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**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**Directorate General of Trade Remedies**  
**4th Floor, Jeevan Tara Building,**  
**5, Parliament Street, New Delhi -110001**

Date: 28 December 2024

**FINAL FINDINGS**

**Case No- AD(OI)- 18/2023**

**A. BACKGROUND OF THE CASE**

Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred 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 thereof, as amended from time to time (hereinafter referred as the “Anti-Dumping Rules” or “the Rules”);

1. Whereas, Reliance Sibur Elastomers Private Limited (hereinafter referred to as the “applicant” or “domestic industry”) filed an application, before the Designated Authority (hereinafter also referred to as the “Authority”) in accordance with the Customs Tariff Act, 1975 and the Anti-Dumping Rules for initiation of anti-dumping investigation concerning imports of Halobutyl-Rubber (hereinafter also referred to as the “product under consideration” or the “subject goods” or “HIIR”) from Japan, Russia, Singapore, the United Kingdom and the United States of America (hereinafter also referred to as the “subject countries”).
2. And whereas, in view of the duly substantiated application filed by the applicant, the Authority issued a public notice vide Notification No. 6/19/2023-DGTR dated 30<sup>th</sup> September 2023, published in the Gazette of India, initiating anti-dumping investigation into imports of the product under consideration from Japan, Russia, Singapore, the United Kingdom and the United States of America in accordance with Rule 5 of the Anti-Dumping Rules to determine the existence, degree and effect of any alleged dumping of the subject goods and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

**B. PROCEDURE**

3. The procedure described below has been followed with regard to the investigation:

- a. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with sub-rule (5) of Rule 5 supra.
- b. The Authority issued a public notice dated 30<sup>th</sup> September 2023, published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning import of subject goods from the subject countries.
- c. The Authority sent a copy of the initiation notification to the Governments of the subject countries, through their Embassies in India, known producers and exporters from the subject countries, known importers / users and the domestic industry as well as other interested parties, as per the addresses made available by the applicant and requested them to make their views known in writing within the prescribed time limit.
- d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Governments of the subject countries, through their Embassies in India, in accordance with Rule 6(3) of the Anti-Dumping Rules. A copy of the non-confidential version of the application was made available to other interested parties, wherever requested.
- e. The Authority sent exporter's questionnaire to the following known producers/exporters to elicit relevant information in accordance with Rule 6(4) of the Rules:
  - i. Arlanxeo Singapore Pte. Ltd
  - ii. China Petrochemical Corporation
  - iii. Exxon Mobile Corporation
  - iv. Huntsman International LLC.
  - v. Japan Butyl Co. Ltd
  - vi. Lyondell Basell Industries Holdings B.V
  - vii. Timco Rubber
  - viii. PJSC Nizhnekamskneftekhim
  - ix. SABIC
  - x. TPC Group
  - xi. Zhejiang Cenway New Synthetic Materials Co., Ltd.
- f. The Embassies of the subject countries in India were requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit.
- g. In response to the initiation of the subject investigation, the following producers/exporters from the subject countries have responded by filing questionnaire response:
  - i. Arlanxeo Singapore Pte Ltd.
  - ii. Eneos Materials Corporation ("EMC")
  - iii. ExxonMobil Asia Pacific Pte Ltd. ("EMAPPL")
  - iv. ExxonMobil Chemical Limited ("EMCL")

- v. ExxonMobil Japan Godo Kaisha (“EMJ”)
  - vi. ExxonMobil Petroleum & Chemical BV, Belgium (“EMPC”)
  - vii. ExxonMobil Product Solutions Company (“EMPSC”)
  - viii. Japan Butyl Co. Ltd. (“JBC”)
  - ix. JTC Corporation (“JTC”)
  - x. MRF SG PTE LTD.
  - xi. Public Joint Stock Company Niznekamskneftekhim (NKNH)
  - xii. Public Joint Stock Sibur Holding
  - xiii. Sibur International GMBH
- h. The Authority sent Importer’s Questionnaire to the following known importers / users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.
- i. Abhi Rubber & Chemicals
  - ii. Accura Valves Private Limited
  - iii. Adven Tyre Tube India Pvt. Limited,
  - iv. Agarwal Rubber Limited
  - v. Aks Polychem Pvt Ltd.
  - vi. Allied J B Friction Pvt Ltd
  - vii. Ambica Boiler & Fabricator
  - viii. Anabond Ltd
  - ix. Apollo Tyres Limited.
  - x. Armacell India Pvt Ltd
  - xi. Astron Polymers Private Limited
  - xii. B P Chemicals
  - xiii. B. B. M. Impex Pvt Ltd
  - xiv. B. K. Rubber Industries Pvt Ltd
  - xv. B.P. Chemicals
  - xvi. Bajaj Rubber Company Pvt Ltd
  - xvii. Balaji Enterprises
  - xviii. Balkrishna Industries Limited
  - xix. Bharat Rubber Works Private Limited
  - xx. Bis Polymers Ltd
  - xxi. Braza Tyres Pvt. Ltd.
  - xxii. Bridgestone India Private Limited
  - xxiii. Cavendish Industries Limited
  - xxiv. Ceat Limited
  - xxv. Ceat Specialty Tyres Limited
  - xxvi. Chelna Inc
  - xxvii. Chemicolour International Pvt Ltd
  - xxviii. Cherry International

- xxix. Chowdhry Rubber & Chemical Pvt Ltd.
- xxx. Cinq Micron Chem Pvt Ltd
- xxxi. Classic Auto Tubes Ltd
- xxxii. Classic Industries and Exports Limited
- xxxiii. Continental India Private Limited
- xxxiv. Corrosion Engineers Private Limited
- xxxv. Crane Process Flow Technologies (I)
- xxxvi. D Decor Exports Private Limited.
- xxxvii. Deepak Overseas
- xxxviii. Dev Rubber Factory Private Limited
- xxxix. Dolfm Rubbers Ltd.
- xl. Elgi Rubber Company Limited
- xli. Elmer Products Pvt Ltd
- xlii. Elpha Polychem Private Limited
- xliii. Exel Rubber Private Limited
- xliv. Exxon Mobil Company India Pvt Ltd
- xlv. Flexilis Private Limited
- xlvi. Ganpati General Trading LLP
- xlvii. Globus Rubchem Private Limited
- xlviii. Goodyear South Asia Tyres Private Ltd.
- xlx. Gujarat Fluoro Chemicals Ltd
- l. Hartex Rubber Pvt Ltd
- li. Henkel Anand India Private Limited
- lii. Hind Elastomers Private Limited
- liii. Hindustan Cycles & Tubes Pvt. Ltd.
- liv. Indian Rubber Manufacturers Resear
- lv. J K Tyre & Industries Ltd.
- lvi. Jamnadas Industries
- lvii. Jasmino Polymertech Pvt Ltd.
- lviii. Jay Ashirwad Trading Co.
- lix. Jayam Industries
- lx. Jk Tyre & Industries Limited
- lxi. Jmf Synthetics India Private Limited
- lxii. Jonson Rubber Industries Limited
- lxiii. K.L. Trading Corporation
- lxiv. Karnataka Chemical Industries
- lxv. Kesoram Industries Ltd
- lxvi. Kohinoor India Pvt Ltd
- lxvii. Majestic International
- lxviii. Maxwell Polymers LLP

- lxix. Maxxis Rubber India Pvt Ltd
- lxx. Metro Tyres Limited
- lxxi. Midas Butyl Products India Pvt Ltd
- lxxii. Midas Treads (India) Private Limited
- lxxiii. Mil Industries Ltd
- lxxiv. MRF Limited
- lxxv. Mysore Polymers and Rubber Products
- lxxvi. Nishigandha Polymers Pvt Ltd
- lxxvii. Paragon Vial Caps Pvt Ltd
- lxxviii. Pearl Patch
- lxxix. Perfetti Van Melle India Private Limited
- lxxx. Pinkcity Rubber and Chemicals
- lxxxii. Pix Transmissions Ltd
- lxxxiii. Polygold Precured Systems Pvt. Ltd.
- lxxxiv. Prs Tyres Limited
- lxxxv. R.K. Polymer
- lxxxvi. Rajshila Synthetics Pvt. Ltd
- lxxxvii. Ram Charan Company Private Limited
- lxxxviii. Raman Enterprises
- lxxxix. Ravinder Kumar Vijay Kumar
- lxxxix. Rubber India
- xc. Rubberking Tyres India Pvt Ltd
- xcii. Sagar Rubber Products Pvt. Ltd.
- xciii. Sahil Enterprises
- xciv. Sakshi Innovations Private Limited
- xcv. Sakshi Impex
- xcvi. Sangee
- xcvii. Satyam Rubber Industries
- xcviii. Seal For Life India Pvt Ltd
- xcix. Shri Krishan Rubber Chemical
- c. Sonata Rubber Pvt. Ltd
- ci. Specific Ventil Fabrik
- cii. Speedways Rubber Company
- ciii. Sun Exim
- civ. Sunrise Industrial Corporation
- cv. Supple Rubber Chemical Pvt Ltd
- cvi. Surendra Elastomers Pvt Ltd
- cvi. Swastik Sales Agency
- cvii. Thakar Dass & Co
- cviii. Thomson Rubbers India Pvt Ltd

- cix. Toyota Tsusho India Private Limited
- cx. Triton Valves Limited
- cxi. Tulsiram Hanumanbagas Gilada
- cxii. UD Pharma Rubber Products
- cxiii. Vee Rubber India Private Limited
- cxiv. Vista Business Ventures LLP
- cxv. Wrigley India Private Limited
- cxvi. Yokohama India Pvt. Ltd.
- cxvii. Zenith Industrial Rubber Products Pvt.
- i. The Authority sent Importer's Questionnaire to the following known Associations of subject goods in India for circulation & calling necessary information in accordance with Rule 6(4) of the Rules:
  - i. Automotive Tyre Manufacturers Association
  - ii. All India Rubber Industries Association
- j. In response to the initiation of the subject investigation notification, following importers/users from the subject countries have responded by filing questionnaire response:
  - i. Apollo Tyres Limited
  - ii. Bridgestone India Private Limited
  - iii. CEAT Limited
  - iv. ExxonMobil Company India Private Limited ("EMCIPL")
  - v. J K Tyre & Industries Limited
  - vi. JMF Performance Materials Private Limited
  - vii. MRF Limited
- k. The Authority made available non-confidential version of the evidence presented by various interested parties. A list of all interested parties was uploaded on the DGTR website, along with the request to all of them to email the non-confidential version of their submissions to all the other interested parties.
- l. Request was made to DG Systems to provide the transaction-wise details of imports of subject goods for the injury period and also the period of investigation. The Authority has relied upon the DG Systems data for computation of the volume of imports and required analysis after due examination of the transactions.
- m. The non-injurious price (NIP) based on the optimum cost of production and cost to make & sell the subject goods in India, based on the information furnished by the domestic industry and having regard to Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules, has been worked out so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- n. The period of investigation (POI) for the purpose of present investigation is 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023 (12 months). The examination of trends in the context of

injury analysis covered the periods 2019-20, 2020-21, 2021-22 and the period of investigation.

- o. Thereafter, in accordance with Rule 6(6) of the AD Rules, the Authority provided an opportunity to the interested parties to present their views during the oral hearing held on 20 August 2024. The interested parties were requested to submit their written submissions and rejoinder submissions, if any, within the prescribed time.
- p. Due to the change of the Designated Authority, a fresh oral hearing was held on 11th September 2024 wherein all interested parties were provided the opportunity to present their views. The interested parties were requested to submit their written submissions and rejoinder submissions, if any, within the prescribed time.
- q. The Authority circulated the disclosure statement containing all essential facts under consideration for making the final recommendations to the Central Government to all interested parties on 18 December 2024. The Authority has examined all the post-disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority has not been repeated for the sake of brevity.
- r. The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority, in these preliminary findings.
- s. 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.
- t. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the views/observations on the basis of the facts available.
- u. The Authority, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of the present final findings to the extent possible and verified the data/documents submitted by all the interested parties to the extent considered relevant, practicable and necessary.
- v. The Authority conducted a meeting where all the interested parties were invited to give their comments on the scope of the product under consideration and PCN methodology.

- w. ‘\*\*\*’ in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- x. The exchange rate adopted by the Authority for the subject investigation is 1 US\$ = ₹ 80.79.

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

- 4. At the stage of initiation, the product under consideration was defined as follows by the Authority:

*“4. Halobutyl-Rubber (HIIR)” such as Bromobutyl Rubber (BIIR) and Chlorobutyl Rubber (CIIR). HIIR is obtained through the halogenation of the isoprene groups of IIR, producing a rubber with improved properties and characteristics. HIIR is used for tire inner liners, hoses, seals, membranes, tank linings, conveyor belts, protective clothing and for consumer products such as ball bladders for sporting goods.*

*5. The product under consideration is classified under Chapter 40, under tariff code 4002 39 00 of the First Schedule to the Customs Tariff Act, 1975. The customs classification is only indicative and is not binding on the scope of the present investigation.”*

#### C.1. **Views of other interested parties**

- 5. The submissions of the other interested parties with regard to product under consideration and like article are as follows:
  - i. BIIR should be excluded as the applicant has not received approval for the same. The applicant has claimed that it has received approval for Impramer B 2247 in December 2023. Hence, it did not supply during the period of investigation.
  - ii. RSEPL has not been able to produce and does not have the capability to produce HV BIIR as per acceptable specifications of the customers. None of the members of ATMA have approved the product produced by RSEPL and the same should be excluded from the scope of the product under consideration.
  - iii. BIIR and CIIR are not commercially interchangeable. The Authority must verify whether the applicant has commenced commercial production of both the grades and exclude the grade not in commercial production during the period of investigation. Arlenxeo has supplied only two grades of BIIR (X\_Butyl BB 2030 and X\_Butyl BBX2) in India and such grades have not been supplied by the applicant, thus the same must be excluded from the scope of the product under consideration.

- iv. The Authority should direct the applicant to provide communication with the customers regarding product approval in order to assess whether the applicant has supplied in commercial volumes.
- v. Low viscosity as well as high viscosity HIIR have not received commercial approval. IMPRAMER 2247 is under bulk trials and has not been approved even after the period of investigation, as per email communications submitted by ATMA.
- vi. The volumes supplied by the applicant are sample sales. The Authority may verify the same with the applicant and consumers and terminate the investigation or exclude grades not supplied commercially.
- vii. It must be clarified that copolymers of Isobutylene and para-methyl styrene (Exxpro series) are not covered in the scope of the product under consideration since the same is not HIIR. The Exxpro series differ in technical properties, manufacturing process, molecular structure, tariff classification and end-use applications and is manufactured using Exxon's patented technology which is not available with the applicant.
- viii. The star-branched halobutyl rubbers produced by EMPSC differs in technical properties, manufacturing process, molecular structure and raw materials from the product produced by the applicant and contains styrene copolymer branching agent. EMPSC has proprietary technology to manufacture the said product and the applicant does not have technology to produce the same. Actual import of the product is immaterial in deciding product exclusions. Authority's practice is to exclude grades that have not been manufactured and sold by domestic industry. EMPSC has exported a sample of star-branched HIIR to India.
- ix. HIIR with high mooney viscosity must be excluded from the scope of the product scope.
- x. HIIR with combination of high mooney viscosity and high bromine content must be excluded from the product scope.
- xi. HIIR with viscosity above 42 MU must be excluded as RSEPL does not have the capacity to manufacture the same. Bromobutyl 2255, Bromo 2244 and BBX2 have higher tensile strength, and faster vulcanization rate. HV BIIR was only supplied for testing by RSEPL and no approval has been given yet.
- xii. EMCL's HIIR with bromine content of more than 2.0 WT% up to 2.5WT% differ in technical properties and manufacturing process and are specifically made for pharmaceutical applications and must be excluded from the product scope. The applicant must demonstrate that it has the capacity to produce these grades.
- xiii. It is well settled by various Court decisions that where the domestic like article does not exist for a product type / grade, such type / grade should not be included in the scope of product under consideration.
- xiv. In order to be effective, bromobutyl should have high resistance to flow, tensile strength, uniformity and faster vulcanization rate. The product supplied by the domestic industry has poor air permeability and poor cure properties, due to which the

domestic industry has not received formal approval from the users, despite supplying the same.

- xv. Low Mooney Viscosity Bromobutyl grades were also not approved by users until the end of the period of investigation, and should be excluded from the product scope.
- xvi. Since import documentation shows the type of Halo Butyl Rubber and the Mooney Viscosity, there would be no issue for the Customs to identify the product reliably.
- xvii. As per their SOP, the users give formal vendor approval invariably through letter or email, contrary to the contention of the domestic industry.
- xviii. There is an approval process involved for the subject goods which is evident from the screenshot of the vendor approval portal of ATMA members. ATMA members procure a number of products from RIL including SBR, BR, PBR and CIIR and all such products have undergone approval process.

## **C.2. Views of the domestic industry**

- 6. The submissions of the domestic industry with regard to product under consideration and like article are as follows:
  - i. The product under consideration in the present investigation is Halobutyl Rubber which includes Bromobutyl Rubber and Chlorobutyl Rubber.
  - ii. Since the present case is that of material retardation, mere lack of production should not be considered as the basis for exclusion of the grade. Rather, the capability and capacity to produce should be considered.
  - iii. The requests made for exclusions may not be considered as the Authority has already conducted a meeting and finalised the scope of product under consideration and PCN.
  - iv. Submissions made by Arlanxeo are belated as no submissions were made during the PUC PCN meeting.
  - v. The domestic industry has produced and sold BIIR in commercial quantities during the period of investigation.
  - vi. Arlanxeo has not provided any evidence that the grade supplied by it cannot be substituted by the grade produced by the applicant. The grades supplied by the domestic industry, namely, RSEPL B 2232 and RSEPL B 2247 are comparable in characteristics and are like article to the grade supplied by the said exporter.
  - vii. Since the present investigation is that of material retardation, the requirement for product exclusion is not actual production and sale but the capacity to produce the said product.
  - viii. The approval date of IMPRAMER B 2247 is not relevant as the same is not the only grade of BIIR produced and sold by the applicant.
  - ix. As opposed to the contention of the other interested parties, the applicant has produced IMPRAMER 2247 even prior to the period of investigation, hence, the domestic industry has the capacity to produce high mooney viscosity HIIR.

- x. Star-branched HIIR cannot be excluded from the product scope as there is no demand of the said product in India and hence, there are no imports of the same. As per the practice of the Authority only a product which has been imported and not produced by the domestic industry can be excluded from the scope of the product under consideration.
- xi. Bromobutyl 7244, that is, BIIR with bromine content of more than 2 and upto 2.5 MoL% cannot be excluded from the scope of the product under consideration, since there are no imports of such product. While the other interested parties have claimed that such product has bromine content between 2 – 2.5, the actual content is 2.1 MOL%. The domestic industry has produced the subject goods with bromine content upto 2 MOL%. Increasing the bromine content required only addition of isoprene at the stage of IIR and the same can be produced by the domestic industry.
- xii. As opposed to the submissions of the other interested parties, in case, the performance of the BIIR produced by the domestic industry was poor, it would not have been able to make sales in commercial volumes.
- xiii. As opposed to the submissions filed by the other interested parties, if product exported is not HIIR, they automatically do not fall within the scope of the product under consideration. Hence, there is no need for specific exclusion or clarification of the same
- xiv. In case, the Authority decides to issue clarification regarding exclusion of Exxpro, there is a need to examine the tariff classification of the product as the exporters have claimed that product is imported under a different HS code, however, it is being imported under the same HS Code. There is also a need to examine if the product has distinct characteristics and if it is marketed, imported and used as HIIR.
- xv. As submitted by the users during the oral hearing, there is no formal approval of the product. Approval of the product is evident from repeated orders by the said users.
- xvi. All members of ATMA do not maintain vendor approval portal and hence, such portal by some users do not vitiate the fact that the domestic industry has the capability and capacity to manufacture the subject goods.
- xvii. Formal approval is a namesake requirement since the users are regularly procuring more than 70% of their requirement from the applicant without a formal approval. The users have refrained from giving formal approvals due to the ongoing anti-dumping investigation.
- xviii. Approval is also evident from the fact that post purchase of initial samples from the applicant, the users have approached the applicant again for procurement of subject goods.
- xix. Non-approval by handful of customers cannot be considered as absence of commercial production. Even ATMA members are procuring the subject goods from the domestic industry in commercial quantities.

- xx. With regard to the communication with ATMA, the reply filed by the applicant shows that it has provided the specifications actually required by the users. It has also passed the initial trials by another user.
- xxi. Contrary to the submissions of the other interested parties, the applicant has already provided information regarding commercial production and sale of the subject goods during the period of investigation.

**C.3 Examination by the Authority**

- 7. The Authority had granted an opportunity to all the interested parties to file their submissions on the scope of the PUC and PCNs, within a period of 30 days from the date of the circulation of the nonconfidential version of application. The deadline was further extended up to 25<sup>th</sup> November 2023.
- 8. Comments were filed by ExxonMobil Product Solutions Company (“EMPSC”), ExxonMobil Chemical Limited (EMCL) and Automotive Tyre Manufacturer’s Association (ATMA). Based on the comments filed by various parties, the Authority held a meeting on the PUC/PCN methodology on 7<sup>th</sup> December 2023.
- 9. Based on the comments received from the interested parties, the Authority considered the following PCN methodology for the present investigation which was notified vide notification dated 5<sup>th</sup> February 2024.

PCN parameter	Value	Code
Star-branched halo-butyl	Chlorobutyl	SC
	Bromobutyl	SB
Other halo-butyl	Chlorobutyl	OHC
	Bromobutyl	OHB

- 10. With regard to exclusion of BIIR from the scope of the product under consideration, the Authority notes that no such submissions were filed by the other interested parties during the stipulated period. Since such submissions are belated, these have not been accepted by the Authority. In any case, BIIR cannot be excluded from the scope of the product under consideration since as per the information on record, the domestic industry has produced and sold BIIR in commercial quantities. It is noted that \*\*\* % of the total production during the period of investigation were that of BIIR. Further, the fact that such significant quantity of BIIR was sold also shows that the subject goods produced by the domestic industry were of the requisite quality.

11. With regard to exclusion of grades X\_Butyl BB 2030 and X\_Butyl BB X2, the Authority notes that such submission has been filed at a belated stage. Since anti-dumping investigations are time bound in nature, such submissions cannot be accepted. In any case, the domestic industry has provided evidence that the grades supplied by it are like article to the said grades being imported into India. The grades supplied by the domestic industry are comparable in terms of technical parameters to the grades supplied by Arlanxeo as seen from the table below. Thus, there is no need for exclusion of such grades from the scope of the product under consideration.

Particulars	RSEPL B 2232	X_Butyl BB 2030	RSEPL B 2247	X_Butyl BB X2
MV	28 – 36	32	41 – 51	46
Bromine (wt%)	1.6 – 2.0	1.80	1.6 – 2.0	1.80
Volatile matter (wt%)	0.70 max	<0.7	0.70 max	<0.7
Antioxidant (wt%)	0.05 min.	>0.03	0.05 min.	>0.03
Ash (wt%)	0.70 Max	<0.7	0.70 Max	<0.7

12. With regard to exclusions sought by the other interested parties for Bromobutyl 2255 and 7244 and HIIR with high mooney viscosity, the Authority notes that as per the evidence on record the domestic industry has produced like article. The domestic industry has submitted specification sheets of RSEPL B2247 which is a high mooney viscosity grade. The grade produced by the domestic industry has technical properties similar to that of grades imported into India. Therefore, the Authority has noted that the exclusion of the same is not warranted.

Exxon Grades	RSEPL B2247	2255 (Point a)	7244 (Point e)
MV	41 – 51	46	46
Bromine (Mol %)		1.03	
Bromine (wt%)	1.6 – 2.0	2.1	2.1
Calcium (wt%)	0.12 – 0.18	0.15	0.17
Antioxidant (wt%)	0.05	0.02	0.01

13. With regard to Exxpro series, the Authority notes that the exporter has stated that the same is not HIIR. In such a situation, the need for exclusion of the said product type from the product scope does not arise. The Authority notes that the exclusion of a product type can only be given if such product is itself a part of the product under consideration. Since the other interested parties have themselves stated it is not HIIR, no specific exclusion or clarification is required for the same at this stage.
  
14. With regard to HIIR with higher bromine content, the domestic industry has stated that it has the capacity to manufacture such grade. Production of such grade merely needs an increase in the quantity of isoprene in the product. This only requires an acid neutralization facility. The domestic industry has the same facility at its plant and hence, has the capability to manufacture the said product. Thus, there is no need for the exclusion of the said product from the scope of the product under consideration.
  
15. With regard to exclusion of star-branched HIIR, the Authority notes that though there are no imports of star-branched HIIR into India, there is no evidence to show that the domestic industry has not produced like article star branched HIIR.
  
16. With regard to non-approval of the grades produced by the domestic industry, the Authority notes that the domestic industry has submitted that there are no formal approval process and the approval is apparent from the volume of sales to the consumers. On the other hand, the other interested parties have submitted that ATMA members maintain a portal which shows the product approval. The Authority notes that the other interested parties have submitted screenshot of portal by a few users. However, the evidence on record shows that only a few users maintain such a portal. The applicant has sold to a number of users in commercial quantities, which imply that even without a formal approval, the domestic industry has the capacity to supply the subject goods to the users as per the specification required. Further, the email communications filed by the domestic industry demonstrates that the domestic industry is capable to manufacture subject goods as per the specification of the users. The following table shows the quantities sold by the domestic industry to the users during the period of investigation and post period of investigation.

SN	Major customer name and each consumption segment of HIIR	Month of significant and repeat volumes	Total volume sold (MT) till		
			POI	2023-24	2024-25
1	***	***	***	***	***

2	***	***	***	***	***
3	***	***	***	***	***
4	***	***	***	***	***
5	***	***	***	***	***
6	***	***	***	***	***
7	***	***	***	***	***
8	***	***	***	***	***
9	***	***	***	***	***
10	***	***	***	***	***
11	***	***	***	***	***
12	***	***	***	***	***
13	***	***	***	***	***
14	***	***	***	***	***
15	***	***	***	***	***
16	***	***	***	***	***
17	***	***	***	***	***

17. In view of the foregoing, the Authority does not find it appropriate to modify the product scope. Accordingly, the scope of the product under consideration is determined as follows.

