following factors have been examined to see whether there is a likelihood of continuation of dumping from China and recurrence of dumping from Indonesia as there were only three isolated transactions from that country during the injury investigation period, and whether in such a scenario the domestic industry would continue to suffer material injury.

**(i) Level of current and past dumping margins from the subject countries**

125. The examination in the previous sections indicates that the level of dumping margin from China, from where the volume of import was substantial, was significant. Though the margin of dumping from Indonesia was found to be high, the determination is based on three isolated transaction during the POI and no other import was reported during the injury investigation period.

**(ii) Available capacities in the subject countries**

126. The domestic industry has submitted that China has huge surplus capacities and with antidumping duty imposed by several countries on Chinese exports there is an imminent likelihood of diversion of goods to India if the duties are revoked. Other interested parties have disputed the claim and have argued that mere availability of capacity cannot be ground for extension of duties.

127. None of the producers or exporters from China or Indonesia has provided any information regarding the production, consumption or capacities in these countries. The FOSG in its submission has submitted that it has been an admitted position that China PR has surplus capacity than the total Indian demand and at no point of time Indian domestic industry would be able to compete with China PR as far as manufacture of float glass is concerned. It has been submitted that Chinese capacity is about 26 times that of total demand in India and 33 times that of the production capacity of the domestic industry. This inevitably shows that the domestic industry has not at all earnestly increased their production capacities so as to provide cost competitive product to the Indian market. It has been further submitted that over the past 10 years the domestic industries could add only 3-4 additional float lines whereas India should be having at least 50 float lines to compete with China to offer a cost competitive product to the Indian market.

128. As per the reports provided by the domestic industry China continues to hold a very dominant position in capacity and production of float glass and a major supplier of this product globally.

129. However, as far as Indonesia is concerned, the domestic industry has provided certain information regarding the capacities and export orientation of the Indonesian producers and exporters as recorded above based on publicly available information in the websites of the producers in that country. The domestic industry has further argued that their obligation was only to provide positive information leading to initiation of a review and thereafter the onus shifts to the producers and exporters in that country to provide detail information which they have failed to do. Even the Govt. of Indonesia has not provided any information as requested during the public hearing.

130. In this connection the Authority notes that this is a sunset review and not a midterm investigation which requires only positive information for initiation of a review. Therefore, the contention of the domestic industry in this regard is not correct. In a sunset review, which seeks further extension of the duty for a period of five years, likelihood test is more important for which certain evidence which could establish that there is an imminent possibility of recurrence of dumping and consequent injury is required. Though the domestic industry has given some information about the existing capacities in Indonesia no reliable information is available regarding domestic demand and exports to other countries to establish whether these capacities are surplus and likely to be diverted to India in the event of revocation of the duty against that country. The Authority also notes that the Government of Indonesia has also not provided any information in this regard.

**(iv) Level of injury and dumping margin based on prices from subject countries to other countries**

131. Despite the anti-dumping duty in force, the import of the subject goods from China continues to be at dumped prices and significantly undercut the domestic industry in Indian market. Three import transactions from Indonesia during the injury investigation period were also at significantly low price compared to domestic industry price. But this may not be representative considering the fact that there was no import from that country during large part of the entire injury investigation period.

132. The domestic industry has submitted some proof of prices of the subject goods supplied from China and Indonesia to other countries to demonstrate that if the duties are revoked the imports will enter Indian market at such prices which will injure the Indian industry. However, this information is based on sample invoices only and no statistics of exports from China and Indonesia to other countries have been provided apparently because no dedicated head is available for procuring such information from international sources.

**(v) Price Attractiveness of the Indian Market and Demand scenario**

133. Indian market for the subject goods continues to have a healthy demand for the product which is in line with the general economic growth. However, the price scenario of the past indicates that it would continue to remain a low price market and attractive for the global players with surplus capacity to export at marginal cost pricing. However, if the duties are removed the Indian market will become much more attractive as the exporters would be able to realize better prices to the extent of the duty absorbed by them.

