**TO BE PUBLISHED IN PART 1 SECTION-1**
**OF GAZATTE OF INDIA-EXTRAORDINARY**

**F. No. 7/10/2017-DGAD**
**Government of India**
**Ministry of Commerce & Industry**
**Department of Commerce**
**Directorate General of Trade Remedies**
**4th Floor, Jeevan Tara Building, Parliament Street, New Delhi**

Dated the 22nd November, 2018

# FINAL FINDINGS

**Subject: New Shipper Review under Rule 22 of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 pertaining to Anti-Dumping Duty imposed on the imports of Jute Products" viz – Jute Yarn/Twine (multiple folded/cabled and single), Hessian Fabric and Jute Sacking Bags originating in or exported from Bangladesh, as requested by M/s Janata Jute Mills Ltd. (P), regarding Sacking Bags initiated on 1.1.2018.**

**No. 7/10/2017- DGAD:** Having regard to the Customs Tariff Act 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

## A. Background of the Case

2. Whereas, in the original Anti-Dumping investigation, the Designated Authority (hereinafter also referred to as the Authority) recommended, inter alia, imposition of anti-dumping duty on the imports of "Jute products" viz- Jute Yarn/Twine (multiple folded/cabled and single), Hessian fabric, and Jute sacking bags, originating in or exported from Bangladesh and Nepal, falling under Chapter 69 of the Customs Tariff Act, 1975, vide Final findings Notification No. 14/19/2015-DGAD dated 20th October, 2016. The Central Government notified the definitive anti-dumping duty vide Notification No. 01/2017-Customs (ADD) -Customs dated 5th January 2017 and Customs Notification No. 11/2017-Cus (ADD) dated 3rd April, 2017.

3. M/s. Janata Jute Mills Ltd. (Producer and Exporter) filed an application for New Shipper Review (NSR) in terms of Rule 22 of the Anti-dumping Rules read with the Customs Tariff Act, requesting for a New Shipper Review (NSR) claiming individual dumping margin in respect of imports of the sacking bags, originating in or exported from Bangladesh which

was not exported by them during the POI of the original investigation wherein AD measure has been imposed vide Custom Notification no. 11/2017-Cus (ADD) dated 3rd April, 2017.

4. The Authority, having been prima facie satisfied with the conditions laid down under Rule 22 of Anti-dumping Rules, initiated a New Shipper Review investigation, vide Notification No. 7/10/2017-DGAD dated 1st January 2018, for determination of individual dumping margin for the purposes of imposition of the anti-dumping duties levied on the dumped imports of Jute Sacking Bags originating in or exported from Bangladesh, in respect of M/s. Janata Jute Mills Ltd. (Producer).

5. Ministry of Finance notified the provisional assessment on all exports of the subject goods made by M/s Janata Jute Mills Limited till completion of the aforesaid NSR investigation vide Notification No. 30/2018- Customs (ADD) dated 30th May, 2018.

6. The period of investigation for the purpose of this New Shipper Review was fixed as 1st January, 2017 to 30th June, 2018.

## B. PROCEDURE

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

(i) The Authority issued a public notice vide Notification No. 7/10/2017-DGAD dated 1st January 2018, published in the Gazette of India, Extraordinary, initiating the subject NSR anti-dumping investigation.

(ii) The Authority forwarded a copy of the initiation notification to the applicant along with a copy of the exporter's questionnaire and gave them opportunity to make their views known in writing, and filing relevant data in the prescribed Questionnaire, after expiry of the POI.

(iii) The Authority also forwarded a copy of the initiation notification to the High Commission of Bangladesh in India.

(iv) The Authority forwarded a copy of the initiation notification to the known domestic producers in India and gave them opportunity to make their views known in writing.

(v) In response to the initiation notification, Questionnaire response was filed by M/s. Janata Jute Mills Ltd., the applicant for NSR.

(vi) The Authority made available non-confidential version of submissions/ information filed by various interested parties, in the form of a public file, kept open for inspection by interested parties.

(vii) The Authority held an Oral Hearing on 6th September, 2018 to provide an opportunity to interested parties to present information orally in accordance with Rule 6(6) followed by written submissions. The interested parties were allowed to present rebuttal rejoinders on the views/information presented by other interested parties. The Authority has considered submissions received from various interested parties appropriately.

(viii) All relevant Submissions/comments made by interested parties, during the course of this investigation have been considered and included in this final finding.

## C. PRODUCT UNDER CONSIDERATION

8. The product under consideration in the original investigation is 'Jute Products' comprising of Jute yarn/twine (multiple folded/cabled and single), Hessian Fabrics and Jute Sacking bags. The Authority had recommended separate duty for each type of Jute products in the original investigation to producers. This investigation is pertaining to exports of Sacking Bags only i.e. one of the product types of the PUC considered in original investigation, as stated in the Para 1 of the initiation notification dated 1.1.2018.