*“4. Halobutyl-Rubber (HIIR)” such as Bromobutyl Rubber (BIIR) and Chlorobutyl Rubber (CIIR). HIIR is obtained through the halogenation of the isoprene groups of IIR, producing a rubber with improved properties and characteristics. HIIR is used for tire inner liners, hoses, seals, membranes, tank linings, conveyor belts, protective clothing and for consumer products such as ball bladders for sporting goods.*

*5. The product under consideration is classified under Chapter 40, under tariff code 4002 39 00 of the First Schedule to the Customs Tariff Act, 1975. The customs classification is only indicative and is not binding on the scope of the present investigation.”*

18. Further, in view of the foregoing, the product produced by the domestic industry is like article to the goods imported from the subject countries. The product produced by the domestic industry and imported from the subject country are comparable in terms of physical & chemical properties, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The imported goods and the goods produced by the domestic industry are used interchangeably. In view of the same, the product manufactured by the domestic industry is considered as like article to the product imported into India.

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

### **D.1 Views of other interested parties**

19. The other interested parties have made the following submissions with regard to the scope of domestic industry and standing:
- i. The applicant should not be considered eligible to constitute domestic industry due to its relationship with the Russian entity, in accordance with the Rules.
  - ii. PJSC Sibur Holdings indirectly controls both the applicant and NKNH, therefore, both the entities are related to each other. Sibur has control over the management decision of the applicant. As per the AoA two directors are appointed by Sibur and reserved matters and related party transactions/ joint approval transactions require approval of at least one director of each group. Even the draft agenda for each board meeting is approved by Sibur's director.
  - iii. Control is also evident from the fact that a former director of the applicant, Marina Medvedeva, resigned from the board due to Sibur's withdrawal of her nomination.
  - iv. The EC in merger decision between Sibur and Tatar-American Investment and Finance group of companies found that although RIL holds the majority of shares in RSEPL, both RIL and Sibur have joint control over it.
  - v. Deadlock provision applied for only Reserved Matters and does not apply to Related Party Transactions and Joint Approval Transaction.
  - vi. Even though the applicant is the sole producer in India, the law does not allow circumvention of eligibility criteria based on number of producers in India.
  - vii. Protection of anti-dumping duty cannot be provided to an industry which has benefited from or contributed to dumping through related exporter.
  - viii. Significant investment by the applicant or it being a new entrant focused on manufacturing in India is not a reasonable ground to consider it eligible domestic industry, especially due to its relationship with the Russian entity.
  - ix. While the Authority has concluded that the applicant is related to Russian exporter in the anti-dumping investigation of IIR, the discretion used is not appropriate and against the findings of the Authority in the investigation concerning wheel loaders and soda

ash. No exceptional circumstances have been identified in the present investigation for use of discretion.

- x. There needs to be an objective and unbiased examination of the facts and evidence placed on record to exercise judicial discretion. As per the evidence on record, the Russian producer and the applicant are trying to re-arrange the market to create monopoly and gain significant market share.
- xi. There is collusion between the two which is evident from the decline in imports from Russia and increase in sales of the applicant. While the volume of imports has declined from Russia, the prices have increased possibly in coordination with the applicant to maintain profitability while reducing imports to achieve favourable margin in the present investigation.
- xii. Seeking anti-dumping duty against imports from Russia or opposing anti-dumping duty by the Russian entity does not absolve the parties from collusion. Participation in the investigation will provide individual duties which could be managed and do not significantly disrupt the market activities.
- xiii. The collusion is also evident from the fact that the Russian entity has not challenged the legal standing of the applicant despite their relationship.
- xiv. There is a possibility that NKNH may have directly shipped HIR to India during the period of investigation and the relationship between the related producer in Russia and applicant may have impacted the market conditions. Thus, the subject countries face different standards of competition during this period. The eligibility of the applicant to constitute domestic industry must be re-considered.
- xv. The applicant has acted as a marketing / indenting agent for the Russian exporter.

## **D.2 Views of the domestic industry**

20. The submissions of the domestic industry with regard to the scope of domestic industry and standing are as follows:
  - i. Reliance Sibur Elastomers Private Limited is the sole producer of the subject goods in India. It is a joint venture of Reliance Industries Limited and Sibur Investment AG, Switzerland which is a 100% subsidiary of Sibur Holdings.
  - ii. Sibur does not have control on the day-to-day operations of the applicant and thus, cannot direct the applicant to take a decision or restrain any decision taken by RIL.
  - iii. As opposed to the contention of the other interested parties, even if the applicant and Russian entity are considered related, mere fact of relationship is insufficient to hold that the applicant is ineligible to constitute domestic industry.
  - iv. The object of exclusion of related party from the scope of the domestic industry is to exclude producers, which are benefitting from their relationships with the foreign producers. In case of legal or operational control, the domestic producer is said to be related to a foreign producer / exporter.

- v. There is a need to examine if behavior of related parties is distinct from unrelated parties, if they triggered, intensified, benefitted or shielded itself from dumping, if the injury is self-inflicted, impact of imports made by related party, whether related party had exported the product to India during the period of investigation, if the volume of related exporter is substituting the unrelated domestic producers' market, whether the relationship has the potential to impact decision concerning production, pricing, or cost of like article, the statutory or organizational restrictions by shareholders, whether the related parties operate autonomously or in collusion or are competing with each other and whether they have conflicting interest in anti-dumping investigation.
- vi. There is no difference in the behavior of RSEPL due to Sibur being a joint venture partner. The Russian entity and applicant are competing in the market and have conflicting interests as one has requested imposition of anti-dumping duty and the other is opposing the same. There is no evidence of collusion between the two.
- vii. Even after considering the relationship between the applicant and the Russian entity, the Authority in the IIR investigation held that the applicant is eligible to constitute domestic industry. No new evidence has been placed on record by the other interested parties in order to demonstrate that there is a need to change the findings issued by the Authority in the IIR investigation.
- viii. RIL holds majority of shares and directors in RSEPL, the right to nominate the Chairman of the Board rests with RIL and thus, all decision where majority voting is required are of RIL.
- ix. The reserved matters do not entail day-to-day decisions of RSEPL which could have allowed RSEPL to suffer self-inflicted injury. Sibur cannot take any decision unilaterally unless it is supported by RIL. Thus, Sibur is not in a position to exercise restraint or direction over RSEPL.
- x. As opposed to the contention of the other interested parties, a mere change in director by Sibur does not show additional control as it always had the power to appoint two directors.
- xi. The applicant should be considered eligible as it is the sole producer in India and considering it ineligible would imply denying remedy to the Indian industry and promote dumping in India.
- xii. The applicant has applied for imposition of anti-dumping duty on all sources of dumped products including Russia. Hence, there is no benefit to the Russian entity which has been awarded one of the highest duties in anti-dumping investigation on imports of IIR.
- xiii. There is lack of control between the applicant and Russian entity, which is evident from the fact that the applicant has not been able to stop the Russian producer from dumping and the Russian entity has not been able to stop the applicant from filing an anti-dumping application.
- xiv. The plant of the applicant is situated in Jamnagar and at the refinery of RIL.

- xv. Denying remedy to the applicant will render the significant investment in the product unviable and will make India dependent upon imports.
- xvi. As opposed to the contention of the other interested parties, the applicant has not submitted that the eligibility criteria must be circumvented.
- xvii. The applicant has not requested any protection but a remedy against unfair trade practices. Further, it has not benefitted or contributed to dumping in any way. In case, it was benefitting from dumping, it would have easily ignored Russia from the application filed.
- xviii. The focus of the applicant is on manufacturing and not importation of subject goods.
- xix. Contrary to the submissions of the other interested parties, level of commitment to production is a key factor in evaluating whether a producer should be considered eligible.
- xx. Since the other interested parties have claimed that the Russian prices were lowest, the producer in Russia will be subject to the highest anti-dumping duty. Thus, individual duties would not benefit the Russian producer in any way.
- xxi. Contrary to the submissions of the other interested parties, imports from all sources have declined and not just from Russia. The import price from all subject countries have increased as compared to the previous year and Russian prices have moved in tandem with price of imports from other countries.
- xxii. As opposed to the contention of the other interested parties, the fact that NKNH did not mislead the Authority by challenging the standing in the present case cannot be considered negatively since NKNH is well aware that there is no control between the applicant and NKNH.
- xxiii. As opposed to the submissions of the other interested parties, the European Commission held that RIL has control over RSEPL. Further, the document relied upon is related to merger and acquisition and not anti-dumping investigation. The meaning and scope of related parties is different under the two.
- xxiv. In case of a deadlock between RIL and Sibur, RIL has the power to direct Sibur to sell off its share to RIL. Likewise, Sibur has the power to require RIL to purchase its share. Thus, in a situation of deadlock, RIL assumes control over the entirety of operations. Thus, Sibur cannot prevent any decision by RIL due to the presence of the deadlock clause.
- xxv. Even if deadlock provision is not applicable to related party and joint approval transactions, it does not show control of Sibur in any manner.
- xxvi. As opposed to the submissions of the other interested parties, the applicant is competing with the Russian producer and has been forced to lower prices due to low price offered by the Russian producer. If Russian producer were to give market access to the applicant, it would have offered higher prices instead of lower prices.
- xxvii. Approval of related party transactions by the other shareholder group shows best practices and transparency adopted by the entities. Sibur cannot take a decision to stop

procurement of raw material from RIL as the technology transfer agreement governs purchase of raw material from RIL.

- xxviii. The issue of direct or indirect imports or knowledge of such imports from Sibur is immaterial.
- xxix. There is no evidence to suggest that the applicant has acted as a marketing agent for Russian entity. The applicant has setup a plant in India and has been competing to increase its sales.

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

21. The application has been filed by Reliance Sibur Elastomers Private Limited (RSEPL) which is the sole producer of the subject goods in India.

22. Rule 2(b) of the Anti-Dumping Rules defines domestic industry as under:

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

23. For the purposes of Rule 2(b), producers shall be deemed to be related to exporters or importers only if, -

*“(a) one of them directly or indirectly controls the other; or  
(b) both of them are directly or indirectly controlled by a third person; or  
(c) together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.*

*Note: For the purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.”*

24. The Anti-Dumping Agreement, in Article 4, defines domestic industry as follows.

*“4.1 For the purposes of this Agreement, the term “domestic industry” shall be interpreted as referring to the domestic producers as a whole of the like products or*

*to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:*

*(i) When producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term “domestic industry” may be interpreted as referring to the rest of the producers;”*

25. Footnote 11 further clarifies the meaning of related as follows.

*“11. For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.”*

26. The Authority notes that the essence of the definition of related party lies in “control”, legal or operational. If one party is not in a position to exercise direction or control over the other, whether directly or through the other party, it cannot be considered that the two parties are related to each other. It is noted that mere shareholding does not amount to the exercise of control and therefore, does not make RSEPL related to NKNH within the meaning of Anti-Dumping Rules. Further, even if the two parties are related parties, the mere fact of the relationship is insufficient to consider the domestic producer as ineligible. There must be evidence that the related domestic producer has acted differently due to the relationship or has participated in dumping practices and has taken such steps which would have resulted in self-inflicted injury.
27. In the present case, RSEPL is a joint venture between Reliance Industries Limited (“RIL”) and Sibur Investments AG, Switzerland (“Sibur Switzerland”), a subsidiary of PJSC Sibur Holding (“Sibur Holding”). Sibur Holding also has a stake in PJSC Nizhnekamskneftekhim (“NKNH”), a producer of the product under consideration in Russia.
28. The applicant has claimed that it is not related to exporters of Russian goods, nor it is related to Russian producers of the subject goods. The applicant has submitted that the relationship under the Rules is required to be seen with reference to the exporter of the product. The applicant has denied the relationship on the grounds that (a) there are no direct exports by Sibur or PJSC Nizhnekamskneftekhim, (b) Reliance has a majority voting power in both shareholders and Board of Directors, (c) Sibur cannot dictate any day-to-day decisions of

RSEPL, (d) RSEPL has not contributed to dumping by Sibur, and (e) the applicant should be treated as eligible domestic industry in view of past practice.

29. The Authority notes that the objective or the purpose of the discretion conferred onto the Authority under Rule 2(b) is relevant in the present case. The Authority notes that the objective of the provision is to allow the Authority to treat certain domestic producer as ineligible under certain situations. One such condition is when a domestic producer is related to an exporter of the subject goods. However, notwithstanding the relationship, the Authority has discretion to treat domestic producers related to foreign producer as ineligible. In any case, there is no automatic exclusion of such a domestic producer from the scope of domestic industry under Rule 2(b).
30. The Authority notes that Article 39(a) of the AoA provides for the decision-making process/approvals required for transacting a Reserved Matter in a board and shareholders' meeting. It states that so long as Sibur shareholders hold the qualifying shares in the applicant, the decisions in the board and shareholders' meetings shall not be taken unless at least one director appointed by Reliance and Sibur each has voted in favour of the matter (in case of board meeting) and an authorised representative of at least one shareholder from Reliance and Sibur each has given its approval for such matter (in case of shareholders' meeting). The relevant portions of Article 39 are extracted as under:

*(a) For so long as the Sibur Shareholders collectively hold the Qualifying Shareholding, then save and except for the situations expressly provided in Article 43 (e) and Article 44 (c), the Company shall not and the Shareholders shall procure that the Company shall not take any decision or action in relation to a Reserved Matter, unless:*

*(i) An authorised representative of at least one Shareholder from each Shareholder Group has given its approval for such Reserved Matter to the Company in writing, or, if such Reserved Matter falls solely within the competence of a Shareholders' Meeting under the Act then an authorised representative of at least one Shareholder from each Shareholder Group has given its approval for such Reserved Matter at a Shareholders' Meeting; and*

*(ii) at least one (1) Director appointed by each Shareholder Group has voted in favour of the matter at a duly convened and held Board meeting.*

31. The other interested parties have also relied upon Article 41(b)(i) which governs “joint approval transactions”. The Authority notes that similar to Reserved Matters, Article 41(b)(i)

states that all such transactions require approval of at least one director and one shareholder from both Reliance and Sibur (so long that Sibur holds qualifying shares).

32. In particular, the Articles of Association (AoA) defines certain "Reserved Matters", "Related Party Transactions" and "Joint Approval Transactions" wherein the approval of Sibur's directors and shareholders in board and shareholders' meetings, respectively, is necessary before any such business can be transacted. Thus, it is seen that despite the majority of shares being owned by Reliance, Sibur can exercise restraint over the applicant in terms of explanation to Rule 2(b).
33. Since the Authority has already concluded that Sibur can exercise restraint over the applicant, it does not find it necessary to re-examine the relationship with regard to deadlock provisions and decision of the European Commission relied upon by the other interested parties. While the domestic industry has disputed that these factors do not show existence of relationship, the Authority has already found that a relationship exists, based on other factors examined hereinabove.
34. In light of the above, it is established that Sibur, through Sibur Investments AG, has control over the applicant and a relationship is established in terms of Rule 2(b) of the AD Rules.
35. The Authority notes that Rule 2(b) merely refers to a possible situation where a domestic producer may be treated as ineligible. Since no prescriptions or conditions have been laid down under the Rules, the Authority examines possible situations where the Authority may treat domestic producers as eligible or ineligible despite the relationship with the exporters in the subject countries. Rather than being applied in a mechanical manner, the rule needs to be applied after due appreciation of the facts of the case and testing if the relationship is being used to influence the market
36. The Authority has dealt with this issue at length in the case of anti-dumping investigation concerning import of Soda Ash originating in or exported from China PR, European Union, Kenya, Iran, Pakistan, Ukraine and USA (NO. 14/17/2010-DGAD). Indeed, the Rules have been modified from "shall" to "may" only to grant discretion to the Authority in a situation where a domestic producer is itself an importer or related to an importer or a foreign exporter. Further, detailed examination on the present issue has also been made in the anti-dumping investigation into imports of Isobutylene-Isoprene Rubber originating or exported from China PR, Russia, Saudi Arabia, Singapore and the United States of America (F.No. 6/05/2023).

37. The authority has now examined in the following paras as to whether the relationship between Sibur and the applicant has influenced the market with an intent of benefitting from the dumping.
38. The domestic industry started production in 2020-21 and declared commercial production only on the last day of the period of investigation. The significant time gap between commencing production and declaring commercial production has been justified by the domestic industry on the grounds of dumping happening in the country. Dumping of the product in the country has prevented the domestic industry from declaring commercial production for a significantly long period even after fully establishing its technical capability to produce and sell.
39. The imports from Russia were priced in competition with other subject countries. There is no evidence on record showing the presence of any collusion or collective action. The Russian producer has participated and opposed the imposition of anti-dumping duty which shows conflicting business interests of the petitioner and Russian producer.
40. There is no evidence of record which shows that the applicant has benefitted from or contributed to dumping. On the other hand, the evidence on record shows that the applicant has suffered material injury due to dumping of subject goods from the subject countries including Russia into India
41. There is no evidence on record to show that the applicant has acted as a marketing agency for the Russian producer in India. The Authority notes that the applicant has set up a plant for manufacturing of subject goods in India. The subject goods imported from Russia and that produced by the domestic industry in India are competing with each other in the domestic market.
42. The other interested parties have submitted that there is collusion between the applicant and the Russian entity as the volumes from Russia have declined and the prices have increased. The Authority notes that volume has declined in case of another subject country as well. With regard to increase in prices, the Authority notes that the prices have increased from all the subject countries and the Russian prices have followed the same trend as that of prices from other subject countries.

Particulars	Unit	2019-20	2020-21	2021-22	2022-23	Change vis-à-vis 2021-22

Volume of subject imports	MT	35,941	45,696	47,495	46,823	-1%
Japan	MT	1,043	5,999	5,429	8,504	57%
Russia	MT	10,468	14,661	13,342	3,443	-74%
Singapore	MT	15,519	12,090	16,142	27,845	73%
UK	MT	4,322	7,030	9,262	2,330	-75%
USA	MT	4,589	5,916	3,320	4,701	42%
Price of subject imports	₹/MT	2,09,576	1,90,677	2,16,358	2,57,407	19%
Japan	₹/MT	2,07,102	1,87,791	2,00,266	2,56,350	28%
Singapore	₹/MT	1,99,386	1,68,667	2,06,998	2,56,010	24%
Russia	₹/MT	1,98,138	1,89,080	2,10,747	2,38,951	13%
UK	₹/MT	2,50,104	2,19,563	2,43,616	2,63,842	8%
USA	₹/MT	2,32,523	2,08,220	2,34,689	2,77,917	18%

43. The Authority notes that the imports from Russia were priced in competition with other subject countries. It is also noted that the volumes of imports from the Russian producer are not so significant that they can suppress the prices of other exporters.
44. Further, the domestic industry has not imported the subject goods from the subject countries during the period of investigation. Accordingly, the Authority considers the applicant eligible to constitute the domestic industry on this account.
45. In view of the foregoing, the Authority concludes that the applicant constitutes the domestic industry as defined under Rule 2(b) of the Anti-Dumping rules, and the application satisfies the requirement of standing in terms of Rule 5(3) of the Anti-Dumping Rules.

## **E. CONFIDENTIALITY**

### **E.1. Views of the other interested parties**

46. The other interested parties have made the following submissions with regard to the confidentiality claimed by the domestic industry:
- i. The domestic industry has claimed information regarding date of commercial production as confidential, despite such information being available publicly.
  - ii. The domestic industry has claimed the entire project report confidential without providing a non-confidential summary.
  - iii. While the applicant has claimed that it has provided price undercutting in range, it has not provided the same in Proforma IV B.
  - iv. The methodology and assumptions underlying the project report have not been disclosed.
  - v. The applicant should be directed to provide comprehensive details about the proposed methodology for determination of non-injurious price.
  - vi. As opposed to the submissions of the domestic industry, exporter is not obliged to disclose confidential additional information regarding corporate structure and production facilities provided to the Authority.
  - vii. Arlanxeo does not publish a price list and prices are based on negotiations with the customers and the same cannot be disclosed.
  - viii. Contractual links of the exporters are confidential information and cannot be disclosed with the domestic industry.
  - ix. Since sales channels are not available in public domain, the same is business sensitive information and cannot be disclosed.
  - x. No prejudice has been caused to the interest of the applicant by non disclosure of production process. The production process is confidential information which is required to maintain a competitive edge in the market.
  - xi. Accounting methodology of the exporters are business confidential information. The accounting methodology of the company is in line with the International Financial Reporting Standard and the same has been disclosed in the response.
  - xii. Information regarding sourcing of raw material will compromise sensitive business operations such as supplier relationships, raw material sourcing and competitive strategies and hence, the same have not been disclosed.
  - xiii. There is no obligation on the exporters to disclose post invoicing discounts to the domestic industry.
  - xiv. The name of producer of the product is confidential business proprietary information which cannot be disclosed.
  - xv. The domestic industry has not raised issues concerning disclosure of information in the non-confidential version of response filed by NKNH, Sibur Holding and Sibur International.
  - xvi. The domestic industry has not disclosed the projected prices and price quotes of subject goods and has offered steep discounts to gain customers.

- xvii. The claim that price undercutting is positive on customer wise basis should not be accepted as the names of the customers for which price undercutting has been calculated or the manner of selection of such customers/ customer groups has not been disclosed. RSEPL should disclose the number and volume of transactions considered, customers considered and manner of selection of such customers, proportion of their market share and the country from which they have imported the product.
- xviii. The applicant has claimed grade wise bifurcation of sales as confidential.

## **E.2. Views of the domestic industry**

- 47. The domestic industry has made the following submissions with regard to the confidentiality claimed by the other interested parties.
  - i. The questionnaire response filed by other interested parties suffer from various violations of Rule 7 of the Anti-Dumping Rules
  - ii. The exporters / producers have claimed entire responses to certain questions as confidential, without providing a non-confidential summary of the confidential information.
  - iii. The exporters / producers have not provided any statement explaining why a non-confidential summary of the information claimed confidential in responses is not possible.
  - iv. The statement of reasons for confidentiality filed by the exporters / producers is not as per the format prescribed under Trade Notice 1/2013, dated 9<sup>th</sup> December 2013.
  - v. The exporters / producers have claimed their product catalogue as confidential without providing a justification for the same.
  - vi. The manufacturing process as well as the names of major raw materials has also been claimed confidential, without due justification.
  - vii. The exporters / producers have claimed all information regarding the production facilities and subcontracting of production process of the product under consideration in India as confidential.
  - viii. The exporters / producers have failed to disclose information regarding the methodology used to report adjustments claimed on export price and in some cases home market price.
  - ix. The exporters / producers have claimed the channel of distribution confidential without providing any justification for the same.
  - x. The exporters / producers have claimed the entire response regarding post-invoicing/sale discounts or year-end rebates given to its customers as confidential.
  - xi. The exporters / producers have failed to adequately disclose information regarding captive use and purchase of raw materials and other inputs from related parties as well as the basis of prices of such inputs from independent parties.

- xii. The exporter / producers have claimed confidential all information regarding contractual links and joint ventures for R&D and other activities without providing a summary in the non-confidential version.
- xiii. The users have failed to provide indexed figures for purchase/sales, cost of raw material and other conversion costs.
- xiv. The users have not provided range values for the estimated share in the domestic sales of the end-product manufactured out of product under consideration.
- xv. Some of the users have claimed their arguments on likely impact of proposed duties and the quantification of impact on users as confidential, without supplementing a non-confidential summary.
- xvi. The interested parties have failed to furnish adequate information in the economic interest questionnaire responses and have reserved their comments on certain critical aspects which may render the exercise of issuing the questionnaire futile.
- xvii. The interested parties have failed to identify specific instances of non-compliance with the requirements of the trade notice.
- xviii. The project report is a confidential business sensitive information of the applicant and hence, cannot be disclosed.
- xix. Methodology for determination of non-injurious price has been provided to the Authority. The same is confidential business information and cannot be disclosed to other interested parties.
- xx. The domestic industry has provided the price undercutting in the addendum to the application.
- xxi. The domestic industry has withdrawn the confidentiality claimed on the date of commercial production and has provided the same.
- xxii. The project report is confidential in its entirety and have been treated as confidential in the past several investigations as well.
- xxiii. The domestic industry has provided a summary of the project report, in the form of comparison between actual and projected information in the revised non-confidential version.
- xxiv. The projected prices and price quotes of the domestic industry are confidential business proprietary information and hence, cannot be disclosed.
- xxv. As opposed to the submissions of the other interested parties, the names of customers and manner of selection of such customers cannot be disclosed since such information is business proprietary in nature and disclosure of the same will have an adverse impact on the domestic industry.
- xxvi. PCN wise sales of the applicant is business proprietary information which cannot be disclosed with the other interested parties.

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

48. The Authority made available the non-confidential version of the information provided by the various parties to all the other interested parties as per Rule 6(7).
49. Further, in light of confidentiality concerns raised by various interested parties, on 24<sup>th</sup> March 2024, the Authority directed all parties to give a point-by-point response to the issues raised and directed all parties to comply with the rules regarding confidentiality, specifically Rule 7 of the Anti-Dumping Rules and Trade Notice 10/2018, dated 7<sup>th</sup> September 2018. The domestic industry, producers / exporters and users have provided a response to the concerns and comments on the confidentiality claims on 31<sup>st</sup> March 2024.
50. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provide as follows:

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

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

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

51. With regard to submissions by other interested parties regarding confidentiality claimed on date of commencement of commercial production, the Authority notes that the domestic industry has withdrawn its request for confidentiality on such information and has provided the same.
52. The other interested parties have claimed the project report has been claimed confidential in entirety. The Authority notes that the project report as well as the methodology and

assumptions for preparing of the project report contains information with regard to functioning and market information of the applicant and such information is confidential business proprietary in nature. However, since the domestic industry is relying upon comparison of the projected performance with the actual performance, non-confidential summary of the same has been shared.