**(vi) Anti-dumping duty in force on the product**

134. Anti-dumping duties have been imposed by India against imports of Clear Float Glass from Pakistan, UAE and Saudi Arabia; vide Notification No. 48/2014-Customs (ADD) dated 11th December, 2014. It has also been brought to the notice of the Authority that duties have been imposed by Brazil, which is one of the emerging economies and an emerging consumer of float glass, in 2013 on imports of this product from China. South Korea's trade commission has also extended anti-dumping duties on the Chinese float glass products levied on April 2012. Australian Authority has levied anti-dumping duty on the imports of float glass from Thailand in Nov 2011. Therefore, Chinese exports of the subject goods to Brazil, South Korea and Australia are likely to be impacted to that extent. No information has been provided with regard to antidumping action against export of subject goods from Indonesia by any other country.

**(vii) Trend in imports in the post POI period**

135. The POI in the instant case was July 2012 – June 2013 and the extended antidumping duty was valid till 5<sup>th</sup> January 2015. Examination of the trend in imports and prices in the post-POI period indicates that there is no import from Indonesia and import from China has also further declined. The post POI import data is as follows:

Country	Sum of values Rs	Sum of Metric Tonne
China PR	39378773	1753
Indonesia	0	0

136. It is noted that during this period the duties were in force on imports from China and Indonesia. Therefore, the trend of imports has not changed compared to the injury investigation period.

## **J. Post Disclosure Submissions of all interested parties:**

137. The Authority issued a disclosure statement on 23<sup>rd</sup> June 2015 disclosing essential facts of the case and inviting the comments of all interested parties. The interested parties have mostly reiterated their various arguments. For the sake of brevity the submissions/comments made by the interested parties earlier have not been repeated. Accordingly, the post disclosure submissions and the issues raised therein have been examined hereunder:

### **J.1 Comments of the domestic industry**

138. Apart from their comments of the likelihood of recurrence of dumping from Indonesia as recorded above the domestic industry, in its post disclosure submissions, has submitted that as regards the facts, analysis and inferences drawn with regard to China PR, the Domestic Industry has no specific comments to offer in view of the conclusions proposed to be reached.

### **J.2 Views of Federation of Safety Glass**

139. The Federation of Safety Glass, in its comments of the disclosure statement, has submitted that though their views have been properly recorded in the disclosure the observation of the Authority under para 41(iv) of the disclosure statement that interested parties have failed to produce evidence to prove undue protection to the domestic industry and that they have failed to prove as to how continuation of duties against imports from such countries would be detrimental to the larger interests of the economy or the country is contrary to the submissions made by them. Therefore, the Authority should reconsider the above finding in the light of the elaborate and objective submissions made by FOSG and arrive at a reasonable decision.

### **J.3 Views of Ajanta Pvt. Ltd. and PT Muliaglass, Indonesia**

140. In their separate but identical submissions the above interested parties have mostly reiterated their submissions and arguments made earlier on various aspects of the investigation, including maintainability of the investigation. For the sake of brevity those points are not being repeated here. Other issues raised by the parties have been summarized as follows. The parties have *inter alia* argued

- That no examination regarding likelihood of continuation or recurrence of dumping can be made when anti dumping duty is not in force. Since the duty in question expired on January 5, 2015 and no antidumping duty is in force

now the Authority could not have carried out a likelihood of continuation or recurrence of dumping examination;