## D. SUBMISSIONS BY VARIOUS INTERESTED PARTIES AND DOMESTIC INDUSTRY :

9. **Submissions by the Domestic Industry:**

i. The applicant sought the present initiation without providing adequate and necessary information. The Petition lacks information and evidence to show that the applicant satisfies requirements of Rule 22. Applicant needs to establish that it is bonafide exporter who has made bonafide sales, has not exported goods in the original investigation and is not related to producer/exporter of subject goods attracting duty.

ii. Applicant filed questionnaire response on 31st August 2018 while Authority formulated new questionnaire format for NSR investigation on 25th April. Despite taking sufficient time, questionnaire response filed does not meet the new format.

iii. Applicant admitted ignorance on whether it exported to India during POI for original investigation which shows the petition does not contain any evidence that the applicant did not export PUC during the POI of the original investigations. The investigation has been initiated without meeting such important requirement under law.

iv. Nothing in the application shows that the requirement to show that the applicant is not related to any exporter or producer in the exporting country who are subject to anti-dumping duties on the product is fulfilled. Such vital requirement of Rule 22 has not been met before seeking new shipper review investigation. The applicant has failed to provide any evidence in this regard.

v. Authority chose a prospective period as period of investigation i.e., a period which includes subsequent period to the initiation of investigation under Rule 22. There were admittedly exports by the applicant in the past. Instead of considering those exports, the authority chose to proceed on the basis of a prospective POI, which is inappropriate. Applicant in such a case would have been able to manipulate and doctor the data by doing insignificant number of transactions at high prices during period of investigation. This concept has been criticized by the CESTAT in Tiles case.

vi. In the past the authority has initiated new shipper review investigations only upon satisfaction of sales made or firm commitment made for exports. Evidences required under the law constitute of exports made after the POI and before the POI along with irrevocable contractual agreements for sales of the product to India. However, none of these have been given with the application.

vii. Exports made by the applicant during the period of investigation must be bona fide commercial transactions to form basis for dumping margin. It has to be seen whether the sale under consideration is typical and will be representative of the new shipper's future sales. The genuineness of these sales, both in terms of value and volume, should be examined.

viii. Concept of 'bona fide sale' in U.S.A. was introduced to counter attempts of avoidance of duty by undertaking mala fide transactions during POR. It was necessitated to ensure that transactions during POR were representative of "shipper's future commercial practice, and to ensure that the shipper is not attempting to circumvent the duty order". The purpose was to "examine each sale for its commercial reasonableness". This concept was codified in Section 433 of Trade Facilitation and Trade Enforcement Act Of 2015 where the vital factors are considered to determine bona fide sales.

ix. Different NSR investigations initiated should be clubbed together as the requirement under law is to 'carry out a periodical review' implying that applications should be entertained at set or fixed intervals and not as and when the applications are filed. It would also be of administrative convenience to club these together.

x. Applicant has not established its case for grant of individual dumping margin and in the absence of which it may be given weighted average duties given to the cooperating companies not included in the sample in the original investigation, since the original investigation involved sampling.

xi. Under Rule 17, exporters are entitled to their own dumping margin but this right under Rule 17 gets superseded/ qualified by the further provision of sampling under Rule 17 which authorises the Authority not to determine individual dumping margin for each known exporter/ producer.

xii. Determination of individual dumping margin only increases the burden on the authority and considering the product categories and number of producers there are about 855 possible combinations in which goods could have been exported to India. All these channels were not used in the POI of original investigations and therefore there is a high number of channels available for exports. Determining individual margins for each new shipper would be burdensome for the authority.

xiii. Rule 22 provides for the phrase 'time to time' which simply implies at set intervals thereby indicating at bunching of the number of reviews initiated in the present investigation.

xiv. The cooperating non-sampled producers cannot be at a disadvantage as compared to a new shipper as they were also not accorded individual margins.

xv. Any argument that non granting of individual dumping margin based on their own normal value and export price might lead to exaggerated dumping margin and these exporters may

be made to pay a higher quantum of ADD as would have been payable, had that authority considered their own data implies that the sampling law is illegal. A situation where exporter needs to pay a duty higher than its own dumping margin is addressed in review laws.

xvi. No prejudice is caused to exporters if dumping margin is not determined based on their data and such exporters are subjected to ADD on the basis of ADD originally determined for sampled cooperating exporters.