53. The Authority notes that the interested parties have contended that the price quotes, projected prices and post sales invoice discounts have not been shared. However, since such information is confidential in nature and disclosure of such information will have an adverse impact on the operations of the relevant interested party, the Authority has accepted confidentiality claims over such information.
54. With regard to the submissions that the domestic industry has not disclosed the names of the customers for price undercutting, the Authority notes that such information is business sensitive in nature. Disclosure of such information will adversely impact the domestic industry. Similarly, the claim of other interested parties to keep details of customers confidential, has been accepted.
55. The information provided by the interested parties on a confidential basis was examined with regards to sufficiency of such claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential and not disclosed to the other interested parties. Wherever possible, the parties providing information on a confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The domestic industry has disclosed the date of commencement of production as well as date of declaration of commercial production based on the comments received from the other interested parties and the same was accepted by the Authority. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

## **F. MISCELLANEOUS SUBMISSIONS**

### **F.1. Views of the other interested parties**

56. The other interested parties have made the following miscellaneous submissions
  - i. The applicant has selectively chosen market intelligence data for the revised period of investigation while using DGCI&S data for rest of the injury period.
  - ii. While as per the data used by the petitioner, there is only a marginal decline in import volume from the USA, there is significant decline as demonstrated by DGCI&S data showing no volume injury. Further, the imports from Russia are much less than that reported by the applicant at lower prices showing collusion between RSEPL and

NKNH. The Authority must verify the import data from DGCI&S / DG Systems and terminate the investigation against the USA under Rule 14(d).

- iii. The period of investigation considered is not appropriate as it is too soon to determine whether the establishment of industry was materially retarded.

## **F.2. Views of the domestic industry**

57. The domestic industry has made the following miscellaneous submissions
  - i. There is some mismatch in the DGCI&S published data. Since entirety of imports from the USA are from Exxon Group, the Authority may verify the quantity reported by the said exporter.
  - ii. No prejudice has been caused to the interest of any interested party due to consideration of market intelligence data as the Authority will rely upon the DGCI&S or DG Systems data.
  - iii. The contention that it is too soon to determine whether the establishment of the industry was materially retarded is incorrect, as material retardation can be examined even without commencement of production.

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

58. With regard to use of secondary data for the period of investigation, the Authority notes, that the applicant has submitted that there are mismatches in the DGCI&S published data due to which it has relied upon secondary data. At the time of initiation, while the applicant had submitted data available to it, the Authority had relied upon DG Systems data. The applicant had filed application for initiation of anti-dumping investigation into imports from the subject countries as well as the European Union. On perusal of the DG Systems data, the Authority found that the imports from European Union were de-minimis and accordingly, the investigation was not initiated against such imports. However, since imports from each of the other subject countries, including USA, were above 3% of the total imports, the Authority initiated the present investigation against such countries. The relevant extracts of the notification of initiation dated 30<sup>th</sup> September 2023 is as below.

*“16. The applicant filed for initiation of an anti-dumping investigation into imports from the European Union, Japan, Russia, Singapore, the United Kingdom and the United States of America. However, as per the DG Systems data received by the Authority, the volume of imports from the European Union accounts for less than three per cent of the imports of the like products. Accordingly, the subject countries for the present anti-dumping investigation are Japan, Russia, Singapore, the United States of America and the United Kingdom (herein referred to as “subject countries”).”*

59. For the purpose of the present final findings, the Authority is relying upon the DG Systems data and not the data submitted by the applicant. Thus, no prejudice has been caused to the interest of any interested party.
60. With regard to the submissions that the period of investigation considered is not appropriate to determine whether the establishment of the domestic industry has been materially retarded, the Authority notes that the domestic industry has been producing the subject goods since 2020-21. The domestic industry commenced production in February 2021 and declared commercial production on 31<sup>st</sup> March 2023. Thus, it has been in operations for a period of 26 months. The domestic industry has submitted that the delay in declaration of commercial production was due to dumping of the product under consideration in India. The Authority notes that the present case is that of a nascent industry which has been producing in India but has not been fully established yet. Thus, the period of investigation considered is appropriate for the present investigation.

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

### **G.1 Views of other interested parties**

61. The other interested parties have made the following submissions with regards normal value, export price and dumping margin:
- i. Russia must be treated as a non-market economy as per para 8(2). USA and Canada have treated Russia as a non-market economy in the past.
  - ii. The calculation of normal value is not appropriate as the same is based on cost of production of the applicant which has just commenced commercial production, and its costs cannot be equated with the costs of long-established producers as well as the technology for manufacturing may be different. The same should be determined based on the response filed by the exporter.
  - iii. Normal value based on applicants cost of production is not reasonable as the applicant has lower production and it has incurred start-up costs and no adjustments have been made to arrive at normal value for Russia.
  - iv. Net export price should be based on the response filed by the Arlanxeo Singapore Pte Limited.
  - v. NKNH is the only producer of subject goods in Russia. The sea freight considered for calculating export price and the ports used are not clear. NKNH exports from Novorossiysk port to Nhava Sheva port and the ocean freight in such case is lower.

- vi. In order to assess the landed price and normal value for NKNH, the Authority may consider the price offered to intermediates in both the market as done in the case of Melamine.
- vii. Since complete response has been filed by NKNH, the margins should be calculated on the data filed by it.
- viii. JBC supplies in export market and domestic market through EMJ and Eneos. In case of domestic market, EMJ sells directly to independent customers while for exports to India, EMJ has sold to unrelated traders in Singapore (which incur SGA, finance and other expenses related to purchase and sale) which have sold to affiliate users in India. The difference in commercial levels of sale in both the market affects the comparison of normal value and export price. The margins generally earned by the traders should be deducted from the normal value determined by JBC.
- ix. Since the Authority has already allowed adjustment of level of trade expenses in the anti-dumping investigation concerning IIR, the same approach may be followed in the present investigation.

## **G.2 Views of the domestic industry**

- 62. The submissions of the domestic industry with regard to the normal value, export price and dumping margin are as follows:
  - i. With regard to Japan and USA, normal value can be calculated based on import price into the country. For United Kingdom, Singapore and Russia, normal value has been provided based on cost of production, in the absence of significant volume of imports.
  - ii. The FOB value as per Trade Map data would be a better indicator of export price, in a case where the producer is dumping, since it would not be affected by international freight costs nor affected by any further trading operations.
  - iii. The dumping margin for the subject countries is not only above the de minimis levels, but also significant.
  - iv. The request for adjustment on account of level of trade is without any merit as mere difference in selling activity or channel of distribution does not justify the claim. The other interested parties have failed to list different selling activities undertaken by each selling agent. It is essential to demonstrate that the intensity of such activities was significantly different in both the markets that justify the claim of adjustment.
  - v. The marketing activities in both the markets should not just merely be different but there is a need to check whether they are substantially different in both the markets.
  - vi. The practice of the USDOC in this regard is to list activities performed for each sales activity along with supporting documents. The onus to prove substantial difference in expenses incurred at different level of trade lies on the exporter. In the anti-dumping investigation into imports of PTY, the USDOC did not accept the adjustment for level

- of trade even though RIL was selling in home market and export market using different channels and was providing services in the home market.
- vii. There is a need to adjust selling, general and administrative expenses of the Indian marketing entity of Exxon Group as it acts as service entity in India.
  - viii. The claim that Russia should be treated as a non-market economy is without merit. The Authority did not treat Russia as a non-market economy in the findings issued in the anti-dumping investigation into imports of IIR.
  - ix. The applicants had determined normal value and export price based on available information at the stage of initiation.
  - x. There is no difference in the channel of distribution in case of JBC. JBC has sold to unaffiliate traders in the home market which have sold to unrelated customers. In case of exports to India, JBC has sold to the same unaffiliated traders which have sold to related parties of the Indian importers in Singapore. Since traders in Singapore are related to Indian importers, they should be considered as a single economic entity.
  - xi. As opposed to the submissions filed by JBC, since the entities in Singapore are selling to affiliate entities, there cannot be any such selling costs involved. Such entities have acted as a purchasing arm of the importers. The Authority may direct JBC to provide evidence of marketing expenses incurred by traders in Singapore in selling to their related parties, which would have otherwise been incurred by JBC had the sale been made directly to the Indian entity.
  - xii. The reliance on IIR findings to claim adjustment of level of trade must be allowed is incorrect as the same may be decided on case-to-case basis and the legal and factual position.
  - xiii. The response filed by the foreign producers must be verified for completeness, accuracy and adequacy, prior to granting individual margins.
  - xiv. Contrary to the submissions of the other interested parties, it is not possible for the Authority to determine individual margins in the absence of response by all parties in the channel of distribution as the Authority will not be able to determine the final price of exports to India, at which the imports competed with the domestic industry. Further, it cannot be determined whether the trading entities resold the subject goods at profits or losses for exports to India.

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

63. Under section 9A(1)(c), the normal value in relation to an article means:

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

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

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

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

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

64. The Authority notes that the following exporters of the subject goods have filed exporter’s questionnaire responses:
- a. ExxonMobil Product Solutions Company (“EMPSC”)
  - b. ExxonMobil Chemical Limited (“EMCL”), UK
  - c. ExxonMobil Japan Godo Kaisha (“EMJ”), Japan
  - d. MRF SG PTE LTD.
  - e. ARLANXEO Singapore Pte Ltd.
  - f. JTC Corporation (“JTC”)
  - g. Eneos Materials Corporation (“EMC”)
  - h. Japan Butyl Co. Ltd. (“JBC”)
  - i. Public Joint Stock Company Niznekamskneftekhim (“NKNH”)
  - j. Public Joint Stock Company Sibur Holding
  - k. Sibur International GmbH
65. ExxonMobil Product Solutions Company (EMPSC), ExxonMobil Chemical Limited (EMCL) and Japan Butyl Co., Ltd. (JBC) have claimed an adjustment on account of differences in level of trade in the sales made in home market and exports to India. The producers have claimed that while the sales in the home market are made to the end user, some of the exports to India are made to an unrelated exporter, who in turn sells the subject goods to users in India. Since the unrelated exporter would also earn a profit margin on its resale to the customer, the aforesaid producers have claimed that an adjustment must be made to the normal value, for the difference in level of trade, based on the profit margin earned by the unrelated exporter.

66. The domestic industry has disputed an adjustment on this account based on the fact that significant differences in marketing activities undertaken must be shown before an adjustment can be made for differences in level of trade.
67. The Authority notes that EMPSC, EMCL and JBC have claimed difference in level of trade based on the sales made to MRF Singapore and Apollo Singapore. However, to consider that the sales to such exporters render the sales in question as being on a different level of trade than the direct sales to users in India would be inappropriate. The response filed by MRF Singapore shows that it has only resold the subject goods to its related entity, MRF Limited. MRF Singapore and MRF Limited are essentially a single economic entity. That being the case, EMPSC, EMCL and JBC have sold the subject goods to the user group itself. Further, the Authority notes that only billing has been done in the name of MRF Singapore but no delivery has been made to the said trader. The subject goods have been directly delivered to the final customers in India. As Apollo Singapore has not furnished a response before the Authority, the Authority is unable to accept the claim made with reference to it. In view of the same, the Authority does not find it appropriate to allow an adjustment on account of differences in level of trade.
68. The Authority issued a letter to the producers, which have claimed level of trade adjustment, on 8<sup>th</sup> September 2024 seeking information with regard to the marketing functions performed by the traders in Singapore, methodology for calculation of adjustment, the profit margin considered by the foreign producers for quantifying the amount of adjustments and the basis for the same especially in the absence of response by the unrelated traders in Singapore. A reply was received by the Authority on 14<sup>th</sup> September 2024 in this regard. The foreign producers have submitted that there is difference in level of trade at which the subject goods have been sold in the domestic market and export market. It has been further stated that the level of trade adjustment is necessary since the first sale to independent customers in the home market is to the end users and in case of export to India is to the traders. The Authority notes both normal value and net export price were determined at the same level in the present case. Since the traders in Singapore are related to users in India, the purchase by such traders is de facto purchase by the users in India due to the concept of single economic entity. Thus, the sale in both the markets are to the end users and there is no requirement for level of trade adjustment.
69. Further, the Authority notes that the foreign producers have failed to establish that there are some marketing functions performed by the unrelated trader for sales to their related entities which are performed by the foreign producers in the home market. The functions identified are routinely performed by the users of the product. Further, no marketing functions,

warehousing, inventory maintenance or any other such function which involves a significant cost have been identified.

70. Some of the interested parties have contended that Russia should be treated as a non-market economy for the purpose of the present investigation. The other interested parties have not referred to the legal provision under which Russia should be treated as a nonmarket economy country, nor established with evidence that the operations in Russia with regards to the subject goods are not in accordance with the market principles of cost or pricing structures. While it is alleged that the USA and Canada have treated Russia as a non-market economy, the said authorities have not concluded the same with regard to the product under consideration. In the absence of evidence on record, Russia cannot be treated as a non-market economy for the purpose of the present investigation.
71. However, the Authority notes that Public Joint Stock Company Niznekamskneftekhim (NKNH) has reported a sale of \*\*\* MT material to Sibur Holdings and Sibur International GmbH for exports to India. Both the entities have filed a response in the present investigation. Sibur Holdings has further reported sales of \*\*\* MT to Sibur International GmbH. Sibur International GmbH has reported a sale of \*\*\* MT to Supreme Sun FZE, \*\*\* MT to Trigon Gulf FZCO and \*\*\* MT to Trigon International S (Pte) Limited for exports to India. However, none of these traders have cooperated before the Authority.
72. The Authority issued a letter to NKNH on 8<sup>th</sup> September 2024 seeking information with regard to non-participation of traders involved in exports to India and the basis for claiming individual duties for NKNH in the present investigation, different channels of distribution, total exports to India and the adjustments claimed by the said producer. The producer had requested an extension of 10 working days for filing the response to the queries raised, that is, till 27<sup>th</sup> September 2024. However, even after the stipulated date, the producer has failed to file any response to the queries raised.
73. The Authority, thus, concludes that the questionnaire response filed by the producer and exporters is grossly incomplete for the purpose of determination of individual dumping margin. The Authority notes that in a situation where full information with regard to exports to India is not on record and when the exporter concerned has not filed questionnaire response, the Authority is not in a position to precisely determine export price and landed price for the producer concerned. It is established practice of the Authority that the Authority determines export price and landed price only when the producer and the exporters concerned have filed questionnaire responses. Since the value chain is not complete, the Authority is unable to determine individual dumping margin for the producer. Accordingly, the Authority has not determined individual dumping margin for NKNH. Accordingly, the dumping margin has been determined on the basis of the facts available. It is also noted that

there is only one known producer from Russia and therefore entirety of the imports in India constitutes exports of goods produced by NKNH.

74. With regard to the contention that normal value should not be based on cost of production of the applicant since the same may be inflated, the Authority notes that the normal value for all cooperative producers is based on their own responses. For non-cooperative producers, the Authority has relied on facts available. In this regard, the Anti-Dumping Agreement is clear that *“if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate”*. Therefore, the Authority is justified in relying on facts available in this regard. Nevertheless, the Authority has considered the optimized cost of production of the domestic industry for the purpose of determination of normal value.

### **G.3.1 Determination of Normal value and Export Price**

#### **Normal value for Japan**

#### **Normal value for Japan Butyl Co., Ltd.**

75. Japan Butyl Co., Ltd. (JBC) has sold \*\*\* MT of the subject goods in the domestic market during the period of investigation, whereas it has exported \*\*\* MT of the subject goods to India. The Authority notes that the domestic sales are in sufficient volumes when compared with exports to India. JBC has sold the goods to only related parties in the home market, namely ExxonMobil Japan (EMJ) and Eneos Material Corporation (Enos). Eneos has further sold the subject goods to unrelated customers, two related traders, ENEOS Materials Trading Co. Ltd. (EMT) and Goko Trading Co. Ltd. (Goko), for resale to independent customers, and to a related user, Elastomix Co. Ltd. (EMIX). The information concerning sales and prices of all related traders has been furnished on record. Accordingly, the Authority has determined the normal value based on resale price to the independent customer. For sales to EMIX, the Authority examined whether the sales were on arm's length basis. Since the price of such sales are lower than the prices to unaffiliated customers, the Authority has not considered such sales to be in the ordinary course of trade.
76. To determine the normal value, the Authority has conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods on a PCN-wise basis. Where for a PCN, less than 80% sales were made at profits, the normal value has been determined based on selling price of profitable sales. JBC and its related traders have claimed price adjustments on account of inland freight and credit cost. The adjustments claimed have been allowed by the Authority. For the PCN having a negligible volume of sales at profits, the normal value has been determined based on cost of production, plus a reasonable addition towards selling, general

and administrative expenses and profits. Thus, the normal value at ex-factory level for JBC has been calculated as mentioned in the dumping margin table below.

### **Normal value for other producers/exporters in Japan**

77. The normal value for all other non-cooperating producers and exporters of Japan has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Export price for Japan**

#### **Export price for Japan Butyl Co., Ltd.**

78. JBC has exported \*\*\* MT of the subject goods to India, through the following three channels.

JBC → EMJ (related) → EMAPPL (related) → MRF Singapore (unrelated) → Customer in India

JBC → EMJ (related) → EMAPPL (related) → Unrelated customer India

JBC → Eneos (related) → JTC Corporation (JTC) (related) → JMF Performance Materials Private Limited (JMF) (related importer in India)

In case of sales to MRF Singapore, the Authority has examined and confirmed that such exporters have resold the product under consideration at profits.

79. Accordingly, the export price has been determined based on the price of sale charged by the related exporters to the unrelated exporter or to the importer in India, as the case may be. Adjustments have been made for inland transportation, ocean freight, insurance, port and other related expenses, fund transfer charges, canvassing fee, warehousing and other related costs, and credit cost to arrive at the ex-factory price. The export price determined is mentioned in the table below.

### **Export price for other producers/exporters in Japan**

80. The export price for all other non-cooperating producers and exporters of Japan has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Normal value for Singapore**

#### **Normal value for Arlanxeo Singapore Pte Ltd. (Arlanxeo)**

81. Arlanxeo Singapore Pte Ltd. (Arlanxeo) is a producer of the subject goods in Singapore, and has not sold the subject goods in the domestic market. In the absence of domestic sales, the Authority has considered the cost of production of the producer as the basis for the purpose of determining the normal value.
82. Accordingly, normal value has been determined based on cost of production, plus a reasonable addition towards selling, general and administrative expenses and profits. The normal value at ex-factory level for Arlanxeo has been calculated as mentioned in the dumping margin table below.

#### **Normal value for ExxonMobil Asia Pacific Pte Ltd (EMAPPL)**

83. ExxonMobil Asia Pacific Pte Ltd. (EMAPPL) is a producer of the subject goods in Singapore, and has not sold the subject goods in the domestic market. In the absence of domestic sales, the Authority has considered the cost of production of the producer as the basis for the purpose of determining the normal value.
84. Accordingly, normal value has been determined based on cost of production, plus a reasonable addition towards selling, general and administrative expenses and profits. The normal value at ex-factory level for EMAPPL has been calculated as mentioned in the dumping margin table below.

#### **Normal value for other producers/exporters in Singapore**

85. The normal value for all other non-cooperating producers and exporters of Singapore has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Export price for Singapore**

#### **Export price for Arlanxeo Singapore Pte Ltd. (Arlanxeo)**

86. Arlanxeo has exported \*\*\* MT of the subject goods to India, through the following three channels.

Arlanxeo → Unrelated customer in India

Arlanxeo → MRF Singapore → Customer in India

Arlanxeo → Apollo Singapore → Customer in India

87. In case of sales to MRF Singapore, the Authority has examined and confirmed that such exporters have resold the product under consideration at profits. However, Apollo Singapore has not cooperated with the Authority.

88. The export price has been determined based on the price charged by Arlanxeo from the unrelated customer. Adjustments have been made for credit notes, shipping cost, storage cost, packing cost, commission, bank charges and credit cost to arrive at the ex-factory price. However, for the volume exported through non-cooperative exporters, the Authority has determined the export price based on facts available. The export price determined is mentioned in the table below.

#### **Export price for ExxonMobil Asia Pacific Pte Ltd (EMAPPL)**

89. EMAPPL has exported \*\*\* MT of the subject goods to India, through the following three channels.

EMAPPL → Unrelated customer in India

EMAPPL → MRF Singapore → Customer in India

EMAPPL → Apollo Singapore → Customer in India

90. In case of sales to MRF Singapore, the Authority has examined and confirmed that such exporters have resold the product under consideration at profits. However, Apollo Singapore has not cooperated with the Authority.

91. The export price has been determined based on the price charged by EMAPPL from the unrelated customer in India, or the unrelated exporter. Adjustments have been made for inland freight, international freight, insurance, canvassing fee, warehousing and other related costs and credit cost to arrive at the ex-factory price. However, for the volume exported through non-cooperative exporters, the Authority has determined the export price based on facts available. The export price determined is mentioned in the table below.

### **Export price for other producers/exporters in Singapore**

92. The export price for all other non-cooperating producers and exporters of Singapore has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Normal value for Russia**

93. The normal value for all producers and exporters of Russia has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Export price for Russia**

94. The export price for all producers and exporters of Russia has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Normal value for the United Kingdom**

#### **Normal value for ExxonMobil Chemical Limited (EMCL)**

95. ExxonMobil Chemical Limited (EMCL) has sold \*\*\* MT of the subject goods in the domestic market during the period of investigation, whereas it has exported \*\*\* MT of the subject goods to India. The Authority notes that the domestic sales are in sufficient volumes when compared with exports to India. EMCL has sold the goods to only a related party in the home market, namely ExxonMobil Petroleum & Chemical (EMPC). EMPC has further resold the subject goods to unrelated customers in the domestic market. Accordingly, the Authority has determined the normal value based on resale price to the independent customer.
96. To determine the normal value, the Authority has conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods on a PCN-wise basis. Where for a PCN, less than 80% sales were made at profits, the normal value has been determined based on selling price of profitable sales. EMCL and its related trader have claimed price adjustments on account of inland freight, commission, warehousing charges and credit cost. The adjustments claimed have been allowed by the Authority. For the PCN having a negligible volume of sales at profits, the normal value has been determined based on cost of production, plus a reasonable addition towards selling, general and administrative expenses and profits. Thus, the normal value at ex-factory level for EMCL has been calculated as mentioned in the dumping margin table below.

### **Normal value for other producers/exporters in the UK**

97. The normal value for all other non-cooperating producers and exporters of the UK has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Export price for the United Kingdom**

#### **Export price for ExxonMobil Chemical Limited (EMCL)**

98. EMCL has exported 4,206 MT of the subject goods to India, through the following five channels.

EMCL → EMAPPL (related) → Unrelated customer in India

EMCL → EMPC (related) → EMAPPL (related) → Unrelated customer in India

EMCL → EMAPPL (related) → Apollo Singapore (unrelated) → Customer in India

EMCL → EMPC (related) → EMAPPL (related) → Apollo Singapore (unrelated) → Customer in India

EMCL → EMAPPL (related) → MRF Singapore (unrelated) → Customer in India

99. In case of sales to MRF Singapore, the Authority has examined and confirmed that such exporters have resold the product under consideration at profits. However, Apollo Singapore has not cooperated with the Authority.
100. Accordingly, the export price has been determined based on the price of sale charged by the related exporter, EMAPPL, to the first unrelated customer (unrelated customer or unrelated importer in India, as the case may be). Adjustments have been made for inland transportation, ocean freight, insurance, canvassing fee, warehousing cost and other related costs, and credit cost to arrive at the ex-factory price. However, for the volume exported through non-cooperative exporters, the Authority has determined the export price based on facts available. The export price determined is mentioned in the table below.

### **Export price for other producers/exporters in the UK**

101. The export price for all other non-cooperating producers and exporters of the UK has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Normal value for the United States of America**

### **Normal value for ExxonMobil Product Solutions Company, USA (EMPSC)**

102. ExxonMobil Product Solutions Company, USA (EMPSC) has sold \*\*\* MT of the subject goods in the domestic market during the period of investigation, whereas it has exported \*\*\* MT of the subject goods to India. All sales in the domestic market have been made to unaffiliated customers.
103. To determine the normal value, the Authority has conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of the subject goods on a PCN-wise basis. Where for a PCN, more than 80% sales were made at profits, the normal value has been determined based on average selling price. For the PCN not produced during the period of investigation, the cost of the closest comparable PCN has been considered. EMPSC has claimed price adjustments on account of inland freight and credit cost. The adjustments claimed have been allowed by the Authority. For the PCN having negligible volume sales at profits, the normal value has been determined based on cost of production, plus a reasonable addition towards selling, general and administrative expenses and profits. Thus, the normal value at ex-factory level for EMPSC has been calculated as mentioned in the dumping margin table below.

### **Normal value for other producers/exporters in the USA**

104. The normal value for all other non-cooperating producers and exporters of the USA has been determined based on facts available and the same is mentioned in the dumping margin table below.

### **Export price for the United States of America**

#### **Export price for ExxonMobil Product Solutions Company, USA (EMPSC)**

105. EMPSC has exported \*\*\* MT of the subject goods to India, through the following three channels.

EMPSC → EMAPPL (related) → Unrelated customer in India

EMPSC → EMAPPL (related) → Apollo Singapore (unrelated) → Customer in India

EMPSC → EMAPPL (related) → MRF Singapore (unrelated) → Customer in India

106. In case of sales to MRF Singapore, the Authority has examined and confirmed that such exporters have resold the product under consideration at profits. However, Apollo Singapore has not cooperated with the Authority.

107. Accordingly, the export price has been determined based on the price of sale charged by the related exporters, EMAPPL to the first unrelated customer (unrelated customer or unrelated importer in India, as the case may be). Adjustments have been made for inland transportation, ocean freight, insurance, canvassing fee, warehousing cost and other related costs, and credit cost to arrive at the ex-factory price. However, for the volume exported through non-cooperative exporters, the Authority has determined the export price based on facts available. The export price determined is mentioned in the table below.

**Export price for other producers/exporters in the USA**

108. The export price for all other non-cooperating producers and exporters of the USA has been determined based on facts available and the same is mentioned in the dumping margin table below.