- That the exchange rate considered is not justifiable as the respondents believe that the prevailing rate as per the RBI should be taken. It has been further submitted that if the current exchange rate is considered the level of price undercutting and price underselling will be eliminated.
- That the Authority has mentioned that the subject goods less than 4 mm have also been imported from the subject countries during the investigation period but the volume is miniscule. It has been reiterated that exclusion of float glass of thickness 4 mm and below from the scope of PUC in case of clear float glass originating in or exported from Saudi Arabia, UAE and Pakistan also reveals that the domestic producers are not suffering any injury from float glass of thickness 4 mm and below;
- That there is no injury on account of the imports from the subject countries as its volume is miniscule compared to the volume of imports from other countries. Moreover, even such miniscule volume has steadily declined in the injury period as well as in the POI;
- That confidentiality granted over certain information is unwarranted;
- That determination of Normal Value for Indonesia and China is illegal as under no circumstances normal value for a market economy country can be determined based on the cost of production of the domestic producer in India. Further the Authority has also not disclosed the source information for determining the international price of raw materials and the basis for the reasonable profit.
- That there is no injury caused to the domestic injury on almost all the volume parameters. The domestic industry has admittedly witnessed significant improvement in critical injury parameters such as domestic sales, capacity, production, capacity utilization, employment and inventory etc. The only possible injury parameters through which injury can possibly be demonstrated is the decline in market share and the trend in profits. The Authority has rightly acknowledged the presence and increase of imports from countries other than subject countries on which antidumping duty is in operation. The imports from such countries have increased by 6 times during the investigation period. Thus the real cause of injury and likelihood of injury is not the imports of the subject goods from the subject countries;

- That the scope of sunset review is limited to arriving at a conclusion on whether there is a likelihood of recurrence or continuation of dumping and injury and nothing more. Therefore, while antidumping duty cannot be continued at all on the subject exports from the subject countries, it is submitted that even if the Authority decide to do so the rate of antidumping duty cannot exceed the existing duty.
- That the sunset review of the continuation of anti-dumping duty on the subject product is required to be terminated as the same is without jurisdiction. Even if the Designated Authority decides to continue the review, anti dumping duty cannot be enhanced.

#### **J.4 Examination of the issues by the Authority**

141. The Authority has examined the issues and the views of the Authority on the post disclosure comments of the domestic industry and other interested parties. The Authority notes that the interested parties, except the domestic industry, have mostly reiterated their earlier submissions with regard to various aspects of the investigation which have already been addressed in the respective paragraphs in this finding. Other issues summarized above have been examined as follows:

142. As far as the comments of FOSG are concerned, the Authority notes that the information provided by them regarding the injury claims of the domestic industry have been adequately addressed in the relevant sections in the findings. The Authority notes that injury and likelihood of continuation or recurrence of injury is an overall assessment of several factors and the same has been objectively carried out as recorded in this finding. As regards their concerns regarding the impact of continuation of duty on the downstream producers, the Authority has examined the same and has recorded that antidumping duty is meant to re-establish fair competition and level playing field in the domestic market which is also in the general interests of the consumers.

143. As regards the issues raised by M/s Ajanta and M/s PT Muliaglass, Indonesia regarding the validity of the investigation and examination of likelihood of dumping the Authority notes that while the duty has expired on 5<sup>th</sup> January 2015, the Central Govt. has extended the time period for completion of the investigation till 2<sup>nd</sup> July 2015 as per the relevant provisions of the Rules and therefore, continuation of the investigation and examination of various aspects are valid and have been conducted within the framework of the Rules.

144. As regards the scope of the product under consideration and demands of the interested parties for exclusion of float glass below 4 mm the Authority notes that this has been adequately addressed in the relevant sections. Therefore, the

arguments of the parties are not tenable.

145. As regards the current injury and likelihood of continuation or recurrence of injury the Authority notes that injury examination is an overall assessment covering several factors and no single or group of factors may give a conclusive indication of injury or likelihood of injury. Therefore, an objective examination of various factors has been carried out as recorded in the findings, which includes the impact of imports from other sources. The Authority has also recorded that in view of simultaneous dumping from several sources the injury has been examined cumulatively. Therefore, the concerns of the interested parties in this regard have been adequately addressed.