**G.3.2. Dumping Margin**

The normal value, export price and dumping margin determined in the present investigation are as follows:

**Dumping Margin Table**

<b>Producer</b>	<b>Normal Value (USD/MT)</b>	<b>Export Price (USD/MT)</b>	<b>Dumping Margin (USD/MT)</b>	<b>Dumping Margin (%)</b>	<b>Dumping Margin (Range)</b>
<b>Japan</b>					
Japan Butyl Co., Ltd.	***	***	***	***	20-30%
Any other	***	***	***	***	35-45%
<b>Russia</b>					
Any	***	***	***	***	60-70%
<b>Singapore</b>					
Arlanxeo Singapore Pte Ltd.	***	***	***	***	20-30%
ExxonMobil Asia Pacific Pte Ltd	***	***	***	***	30-40%
Any other	***	***	***	***	50-60%
<b>United Kingdom</b>					

ExxonMobil Chemical Limited	***	***	***	***	0-10%
Any other	***	***	***	***	20-30%
<b>United States of America</b>					
ExxonMobil Product Solutions Company	***	***	***	***	5-15%
Any other	***	***	***	***	25-35%

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

### **H.1. Views of other interested parties**

109. The following submissions have been made by the other interested parties with regard to injury and causal link:

- i. Claim of injury is not tenable as the applicant did not have commercial production during the period of investigation and hence, did not compete with imports. Since the applicant did not have customer approval for its product there is no possibility of supplying in commercial volumes.
- ii. The factors identified by the domestic industry regarding injury are that of material injury rather than material retardation.
- iii. RSEPL was already established during the period of investigation as it made significant commitment of resources, produced and sold in commercial volumes and achieved 26% market share prior to the period of investigation, thus, it cannot be considered as a nascent industry.
- iv. CIIR is a substitute of IIR as it is used for the same purpose and production of CIIR is an extension of production of IIR which is already established. Production of HIIR is only an incremental process as the value addition is only 4-5% and the capital investment is not more than 15-20% of the total project cost.
- v. The price is not determinant of value addition as the price varies based on multiple factors such as demand of the product, profit margins and availability of grades. The difference between the landed price of IIR and HIIR is 26%.
- vi. The Panel in Morocco – Hot Rolled Steel (Türkiye) held that introduction of a new product does not necessarily result in creation of a new industry. RSEPL relies on the existing infrastructure, sales and marketing channels of IIR for its HIIR sales and manufactures the product at the same place as IIR which is a major cost. Thus, there is high overlap in use of overall infrastructure between the two.
- vii. The injury period should be limited to the period during which the domestic industry was in production.
- viii. The applicant has been continuously investing in property, plant and equipment; thus, it must have envisaged a positive outlook in the Indian market.

- ix. In line with the past practice, the Authority should examine trends on quarter-by-quarter basis. Further, since the data for the period of investigation was based on only trial run figures, the data for the subsequent period should also be examined.
- x. The capital structure of the applicant is not stable yet which is evident from the volatile interest cost. Even then the per unit interest cost of the applicant has declined.
- xi. While no interest cost has been reported in the profit and loss statement of the applicant, the same has been reported in the application. The Authority may direct the applicant to explain the same.
- xii. The trial run figures are experimental and provisional, and hence are not a reliable benchmark for assessing material injury.
- xiii. Imports from Russia should be de-cumulated as they were made under different conditions of competition due to relationship between the petitioner and SIBUR, non-market economy status and distorted cost in Russia, and volume and price of imports from Russia.
- xiv. Claim that decline in Russian imports is due to Russia-Ukraine conflict is unsubstantiated as India has not imposed any sanctions on imports from Russia. Rather, trade with Russia has increased in recent years including imports of crude oil by RIL.
- xv. There is a need to analyse the volume and price of Russian imports in order to determine the collusion between the applicant and Russian entity. Merely because an issue was settled in another investigation cannot be the grounds for not examining the issues raised by the other interested parties in the present investigation.
- xvi. Comparison with project report for price suppression and depression is not appropriate since the project report was made much prior to the period of investigation and does not take into account the change in market conditions, capacities setup globally post making of the project report and COVID-19. Further, the project report is unreliable since SIBUR did not even have the technology to make HIIR at the time of making the project report.
- xvii. Comparison with third year of project report is flawed as period of investigation is actually second year of operations of the applicant.
- xviii. The potential performance of the applicant at current prices cannot be examined as there is no legal basis for such analysis.
- xix. It is likely that the price underselling is also negative.
- xx. The injury period cannot start from 2019-20 as there was no production of the subject goods during this period and hence, there can be no injury to the applicant due to imports. 2019-20 was intentionally added to show increase in import volume and decline in import prices. However, such increase in imports and decline in prices over the injury period was only due to increase in demand in India and disruptions in the market due to COVID-19.

- xxi. The Authority did not consider 2019-20 as base year despite 7 months of IIR production in 2019-20. The Authority should not consider 2020-21 as base year because of only two months of trial production in that year.
- xxii. With increase in demand, the imports increased initially due to absence of domestic production in India and then increased marginally while the domestic sales of the applicant increased exponentially.
- xxiii. There is no volume effect as the subject imports have declined in the period of investigation as compared to 2020-21 and the price has increased. Further, the demand and domestic sales of RSEPL have increased during this period.
- xxiv. There is no price injury as the price undercutting is negative and the selling price and profitability of the applicant has increased showing lack of price suppression / depression.
- xxv. There is no legal basis to assess customer-wise price undercutting. Since the legal standard is significant price undercutting, only average price undercutting should be considered and not isolated transactions.
- xxvi. Price undercutting is negative due to predatory pricing by the applicant in order to gain significant market share.
- xxvii. Arlanxeo has not provided any post sales invoicing discounts to the customers.
- xxviii. The landed price of subject imports as well as non-subject imports have moved in tandem as per the market forces. There is no price suppression depression as the selling price of the applicant has increased while the cost of sales has declined. The selling price of the applicant has increased more than the increase in landed price.
- xxix. Price suppression, if any, is only due to low prices from Russian related entity of the applicant. Since the applicant replaced imports from Russia, it had to offer the same at lower prices.
- xxx. For evaluation of material retardation, the capacity must be limited to production that is relevant and commercially viable during the period of investigation. Therefore, capacity intended for Bromobutyl production should be excluded, while capacity for Chlorobutyl should be added incrementally as approvals were received.
- xxxi. Delay in declaration of commercial production by the applicant was due to delay in integration of IIR and HIIR plant as evident from press release analyzing the credit rating of the applicant in 2021.
- xxxii. There is no volume injury as the production, sales and market share of the applicant has increased. Capacity, capacity utilization and number of employees of the applicant have also increased.
- xxxiii. RSEPL has exaggerated its capacity as it increased from 10,000 MT to 60,000 MT in 2021-22 as compared to the previous year. The increase in capacity would not have happened in the starting of 2021-22 and hence, capacity utilization when considered with adjusted capacity would be higher.

- xxxiv. The contention that the applicant was forced to export at losses is not correct since the export price is much less than the landed price in India. This shows predatory pricing of the applicant in India as well as export market. High volume of exports may be due to high volume of inventory from trial runs and generation of off-spec product which is evident from the stock position as per the financials of the applicant.
- xxxv. Pricing strategy of Reliance must be scrutinized and the low selling price should not be attributed to imports. The applicant has admitted that the domestic industry offered low prices for initial order in order to satisfy the customers. Since product approval have not been received in the period of investigation, the applicant was offering lower prices.
- xxxvi. The Authority may verify the agreement between RIL and the applicant regarding purchase of raw material and check whether the same is at arm's length basis.
- xxxvii. There is no causal link between injury to the domestic industry and subject imports. The Authority in the past has terminated a number of investigations due to lack of causal link.
- xxxviii. Since the applicant did not supply all grades in commercial quantities and quality required by the customers, imports of the same cannot cause injury to the domestic industry.
- xxxix. Email communications between the applicant and an ATMA members shows that the product was not approved by one member till June 2024, while another member rejected the product in 2023. Another user has not received the product, despite requesting for the same in June 2023.
- xl. The Authority may assess other factors causing injury such as high start-up costs, technology transfer fee, integration issues, COVID-19 and global dynamic market situation.
- xli. The cost of setting up production and difficulty in achieving necessary product quality should not be attributed to imports. The Authority, in investigation into imports of non-woven fabric, held that the initial losses to the domestic industry were due to problems associated with startup operations.
- xlii. Slowdown in growth of the applicant is due to global over-supply resulting from addition of capacities in India and China, due to which the capacity utilization of all major producers has reduced over the last four years.
- xliii. Injury may also be due to increase in cost of production following fluctuations in crude prices. Between 2014 and 2022, the raw materials isobutylene and isoprene have also witnessed volatility in their prices.
- xliv. RSEPL is suffering self-inflicted injury as it set up only one production line for all the grades and is not able to produce different grades concurrently, and the product takes 2-3 years of trial and customer approval. High production of off-spec material may also have caused injury to the domestic industry.

- xliv. The initial losses to the applicant were due to high start-up costs which is evident from the financials of the applicant where finance and depreciation costs were very high.
- xlvi. Since Sibur did not have technology to produce HIIR, India became a testing ground for the product after acquisition of such technology. This also led to incapability of the petitioner to produce all grades of HIIR.
- xlvii. The injury to the domestic industry is not due to imports from the UK as imports of product under consideration from UK have declined significantly over the injury period
- xlviii. In order to determine the non-injurious price, costs relating to IIR, non-recurring costs, start-up costs, R&D expenses, license fee and costs for integration of plant should not be considered. Further, high depreciation and interest costs should be normalized, while transfer price between related parties should be verified.
- xlix. There is a need to optimize the raw material, utilities and production based on quarterly performance of the domestic industry as done in the investigations related to DCC and PU.
  - 1. If the Authority finds a case for material retardation the high cost of production must be normated to remove internal inefficiencies and remove potential injury as per the practice established in the investigation into imports of SBR.
  - li. The costs of the domestic industry must be adjusted to account for startup related expenses for computing the non-injurious price. In the case of Polyurethane leather, the non-injurious price of the domestic industry was optimized by 20-30% on account of start-up factors, and similar optimization was done in the case of DCC.
  - lii. A 22% return of capital employed is very high in the HIIR industry. The CESTAT in Indian Spinners Association v. Designated Authority and M/s Bridge Stone Tyre Manufacturing v. Designated Authority has held that return should be industry specific and in line with historical returns. 22% return will provide non-injurious price of \$ 4,400 – 4,500 per MT which are not the prices in any market and the Authority must verify the actual return earned by the participating producers.

## **H.2. Views of the domestic industry**

- 110. Following submissions have been made by the domestic industry with regard to the Injury and causal link are as follows:
  - i. RSEPL is a nascent industry as the domestic industry commenced domestic production on the last day of the period of investigation, the product as well as the plant is new in India, the production and capacity utilization of the applicant is low and below the projected level, declaration of commercial production took significant time, and the market share of the domestic industry is insignificant.

- ii. The applicant is the first producer to start production of HIIR in India. The technology for production of HIIR was not available freely and substantial hurdles have been faced by the applicant to bring the said technology to India.
- iii. Significant investment has been made by the applicant for setting up production of HIIR in India. While the per unit investment in IIR is ₹ \*\*\* per MT, the investment in HIIR is to the tune of ₹ \*\*\* per MT.
- iv. As opposed to the submissions of the other interested parties, there is lack of overlap of infrastructure between IIR and HIIR as both plants are independent, started at different time, run on different technology and know-how and are not interchangeably used. HIIR and IIR have different technology sourced from different producers, prices, HS Codes, require different technical manpower, and entails a value addition of 60%.
- v. The other interested parties are comparing the dumped prices of IIR and HIIR. The Authority is requested to compare the non-injurious price determined in both the investigations in order to assess the value addition between the two products.
- vi. The submissions of the other interested parties are without merit as the Authority allocates interest cost on the basis of turnover. With increase in turnover, the volume of sales has increased and hence, the interest cost per unit has declined.
- vii. The applicant declared commercial production on 31<sup>st</sup> March 2023 but started producing and selling in commercial quantities since 2021-22. Production in commercial quantities requires stability of the product while declaration depends upon a number of other factors. The delay in declaration of commercial production was due to dumping in India.
- viii. Dumping of the subject imports has materially retarded the establishment of domestic industry in India as the domestic industry has not been able to achieve its targeted performance.
- ix. The applicant was forced to shut down its plant multiple times due to dumping in India.
- x. Since Russian imports were competing with imports from other subject countries and with product supplied by the domestic industry, there is a need for cumulation. Status of Russia as a non-market economy is irrelevant as the same only impacts normal value and not cumulative assessment. Import price from Russia also does not show need for de-cumulation as dumping margin, injury margin, and price undercutting is separately determined for each subject country.
- xi. Imports from Russia declined due to fear of secondary sanctions being imposed by the US and apprehension of sanctions by the EU on imports of any product manufactured using Russian material.
- xii. The applicant was forced to revise its project report due to dumping in India. However, it could not withdraw from the project due to significant investments made and irrevocable financial commitments. By the time of commencement of the project, the profitability of the domestic industry declined significantly.

- xiii. In a number of investigations, the applicant does not have technology to manufacture the subject goods prior to setting up of plant. This does not render project report redundant.
- xiv. As opposed to the submissions of the other interested parties, the comparison has been made with the second year of operations as per the project report.
- xv. Interest cost has not been reported in the financial statements as the plant was not capitalized during the period of investigation.
- xvi. Contrary to the submissions of the other interested parties, the practice of the Authority is to analyse import data for a period of 4 years, even in material retardation cases.
- xvii. The Authority may analyse projected performance with actual performance of the domestic industry in the period of investigation. Even in the IIR investigation, the Authority analysed imports for 4 years and held that only certain parameters of the domestic industry in the base year were not reliable.
- xviii. The law does not bar Authority from adopting a reasonable methodology to assess price undercutting and the Authority may assess customer-wise price undercutting.
- xix. The landed price is below the projected selling price of the domestic industry due to which the applicant has been forced to sell at low prices.
- xx. The foreign producers are offering post sales invoice discounts to the tune of \*\*\* USD per MT. The consumers negotiate prices based on the net price due to which the domestic industry is forced to reduce its selling price. The Authority may conduct detailed physical verification and the amount actually received must be considered for determination of export price.
- xxi. The price undercutting is negative due to post sales invoice discounts being offered by the foreign producers and procurement of subject goods from related parties at higher prices. Expenses incurred by affiliate traders cannot be considered materially different from the expenses that would have been incurred in case of direct imports.
- xxii. The law does not state that only average prices should be considered for price undercutting. If such an interpretation is taken, then PCN wise price undercutting would also not be evaluated. The Panel in EC-Anti-dumping duty on Malleable Cast Iron Tube or Pipe Fitting from Brazil held that there is no requirement to establish one single margin or undercutting on the basis of each transaction. The extent of price undercutting depends upon the number of undercutting transactions and the extent of undercutting. The calculation of average margin might not be the most effective manner to assess the impact of undercutting on the domestic industry.
- xxiii. The domestic industry has been forced to reduce prices due to imports into India. The consumers force the applicant to match net import price, that is, after adjustment of post sales invoice discount.
- xxiv. As opposed to the submissions of the other interested parties, price suppression depression is due to imports from subject countries and not just Russia. The price of imports from other subject countries is lower than price of imports from Russia.

- xxv. While the actual cost of sales is 2% lower than the projected cost of sales, the selling price is 43% lower than the projected selling price of the domestic industry. Thus, the subject imports have suppressed the prices of the domestic industry.
- xxvi. The capacity utilization of the domestic industry has remained low in the period of investigation, even though it is the sole producer in India.
- xxvii. The production and sales of the domestic industry are much below the projected production and sales.
- xxviii. The increase in sales of the domestic industry is natural consequence of commencement of domestic production in India. Even after compromising on profitability, the domestic industry is unable to achieve its projected sales.
- xxix. The export by domestic industry at lower prices shows compulsion on the domestic industry to dispose of surplus production.
- xxx. The reliance on imports is unnecessary as the domestic industry has the capacity to cater to \*\*\* of the market share. However, even after compromising on profitability, the market share held by the applicant is minimal and much lower than projected market share.
- xxxi. The profitability of the applicant is much below the projected profitability as it is forced to sell at low prices due to presence of dumped imports.
- xxxii. In case, depreciation cost is considered, the domestic industry has actually incurred losses in the period of investigation as compared to projected profits.
- xxxiii. While the applicant projected a return on investment of \*\*\* % in the second year of operations, it has earned only \*\*\* % returns. If depreciation cost is added, the applicant has recorded a negative return on investment.
- xxxiv. In order to earn a return of 22%, the domestic industry needs to earn profit before interest and tax of ₹ \*\*\* per MT, however, it has earned a profit of only ₹ \*\*\* per MT.
- xxxv. As opposed to the contention of the other interested parties, the domestic industry has manufactured BIIR and there was no capacity which was not commercially available for production of the subject goods.
- xxxvi. Low selling price of the applicant is due to presence of low-priced imports and not due to non-approval of product. The applicant has sold in commercial quantities to a number of users and hence, it cannot be considered that the product produced by the applicant has not been approved.
- xxxvii. Due to dumping of subject imports in India, the declaration of commercial production took 26 months from the date of starting production.
- xxxviii. The injury to the domestic industry is not due to integration issues, as IIR and HIIR are separate plants. Further, the other interested parties have not highlighted the market situation which has caused injury to the domestic industry.
- xxxix. The other interested parties have failed to show any problems faced by the applicant due to start-up costs. The quality of product produced by the applicant cannot be

considered inferior as it has received significant and repeat orders from a number of customers.

- xl. As submitted by the users during the oral hearing, there is no formal approval of the product. Approval of the product is evident from repeated orders by the said users.
- xli. As opposed to the contention of the other interested parties, there is no overcapacity in India and the applicant is the sole producer. Global overcapacities cannot be considered as justification for dumping in India.
- xlvi. Contrary to the submissions of the other interested parties, the projected cost of sales of the domestic industry is higher than the actual cost of sales. Hence, even if raw material costs have increased due to crude price fluctuation, the cost of sales of the domestic industry has remained low.
- xlvii. As opposed to the contention of the other interested parties regarding injury due to setting up of single production line, the applicant had made the project report for a single production line and has not been able to achieve its targeted production. Even if the domestic industry is unable to produce grades concurrently, the applicant is suffering injury for the grades it has produced.
- xlviii. The project report of the applicant already accounted for production of off-specification product.
- xlix. The non-injurious price may be determined as per provisions of Annexure III. The Authority has determined the best utilization of raw material and utilities based on quarter or year-wise analysis based on requirement of each case. The consumption norm in the present case will remain constant. Even in PU leather, the Authority only considered optimisation of capacity utilization on quarterly basis. Since the applicant has claimed non-injurious price at optimum level, consideration of optimum capacity utilization will lead to increase in non-injurious price.
- l. The applicant has already submitted cost of production at optimized capacity utilization. Hence, no further optimization is required.
- li. The applicant projected a higher return than 22% as it is the sole producer of subject goods in India. The Tribunal has taken a consistent view that unless the interested parties demonstrate a need for consideration of different return, a return of 22% should be allowed.
- lii. The other interested parties have not highlighted how the factors identified have impacted the costs or performance of the domestic industry to make the project report unreliable. In a normal business situation, in case there is increase in cost, it should result in increase in prices.
- liii. COVID-19 did not make the project report unreliable since there was no lasting impact of the same. The applicant already revised its project report, and the actual performance is even worse than the revised projections.
- liiii. Contrary to the submissions of the other interested parties, the Authority routinely examines potential performance of the domestic industry in sunset reviews. The list of

injury parameters given under the law are not exhaustive and the Authority may examine other relevant parameters as well.

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

111. Rule 11 of Anti-Dumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.
112. With regard to the agreement between RIL and RSEPL, the Authority notes that data for the domestic industry has been accepted, after ensuring that all related party transactions have been made at arms' length prices.
113. With regard to the submissions that the claim of injury is not tenable as the domestic industry did not have commercial production and thus, was not competing with the subject imports, the Authority notes that the domestic industry declared commercial production only on the last day of the period of investigation. However, while the domestic industry did not declare commercial production, it was still producing and selling in commercial quantities. In any case, the competition is established by sales of the domestic industry and not production. Hence, even though the domestic industry did not declare commercial production, it was selling in commercial quantities and hence, suffering injury due to dumping of subject imports into India.
114. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The Authority has noted that the present application is with respect to material retardation to the establishment of an industry. Thus, prior to undertaking detailed injury examination, the Authority has examined whether the domestic industry was an established industry to such an extent that the same permits

assessment of injury in the form of material injury, or the domestic industry was an embryonic or nascent industry, in the process of establishment, and not having sufficient past history to permit assessment of injury in the form of material retardation.

### **H.3.1. Material retardation to establishment of an industry**

115. The WTO Anti-dumping Agreement or the Anti-Dumping Rules do not provide a definition for “material retardation”. Footnote 9 to Article 3 of the WTO Agreement merely states as follows –

*“Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.”*

116. Similarly, Annexure II to the Rules merely clubs ‘material injury’, ‘threat to material injury’ and ‘material retardation’ under the definition of injury. There is no further explanation to what constitutes material retardation to the establishment of an industry.

117. It is, however, clear that ‘material retardation’ to an industry would be in reference to an establishing / unestablished industry and not an industry that is fully established. The term ‘establishing’ industry has not been defined in the WTO Agreement, the Act or the Rules. However, there has been a proposal at the WTO for amendment to the Anti-Dumping Agreement which provides some clarity as to the meaning of material retardation and establishment of an industry. The relevant extract of the draft proposal is reproduced hereinbelow. Even though the said provision has not been incorporated in the Agreement so far, the Authority has considered the same as well for making the present determination:

*“3.9. A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility. An industry may be considered to be in establishment where a genuine and substantial commitment of resources has been made to domestic production of a like product not previously produced in the territory of the importing Member, but production has not yet begun or has not yet been achieved in commercial volumes. In making a determination whether an industry is in establishment, and in examining the impact of dumped imports on the establishment of that industry, the authorities may take into account evidence concerning, inter alia, installed capacity, investments made, and financing obtained, and feasibility studies, investment plans or market studies.”*

118. In Morocco - Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey, the WTO Panel laid down some guidance on determining whether there is establishment of an industry. The Panel observed that Article 3.1 does not prescribe a specific methodology for determining whether an industry has been established. Accordingly, the investigating authority is allowed to use any reasonable methodology which is based on assumptions and inferences. However, these inferences must be based on facts and positive evidence.
119. The Panel also observed that the investigating authority has the discretion in deciding which parameters are relevant to determine whether a new industry has been established. One of the parameters considered to be relevant by the Panel was whether the production constitutes a new ‘product line’ of an existing company. If an existing industry/company merely introduces a new product line, this may not be considered as an ‘establishing industry’. To examine this factor, the investigating authority would have to look into the degree of overlap in the use of overall infrastructure of the producer (including customer contacts, distribution channels, existing productive, commercial, research, and administrative assets etc.). The relevant portion of the Panel's observation is provided as under.

*“7.211. We note, at the outset, that we do not pronounce ourselves on these factors or whether they are either prescriptive or definitive for determining whether the domestic industry is unestablished. We accept that a relevant factor may be whether the domestic industry is the only producer of the like product in question in the market. At the same time, we note that whilst there could be only one producer of that product in the market, where that product constitutes merely a new "product line" of an existing industry and benefits from the existing production, marketing and other operations, such shared operations may play an important role in determining whether a distinct new industry has been established. If an existing industry chooses to introduce a new product unlike any other product currently being produced, the introduction of that new product will not necessarily result in the creation of a new industry. It may still be perceived as the introduction of a new product line into the existing industry, depending on the degree to which the overall infrastructure (including the productive, commercial, research, and administrative assets) of the existing industry is implicated. The greater the degree of overlap in the use of overall infrastructure, the less likely the perception that the introduction of the new product marks the establishment of a new industry. The fact that a domestic industry is defined by Article 4.1 of the Anti-Dumping Agreement by reference to like product, and that there are no pre-existing producers of that like product in the domestic market, does not preclude the possibility of that domestic industry utilizing existing infrastructure such as customer contacts and distribution channels, in its introduction of that like product in the domestic market.”*

120. Accordingly, the Authority has examined the following points to determine whether the case fits the requirement of material retardation.
- a. Does the domestic industry constitute a “new” industry for the product under consideration, or whether production of the product under consideration merely constitutes an extension of the existing established operation of the domestic industry. The Authority examined the degree of overlap between existing product lines of the company and the new product?
  - b. When did the domestic industry began its production?
  - c. Operations of the domestic industry as compared to the operations that were projected while setting up the plant. In case the domestic industry has not achieved projected levels of operations, whether the same is due to presence of dumped imports in the country, or due to any other reason
  - d. Since the domestic industry has commenced commercial production only during the present injury period, whether the domestic industry has been prevented from producing the product due to any technical reasons or product acceptance by the customers, or any other regulatory requirements in the country
  - e. Did the domestic industry reach a reasonable level of profitability? If not so, whether the reasons for the same are linked to dumping of the product or any other commercial or technical reasons?
  - f. A comparison of the actual and potential performance of the domestic industry. In a situation where the domestic industry has commenced production during the period of investigation, the Authority has assessed the potential performance of the domestic industry.
121. The above-referred parameters have been examined in detail below.

### **H.3.2. Material retardation to the establishment of the domestic industry in the present**

122. The Authority notes that the applicant has set up a new manufacturing facility for the production of subject goods by making significant investment. Prior to the commencement of production by the domestic industry, the entire demand for the subject goods was being catered to by imports into India. The other interested parties have contended that introduction of HIIR is merely an extension of product line of IIR. The Authority notes that the domestic industry has set up a new plant for production of HIIR. The subject goods are not being manufactured in the same plant as that for IIR. The domestic industry has made significant investment in setting up a plant for HIIR.
123. Based on the factors examined below, it is seen that the domestic industry in the present case is not established and the injury caused to the industry is in the nature of material retardation.

**A. Whether the applicant is a “new” industry or it is merely an extension of an already established operation?**

124. As mentioned hereinabove, the WTO Panel has observed that if the production of the industry is merely a new product line in an existing industry, it may not be a case of material retardation. However, the Panel stressed that what is important is the degree to which the existing infrastructure is utilized for the product under consideration. Further, the Panel observed that in addition to a new product line, the Authority must examine the degree of overlap with the existing infrastructure of the industry.
125. The other interested parties have submitted that the domestic industry was already established during the period of investigation since it has made significant commitment of resource and achieved production in commercial volumes, and it is an existing manufacturer of an intermediate product and has only added a product line. It is noted that HIIR is a new product and has been produced in the country for the first time by the domestic industry. The applicant has invested an amount of ₹ \*\*\* crores for manufacturing HIIR excluding investment made for captive input. The per unit investment for manufacturing HIIR is to the tune of ₹ \*\*\* per MT as compared to an investment made for manufacturing IIR which is ₹ \*\*\* per MT. Thus, significant investment has been made by the applicant for production of HIIR which is a plant separate to that for manufacturing IIR. It is noted that the subject goods produced by the applicant is not merely a new product line commenced by the domestic industry. The domestic industry has set up a new plant and entailed significant investment to set up a plant for the like article.
126. The Authority notes that HIIR cannot be considered as an extension of IIR in any manner due to the following aspects.
- a. The plants for HIIR and IIR are separate and substantial investment has been made by the applicant in both the plants separately. Further, both the plants were set up and commenced at different time.
  - b. The plants for HIIR and IIR run independently.
  - c. The manufacturing process of both HIIR and IIR are different. IIR is the input used to manufacture HIIR.
  - d. The technology for production of IIR and HIIR were sourced by the applicant from different producers of the product.
  - e. The cost of production as well as selling price of both IIR and HIIR vary significantly. The consumers are paying higher prices for HIIR as compared to IIR.
  - f. HIIR and IIR have different HS codes and are imported under separate HS Codes.
  - g. The manpower employed by the applicant for production of HIIR and IIR are separate.
  - h. The value addition for HIIR from IIR is around 50%. Thus, HIIR is not a product with minimal value addition.

**B. When did the domestic industry begin production?**

127. The Authority notes the domestic industry started production in February 2021 but declared commercial production only in March 2023. There is no other domestic producer of the subject goods in India. The domestic industry has submitted that it was unable to declare commercial production for 26 months due continuous dumping. It is noted that production of the subject goods has begun only at the tail end of the period of investigation. Further, although the production of the subject goods has commenced, a comparison of the actual and projected production and sales of the domestic industry reveals that actual production and sales in the period of investigation have not reached the projected levels. Moreover, the domestic industry has not got a price in consonance with the projections made.

**C. Operations achieved vs operations projected**

128. The operations of the domestic industry were compared with the projections made. The other interested parties have submitted that the period of investigation was in fact the second year of production for the domestic industry and comparison with third year of projection is not appropriate. The Authority has noted the submissions by the other interested parties and concludes that the comparison should be made with the second year of the projections. The Authority notes that even the domestic industry had provided data for second year, but inadvertently referred to it as the third year.
129. The other interested parties have submitted that the project report is not reliable as it is outdated. The Authority notes that the project report is usually prepared prior to conceiving the project. Further, in a normal business scenario, in case, the raw material prices or cost of production fluctuates, it is expected that the selling price will also change commensurately. There is no evidence on record to show that global trade dynamics or market situation has rendered the projections of the domestic industry outdated. Further, there is no impact of COVID-19 in the period of investigation due to which the projection may not be considered reliable. Further, due to change in market situation, the domestic industry had to revise its financial projections.
130. The performance achieved by the domestic industry in respect of various macro- economic parameters, such as production, domestic sales, capacity utilisation, market share, profits, cash profits, return on investment is materially below the levels projected by the domestic industry in the second year of operations. Against a projected capacity utilization of \*\*\* %, the domestic industry has been able to utilize only \*\*\* % of its capacity. The applicant is the only Indian producer of the subject goods in India who has established production facilities for the subject goods. The demand for the product under consideration in India was \*\*\* MT during the period of investigation. As against this demand, the domestic industry has set up

a production capacity of 60,000 MT. Thus, the domestic industry has the capacity to meet almost the entirety of the Indian demand. Instead, its market share was only \*\*\*%.

131. The domestic industry had projected profits in its very first year of operations. But the domestic industry has not been able to recover its costs and has earned significant financial losses during the injury period and has only earned marginal profits in the period of investigation. Further, there is significant difference between the projected performance and actual performance of the domestic industry. Since the applicant had not capitalized its plant in the period of investigation, depreciation has not been recorded. Even without depreciation, the current profits of the domestic industry are only 1% of its projected profits.

Particulars	UOM	HIIR	
		POI-Actual	Projected Year 2
Installed Capacity	MT	***	***
Total Production Quantity	MT	***	***
Capacity Utilization	%	***	***
Sales Quantity	MT	***	***
Domestic Sales	MT	***	***
Export Sales	MT	***	***
Cost of Sales (ex-factory)	₹/MT	***	***
Net Sales Realisation	₹/MT	***	***
PBT (Profit before Tax)	₹/MT	***	***
PBT (Profit before Tax)	₹ Lacs	***	***
Cash Profit (PBT+ Depreciation)	₹/MT	***	***
PBDIT (Profit before Depreciation, Interest & Tax)	₹/MT	***	***
PBDIT (Profit before Depreciation, Interest & Tax)	₹ Lacs	***	***
PBIT as % of Average Capital Employed (ROI)	%-Range	0-10%	20-30%

**D. Whether the domestic industry has been prevented from producing the product due to reasons other than imports**

132. It has been examined if other parameters, such as product approval, product quality, technical glitches in new plant, etc. have been a reason for low production and sales. The other interested parties have argued that that the domestic industry has suffered injury due to due to long customer approval process and limited range of products of poor quality offered.

133. The Authority notes that the domestic industry has submitted that there are no formal approval process and the approval is apparent from the volume of sales to the consumers. On the other hand, the other interested parties have submitted that ATMA members maintain a portal which shows the product approval. The Authority notes that the other interested parties have submitted screenshot of portal by a few users. However, the evidence on record shows that only a few users maintain such a portal. The applicant has sold to a number of users in commercial quantities, which imply that even without a formal approval, the domestic industry has the capacity to supply the subject goods to the users as per the specification required. Further, the domestic industry vide rejoinder dated 23<sup>rd</sup> September 2024 has submitted email communications with the users \*\*\* demonstrating that the domestic industry is capable to manufacture subject goods as per the specification of the users. The following table shows the quantities sold by the domestic industry to the users during the period of investigation and post period of investigation.

SN	Major customer name and each consumption segment of HIIR	Month of significant and repeat volumes	Total volume sold (MT) till		
			POI	2023-24	2024-25
1	***	***	***	***	***
2	***	***	***	***	***
3	***	***	***	***	***
4	***	***	***	***	***
5	***	***	***	***	***
6	***	***	***	***	***
7	***	***	***	***	***
8	***	***	***	***	***
9	***	***	***	***	***
10	***	***	***	***	***
11	***	***	***	***	***
12	***	***	***	***	***
13	***	***	***	***	***

14	***	***	***	***	***
15	***	***	***	***	***
16	***	***	***	***	***
17	***	***	***	***	***

134. It is seen that many customers have purchased from the domestic industry in commercial quantities. Moreover, the domestic industry is exporting the subject goods globally in a significant quantity. Thus, the product has been approved globally without any concerns on quality. Therefore, claims on injury due to poor quality and long customer approval cycles cannot be accepted.

135. The parties have also argued that there are global overcapacities for HIIR which have led to low prices. Further, COVID-19 has also disrupted the supply and demand for the product, which also led to delay in commercial operations for the domestic industry. The Authority notes that the applicant is the sole producer of the subject goods in India and there are no overcapacities in India. If global overcapacities are the cause of dumping and if the same is causing injury to the Indian industry, the industry is justified in seeking remedy against such dumping. The injury to the domestic industry has been analyzed in terms of the domestic market. Overcapacities or changes in price of raw material does not provide a justification for the exporters to engage in unfair trade practice of dumping in India. Further, the Authority notes that the period of investigation in the present investigation is 2022-23, and there is no evidence of adverse effect of Covid-19 during this period.

**E. Did the domestic industry reach a profitability/break-even point?**

136. It is noted that the domestic industry has incurred losses and has suffered cash losses until 2021-22. During the period of investigation, the domestic industry was able to reach profitability. However, since the applicant had not commercialized its plant during the period of investigation, depreciation has not been considered. On consideration of depreciation during the period of investigation, the Authority notes that the domestic industry has incurred financial losses, cash losses and recorded a negative return on capital employed. Thus, it has not been able to even break-even.

Particulars	Units	Actual (including depreciation)	Projected
Profit/(Loss)	₹/MT	***	***

Profit/(Loss)	₹ Lacs	***	***
PBIT	₹ Lacs	***	***
Return on capital employed	%	***	***

## F. Comparison of the actual and potential performance

137. As per Annexure-II to the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Authority is required to consider both actual and potential performance of the domestic industry.

*“(iv) The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and potential<sup>11</sup> 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<sup>12</sup> negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”*

138. The Authority has examined the actual performance of the domestic industry during the period and compared it with the projections made to assess whether the dumping of the product under consideration has materially retarded establishment of the domestic industry. On this basis, the domestic industry has quantified its potential performance. It is noted that even if the domestic industry was able to utilize its projected capacities in the second year, at current prices, it would still earn only 2.5% on return on capital employed.

Particulars	UOM	Potential in Year 2
Capacity	MT	***
Production	MT	***
Capacity Utilisation	%	***
Domestic Sales Volume	MT	***
Selling Price	₹/MT	***
Cost of sales	₹/MT	***
Profit/(Loss)	₹/MT	***
Profit/(Loss)	₹ Lacs	***
Interest	₹ Lacs	***
PBIT	₹ Lacs	***

Capital Employed	₹ Lacs	***
Return on Investment	%	***

139. The other interested parties have submitted that there is no legal basis for examining the potential performance of the applicant. The Authority notes that the provisions of Annexure-II only list out the parameters to be considered in examination of injury to established industries, in the form of material injury or threat of material injury. No parameters have been identified for examination of material retardation to the establishment of industry. Nevertheless, the examination of potential performance is specifically permitted under the Anti-Dumping Rules. Moreover, the provisions of para (iv) contain an inclusive list of parameters, which may be examined. Therefore, the Authority is free to examine further parameters, depending on the requirements of the investigation.
140. The above analysis indicates that the production of HIIR is newly established, and there is no significant degree of overlap with the existing manufacturing facilities of IIR. Further, the current performance is materially below the projected levels. Further, there are no other factors preventing the domestic industry from achieving its projected performance. Accordingly, the Authority concludes that the present investigation is that of material retardation to the establishment of the domestic industry in India.

### **H.3.3. Cumulative assessment of injury**

141. Article 3.3 of WTO agreement and para (iii) of Annexure II of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:
- a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and
  - b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.
142. The Authority notes that:
- a. The subject goods are being dumped into India from the subject countries. The margin of dumping from each of the subject countries is more than the de minimis limits prescribed under the Rules.

- b. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
  - c. Cumulative assessment of the effects of import is appropriate as the imports from the subject countries not only directly compete with subject goods imported from each of them but also the like article offered by the domestic industry in the Indian market.
143. With regard to conditions of competition, certain interested parties have claimed that the imports from Russia should not be cumulated in light of the volumes and prices of such imports, request for treatment of Russia as a non-market economy and the alleged relationship with the applicant. The Authority notes that the Appellate Body in the matter of EC – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil <sup>1</sup>noted that country wise volumes and prices are not required to be examined for determining whether the cumulation of imports is required. Further, the Authority has not found it appropriate to consider Russia as a non-market economy, and also found that the relationship between the applicant and the Russian producer has not impacted the behaviour of the applicant or Russian entity.
144. It is undeniable that the margin of dumping and the volume of imports from each of the subject countries is above de minimis. There is no evidence on record to demonstrate that the goods imported from Russia do not compete with the goods imported from the other subject countries, or the like article produced by the domestic industry. Thus, cumulative assessment of imports is appropriate in the present investigation, in the light of conditions of competition.

**H.3.4. Volume effect of the dumped imports**

**a) Assessment of demand / apparent consumption**

145. For the purpose of the present investigation, the Authority has defined demand or apparent consumption of the product concerned in India as the sum of domestic sales of the domestic industry and imports from all sources. The demand so assessed is given in the table below.

Particulars	Unit	2019-20	2020-21	2021-22	POI
Sales of applicant	MT	-	***	***	***
Trend	Indexed	-	100	2,151	6,576

Subject imports	MT	37,511	47,231	47,000	41,521
Other imports	MT	3,062	1,443	1,355	997
Demand	MT	***	***	***	***
Trend	Indexed	100	121	131	142

146. It is seen that the demand for the subject goods has steadily increased over the injury period and was the highest during the period of investigation.

**b) Import volumes from the subject countries**

147. 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 import volumes of the subject goods from subject countries and share of the dumped import during the injury period is as follows:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Subject Countries	MT	37,511	47,231	47,000	41,521
Singapore	MT	11,407	8,252	11,477	23,046
UK	MT	2,602	6,885	7,088	4,206
Japan	MT	1,061	7,130	5,805	5,617
USA	MT	6,002	7,285	5,583	3,035
Russia	MT	16,440	17,680	17,047	5,617
Other Countries	MT	3,062	1,443	1,355	997
Total Imports	MT	40,574	48,673	48,356	42,518
Subject import in relation to:					
Total imports	%	92%	97%	97%	98%
Indian consumption	%	***	***	***	***
Trend	Indexed	100	104	95	78
Indian production	%	-	***	***	***
Trend	Indexed	-	100	15	7

148. It is seen that-

- a. The volume of imports has increased over the injury period and only marginally reduced during the period of investigation.

- b. The subject imports accounted for \*\*\* % of the consumption in India during the period 2019-20 and increased thereafter. However, it has reduced since 2021-22 and was \*\*\* % during in the period of investigation.
  - c. The subject imports have declined in India as a result of commencement of domestic production. Nevertheless, the Authority notes that despite the domestic industry having capacity to cater to almost the entirety of the Indian demand, three-fourth of the market has been captured by the imports from subject countries.
  - d. Owing to commencement of production by the domestic industry, the imports in relation to production have reduced to \*\*\* % during the period of investigation. However, it is noted that imports in relation to production is still significant and is double the Indian production, despite the Indian industry having significant capacities.
  - e. The imports from the subject countries account for 98% of the total imports in the period of investigation.
149. The Authority notes that the domestic industry commenced production during the injury period. Therefore, it is quite common that imports witnessed a decline over the injury period, as the domestic industry increasingly utilized its capacities. However, despite such decline, the imports continue to have a majority share in the Indian market. In case depreciation is considered, the domestic industry has actually sold the subject goods at losses.
150. The other interested parties have submitted that there is a need to exclude 2019-20 in order to assess the volume of imports into India since there was no production during the said period. The Authority notes that it is a consistent practice of the Authority to consider imports for a period of 4 years, even in a material retardation case. Further, reliance placed on IIR findings is not relevant as even in that investigation, the Authority had examined the volume and price of imports for a period of three year. The base year was considered not appropriate only for some of the aspects related to production by the domestic industry.
151. Some of the interested parties have claimed that since the domestic industry has production only for 2 months in 2020-21, it should not be considered. The Authority notes that since the present case is that of material retardation, the Authority has considered the actual performance of the domestic industry in the period of investigation with the projected performance in the second year of operations.

### **H.3.5. Price effect of the dumped imports**

152. In terms of Annexure II (ii) of the Rules, with regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India,

or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

**a) Price undercutting**

153. Price undercutting has been determined by comparing the net sales realization of the domestic industry with the landed price of the imports for the period of investigation.

Particular	Unit	POI
Selling price	₹/MT	***
Landed price	₹/MT	***
Price undercutting	₹/MT	***
Price undercutting	%	***
Trend	Range	Negative

154. The applicant has highlighted the following with regard to comparison of import price with the selling price of the domestic industry.

- i. Some of the users in India have imported from their affiliate parties in the subject countries at higher prices. The applicant quantified that about 48% of the exports have been made by affiliated traders.
- ii. On a customer-wise basis, the price undercutting would be negative for only transactions with related parties, and one customer, that is, \*\*\* are considered. The price undercutting for \*\*\* is negative as it is a \*\*\* company and as the raw material used has to be approved by its customers. Further, majority of the customers of the said company are outside India and there are stringent regulatory requirements in the country of its buyers. Thus, it is forced to pay a premium on the product.
- iii. Being a new entrant in the market, the domestic industry was forced sell at such prices which would allow it to take some orders.
- iv. Some exporters have given post-invoicing discounts. The applicant has claimed that the discounts allowed are in the range of USD \*\*\* per MT.
- v. The CIF price as per import data does not reflect the price at which the Indian consumers have negotiated the product and placed orders with the domestic industry or the foreign suppliers. The import price should be determined based on the actual payment realized by the exporters of the subject goods.
- vi. If the price undercutting is determined considering the projected selling price of the domestic industry, it would be seen that the price undercutting is very significant.

Particulars	Unit	POI
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Projected selling price	₹/MT	***
Landed price	₹/MT	***
Price undercutting	₹/MT	***
Price undercutting	%	***
Price undercutting	Range	30-40%

**b) Price suppression/depression**

155. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the Authority has analysed the actual and projected cost of sales and selling price of the domestic industry.

Particular	Unit	Actual	Projected	Difference	Difference
Cost of sales	₹/MT	***	***	***	-35%
Selling price	₹/MT	***	***	***	-46%
Profit	₹/MT	***	***	***	-2,160%

156. The Authority notes that the actual cost of sales is 35% less than the projected cost of sales. However, the selling price of the domestic industry is 46% less than the projected selling price. The domestic industry has not been able to take any advantage of lower cost of sales as it was forced to sell the subject goods at prices much below the projected prices. Thus, it is evident that the subject imports have suppressed and depressed the prices of the domestic industry.

157. Due to the lower selling price than projected prices, the profitability of the domestic industry is much lower than projected. Further, the Authority has compared the actual profitability in the period of investigation without taking into account the depreciation. In case, such cost elements are considered, the domestic industry has incurred losses during the period of investigation.

**H.3.6. Economic parameters of the domestic industry**

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

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

**a) Production, capacity, capacity utilization and sales volumes**

159. Capacity, production, sales and capacity utilization of the domestic industry over the injury period were as below:

Particular	Unit	POI	Projected*	Delta (%)
Installed Capacity	MT	60,000	60,000	-
Production	MT	***	***	-63%
Capacity Utilization	%	***	***	-63%
Domestic Sales	MT	***	***	-64%
Export Sales	MT	***	***	-59%

*\*Second year of operations*

160. The Authority notes that:

- a. Since the domestic industry commenced production during the period of investigation, the production, capacity utilization and sales of the domestic industry have improved over the period.
- b. The capacities of the domestic industry are under-utilized even though there is enough demand in India.
- c. While the domestic industry projected capacity utilization of \*\*\* %, it was able to achieve only \*\*\* % of capacity utilization.
- d. Further, the actual production of the domestic industry is 63% lower than the projected production.
- e. While the domestic industry has significantly compromised on its profitability, the domestic sales of the domestic industry are still 64% lower than the projected domestic sales.

161. The Authority also notes that as per the information on record, the domestic industry was forced to shut down its operations for a period of \*\*\* days during the injury period and \*\*\*

days during the period of investigation. The domestic industry has claimed that such shutdown was on account of dumping of the product in India.

162. The other interested parties have claimed that since the export price of the domestic industry is lower than the landed price, it cannot be said that the applicant was forced to export. The Authority notes that the domestic industry has exported higher volumes than that projected in order to dispose of the production. In case, there was predatory pricing by the domestic industry, it would have been able to off load more volumes in the domestic market.
163. Some of the parties have argued that the domestic industry has exaggerated its capacity. The Authority has examined and verified the capacity from documentary evidence and, on being satisfied, has accepted the same.

**b) Market share**

164. Market share of the domestic industry and of imports was as shown in table below:

Market share	Unit	2019-20	2020-21	2021-22	POI
Domestic industry	%	***	***	***	***
Trend	Indexed	-	100	1,975	5,591
Subject imports	%	***	***	***	***
Trend	Indexed	100	104	95	78
Other imports	%	***	***	***	***
Trend	Indexed	100	39	34	23

165. The Authority notes that since the domestic industry commenced production during the injury period, it has gained a market share over the period. However, the imports continue to account for the majority of the market. Despite sufficient capacities of the domestic industry to cater to \*\*\* % demand in India, the subject imports are catering to almost three fourth of the market share.
166. The Authority notes that in case, domestic industry had been able to produce and sell at its projected levels, it would have attained market share of \*\*\* %. By contrast, it has been able to achieve a market share of only \*\*\* %.
167. The Authority notes that the domestic industry has been selling the subject goods in the domestic market after significantly compromising on its profitability. Even then, the market share achieved by the domestic industry is minimal.

**c) Inventories**

168. Inventory position of the domestic industry over the injury period is given in the table below:

Particular	Unit	2020-21	2021-22	POI
Opening Inventory	MT	***	***	***
Closing Inventory	MT	***	***	***
Average Inventory	MT	***	***	***
Trend	Indexed	100	147	189

169. The Authority notes that the average inventories of the domestic industry have increased over the period. Even after exporting \*\*\* % of its production, the domestic industry has witnessed an accumulation of inventories in the injury period. The domestic industry has also stated that it was forced to suspend production for \*\*\* during the injury period, despite commencing production in February 2021.

**d) Profitability, cash profits and return on capital employed**

170. The actual and projected profitability, return on investment and cash profits of the domestic industry in the period of investigation is given in the table below:

Particular	Unit	POI	Projected*	Difference
Cost of Sales	₹/MT	***	***	-26%
Selling Price	₹/MT	***	***	-32%
Profit before Tax	₹/MT	***	***	-96%
Profit before Tax	₹ Lacs	***	***	-98%
Cash Profit	₹/MT	***	***	-96%
PBDIT	₹/MT	***	***	-78%
PBDIT	₹ Lacs	***	***	-92%
Return on capital employed	%	***	***	-96%

\*Second year of operations

171. The Authority notes that, in case the actual performance of the domestic industry is taken without making any adjustments, the actual performance of the domestic industry was much below the projected performance in the second year of operations.
- The domestic industry had projected total profits of ₹ \*\*\* crores but has actually earned profits of only ₹ \*\*\* crores. The actual per unit profits of the domestic industry are 96% lower than the projected profits per unit.
  - The cash profits of the domestic industry are 96% lower than that projected by the domestic industry.
  - The domestic industry has earned merely \*\*\* % return on capital employed. As compared to the return earned, the domestic industry had projected to earn a return on investment of \*\*\* %.
172. The domestic industry contended that analysis of the project report would show that the domestic industry had projected profits in the very first full year of its operations. Against this, it has a marginal return on investment and meagre profits, even after 2 years.
173. Further, the actual cost of sales in the table hereinabove is based on consideration of IIR at its \*\*\* and without considering depreciation since the plant was not capitalized during the period of investigation. In case, IIR is considered at full cost of production plus reasonable profits for transferring to production of HIIR and depreciation is charged for plant for HIIR in the period of investigation, the domestic industry would have suffered losses, cash losses and recorded a negative return on capital employed.

Particular	Unit	Actual	Considering full cost*	Change
Cost of Sales	₹/MT	***	***	23%
Selling Price	₹/MT	***	***	0%
Profit before Tax	₹/MT	***	***	-4,094%
Profit before Tax	₹ Lacs	***	***	-4,086%
Cash Profit	₹/MT	***	***	-621%
PBDIT	₹/MT	***	***	-159%
PBDIT	₹ Lacs	***	***	-578%
Return on capital employed	%	***	***	-663%

*\*Considering depreciation cost of HIIR plant and IIR transfer cost considered at full cost excluding packaging costs and selling overheads*

174. With regard to the submission that the interest cost is not reported in the P&L statement of the applicant, the Authority notes that since the commercial production was not declared in

the period of investigation, the interest cost was capitalized for the purpose of the books of accounts, in accordance with the Generally Accepted Accounting Principles. However, the applicant has reported the same as per the formats issued by the Authority for the purpose of the present investigation.

175. With regard to the submission that the losses to the domestic industry are due to startup costs and depreciation, the Authority notes any start-up costs are capitalized under the Generally Accepted Accounting Principles.

**e) Employment, productivity and wages**

176. The Authority has examined the information relating to employment, wages and productivity, as given below.

Particular	Unit	2020-21	2021-22	POI
No of employees	Nos.	***	***	***
Trend	Indexed	100	512	1,048
Salaries & Wages	₹ Lacs	***	***	***
Trend	Indexed	100	496	935
Productivity per day	MT/Days	***	***	***
Trend	Indexed	100	108	219
Productivity per employee	MT/Nos	***	***	***
Trend	Indexed	100	126	125

177. The Authority notes that the number of employees has increased over the period, since the domestic industry commenced production. With increase in the number of employees, the salaries, wages and productivity have also increased.

**f) Growth**

Particulars	Unit	2020-21	2021-22	POI
Production	%	-	546%	104%
Domestic Sales	%	-	2051%	206%
Profit/(Loss)	%	-	-2003%	106%
Cash Profits	%	-	-2003%	106%

Return on Capital Employed	%	-	-1%	124%
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178. The Authority notes that the domestic industry has claimed that its parameters have shown growth due to commencement of production. However, it has been prevented from achieving its projected performance. Further, in case depreciation is considered, it has suffered losses in the period of investigation. The capacity utilisation of the domestic industry has remained low and it has not been able to earn sufficient return on capital employed.
179. The performance of the domestic industry in terms of both volume and price parameters is below the projected performance.

**g) Impact on ability to raise capital investments**

180. The domestic industry has set up capacity for the subject goods, was able to raise capital investment. However, it has earned only a marginal profit during the period of investigation. The return earned by the domestic industry is at a meagre \*\*\* %, which makes any future investment in the product extremely difficult. This shows that the imports have adversely impacted the ability of the domestic industry to raise capital investments.

**h) Factors affecting prices**

181. It is noted that the subject imports have forced the domestic industry to sell at unremunerative prices in order to survive in the market, which have prevented it from earning adequate profits. The domestic industry is also unable to fetch its target prices in India. The imports have prevented price increases, which otherwise would have occurred.

**i) The magnitude of dumping**

182. There is significant dumping of subject goods from the subject countries which has destroyed the conditions of fair competition in the market.

**j) Potential performance of the domestic industry**

183. The Authority has also examined the potential performance of the domestic industry at various levels of capacity utilizations, as projected.