146. As regards the arguments of the interested parties that the duties cannot be enhanced in a sunset review the Authority notes that as a consistent practice the degree of current dumping and injury, if any, during the period of investigation of the sunset review is assessed and the duty is extended to the extent of dumping and injury so assessed, which could lead to either reduction or enhancement of the duties. Only when there is no current dumping or injury and the duty is required to be extended on the basis of likelihood of dumping and injury the duty is extended as it is. If the arguments of the interested parties are accepted in a situation where the degree and extent of dumping and injury have decreased after imposition of duty the higher duty has to be extended, which is neither in the spirit of the Law nor in the interest of the parties to the investigation. Therefore, the arguments of the interested parties in this regard are not tenable.

147. As regards the arguments of the interested parties regarding determination of normal value is concerned, the Authority notes that the issue has been adequately addressed in the relevant paragraphs in this finding. It has been clearly mentioned that possibility of determination of the normal value in China in terms of first and second option in Para 7 of Annexure I of the AD Rules was examined but could not be resorted to in the absence of any meaningful and credible data/information from any interested parties for selection of an appropriate third country as a surrogate for construction of the normal value on the basis of cost and prices in that country or price from such country to other countries, including India. Therefore, the normal value in China has been determined as per the third alternative provided in the Rules referred above and normal value has been constructed on the basis of the cost of production of the efficient domestic producer/plant in India after making due adjustment for the international prices of major raw material. The price of major raw materials i.e., Soda Ash has been taken from World Trade Atlas. The Authority has also provided for reasonable profit of 5% as per its consistent practice. Therefore, the arguments of the interested parties, in this regard, are not tenable.

## **K Overall assessment of likelihood of continuation or recurrence of dumping and injury**

148. The above analysis of various likelihood aspects of dumping and injury indicates that China continues to have a dominant position in the float glass manufacturing in the global market with huge capacities. With antidumping duty on its product in Brazil and antidumping duty imposed by India on several other countries in the recent past, China would have a distinct advantage to continue to dump the goods in India in higher volumes if duties are revoked. Therefore, continuation or recurrence of intensified dumping from China appears to be an imminent possibility.

149. However, as far as Indonesia is concerned, though the domestic industry has provided certain publicly available information regarding the capacities in that country no case has been made out to demonstrate that these capacities are in excess of the domestic demand and export to other countries which will enable the producers in that country to restart significant volume of exports to India at dumped prices as there was practically no export to India from this country during the whole of injury investigation period. Since there is no reliable information to demonstrate that there is an imminent possibility of recurrence of dumping from Indonesia the Authority concludes that there is no likelihood of continuation or recurrence of dumping from Indonesia if the duties are revoked against that country.

150. Now turning to likelihood of continuation or recurrence of injury, the Authority notes that the domestic industry continues to suffer material injury in terms of significant financial losses, in spite of improvement in production and sales, due to the cumulative effects of dumped imports from several sources, including the subject countries against antidumping duties are in force. Therefore, if the duties are revoked the volume of imports from China is likely to increase and volume and price effects of dumped imports from China along with imports from the countries attracting duty as demonstrated earlier will cause continued injury to the domestic industry.

151. In view of the above the Authority concludes that dumping is likely to continue and intensify from China PR if the duties are revoked and there is no likelihood of continuation or recurrence of dumping from Indonesia. The Authority also concludes that continuation and intensification dumping from China would lead to continuation of injury to the domestic industry.