	Unit	POI	Potential
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Particulars			Year 1	Year 2	Year 3
Capacity	MT	***	***	***	***
Production	MT	***	***	***	***
Capacity utilisation	%	***	***	***	***
Sales volume	MT	***	***	***	***
Selling price	₹/MT	***	***	***	***
Cost of Sales	₹/MT	***	***	***	***
Profit/(Loss)	₹/MT	***	***	***	***
Profit/(Loss)	₹ Lacs	***	***	***	***
Interest	₹ Lacs	***	***	***	***
PBIT	₹ Lacs	***	***	***	***
Return on capital employed	%	***	***	***	***
Return on capital employed	%- Range	0-5%	0-5%	0-5%	0-5%

184. The Authority notes that at the current prices, even if the domestic industry utilizes 100% of its capacity, the domestic industry would only earn a return of \*\*\* % as against the 22% considered reasonable by the Authority. The domestic industry envisioned a return on capital employed of \*\*\* %. Such a return is not possible at current prices in the market.

### **H.3.7. Non-attribution analysis and casual link**

185. Having examined the existence of injury, volume and price effects of dumped imports on the prices of the domestic industry, the Authority has examined whether injury to the domestic industry can be attributed to any factor, other than the dumped imports, as listed under the Rules.

#### **a) Volume and value of imports from third countries**

186. It is noted that there are negligible imports from any other country. The imports from the subject countries constitute 98% of the imports in India. Therefore, the injury is not attributable to imports from third countries.

#### **b) Contraction in demand**

187. The demand for the product under consideration has steadily increased and was the highest during in the period of investigation. The demand for the subject goods is expected to continue to grow. The domestic industry has not suffered injury due to possible contraction in demand.

**c) Pattern of consumption**

188. It is noted that there has been no material change in the pattern of consumption of the product under consideration, which could have caused injury to the domestic industry.

**d) Conditions of competition and trade restrictive practices**

189. The Authority notes that there is no evidence of conditions of competition or trade restrictive practices that are responsible for the claimed injury to the domestic industry.

**e) Developments in technology**

190. There has been no change in technology for production of the subject goods. The domestic industry has set up a new plant for the production of the subject goods.

191. The other interested parties have stated that since Sibur did not have the technology to manufacture the subject goods, the injury to the applicant is due to incapability to produce all grades. The Authority notes that the technology for manufacturing the subject goods has been sourced from \*\*\* . The Authority notes that in material retardation cases, the domestic industry may not have the technology to manufacture the subject goods and accordingly, set up a plant by acquiring the technology. The same cannot be said to be the reason for injury to the domestic industry. This is especially the case, where consumers of the product are buying from the domestic industry in commercial volumes.

**f) Productivity**

192. The Authority notes that the productivity of the domestic industry has increased over the injury period. Therefore, the domestic industry has not suffered injury on this account.

**g) Export performance of the domestic industry**

193. The injury information examined hereinabove relates only to the performance of the domestic industry in terms of its domestic market. Thus, the injury suffered cannot be attributed to the export performance of the domestic industry.

**h) Performance of other products**

194. The Authority has considered data relating only to the performance of the subject goods. Therefore, performance of other products produced and sold are not a possible cause of the injury to the domestic industry.

**i) Global Overcapacities**

195. The other interested parties have submitted that the injury to the domestic industry is due to global overcapacities. The Authority notes that there were no producers of the subject goods

in India prior to commencement of production by the applicant. Thus, there are no overcapacities in India. Even currently, the capacity of the domestic industry is equivalent to \*\*\* % demand in India. In such a case, the domestic industry should not have suffered injury as it is the sole producer in India.

196. Overcapacities established in other countries is not a justification for dumping of the product under consideration in India. The information on record shows that the foreign producers have set up capacities in countries where there is negligible domestic demand. Such producers are dependent upon the export market. However, the dumping of the product under consideration in India has created an unfair market situation for the sole domestic producer in India.

**j) Fluctuation in crude prices**

197. The other interested parties have submitted that the injury to the domestic industry is due to fluctuation in raw material prices. The Authority notes that change in raw material prices is a normal business scenario. However, with change in raw material prices, it is expected that the selling price of the product also changes commensurately. Thus, injury cannot be due to change in raw material prices. In any case, the actual cost of sales of the domestic industry is lower than the projected cost of sales. Thus, no injury is attributable to increase in cost of sales due to fluctuation of raw material prices.

**k) Injury due to setting up single production line**

198. The other interested parties have submitted that the injury to the domestic industry is due to single production line. The Authority notes that for the purpose of injury analysis, the project report of the domestic industry has been compared with the actual performance of the domestic industry. Since the project report was based on a single production line, the comparison of actual performance is on the same level. Thus, injury is not attributable to a single production line.

**I. MAGNITUDE OF INJURY MARGIN**

199. The Authority has determined the non-injurious price for the domestic industry on the basis of the principles laid down in the Rules read with Annexure III, as amended. The non-injurious price of the subject goods has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The non-injurious price has been considered for comparing the landed price from the subject countries for calculating the injury margin. For determining the non-injurious price, the best utilization of the raw materials, the utilities and the production capacity by the domestic industry over

the injury period have been considered. It is ensured that no extraordinary or non-recurring expenses are charged to the cost of production. A reasonable return (pre-tax @ 22% on the average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and is being followed.

200. The landed price for the cooperative exporters has been determined on the basis of the data furnished by the exporters. For all the non-cooperative producers/exporters from the subject countries, the Authority has determined the landed price based on the facts available.
201. With regard to the contention that high costs due to start-up operations must be normated, the Authority notes that the non-injurious price has been determined based on 90% capacity utilization of the domestic industry. Hence, the Authority has not considered high costs due to start-up operations by the applicant.
202. As regards the contention that a 22% return on capital employed is unwarranted, the Authority notes that it is a consistent practice of the Authority to determine the non-injurious price of the domestic industry based on reasonable return on capital employed, which is 22%, barring when there is evidence on record that 22% should not be considered and some other figure is more appropriate. The Authority notes that the domestic industry had envisaged an average return on capital employed of \*\*\* %. The return on capital employed considered by the Authority is less than that envisaged by the applicant and as per the consistent practice of the Authority.
203. Based on the landed price and non-injurious price determined above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below: -

Name of producer	Non-injurious price	Landed price	Injury margin	Injury margin	Injury margin
	(USD/MT)	(USD/MT)	(USD/MT)	(%)	(Range)
<b>Japan</b>					
Japan Butyl Co., Ltd.	***	***	***	***	25-35%
Any other	***	***	***	***	40-50%
<b>Russia</b>					
Any	***	***	***	***	35-45%
<b>Singapore</b>					

Arlanxeo Singapore Pte Ltd.	***	***	***	***	35-45%
ExxonMobil Asia Pacific Pte Ltd	***	***	***	***	40-50%
Any other	***	***	***	***	55-65%
<b>United Kingdom</b>					
ExxonMobil Chemical Limited	***	***	***	***	0-10%
Any other	***	***	***	***	15-25%
<b>United States of America</b>					
ExxonMobil Product Solutions Company	***	***	***	***	15-25%
Any other	***	***	***	***	30-40%

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

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

204. The other interested parties have made the submissions with regard to the Indian industry's interest:
- i. Imposition of anti-dumping duty will create a monopoly of the applicant which will allow it to control the supply and prices in the market and will have an adverse impact on the public at large.
  - ii. Imposition of anti-dumping duty will lead to increase in cost of Indian downstream industry making them uncompetitive in the global market.
  - iii. Since the applicant has not yet received approvals for its product, the downstream industry will have to pay higher prices to import the product under consideration or compromise on the safety of the downstream product by buying from the applicant.
  - iv. HIIR is a crucial component for automotive industry in terms of safety. Average cost impact on tyre industry in the event of imposition of duty is ₹ 6,732 lacs. Impact on commercial truck fleet owners and state bus owners is around ₹ 0.25 Cr. and ₹ 1.5 Cr respectively.
  - v. High bromine grade product is used in pharmaceutical industry which have long approval processes and strict quality specifications. Impact of proposed duty is likely to have adverse impact on pharma industry and will lead to increase in costs of drugs for the consumers.
  - vi. While globally commercial vehicles have shifted to tubeless tyres, India is still shifting to the same. Imposition of anti-dumping duty will lead to slowing down of the said

- process. Shift to tubeless tyres shall lead to fuel efficiency and save fuel costs and crude imports for India. The savings are to the tune of USD 1.5 billion.
- vii. Since the user industry is still recovering from the effects of the Covid-19 pandemic, the imposition of the anti-dumping duty will be against public interest.
  - viii. Imposition of duty may result in supplies being diverted to other markets, due to insufficient orders, leading to supply chain disruptions in India.
  - ix. The imposition of anti-dumping duty would increase costs of the users. Imposition of duty on multiple raw materials of tyres may severely impact profitability, and force users to pass on costs

## **J.2 Submissions by the domestic industry**

205. The domestic industry has made the following submissions with regard to the Indian industry's interest:
- i. Imposition of anti-dumping duty is in public interest. There is a need to examine public interest from the perspective of producer's interest, consumers interest and public interest at large.
  - ii. Imposition of anti-dumping duty will not restrict imports into India but only ensure fair prices. There is no reason to anticipate that imports will cease, and monopoly will be created.
  - iii. The technology for production of the product under consideration is highly regulated and limited. The capacities have been set up in India after facing a number of hurdles.
  - iv. A significant investment has been made by Indian producer as well as Russian entity in India.
  - v. Domestic production is imperative to ensure continuous supply of the product in India as globally only 10 producers have the technology to produce the subject goods.
  - vi. There is a need for remedying the situation of dumping in order to make India AatmaNirbhar in production of the subject goods.
  - vii. The applicant has set up production of upstream product as well which includes IIR and HPIB. In case, HIIR business suffers due to dumping, it will impact the upstream product as well.
  - viii. The Authority has recommended imposition of anti-dumping duty on imports of IIR. Since half the capacity of IIR is for production of HIIR, non-imposition of anti-dumping duty on imports of HIIR will undermine the anti-dumping duty on imports of IIR.
  - ix. The subject goods are an integral part of tyre and there is a need to maintain domestic availability of the product.
  - x. Since HIIR is not the main component in the tyre industry and only an essential component, the imposition of anti-dumping duty will have a minimal impact on the eventual product. The impact is only to the tune of 1.3 – 1.6%.

- xi. Contrary to the submissions of the other interested parties, the import price was higher in India prior to commencement of domestic production. The user industry was competitive even in the past.
- xii. There is no evidence on record to show that the consumers of the product will bear the increase in cost and would not pass on such increase. The users are habitual of price fluctuation as the parties have themselves highlighted the price of product vary in line with change in price of crude.
- xiii. The downstream tyre industry is an established profitable industry in India and has been consistently earning profits for past two decades. Thus, imposition of anti-dumping duty on a minor raw material will not impact them adversely.
- xiv. The pharmaceutical industry has not raised the concern regarding long approval process and quality specifications.
- xv. The purpose of dumping is to hamper the performance of the domestic industry and not help the downstream industry which is evident from the fact that the prices were higher prior to commencement of domestic production.
- xvi. There is no evidence to show impact of COVID-19 on the downstream industry during the period of investigation or the fact that it impacted tyre industry more than any other industry. The tyre industry has actually earned bumper profits during the period of investigation.
- xvii. There is no incentive for the exporters to divert markets after imposition of anti-dumping duty, as the duty is levied over the net realization by the exporter. Since the Authority follows lesser duty rule, the duty-imposed amount will not exceed the normal value.

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

206. The Authority notes that the primary objective of anti-dumping duties is to rectify the injury inflicted upon the domestic industry by the unjust trade practices of dumping, thereby fostering an environment of open and equitable competition in the Indian market. This is not merely a regulatory measure, but a matter of national interest. The imposition of anti-dumping measures is not designed to curtail imports from the subject countries arbitrarily. Rather, it is a mechanism to ensure a level playing field. The Authority acknowledges that the persistence of anti-dumping duties may influence the price levels of the product in India. However, it is crucial to note that the essence of fair competition in the Indian market will remain unscathed by the imposition of these measures. Far from diminishing competition, the imposition of anti-dumping measures serves to prevent the accrual of unfair advantages through dumping practices. It safeguards the consumers' access to a broad selection of the subject goods. Thus, anti-dumping duties are not a hindrance but a facilitator of fair-trade practices.

207. The Authority issued the initiation notification, inviting views from all interested parties including importers, users and consumers. An Economic Interest Questionnaire was also prescribed to allow various stakeholders, including the domestic industry, producers/exporters and importers/users/consumers to provide relevant information concerning the present investigation, including the possible effect of anti-dumping duty on their operations.
208. The Authority notes that the dumping of subject goods in India has materially retarded the establishment of the domestic industry in India.
209. The applicant has made a huge investment of ₹ \*\*\* crores for setting up the HIIR plant and ₹ \*\*\* crores and ₹ \*\*\* crores for setting up the feedstocks (IIR and HPIB) plants respectively. The Authority notes that half the capacity of IIR plant was for merchant market and the other half for production of HIIR. Thus, ₹ \*\*\* crores in IIR plant were invested for the purpose of manufacturing HIIR. Thus, it is essential to provide a level playing field to the domestic industry and remedy the situation of dumping in India, in order to maintain domestic production in India.
210. The Authority notes that imposition of anti-dumping duty does not restrict imports into India but only ensures that such imports are made at a fair price. In India, anti-dumping duties are levied, in a number of investigations, wherein the applicant was a sole producer in India. However, such impositions did not lead to creation of monopoly in India. In any case, if the applicant engages in unfair trade practices, the consumers of the product are free to approach the relevant authorities.
211. The Authority has examined the impact submitted by all the interested parties. The Authority notes that the subject goods are an integral part of tyre. Further, the main cost component in a tyre is natural rubber and raw materials such as IIR and HIIR, although integral, constitute a very small component in the tyre. Thus, they are not a major cost to the tyre industry. Further, if the impact is determined on the further downstream product, the impact would be miniscule indeed.

	<b>Unit</b>	<b>Rate</b>
Tyre rate	₹ per piece	10,125
HIIR consumption	Kg	0.21
HIIR rate	\$/MT	3,186
Exchange rate		80.79

HIIR rate	₹/Kg	257
Proposed anti-dumping duty	\$/MT	1,824.47
Proposed anti-dumping duty	₹/Kg	147.40
Percentage impact on end Product	%	0.31%

212. The impact has to be evaluated in light of gross turnover of the downstream industry. The other interested parties have submitted that impact on the tyre companies is to the tune of ₹ 67 crores. In this regard, the Authority notes that the gross turnover of the tyre industry is to the tune of ₹ 70,000 crores and such an impact is less than 0.1% of the turnover of the industry.
213. With regard to the submissions that imposition of anti-dumping duty will have an adverse impact on the pharmaceutical industry, the Authority notes that such submissions have been made by the exporter of the product and not the pharmaceutical industry. Since the domestic industry is manufacturing high bromine grade, no adverse impact is expected on the downstream industry.
214. The Authority further notes that the imposition of anti-dumping duty will not lead to scarcity of the subject goods in India. It is noted that anti-dumping duty does not restrict imports but ensures that imports are available at fair prices. The imposition of duty would, therefore, not effect the availability of the product. In any case, the capacity of the domestic industry is sufficient to meet more than a significant portion of demand in India.
215. The Authority notes that there is no evidence on record to show the impact of COVID-19 on the downstream industry during the period of investigation. The tyre industry in India is a large-scale industry and has not been impact by COVID-19, more than any other industry in India. The applicant has provided performance of the tyre industry and has claimed that the tyre industry has been consistently earning profits.
216. The other interested parties have submitted that imposition of anti-dumping duty may lead to diversion in supply by the exporters to other markets. No evidence has been given by the parties for this submission. The Authority notes that it is possible that in a scenario where net sales realization of the exporter remains the same, there will be no incentive available to the exporter to divert market, as it will be able to earn the same profitability as it is earning currently. Thus, there will be no supply chain disruption due to imposition of anti-dumping duty.

217. Further, the Authority notes that although the subject imports constitute 98% of the imports into the country, the technology to manufacture the product is available in the 10 countries globally. Thus, the goods can be imported from other sources such as EU, United Arab Emirates, China PR as well. In this regard, the Authority notes that the product under consideration has been imported in past from other sources as well.

## **K. POST DISCLOSURE COMMENTS**

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

218. The following post disclosure submissions have been made by the other interested parties.
- i. The details of sales of various grades to member companies of ATMA, the name of customer, quantities sold, and date of approval have been claimed confidential due to which appropriate comments on the same cannot be filed.
  - ii. While the domestic industry has disclosed the email communication, it has not provided sales information and names of customers.
  - iii. The domestic industry provided the confidential version of the communication only on 23<sup>rd</sup> December 2024, that is, one day prior to the due date for comments on disclosure. The Authority denied the request for extension filed by ATMA. Thus, the association only had one day to conduct a thorough review and consultation with its member companies.
  - iv. A non-confidential summary of potential performance of the domestic industry should be shared in order to enable the other interested parties to make reasonable submissions.
  - v. Confidentiality claimed with regard to name of customer for price undercutting is not justified as the examination is not specified to the import price or price charged by the domestic industry to that customer.
  - vi. The projected performance of the petitioner has been claimed entirely confidential, despite the Authority relying on the same for its conclusions on material retardation.
  - vii. Given the facts and circumstances of the case, this is not a fit case to exercise discretion under Rule 2(b).
  - viii. The Authority has not provided reasons for exercising discretion under Rule 2(b).
  - ix. Participation by the Russian producer is bare minimum requirement to become interested party and get individual margin and does not imply absence of collusion.
  - x. Disclosure issued is without consideration of relevant submissions of other interested parties. Since the same is a procedural lapse, a fresh disclosure should be issued and due opportunity should be given to all interested parties to make submissions on the same.
  - xi. Since the DG Systems data contradicts official DGIC&S data, the data should be verified again thoroughly. Non-confidential summary of DG Systems data should be shared with interested parties.

- xii. While the Authority has stated that some users do not have a formal approval process, it has relied upon communication given by domestic industry which shows requirement for approval of the product. Different users have different approval processes as some users use online portals for approval tracking, other users provide approval via email communication.
- xiii. The email communication with \*\*\* shows that the subject goods have been supplied only for bulk trial purposes and they were being fine-tuned even post period of investigation. This shows that the goods were not accepted previously. Further, the reply to email by the user dated 20<sup>th</sup> June 2024 was absent from the evidence submitted by the domestic industry.
- xiv. The email communication with \*\*\* shows that bromobutyl was supplied for trial and was out of specifications required by the user. Chlorobutyl supplied by the domestic industry received positive feedback.
- xv. The quantities supplied by the domestic industry (20-75 MT) to the said users shows that these are only for trial purposes. This is evident from the approximate import of 4500-5000 MT by member companies of ATMA.
- xvi. JK Tyres, Bridgestone India and CEAT have not purchased bromobutyl with high mooney viscosity from the applicant till date since the same is not as per the specifications of the customers.
- xvii. The conclusion that the domestic industry has sold in commercial quantities is not appropriate as the domestic industry can sell in commercial quantities only after receiving commercial approvals. Such conclusion was based on data pertaining to 2023-24 and 2024-25 and email communications submitted in rejoinder submissions, which were not shared with other parties allowing them to comment on the same.
- xviii. The Authority contradictorily concluded that domestic industry has made commercial supply of goods as per user specifications, while also stating elsewhere that the industry is unable to declare commercial production due to dumping.
- xix. The submissions made by other interested parties with regard to scope of the product under consideration cannot be considered belated since the scope was not frozen at the time of issuance of PUC/PCN notification.
- xx. Comments regarding exclusion of BIIR from product scope have been disregarded as being belated, even though the fact that the domestic industry did not make commercial supply of approved grades of BIIR came to light only during the course of the investigation. Disregarding such comments only on account of these being belated is violative of the principles of natural justice as well as Article 6.1 of the AD Agreement.
- xxi. The Authority has not considered the submissions by the other interested parties with regard to difference in safety and quality of the product supplied by the domestic industry and that imported into India, lack of approved comparable grades of the domestic industry and need for exclusion. There is a need to exclude Bromobutyl high

- mooney viscosity above 42 MU, that is, Bromobutyl 2255, Bromo 2244, BBX2 and I2155.
- xxii. The comparison given in the disclosure statement shows that grade 2255, 7244 and B2247 differ significantly in terms of bromine (Mol%), bromine (wt%) and antioxidant (wt%). Thus, these grades cannot be said to be comparable.
  - xxiii. The Authority did not seek segregated information concerning production and sale of low viscosity, high viscosity and high bromine grades by domestic industry. The domestic industry has not produced high viscosity and high bromine grades in commercial quantities despite demand from the consumers. The high viscosity grades supplied by the domestic industry were for testing and sampling purposes only.
  - xxiv. The Authority has not examined the submissions with regard to Grade I2155 and low mooney viscosity grade. The domestic industry does not have the capacity to produce such grade. Since such grade cannot be manufactured by the domestic industry, the injury cannot be due to imports of such grades.
  - xxv. Exclusion of star-branched butyl is imperative since the domestic industry does not have capability to produce the same, and thus, cannot suffer injury as a result of its imports.
  - xxvi. The disclosure statement does not state the reasons for rejecting the submissions made by the Russian producer, the facts which were applied, and the provision under which the response filed can be rejected.
  - xxvii. The responses filed by Russian producer and its related parties should not be rejected on the ground that their unrelated trader (Trigon) has not participated in the investigation. The exporters cannot compel any unrelated entity to participate. The cooperating producer and its related entities have reported all sales to importing country even if it is made through unrelated trader, because at the time of sale, the producer is aware that the goods are destined for the country of investigation. All necessary information was provided to the Authority.
  - xxviii. The Manual wrongly states that the responses of the producers who exported more than 30% of total volumes through unrelated traders should be rejected because of non-participation of unrelated trader. Various international authorities including Australia, USA and European Commission have been calculating dumping margins based on information furnished by cooperating exporters, where the unrelated parties have not participated. The Authority has also accepted responses filed by producers in past investigations, such as Polypropylene, Polyester Stable Fiber and Cold Rolled Flat Products of stainless steel, despite absence of response by one of the trading entities.
  - xxix. The Authority should follow a consistent approach to carry out ordinary course of trade test considering cost of sales and not total cost of production as done for Exxon Group.
  - xxx. The normal value should be determined on the basis of records kept by the producer provided such records are maintained as per GAAP of exporting country. Since the

- books of JBC are maintained as per Japanese GAAP, the costs should be considered as reflected in the books of accounts.
- xxx. JBC has sold in the domestic market subject goods manufactured in the period of investigation as well as from stock from past year. Thus, the cost should be considered after adjusting for inventory as well as for indirect selling costs.
  - xxxii. The Authority has compared ex-factory sales price with total cost of production of JBC. However, the comparison must be made at the same level of trade.
  - xxxiii. The Authority has not allowed full credit for other income and income from scrap while determining the cost for JBC. Since such incomes are at company level, there is a need to allocate the same to the product under consideration based on appropriate ratios.
  - xxxiv. Adjustment for level of trade should be allowed as the sales in exporter market are to a trader in comparison to sales made in domestic market to users. The average quantity sold to users is much less than that sold to MRF SG during the period of investigation. Since MRF SG is purchasing in bulk quantities, it cannot be considered that these sales are to the users. Even if MRF SG and MRF India are considered as single economic entities, they should be considered as traders.
  - xxxv. Cost of captive input consumed for production of product under consideration should be adjusted to exclude profit built into the transfer price for EMAPPL and EMCL. This is necessary in line with the requirements of Article 2.2.1.1 and the observations in EU – Biodiesel, since the profit is not cost actually incurred for production of the subject goods. The same would also be consistent with the Cost Accounting Standards of India and the practice of US DOC.
  - xxxvi. An adjustment should be made towards costs incurred for startup operations during the period of investigation. The plant for EMAPPL operated at a low capacity utilization during the period of investigation, since it has not operated for a very long period. An adjustment should be made for fixed cost, and inefficiencies in variable costs. The same is consistent with the findings of the Authority in Plain Gypsum Plaster Boards.
  - xxxvii. An adjustment should be made for utilities cost / fixed cost incurred during the period of investigation, when the plants of EMAPPL and EMPSC were facing shutdown, since such costs are non-recurring in nature. Under the Anti-Dumping Agreement, non-recurring items of cost that benefit current production can be adjusted to ensure that only appropriate costs are allocated to product under consideration.
  - xxxviii. There is a linking / mathematical error in the landed price calculated for EMPSC for the volume exported through Apollo Singapore.
  - xxxix. In applying facts available in respect of exports through Apollo Singapore, the Authority should have at least relied upon the price reported by Apollo India. Further, the adjustments should have been determined based on the information provided by the cooperative producers, to the extent such expenses have been incurred by them.
  - xl. As per the provisions of Anti-Dumping Agreement, the Authority should consider all information supplied by it, and where it applies “facts available” and uses information

- from a secondary source, the same must be correlated with other independent sources, including the information obtained from other interested parties during the investigation. The same was emphasized by WTO Panel in China – Broiler Products.
- xli. In China – GOES and US – Anti-dumping and Countervailing Duty (Korea), the WTO Dispute Settlement Body has held that non-cooperation does not justify drawing adverse inference or determinations devoid of any factual basis. The investigating Authority may only replace the missing information.
  - xlii. Since EMAPPL and Apollo India participated in the present case, all necessary information with regard to determination of margins is available with the Authority. The financial statements of Apollo Singapore are also available with the Authority, which show that Apollo Singapore sold goods to Apollo India at a gross profit of \*\*\* % and net profit of \*\*\* %.
  - xliii. Since the Authority has considered Apollo Singapore and Apollo India to be de facto a single economy entity, non-cooperation by Apollo Singapore should not lead to application of facts available.
  - xliv. The exporters have no control over Apollo Singapore’s decision to cooperate or its operational setup. As an independent entity, Apollo Singapore’s non-cooperation should not adversely impact the determinations made with respect to the exporters, particularly in view of the fact that sales to Apollo Singapore constitute a small share of the total exports and were only invoiced through the Singapore office.
  - xlv. In the IIR case, even though CIAEL SG did not participate, the Authority relied upon information reported by CIAEL India to determine the landed price and export price.
  - xlvi. Adjustment for level of trade should be allowed, as done in the IIR case. The adjustment is necessitated since the exports through traders are at a different level of trade than domestic sales to end users. The traders add their own margin and incur a cost towards making the sales.
  - xlvii. The Authority has failed to disclose the methodology and adjustments made to the cost of production of Arlanxeo to arrive at the normal value for the exporter.
  - xlviii. The response filed by NKNH should be rejected, due to non-participation by Trigon International (S) Pte Ltd.
  - xlix. In order to examine whether the present case should be considered as that of material retardation due to imports, there is a need to check which grades of the domestic industry have received approval, when was approval received, what evidence has been provided to substantiate this claim, and which users have given approval.
    - 1. The Authority has deviated from the guidance provided in decision of Morocco – Hot-rolled Steel, creating its own parameters which lead to pre-determined conclusions.
    - li. With regard to the conclusion that the present case relates to material retardation, the Authority should examine the same in light of the twin conditions laid down in the investigation into imports of DCC.

- lii. Since the domestic industry has achieved commercial volumes during the period of investigation, with a market share of more than 25%, it should be considered established.
- liii. The cost of producing HIIR from IIR cannot entail a value addition of 50%, as IIR is the major cost of producing HIIR. Production of HIIR from IIR merely requires halogenation with bromine or chlorine. The Authority also verified Exxon's production facility in UK wherein the Authority oversaw the production equipment required for producing the IIR and the extension line leading to the halogenation tank for addition of bromine/chlorine.
- liv. The purpose of anti-dumping duty is not to curb imports and make the domestic industry achieve ideal levels of profitability.
- lv. While examining material retardation, the Authority has selectively highlighted parameters showing negative performance of the domestic industry, while minimizing positive developments.
- lvi. The heavy reliance on project report, without disclosing the basis thereof, is in violation of principles of natural justice. This is particularly since the report may be outdated for several reasons, including outbreak of Covid-19, demand-supply shift, production cost adjustment and potential alterations in competitive landscape among producers of the product.
- lvii. Comparison with project report should be made only after making adjustments to reflect current state of the market.
- lviii. Any interest or start-up costs which were considered in injury analysis should be excluded.
- lix. As in the case of IIR, the Authority should not consider 2020-21 as base year, as the domestic industry operated for only two months during this period.
- lx. Examination of price undercutting based on projected selling price is not appropriate as it leads to shifting of evaluation of price undercutting to price underselling. Use of projected selling price does not reflect the actual situation and actual impact of imports on the prices of the domestic industry.
- lxi. The Authority has failed to acknowledge the negative price undercutting and simply accepted the arguments of domestic industry in this regard, without any critical analysis.
- lxii. The determination of price suppression based on the fact that the difference between projected and actual selling price of the domestic industry was higher than difference in cost is flawed, since cost and price are derived from different factors and are not required to have equal or proportionate movement.
- lxiii. The capacity of the domestic industry cannot be linked to market share as its product has not received approval of customers and it does not have the capacity to produce certain grades.

- lxiv. The Authority has selectively examined actual data for inventories while undertaking an actual versus projected analysis for other economic parameters.
- lxv. The mere ability of the domestic industry to cater to export market does not automatically mean that it can supply suitable product required by the domestic users of the product under consideration.
- lxvi. The fact that the domestic industry has exported significant quantities globally shows that it is not materially retarded.
- lxvii. There is a need to check the market segment being catered by the domestic industry in the export market. It is possible that the domestic industry is catering to pharmaceutical segment in the export market while Indian market is dominated by tyre manufacturers. Further, there is a need to check the grades which were exported, time frame of exports and whether the markets in which the domestic industry has exported has a developed tyre industry.
- lxviii. The determination that the domestic industry has sold at prices below cost of sales is not correct as the domestic industry has achieved profitability and increased its selling price, despite commencing production in February 2021, gradual approval process of chlorobutyl and non-approval of bromobutyl.
- lxix. The petitioner has raised capital investment of ₹ 360 crores for capacity expansion, highlighting that ability to raise capital investment is not impacted.
- lxx. There is break in the causal link as the injury to the domestic industry is due to dumping by related Russian entity which makes it a self-inflicted injury and high start-up costs.
- lxxi. Impact of other factors including investment costs in the initial years, initial start-up issues, technology transfer fee, intermittent production halts, single line of production to produce all grades, market disruptions globally due to COVID19, lack of range and quality of products that was unable to meet customers' expectations and requirements, high off-specification production, long approval time of 2-3 years for product grades, lack of technology with SIBUR to produce the product before 2021, global overcapacity in the market for the product, and self-infliction of injury due to predatory pricing, have not been considered. Under the WTO law, global overcapacities and not overcapacity in India must be considered for non-attribution analysis.
- lxxii. Depreciation and amortizations should not be considered as the same is charged only after commencement of commercial production.
- lxxiii. Consideration of 22% return on capital employed is not appropriate as globally the producers are currently, earning single digit returns.
- lxxiv. The Authority has not examined the submission that imposition of anti-dumping duty on grades not available domestically will adversely impact the prices of the users.
- lxxv. It is not possible to replace the imported grade with domestically manufactured grade as the same has not received approvals and there are significant safety and regulatory considerations.

- lxxvi. While HIIR constitutes negligible component of overall tyre, the isolated impact of proposed anti-dumping duty on HIIR should not be seen. It is necessary to assess the cumulative impact of anti-dumping duty on various raw material of tyre industry including IIR and insoluble sulphur.
- lxxvii. Imposition of anti-dumping duty will not only increase the cost of the user industry but will also undermine the competitiveness of Indian downstream industry.
- lxxviii. As against the IIR case, the HIIR market is split between different grades and the domestic industry has not been able to manufacture and supply some of these grades. Thus, non-imposition of duty on HIIR would not render the duty on IIR ineffective.
- lxxix. The objective of self-reliance should not lead to monopolization of market.
- lxxx. Consumption of HIIR taken as 210 grams per tyre is incorrect, as the same is 2 kg of HIIR per tyre.
- lxxxi. Impact of duty should not be seen in terms of revenue of the tyre industry, but profits.

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

219. The following post disclosure submissions have been made by the domestic industry.
- i. The Authority has considered that the applicant is related to NKNH. However, the same is not appropriate as there is no de facto or de jure control by Sibur on the operations of the applicant.
  - ii. It is unclear whether cost of production for EMAPPL includes adjustments towards startup operations and shut down costs. There is a need to disclose the methodology adopted for calculation of cost of production in order for the domestic industry to file comments.
  - iii. Adjustment for start-up costs should not be allowed as EMAPPL started production prior to the period of investigation and hence, it cannot be said that start-up costs affected the data for the period of investigation. Article 2.2.1.1 refers to adjustment of start-up costs only in the period of investigation. USDOC permits adjustment for start-up costs only when a producer has new production facility for production of new product which requires substantial investment and production level is limited by technical factor in initial phase of commercial production. The producer has failed to show these factors.
  - iv. EMAPPL did not face start-up costs even in the injury period which is evident from the annual report of Exxon Mobil Corporation which states that it completed startup operations in 2018 and declared commercial production in 2019.
  - v. The low capacity utilization of EMAPPL is not due to technical factors but due to absence of domestic demand in Singapore. The Authority in anti-dumping investigation into imports of Clear Float Glass held that start-up costs are related to difficulty due to technical issues and not slowness of production due to any other reason. USDOC did not accept start-up cost adjustment in less-than-fair value

- investigation into imports of Mattresses from Indonesia as the producer failed to (a) demonstrate that the production levels were limited, (b) show that purchase and testing of new equipment delayed production, (c) identify technical factors encountered and (d) explain how R&D costs constitute technical difficulties.
- vi. The fact that EMAPPL is relying on project report implies that there are no technical difficulties faced by a new plant that prevented a higher production level. The plant has produced at a lower level, because of other factors.
  - vii. As per the Anti-Dumping Agreement, startup costs should reflect costs at the end of start-up period or the most recent costs have to be considered if start-up operations extend beyond the period of investigation. Thus, reliance on project report is not appropriate. The same was held by the Authority in anti-dumping investigation into imports of Clear Float Glass.
  - viii. Article 2.2.1.1 states that the costs as per records of the company must normally be considered. Hence, an adjustment with regard to shut down costs should not be allowed. Since the producer has not excluded such expenses from quantification of profit and loss, there is no requirement for adjustment in this regard.
  - ix. There is no provision under the Anti-Dumping Agreement for adjustment of shutdown costs.
  - x. Shut down cost adjustment cannot be allowed as the nature of expense is not non-recurring in nature. The WTO Panel in EC-Anti-Dumping Measure on Farmed Salmon from Norway held that non-recurring cost should be one-off costs. The Panel understood non-recurring costs to be costs from which benefit is derived over a period such as cost of a capital nature, capital work-in-progress or deferred expenses.
  - xi. Adjustment can be made only for non-recurring costs which provides benefit future or current production and not extraordinary or unusual costs. No adjustment can be made for routine costs, which a plant would normally incur.
  - xii. Article 2.2.1.1 and Annexure-I of the Anti-Dumping Rules, requires that cost of production be determined with regard to costs associated with production of the product under consideration. It is not necessary that the costs should benefit production. In this regard, reliance was placed on the decision of Panel in EC – Salmon (Norway).
  - xiii. The actual cost of production cannot be disregarded, for hypothetical costs which may have been incurred in a different situation. The Panel in EU – Anti-Dumping Measures on Biodiesel from Argentina held that costs actually incurred and recorded in records of producer must be considered.
  - xiv. Even other jurisdictions such as US and EU do not accept shut down cost adjustment for temporary shutdowns. Even COVID related shut down costs, which were beyond the control of the producers, were not accepted. In the present case, EMAPPL shut down its plant at its own discretion.
  - xv. Price undercutting should be determined only after considering those transactions where landed price of imports is below the selling price of the domestic industry. The

- CESTAT in *Kothari Sugars & Chemicals Limited V. Designated Authority*, held that if volume of imports at such price level is sufficient enough to have adverse impact on the prices of the domestic industry, the same should be taken into account.
- xvi. The manner in which net fixed assets for purpose of capital employed and material cost has been calculated needs to be disclosed to the domestic industry.
  - xvii. There is a need to consider cost of chemicals and catalysts consumed for determination of non-injurious price. These are expenses incurred for production of subject goods and hence, cannot be excluded. These were considered for determination of non-injurious price in anti-dumping investigation into imports of IIR.
  - xviii. Depreciation should be considered for determination of non-injurious price. Unless depreciation cost is considered, the amount of duty recommended would not be adequate to remove the injury to the domestic industry, as required under Rule 4 and Rule 17. Annexure-III to the Rules also requires consideration of depreciation cost.
  - xix. Since consumption norms and optimum capacity utilization has been considered based on the project report, the Authority has determined non-injurious price based on level the domestic industry would have achieved has it been established. In such a case, depreciation would have been charged by the domestic industry and has also been reported in the project report. Had the domestic industry been established, it would have incurred depreciation cost.
  - xx. The Supreme Court in *Reliance Industries Limited vs. Designated Authority* has held that the imposition of duty must redress injury and prevent material retardation of the establishment of that industry. Thus, the anti-dumping duty must be quantified in such a manner that allows the industry to be established, implying that both the existing and the future cost structure of the domestic industry should be considered.
  - xxi. There is a need to consider full value of net fixed assets for determination of non-injurious price. Para (viii) of Annexure – III states that assets as per books of accounts should be considered, except revaluation. Thus, no adjustment should be made to exclude made trial run costs. There are no profits or losses to the company prior to declaration of commercial production. The expenses are capitalized while the revenue is reduced from assets.
  - xxii. Even if trial run costs are excluded, the net fixed assets considered do not capture the entirety of the assets of the domestic industry.
  - xxiii. There is a need for imposition of anti-dumping duty as the technology for the product is highly regulated and it took significant efforts to obtain the technology for domestic production in India.
  - xxiv. In case of cessation of domestic production in India, there is possibility of acute shortage of essential raw material for tyre industry, in case of geopolitical disturbance.
  - xxv. Producers in Singapore are holding capacities for exports as there is no domestic demand in the country. In such a case, they are not in a situation to follow fair trade practice, which may lead to shrinking their market share.

- xxvi. The price of the product under consideration was higher in the absence of domestic production. In case of cessation of domestic production, the price of the product is likely to increase and adversely impact the downstream industry.
- xxvii. Imposition of anti-dumping duty is in line with self-sufficiency of the country.
- xxviii. The applicant has heavily invested in setting up not only a plant for the subject goods but also for upstream products, IIR and HPIB. Non-imposition of anti-dumping duty will lead to unviability of upstream products as well.
- xxix. Since the applicant has set up half the capacity of IIR for production of HIIR, non-imposition of anti-dumping duty on HIIR will have an adverse impact on the company as a whole and will render anti-dumping duty imposed on IIR ineffective.
- xxx. HIIR is an essential component for production of tyre but is not a major cost to the downstream industry. Hence, imposition of anti-dumping duty will not have any significant impact on the downstream industry.

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

- 220. The Authority has examined the post disclosure submissions made by the domestic industry and the other interested parties and notes that a number of submissions are reiterations which have already been examined suitably and addressed adequately in the relevant paras of the final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and the domestic industry and considered relevant by the Authority are examined below.
- 221. The Authority notes that the other interested parties have submitted that some of their submissions were not addressed in the Disclosure Statement. The Authority notes that the scope of the disclosure statement is to disclose essential facts under consideration and the Authority has taken into account all the submissions considered relevant for this purpose.
- 222. Certain parties have emphasized that arguments with regard to certain product exclusions were not belated, and that even if the arguments were made belatedly, the same cannot be disregarded. The parties have also claimed that the product scope is not finalized at the stage of issuance of PCN and PUC notice. The Authority notes that the time limit was for making submissions with regard to product scope and PCN methodology. Such time limit is a definitive deadline allowed to parties to make all claims with regard to product exclusion. Thereafter, as the investigation progressed, the Authority has examined such product exclusions in detail. The interested parties cannot disregard the deadlines notified by the Authority and claim that it is open for them to comment on the PUC at any time throughout the conduct of the investigation as this would jeopardize the progress of time bound investigations which the Authority is mandated to conduct as per Rules. Further, the Authority has not found it appropriate on merits to exclude any product type.

223. The Authority also notes that the law allows for consideration of injury even to an industry that has not yet commenced production, and has merely made substantial commitment to production. This implies that actual production might not have even commenced in certain situations and the domestic industry can file application seeking ADD on the product. In a situation where the domestic industry has not commenced production of a grade, its establishment will be retarded by the dumping in the country, if such product is excluded. Even if the domestic industry has the capability to produce the product, and has not produced so far only because the domestic industry is in the process of establishing itself, the same is sufficient to include the product within the scope of PUC. That being the case, merely because the domestic industry, which is still an establishing industry, and which has recently commenced production, it cannot be considered that it must have produced all grades in commercial quantities with identical specifications to the imported product before seeking remedy against dumped imports. On this account, the situation with regard to an establishing industry cannot be considered at the same footing as that of an established domestic industry.
224. During the course of the investigation, the interested parties have relied upon judgments and past investigations to claim that a product not produced by the domestic industry must be excluded from the product scope. However, these judgements and decisions relate to a situation where the industry was an established industry and had been in operation for a sufficiently long period of time (longer than injury period). Further, the domestic industry was not suffering injury from dumping in the past and had full opportunity to produce and sell full range of products. Therefore, the industry had been allowed an opportunity to develop the product and supply the same to the users. However, in the present case, the domestic industry is establishing itself and has been in operation only for a short period. Therefore, the industry has not been in operation for long enough period to have had an opportunity to produce and supply each grade of the product to the users in commercial quantities. This is more so, when the domestic industry was facing injury from dumped imports from start of its production. The Authority notes that for most of the exclusions sought by the interested parties, the domestic industry actually supplied a product with comparable characteristics. Further the Authority notes that as star branched butyl is a like article, there are no grounds for exclusion of the same. In view of the same, the Authority does not find it appropriate to exclude any grade produced by the domestic industry, or which the domestic industry has capability to produce, on the basis that it has not received approval from the users for matching the exact specification of the imported goods.
225. With regard to the contention that the value addition from IIR to HIIR cannot be 50%, the Authority notes that the same is significant and the production of HIIR is not merely an extension of the production line for IIR in case of domestic industry, as contended by other interested parties.

226. While the interested parties have contended that the discretion under Rule 2(b) has been incorrectly exercised, no fresh facts or information or jurisprudence has been cited to establish incorrect exercise of discretion. Since the arguments with regard to exercise of discretion were already addressed in the Disclosure Statement, no further examination is necessary. The interested parties have also contended that participation by the Russian producer does not imply absence of collusion. The Authority notes that participation by the Russian producer disputing request for imposition and the application by the domestic industry seeking imposition of duty shows presence of conflicting interests of the two parties. The Authority also notes that the provisions of Rule 2(b) of the Rules do not provide for automatic exclusion of a domestic producer from the scope of the domestic industry. The interested parties have not placed any material on record to demonstrate collusion. The Authority has examined the information available on record and based on its examination as explained in the relevant section of this final findings did not find circumstances which show collusion and therefore warrant the exclusion of the applicant from the scope of the domestic industry.
227. The interested parties have contended that the Disclosure Statement suffers from excessive confidentiality, since the names of customers to whom goods were sold, the grades supplied by the domestic industry, date of approval and the volume supplied by the domestic industry have not been disclosed. In this regard, the Authority notes that the information, for which disclosure has been sought by interested parties, has been considered confidential. It is noted that such information has not been disclosed by the users as well. The users cannot, on the one hand, contend that the domestic industry has claimed excessive confidentiality by protecting the details of its supplies; while on the other hand, claiming the details of their own procurements as confidential. The Authority has adopted an unbiased and even-handed approach with regard to confidentiality claims of all interested parties. The business proprietary information of all interested parties has been accepted as confidential, where it has been considered that disclosure of such information would be prejudicial to the competitive and business interests of the party concerned.
228. With regard to the submissions that only one day was provided to analyse the communications provided by the domestic industry, the Authority notes that the said communications were already available to the users, as they were a part of the communication themselves. Thus, they had ample time to analyse and rebut the same.
229. The Authority further notes that the interested parties have questioned the credibility of information provided by the domestic industry. The Authority has verified the information provided by the domestic industry, to the extent deemed necessary. The Authority is a quasi-judicial authority which seeks information from all parties, undertakes necessary

examination and verification under the provisions of Rule 8, and thereby arrives at its determination, after having provided an opportunity to all parties to defend their interests. If the contention of the interested parties was to be accepted, it would mean that the exporters and users would also be asked to furnish all confidential information to the domestic industry and allow the domestic industry to offer comments on whether the information supplied was correct and vice versa. The verification of information is required to be conducted by the Authority, and not by the interested parties.

230. With regard to the submission that a non-confidential summary of the potential performance of the domestic industry has not been shared, the Authority notes that such information is business proprietary in nature and cannot be disclosed. Further the Authority notes that an appropriate non-confidential summary has been provided to all interested parties to offer their comments and no prejudice has been caused to the interests of any interested party.
231. The Russian producer has contended that there is no provision which allows the Authority to reject the response filed by it, on account of non-cooperation by an unrelated trading entity. The producer has relied upon the practice of other investigating authorities in this regard and has claimed that all necessary facts relevant for determination of normal value and export price were available before the Authority. NKNH has further contended that the manual of SOP issued by the authority is incorrect in this regard. The Authority notes that Section 9A of the Act define export price as “*the price of the article exported from the exporting country or territory...*”. Therefore, the Act provides that the price of the article exported from the exporting country should be considered. Article 2.1 of the Agreement, however, states that “for the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.” In such a situation where the goods have been sold to an intermediary exporter, the price at which the exporter sold the product in the Indian market is the price at which the goods were introduced into the commerce of India. This is also the price that is responsible for causing injury to the domestic industry. In the absence of participation, the Authority cannot examine the price at which the exporter sold to the Indian market and whether the exporter sold at profits. The entirety of exports have been made through the non-cooperative exporter in the present case and such exporter has preferred non-cooperation. Further, the producer has not shown sufficient evidence that it acted to the best of its ability to seek cooperation and questionnaire response.
232. Further, the Authority sought certain clarifications and verification documents from NKNH vide email dated 8<sup>th</sup> September 2024. Inter alia, the producer was asked to explain how an individual dumping margin can be determined, despite absence of cooperation by the traders

/ exporters. Further, the producer was asked to demonstrate that the material was actually exported to India, and that it was reported to Indian Customs as being of the Russian origin. Other clarifications with regard to ocean freight, commission and credit cost. NKNH was also asked to explain how the sales made to related parties in the home market were at arm's length basis. By a separate email, also dated 8<sup>th</sup> September 2024, verification documents were sought. The said exporter requested extension of 10 working days for providing such information. However, the verification documents were not submitted even within the extended time period, but were filed belatedly on 16<sup>th</sup> October. As regards the other information sought, NKNH filed a letter dated 8<sup>th</sup> November 2024, regarding its position on why the response should be accepted, despite non-cooperation by the traders involved. However, even then, other information sought was not submitted. In particular, NKNH did not explain why the sales made in home market should be considered at arm's length basis, or demonstrate that the goods were actually exported to India. In view of the absence of information and evidence provided, it is not possible to determine the normal value and export price based on the response filed by NKNH.

233. EMAPPL has claimed that its fixed cost and variable costs should be adjusted, as it was facing start up operation during the period of investigation. The domestic industry, on the other hand, has claimed that no adjustment should be made for startup costs since EMAPPL did not face startup operations during the period of investigation. The domestic industry has also relied upon the annual report of ExxonMobil Corporation, and its website, where it has been stated that the production in HIIR plant in Singapore started production in 2018 and commercial production was achieved by 2019. Therefore, EMAPPL did not face startup operations during the period of investigation. The Authority notes that an adjustment can be made for startup operations where the operations during the period of investigation were impacted as a result of technical difficulties faced because of plant being new. The Authority considers that an adjustment can be made for startup of operations if (1) a producer is using a new production facility or producing a new product that required substantial investment and (2) production levels are limited by technical factors associated with the initial phase of commercial production. In the present case, EMAPPL has been in production for multiple years before the period of investigation. Therefore, the plant cannot be considered to be a new production facility. In any case, public statements by EMAPPL shows that startup operations were completed much before the period of investigation. In view of the same, the Authority has not found it appropriate to make an adjustment to startup operations.
234. EMAPPL and EMPSC have also claimed an adjustment towards costs incurred during shutdown period. The adjustment has been claimed on the basis that the cost which were non-recurring in nature. The domestic industry has opposed such adjustment. The Authority notes that the provisions of Para (1) of Annexure-I of the Anti-Dumping Rules and Article 2.2.1.1 of the Anti-Dumping Agreement allow for adjustment of cost of production for non-

recurring items of cost which benefit future and / or current production. The WTO Panel in EC – Salmon (Norway) has noted that such non-recurring costs are one-off transactions, such as the purchase of plant and capital equipment. The language of the article and the observations of the Panel make it clear that non-recurring costs which benefit future and / or current production refer to costs, benefit of which would be derived over long period of time. It does not relate to costs which have been incurred during the period of investigation, but did not lead to production. Therefore, an adjustment cannot be made merely because the cost incurred did not lead to production. The law does not require that only costs benefiting production be considered. All costs which are associated with production are required to be part of cost of production.

235. In this regard, the observations of WTO Panel in the case of EU – Biodiesel are also relevant, wherein it was observed that costs should be determined based on the expenses actually incurred by the producer and not some hypothetical expenses that might have been incurred under different set of conditions or circumstances. The Authority also notes that the costs claimed as shutdown costs have not been treated as “shutdown expenses” in the records of EMAPPL and EMPSC. When the shutdown costs were not excluded in the Profit and Loss Statement, and have been considered as a part of cost and expenses by the producers themselves, there is no reason for exclusion of the from the cost of production. In view of the above, the Authority finds that no adjustment is tenable for the cost incurred during the shutdown period.
236. As regards calculation error in the landed price calculated for EMPSC, the Authority has corrected the same in the final findings.
237. EMPSC, EMCL and JBC have reiterated their request for an adjustment on account of differences in level of trade. The argument of the interested parties is based on the premise that since they have supplied to Apollo Singapore and MRF Singapore, the price of such exports is lower as compared to the price which would be charged to a user. The parties have contended that the traders add their own margin and incur a cost towards making the sales. The Authority has already examined the contentions of the interested parties in detail hereinabove. In particular the Authority has noted that, while the parties have claimed a difference in level of trade, they have not demonstrated differences in the marketing functions performed in respect of sales to the traders versus the sales to the end users. Even in the comments to the disclosure statement, the interested parties have not demonstrated that they are performing certain marketing functions in respect of sales to end users, which have not been performed in respect of sales to traders.
238. The contention of the interested parties appears to be based merely on the basis that the traders would also incur a certain cost and earn a profit margin. However, the parties have

failed to demonstrate that an adjustment to the prices can be made on account of what costs or margins the buyer has incurred. In this regard, the Authority notes that, as per the provisions of Article 2.4 of the Anti-Dumping Agreement, allowance shall be made for differences which affect price comparability. Therefore, the interested parties were required to demonstrate that consistently there was difference in price depending on whether the buyer was an end user or a trader and the same affected price comparability. The exporters have not established the same and provided no evidence on this account. In other words, the parties were required to demonstrate that the status of the buyer as trader or user affected the price at which they have sold to the buyer. However, this requirement has not been met in the present case.