## **L Conclusions**

152. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority, as recorded in this finding, the authority concludes that:

- (i) The subject goods have continued to enter the Indian market from China PR at prices less than their normal values and the dumping margin is substantial and above *de minimis*. However, there has been insignificant imports from Indonesia though the dumping margin is positive and above *de minimis*;
- (ii) The domestic industry has suffered material injury due to the presence of dumped imports from several countries, including the subject countries, during the injury investigation period;
- (iii) The goods are likely to be exported from China PR at dumped prices in the event of cessation of anti dumping duty and dumping is likely to continue from China PR. However, in view of insignificant imports during the injury investigation period and in the absence of credible evidence supporting likelihood of recurrence of dumping from Indonesia the Authority concludes that there is no imminent likelihood of recurrence of dumping from Indonesia; and
- (iv) Injury to the domestic industry is likely to continue in the event of cessation of anti dumping duty on imports of subject goods from China PR because of continuation of dumped imports from that country;

## **M Public Interest and other issues**

153. FOSG, in its submissions, has argued that there are 76 members in the FOSG at present, while the processed glass industry has about 125 manufacturing entities. A single plant of processed glass provides employment to about 100-125 employees. The members of the association are representatives of "processed glass industry" manufacturing toughened, insulated and laminated glasses. The market size of the goods produced by the members of our association is about Rs.2800 Crores in a year in India whereas the size of float glass industry is about Rs. 4000 crores in a year. Processed glass industry consumes almost 35-40% of the total float glass market in India. In value terms it is about Rs.1500 Crores of the total market size of float glass industry of about Rs.4000 Crores in a year. Therefore, any levy on the float glass directly affects the processing industry. FOSG is also an association of MSMEs who use the float glass in the manufacture of toughened glass. Therefore, the Authority should protect the interest of these manufactures and not extend the duties.

154. In this connection the Authority notes that the purpose of the antidumping law is to create a level playing field for production and consumption of the goods in the Indian market by protecting domestic production of the goods against unfair trade practices of producers in other countries. The Authority also notes that existence and sustainability of a domestic production base is important for general economic development and also is in the interest of the domestic consumers which will not be exposed to the monopolistic price behaviors of the foreign producers in the absence of domestic production base. However, the Authority has examined the cost and price behaviors of the domestic producers in this finding in an objective manner to arrive at the conclusion on injury and causal link to address the concerns of the consumer industry.

## **N Recommendations**

155. The Authority notes that this sunset review 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 and verifiable evidence on various aspects of dumping, injury and causal link and likelihood of continuation of dumping and injury in the event of cessation of the duties. Having conducted the investigation as per the procedure prescribed and having established that dumping is likely to continue from China PR and consequent injury to the domestic industry is likely to continue if the duties are revoked, the Authority considers it necessary and appropriate to recommend extension of anti-dumping duty on imports of subject goods, from China PR in the form and manner described hereunder. In the absence of any credible evidence on the likelihood of continuation or recurrence of dumping from Indonesia the Authority considers it appropriate to recommend withdrawal of the duties against Indonesia.

156. Having regard to the lesser duty rules the Authority recommends extension of anti-dumping duty equal to the lesser of margin of dumping and margin of injury so determined in this finding for the period under investigation, so as to remove the injury to the domestic industry. Accordingly, definitive antidumping duty equal to the amount indicated in Col 8 of the duty table given below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods, as detailed in column 3 of the duty table below alongwith the footnotes thereunder, originating in or exported from the Peoples Republic of China.

### Duty Table

S N	Sub Heading or Tariff Item	Description of Goods	Countries of origin	Countries of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
1	2	3	4	5	6	7	8	9	10
1	7005	Float Glass **	China PR	China PR	Any	Any	218	MT	US\$
2	-Do-	-Do-	China PR	Any	Any	Any	218	MT	US\$
3	-Do-	-Do-	Any, other than countries attracting antidumping duty***	China PR	Any	Any	218	MT	US\$

\*\* "Float Glass of thickness 2 mm to 12 mm (both thickness inclusive) of clear as well as tinted variety (other than green glass) but not including reflective glass, processed glass meant for decorative, industrial or automotive purposes".

\*\*\* In case of goods originating from countries against which antidumping duties are in force antidumping duty applicable under those notifications shall apply.

157. An appeal against the orders 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.

158. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

**J. K. Dadoo**  
**Designated Authority**