239. The Authority notes that, in case of sales of goods produced by JBC, all exports to India have been made through EMAPPL. If the price at which goods produced by JBC were sold by EMAPPL to MRF Singapore is compared with the price at which the same PCN were sold to end users in India, 30-40 % of the direct exports of such PCN were made at prices lower than the price at which sale was made to MRF Singapore. Likewise, in case of sale of goods produced by EMPSC, the Authority notes that the exports have been made through EMAPPL. The price at which EMAPPL sold the goods produced by EMPSC to Apollo Singapore and MRF Singapore, has been compared to the price at which EMAPPL sold the goods produced by EMPSC to end users in India. It is noted that, 90-100 % of the direct exports of OHB and 30-40 % of the direct exports of OHC are priced lower than the price charged from MRF Singapore and Apollo Singapore for the same PCNs. Therefore, the Authority notes that there is no evidence that the difference in the level of trade affected the price which was charged by EMAPPL from the end users versus the traders. As regards goods produced by EMCL, 90-100 % of the exports to end users in India were made to \*\*\* . The domestic industry has already explained that \*\*\* uses the subject goods for \*\*\* and the raw material used by it has to be approved by the customers. Accordingly, the prices for the goods purchased by it are higher. It is, therefore, evident that EMAPPL did not price the products differently to customers based on whether the sale was being made to the end users or traders. No evidence or information has been provided to demonstrate that the level at which the buyer has operated affected the price comparability. Thus, in the absence of any information to demonstrate that the differences impacted price comparability, the Authority does not find it appropriate to make an adjustment in this regard.
240. With regard to the contention that the cost of goods sold should be considered for JBC, as done for other producers; the Authority notes that it has adopted the methodology for determining cost of production along with administrative, selling and general costs for all cooperative producers on a consistent basis. The Authority notes that section 9A(1)(c) of the Customs Tariff Act refers to “*cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits*”

as the basis for determination of normal value. Likewise, paragraph (2) of Annexure – II of the Anti-Dumping Rules requires examination of whether sales are in ordinary course of trade with reference to “*(fixed and variable) cost of production plus administrative, selling and general costs*”. The same has been considered in the present case.

241. As regards the adjustments not made to cost of production for JBC, the Authority has relied upon verified information of the producer. All information, which was substantiated with necessary documentation by the producer, has been considered. The producer was provided an opportunity to substantiate its adjustment during the desk verification. However, JBC was not able to demonstrate that the incomes which JBC itself has considered as non-operating income were generated in the process of manufacture of product under consideration.
242. With regard to cost of captive input, the Authority notes that the same has been considered at transfer price, as recorded in the books of accounts. The provisions of Article 2.2.1.1 of the Agreement provide that costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation. The same is also noted under the provisions of paragraph (1) of Annexure – I of the Anti-Dumping Rules. The producer has not claimed that its records are not maintained in accordance with the generally accepted accounting principles of the exporting country, and that they do not reasonably reflect the costs associated with production and sale of the product under consideration. The Authority has, therefore, relied upon the records, as maintained for the product under consideration.
243. The Exxon Group has contended that the landed price and export price for exports through Apollo Singapore should not be determined based on facts available considering the lowest price transactions. According to the Exxon Group, the information required for determination of margins are available on record since Apollo India has participated. With reference to landed prices, the Authority notes that as per its consistent practice, participation of Apollo Singapore is necessary to reveal the full chain of transactions and costs incurred in a transparent manner. Participation by Apollo India is not sufficient to reveal the entirety of transactions and adjustments which need to be allowed. Therefore, the Authority is unable to accept the arguments made in this regard and has made determinations based on facts available.
244. With reference to the export prices, the Authority notes that the complete information required for the determination of export price is not available on record. This is because it cannot be ascertained whether Apollo Singapore has resold the goods purchased by it at a profit. Contrary to the claim of the Exxon group, the financial statements of Apollo Singapore cannot be considered determinative of the same. This is because the financial statements pertain to operations with regard to all products and export to all markets which Apollo Singapore has supplied. However, for the determination of export price, the

Authority requires the information with regard to the whether Apollo Singapore has earned a profit with regard to exports of product under consideration to India only. In view of the same, the Authority continues to find that it is appropriate to rely upon facts available for determination of export price, in the absence of participation by Apollo Singapore.

245. In this regard, it has been claimed that use of the lowest price at which each of the exporters sold to Apollo Singapore or other trader, as case may be, resulted in adverse inferences being drawn, which is in violation of Article 6.8 of the Agreement. Further, it has been claimed that Article 6.8 restricts the Authority from punishing a non-cooperative party and only allows use of facts available to supplement the information that is not on record, due to such non-cooperation. In this regard, the exporters have relied on the decisions of the WTO Panels in China – GOES and U.S. – Anti-Dumping and Countervailing Duties on Certain Products (Korea). However, it is noted that while as per WTO Panel Reports, the Authority is required to not use facts that are punitive, the Panel Reports also state that use of facts that may be less favourable to a non-cooperating party is not inconsistent with Article 6.8. The Panel in the relevant portion in U.S. – AD and CVD Duties noted as below.

*“7.35 Finally, we note that the last sentence of paragraph 7 of Annex II makes it “clear ... that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate”. This indicates that a “less favourable” result is not necessarily WTO-inconsistent and that an investigating Authority is not always required to select those replacement facts that are “most favourable” to a non-cooperating party. Rather, “non-cooperation creates a situation in which a less favourable result becomes possible due to the selection of a replacement for an unknown fact”. We consider that paragraph 7 provides contextual support for the understanding that the “procedural circumstances in which information is missing” – including the interested party’s own conduct and its awareness of the consequences of not providing the “necessary” information – may be relevant to an investigating Authority’s selection of replacement facts under Article 6.8. At the same time, nothing in the text of paragraph 7 suggests that procedural circumstances entitle investigating authorities to dispense with the requirement to select reasonable replacements for the missing “necessary” information.*

*7.36 In sum, we consider that the terms of Article 6.8, interpreted in light of their context and object and purpose, require investigating authorities to select – in an unbiased and objective manner – those facts available that constitute reasonable replacements for the missing “necessary” information in the specific facts and circumstances of a given case. In doing so, investigating authorities must take into account all facts that are properly available to them. In selecting the replacement facts, Article 6.8 does not require*

*investigating authorities to select those facts that are most "favourable" to the non-cooperating party. Investigating authorities may take into account the procedural circumstances in which information is missing, but Article 6.8 does not condone the selection of replacement facts for the purpose of punishing interested parties."*

246. Thus, Para 7 of Annex II read with Article 6.8 provides that non-cooperation of a party may result in use of facts that may be less favourable to such party than if the party had cooperated. Further, use of such less favourable facts is not inconsistent with Article 6.8, as has been held by the WTO Panel.
247. In the present case, the Authority has considered the lowest price reported by EMAPPL to Apollo, EMCL to Apollo and EMPSC to MRF to determine the net export price for the exporters in absence of cooperation by Apollo Singapore. Use of such prices does not constitute use of punitive facts. The Authority has relied upon prices actually charged by Exxon Group in order to arrive at the final determination. It is not a case where the Authority has considered prices completely alien to the exporters. Further, the Authority has not adjusted the export price based on factors that were not based on information submitted by EMAPPL, EMCL or EMPSC. On the other hand, the Authority has in fact considered the prices reported by each of the exporters and made adjustments based on information submitted by them. Use of information that would allow the non-cooperating parties to benefit would incentivize parties to not participate and then claim use of favourable facts, thereby, frustrating the purpose of seeking relevant information and making appropriate determination.
248. The Authority has examined the DG Systems data in detail. The Authority also notes that the volume captured in the DG systems data is comparable to the volume reported by the exporter, EMPSC. Therefore, the volume recorded in DG Systems data cannot be considered inaccurate.
249. In the present case, the Authority has already examined when the industry began production and whether the production of subject goods is merely a new product line. It has also examined in detail the operations projected versus the operations achieved. The authority notes that, while the domestic industry has already achieved a market share of \*\*\* % the volume of imports has remained significant over the period. The imports continue to account for almost \*\*\* % of the total market and are \*\*\* times the production of the domestic industry. The production, capacity utilization, sales and market share of the domestic industry remained materially below the levels that the domestic industry could have achieved in the absence of dumping.

250. As regards stability of production, the Authority notes that the domestic industry could not establish itself, as a result of dumping in the country. Further, the domestic industry was forced to take shut down for \*\*\* days during the period of investigation. The same was also noted in the Disclosure Statement. Therefore, the Authority finds that the domestic industry is not yet established.
251. Some of the interested parties have claimed that, even though the injury analysis conducted by the Authority relies upon the project report, the report or basis thereof has not been shared with other interested parties. In this regard, the Authority notes that industry had provided a non-confidential summary of the information contained in the project report to other interested parties.
252. The interested parties have also claimed that the project report relied upon by the domestic industry has become outdated since the market situation has changed drastically since the project report was prepared. In this regard, the Authority notes that the interested parties have highlighted decline in prices and Covid-19 as changes which have occurred since the project report was prepared. The Authority notes that despite its observations in the Disclosure Statement the interested parties have not explained how the market situation has changed permanently as a result of the impact of Covid-19. The interested parties have not demonstrated that the market has not yet recovered from the effects of the pandemic. Therefore, merely because a parameter affected the market during the period when the plant was being commissioned does not imply that the projections made before the commissioning of the plant have become outdated, despite the parameter not affecting the actual period of operations. As regards the decline in prices and market situation, the same was already examined by the authority in the Disclosure Statement. No fresh information has been provided by the interested parties in this regard.
253. The other interested parties have submitted that comparison to the project report should be made only after making adjustments. The Authority has considered information such as level of production, capacity utilization, sales, profit before tax, profit before interest, etc. from project report. It is not established why these parameters reported in the project report should be adjusted. The changes identified by the other interested parties are in nature of normal business scenario. However, with change in costs of raw material, inputs or any other relevant factor, the selling price of the product is also expected to change which should not impact the projected profitability of the domestic industry.
254. The Authority further notes that while the interested parties have contended that the domestic industry has not supplied the goods in commercial volumes; the facts on record do not demonstrate the same. The Authority notes that MRF Limited, JK Tyres & Industries Limited, CEAT Limited and Apollo Tyres Limited have furnished information with regard

to their imports from subject countries. If the volume supplied by the domestic industry to these users is compared to the volumes reported by them as purchases from subject countries, the volume supplied by the domestic industry to the users is not insignificant in any manner.

Parameter	Volume supplied by domestic industry*	Volume imported from subject countries**	Total purchases	Share of domestic industry
JK Tyres & Industries Limited	***	***	***	20-30%
CEAT Limited	***	***	***	85-95%
Apollo Tyres Limited	***	***	***	25-35%
MRF Limited	***	***	***	5-15%

\* as per information provided by the users / domestic industry

\*\* as per information provided by the responding users

255. Further, while the other users have not filed a response, the Authority has compared the volume of exports reported by various participating exporters directly to the users, which were also supplied to by the domestic industry. The volumes compared show as under.

Parameter	Volume supplied by domestic industry*	Volume imported from subject countries**	Total purchases	Share of domestic industry
***	***	***	***	70-80%
***	***	***	***	85-95%
***	***	***	***	35-45%

\* as per information provided by the domestic industry

\*\* as per information provided by the responding exporters

256. The Authority has analysed price undercutting based on actual selling price of the domestic industry as well as projected prices of the domestic industry. The Authority found that the price undercutting based on actual selling price is negative. Further, the Authority notes that the domestic industry was suffering injury in both volume as well as profitability parameters.

257. With regard to the submission that the domestic industry has not suffered injury due to absence of volume and price affect, and has witnessed improvement in various economic parameters, the Authority notes that the interested parties have made submission as if the present case is that of material injury. However, in the present case, the Authority has considered that the domestic industry is an establishing industry. The injury with regard to the domestic industry has to be examined in the context of whether the imports have

materially retarded the establishment of domestic industry in India. The term establishing implies, by its very nature, that the industry should be witnessing growth during the period. Therefore, contrary to the contention of the interested parties, the injury analysis is required to be seen in comparison to the performance, which the domestic industry could have achieved had dumping not taken place during the period of investigation. In view of the same, the Authority has relied upon a comparison between actual performance of domestic industry with the projected performance to examine whether domestic industry has been impeded from achieving its projected level of performance, as a result of dumped imports to the country.

258. With regard to the submissions that 2020-21 should not be considered as the domestic industry was in operation for only 2 months, the Authority notes that it has considered imports into India over the injury period as per consistent practice. With regard to the economic parameters of the domestic industry, the Authority notes it has not placed any reliance on 2020-21 as the present case is that of material retardation. The Authority has examined the actual performance of the domestic industry during the period of investigation with the projected performance in the second year of operations.
259. The other interested parties have submitted that actual data for inventories has been examined while projected analysis has been done for other parameters. The Authority notes that the domestic industry did not project holding material inventory levels in the project report.
260. The Authority notes that in an anti-dumping investigation, the injury analysis is conducted for domestic market and not for export market. Hence, significant volume of export does not establish that the domestic industry has not been materially retarded. Further, the interested parties have not established that the domestic sales of the domestic industry were lower because of possible preference to exports by the domestic industry.
261. The Authority notes that the injury determination in the form of adverse impact on ability to raise capital investment is with regard to whether the domestic industry is in a position to raise further capital. Past investments raised does not reflect ability to raise capital investment during the period of investigation.
262. With regard to the claim that any interest costs or startup cost should not be included in the data for injury analysis, it is clarified that the treatment of these expenses for injury analysis is in consonance with the provisions of Anti-Dumping Rules.

263. With regard to the submissions of the other interested parties that depreciation cost should not be considered for injury analysis, the Authority notes that the Authority has relied upon actual costs as per books of accounts for the purposes of injury analysis.
264. The interested parties have highlighted a number of factors which have allegedly impacted the performance of the domestic industry. However, the parties have not provided any evidence that the performance of the industry was adversely impacted by these factors. Further, impact of factors such as global overcapacities, injury due to single product line, Covid-19, startup costs have already been examined by the Authority. The interested parties have not explained why global overcapacities and demand-supply situation in India should be considered relevant for injury analysis.
265. As regards intermittent production halts, shut down faced by the domestic industry and reasons for the same, the Authority notes that the domestic industry did not face shutdown due to any technical factor during the period of investigation. The same was also stated in the application and has not been disputed by the other interested parties.
266. The Authority does not find merit in the contention that the injury to the domestic industry is self-inflicted, since the facts on record do not indicate any collusion between the domestic producer and the Russian producer.
267. With regard to the submission that HIR market is split between different grades, the Authority notes that the domestic industry has produced and sold both BIIR and CIIR in the domestic market. The domestic industry had provided invoices of sales of BIIR to members of ATMA.
268. The other interested parties have claimed that the consumption of HIR in a tyre is to the tune of 2 kgs and the impact should be based on profits of downstream industry. The Authority notes that no evidence has been provided by the other interested parties in this regard. The other interested parties have also failed to provide the combined profitability of the downstream industry in order for the Authority to undertake the relevant examination.

## **L. CONCLUSION & RECOMMENDATIONS**

269. After examining the submissions made by all the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:
- i. The application for initiation of the anti-dumping investigation against imports of Halobutyl Rubber (“HIR”) originating in or exported from Japan, Russia, Singapore, United Kingdom and the United States of America was filed by Reliance Sibur Elastomers Private Limited.

- ii. The product under consideration is Halobutyl Rubber (HIIR) such as Bromobutyl Rubber (BIIR) and Chlorobutyl Rubber (CIIR). HIIR is obtained through halogenation of isoprene groups of IIR. HIIR is commonly used to manufacture inner liners, hoses, seals, membranes, tank linings, conveyor belts, protective clothing and for consumer products such as ball bladders for sporting goods.
- iii. The Authority has adopted a PCN methodology and notified the same. The methodology has been applied to ensure fair comparison between the imported and domestic product. The PCN methodology was developed after due opportunity to all interested parties and taking into account submissions and comments offered by various interested parties. The dumping margin and injury margin are determined based on such PCN methodology.
- iv. The other interested parties filed belated comments with regard to request for exclusion of BIIR, X\_Butyl BB 2030 and X\_Butyl BB X2. The Authority notes that the domestic industry has produced and sold BIIR during the period of investigation and has supplied like article to X-Butyl BB 2030 and X\_Butyl BB X2. Hence, there is no justification for exclusion of the said grades.
- v. The other interested parties have requested exclusion of Bromobutyl 2255 and 7244 and HIIR with high mooney viscosity. The Authority notes that RSEPL B2247 is a high mooney grade produced by the domestic industry and has technical specifications similar to Bromobutyl 2255 and Bromobutyl 7244. Thus, there is no justification for exclusion of such grades.
- vi. The Authority notes that there is no justification to exclude HIIR with higher bromine content as the domestic industry has set up a new production facility and possess the capacity to manufacture the same. The domestic industry could not even fully establish itself in the market due to dumping in the Country and its establishment is being retarded by dumping in the Country. Therefore, it would not be appropriate to exclude this product.
- vii. The Authority holds that since there are no imports of star-branched HIIR, and there is no evidence to show that the domestic industry does not have like article to this product, no exclusion is justified in this regard.
- viii. The Authority notes that the applicant has sold the subject goods to a number of consumers in commercial quantities, and against repeated orders, which implies that consumers have not given formal approval of the material to the domestic industry, but have placed repeat orders on the domestic industry. This establishes acceptance of the product produced by the domestic industry. Further, the domestic industry is capable to manufacture the subject goods as per the requirements of the users.
- ix. The applicant is a joint venture between Reliance Industries Limited and Sibur Investments AG, Switzerland. NKNH, Russia is related to SIBUR group. However, the Authority notes that there is no collusion between the Russian entity and the applicant.

Mere fact of relationship does not automatically disqualify a producer from constituting domestic industry under the Anti-Dumping Rules.

- x. The Authority has examined various facts of the case on record to determine whether and how the Authority should exercise its discretion with regard to eligibility of petitioner to be treated as a “domestic industry” under Rule 2(b), notwithstanding its relationship with one of the foreign producers who has also exported the product in the Indian market. The Authority considered various factors such as the objective & intent of the discretion provided to the Authority under such situation, and the fact the Russian imports were priced in competition with other subject countries showing lack of collusion or collective action by applicant and Russian producer, Russian producer is involved in dumping of product in India, the Russian producer has opposed the imposition of anti-dumping duty and the Authority has recommended imposition of anti-dumping duty on imports from the Russian entity. The Authority has used discretion under Rule 2(b) and concluded that the applicant is eligible to constitute domestic industry for the purpose of the present investigation, despite its relationship with one of the exporters of the product under consideration.
- xi. The Authority has relied upon the DG Systems data to conduct the present investigation. It is noted that the volume of imports from all subject countries was above de-minimis.
- xii. The Authority has not accepted adjustment claimed by foreign producers for level of trade, since the foreign producers have sold to related traders in the domestic market which have further sold to users. In case of export to India, the foreign producers have sold to related traders which have sold to related entities of users. Thus, it is not established that the level of trade at which goods have been sold in case of home market and exports to India is so materially different as to qualify for a price adjustment. Further, no evidence has been provided with regard to the fact that some marketing activities have been undertaken by Singapore entities which have been undertaken by the foreign producers in their home market.
- xiii. Russia has been treated as a market economy country as per the past practice of the Authority and claim of other exporters on this account has not been accepted.
- xiv. Public Joint Stock Company Niznekamskneftekhim, Russia participated in the investigations, filed questionnaire response and demanded individual dumping margin treatment. The response filed by Niznekamskneftekhim could not be used for granting individual dumping margin to the company since the value chain of the producer is incomplete.
- xv. The adjustments claimed by EMAPPL towards costs incurred during startup operations and shutdown costs have not been allowed. EMAPPL did not face startup operations during the period of investigation, and thus no adjustment was warranted. As regards plant shutdown, the same was only temporary in nature, and the costs incurred were not non-recurring costs which benefit current and / or future production. The Authority

- has calculated the cost of production based on the actual costs, as recorded in the books of the accounts of the producer.
- xvi. The normal value and export price for cooperative producers and exporters have been determined based on the information provided by them.
  - xvii. Considering the normal value and export price determined, the dumping margin for the subject goods from the subject countries are quite significant. The Authority found existence of very significant dumping of the product in the Country, ranging between 10 to 70 % for various subject countries.
  - xviii. The present investigation is that of material retardation to a new industry which started production in February 2021 and declared commercial production on 31<sup>st</sup> March 2023. HIIR is a new product which was not being produced in India prior to commencement of production by the applicant. Significant investment has been made by the applicant to establish a separate plant for manufacturing HIIR. The domestic industry is unable to reach the performance projected by it in the second year of operations. The domestic industry has not able to break even due to dumping in India.
  - xix. HIIR cannot be considered as an extension of IIR as separate and substantial investment has been made for manufacturing HIIR; there are different plants for both HIIR and IIR, which were set up on different dates; both the plants run independently; the manufacturing process is different for both the plants; technology has been sourced from different producers for both the products; the cost of production and selling price of both the products is different; both the products have different HS codes; and manpower deployed in both the plants is separate. There is substantial value addition between HIIR and IIR.
  - xx. The project report of the applicant has been considered for comparison of actual performance with projected performance. There is no evidence on record that the project report is unreliable.
  - xxi. Fluctuation in raw material prices is a business scenario which leads to change in selling price of the domestic industry. Further, there is no impact of COVID-19 on the domestic industry in the period of investigation.
  - xxii. The Authority has undertaken cumulative assessment of injury, as all conditions prescribed under the law on this account are fully met. The dumping margin and volume of imports from each of the subject countries is more than de-minimus. Cumulative assessment of the effect of dumped imports on the domestic industry is appropriate. It is also noted that there are no grounds for de-cumulating imports from Russia and undertaking separate examination of Russian imports.
  - xxiii. The demand for the subject goods has increased over the injury period and was the highest during the period of investigation.
  - xxiv. The imports have increased over the injury period and declined only marginally in the period of investigation. While the domestic industry has the capacity to cater to entirety

- of demand in India, it has held minority share in India. The imports held majority of share in India even though the domestic industry has sold the subject goods at losses.
- xxv. The subject imports have suppressed and depressed the prices of the domestic industry. While the actual cost of sales of the domestic industry is lower than the projected cost of sales, the selling price is much lower than the projected. Due to this, the profitability of the domestic industry is lower than projected.
- xxvi. As regards the effect of dumped imports on the economic parameters of the domestic industry, the Authority concludes that the domestic industry is a new industry and dumping of subject goods from the subject countries has materially retarded the establishment of domestic industry in India.
- a. The production, capacity utilization and domestic sales of the domestic industry are lower than the projected performance.
  - b. The domestic industry was forced to shut down its operations for \*\*\* days during the period of investigation.
  - c. While the domestic industry has enough capacity to cater to the entirety of the domestic demand, the majority of demand is held by imports. The market share of domestic industry is much less than the projected market share.
  - d. The inventories of the domestic industry have increased even though it was forced to suspend production and sell at losses.
  - e. The profits, cash profits and return on investment of the domestic industry is much lower than that projected in the second year of its operations.
  - f. The imports have adversely impacted the ability of the domestic industry to raise further investments.
- xxvii. The Authority concludes dumping of subject goods from the subject countries has materially retarded the establishment of the domestic industry in India.
- xxviii. The Authority has determined non-injurious price (NIP), having regard to various provisions of Annexure-III and after detailed scrutiny of financial data/information provided by the domestic industry. The NIP determined by the Authority is reasonable and appropriate to quantify the extent of injury suffered by the domestic industry.
- xxix. Comparison of the landed price of imports with the non-injurious price determined by the Authority shows that the injury margin is quite significant and positive in respect of responding exporters from subject countries.
- xxx. The investigation has shown that injury to the domestic industry is due to dumping of the subject goods from the subject countries and no other factor has caused injury to the domestic industry.
- xxxi. The anti-dumping duty is in the larger public interest as is evident from the following:
- a. Imposition of anti-dumping duty will facilitate fair trade in India and is in larger consumer interest.

- b. The domestic industry has heavily invested in the plant to manufacture the subject goods. It is essential to provide level playing field to the domestic industry in order to keep such investments viable.
- c. Imposition of anti-dumping duty will not restrict imports into India and will not lead to creation of monopoly in India.
- d. The subject goods are not a major cost to the downstream industry. The subject goods are not the main cost component in a tyre. The impact of imposition of anti-dumping duty is to the tune of 0.31%.
- e. In comparison to the gross turnover of the downstream industry, the impact of imposition of anti-dumping duty is less than 0.1%.
- f. The domestic industry manufactures HIIR with high bromine content and hence, there will be no impact on the pharmaceutical industry. No submissions have been made regarding any adverse impact by pharmaceutical industry.
- g. The imposition of duty would not affect the availability of the product. The domestic industry has the capacity to substantially cater to the Indian demand. Imposition of anti-dumping duty does not lead to restriction on imports into India.

270. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that imposition of anti-dumping duty is required to offset dumping and injury. Therefore, the Authority recommends imposition of anti-dumping duty on imports of subject goods from the subject countries.

271. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of anti-dumping duty on the imports of subject goods, originating in or exported from the subject countries for a period of 5 years from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below.

SN	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	40023900	Halobutyl-Rubber	Japan	Japan	Japan Butyl Co., Ltd.	694	MT	USD

2	-do-	-do-	Japan	Any country, including Japan	Any other than (1)	956	MT	USD
3	-do-	-do-	Any country other than Japan, Russia, Singapore, United Kingdom and United States of America	Japan	Any	956	MT	USD
4	-do-	-do-	Russia	Any country, including Russia	Any	1,214	MT	USD
5	-do-	-do-	Any country other than Japan, Russia, Singapore, United Kingdom and United States of America	Russia	Any	1,214	MT	USD
6	-do-	-do-	Singapore	Singapore	Arlanxeo Singapore Pte Ltd.	694	MT	USD
7	-do-	-do-	Singapore	Singapore	ExxonMobil Asia Pacific Pte Limited	1,065	MT	USD
8	-do-	-do-	Singapore	Any country, including Singapore	Any other than (6) and (7)	1,487	MT	USD

9	-do-	-do-	Any country other than Japan, Russia, Singapore, United Kingdom and United States of America	Singapore	Any	1,487	MT	USD
10	-do-	-do-	United Kingdom	United Kingdom	ExxonMobil Chemical Limited	215	MT	USD
11	-do-	-do-	United Kingdom	Any country, including United Kingdom	Any other than (10)	710	MT	USD
12	-do-	-do-	Any country other than Japan, Russia, Singapore, United Kingdom and United States of America	United Kingdom	Any	710	MT	USD

13	-do-	-do-	United States of America	United States of America	ExxonMobil Product Solutions Company	311	MT	USD
14	-do-	-do-	United States of America	Any country, including United States of America	Any other than (13)	743	MT	USD
15	-do-	-do-	Any country other than Japan, Russia, Singapore, United Kingdom and United States of America	United States of America	Any	743	MT	USD

**M. FURTHER PROCEDURE**

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

**(Darpan Jain)**  
Designated Authority