xvii. Authority has to consider and compare import volumes reported by responding exporters and compare them with import volumes reported by responding exporters at the time of original investigations. Volume of exports made by these exporters is quite low as compared to volume of exports considered for determination of individual normal value and export price on basis of individual questionnaire response.

xviii. Since export price is the price at which goods have been exported for consumption in Indian market, price at which different buyers in India have purchased the goods from different suppliers from subject country cannot be materially different. Considering the geographical proximity of the subject country there cannot be a material difference in expenses incurred by different producers in Bangladesh. The same is also the practice of the EU and the same practice of giving margins to new shippers which was accorded to non-sampled cooperating exporters in original investigation be followed in the present investigation.

xix. Authority should restrict the result of investigation to a determination of whether the responding exporter constitutes a new shipper within the meaning of Rule 22.

xx. Argument of the applicant on the basis of WTO Panel report is misplaced. In that panel report the investigation didn't even undertake sampling. It only provides that absence of any cross-referencing in Article 9.5 of the Agreement shows there is no obligation on Authority to calculate a residual duty margin by giving neutral margin as per Article 9.4. The WTO Panel observation was with regard to obligation on the Authority under a law and that too in an original investigation.

xxi. The applicant has indulged in suppression of facts and filed incomplete information in the original investigation. Applicant has a related entity, 'Sadat Jute Industries Limited'. It has been claimed that it does not produce Jute Sacking Bag, but only Jute yarn and hence has not submitted questionnaire response. Such information was not disclosed in the original investigation. Despite being a producer/exporter of Jute Yarn/twine, it did not respond to the questionnaire in previous investigation. Despite claiming it to be a producer, the related party did not file a response even in original investigation. In the original investigation exporter clearly stated it does not have any related or subsidiary company involved in the product under consideration.

xxii. Petitioner has no domestic sales of sacking bags and did not export to India during original investigations yet has significant business interests in India.

xxiii. Applicant claimed excessive confidentiality without any good cause. It treated such data confidential which is publicly available and sought confidentiality on information such as Memorandum & articles of association, details of ownership, the export documents relating to the exports of the product under investigation made to the Indian customers, the

products produced and exported, names and information of the related parties. Non-confidential version of petition and questionnaire response fail to adhere to confidentiality requirements under AD Rules and Trade Notice 1/2013.

xxiv. Requirements under Rule 22, to prove it has not exported the product in the POI and it is not related to any exporters/producers in the exporting country subject to the duties on the product, have not been fulfilled in the application and it is based on mere statements.

xxv. The applicant has undertaken ceremonial business in the product under consideration but wishes the authority to determine individual dumping margin.

xxvi. Applicant is not a new shipper and has exported PUC in the original investigation and attracts anti-dumping duty on a type of the PUC.

xxvii. Since the authority is investigating circumvention proceedings as well it is important to ascertain whether or not the applicant is exporting Sacking Cloth. It must provide information of Sacking Cloth too, being the circumvented product of Sacking Bag.

xxviii. No information, evidence and claim by the applicant with regard to appropriateness of normal value and export price. No information has been given on dumping margin. The applicant has restricted itself to filing questionnaire response that is relevant for original investigations.

xxix. No importers have responded in the current investigation leading to absence of evidence to establish appropriateness of the export price claimed. Furthermore, there is also an absence of bonafide transactions which is vital in current review.

xxx. The applicant has conveniently referred to the word 'shall', as mentioned under Rule 22 of the Indian Anti-dumping legislation, as per its convenience. However, the word 'shall' has to be read in conjunction with the conditions mentioned therein for initiating a new shipper review.

xxxi. The investigation can be initiated only when the new shipper has effectively discharged his obligation by demonstrating that the requirements under Rule 22 have been met which in the current case have not been met.

10. **Submissions by the Applicant Exporter:**

i. Rule 22 provides that Designated Authority *shall* carry out a review for new shipper. Use of the word 'shall' makes it clear that Rule 22 of the Anti-dumping Rules provides for mandatory initiation of new shipper review i.e. if the conditions prescribed under Rule 22 are met, Designated Authority is required to initiate new shipper review and does not have any discretion in this regard. Thus, the claim of the domestic industry that new shipper review should not be initiated because it is not appropriate in the present case even if the conditions prescribed under Rule 22 are met is contrary to the provisions of Rule 22 of the AD Rules.

ii. In Anti-dumping Agreement, Article 9.5 makes it mandatory to initiate the new shipper review. The use of the word "shall" under Article 9.5 indicates that there is no room for any discretion for the investigation authority. Thus, if the conditions under Article 9.5 of the

anti-dumping agreement are satisfied, it is mandatory for the authority to not only carry out a review but also determine individual margin of dumping for such exporter.

iii. Domestic industry submits that applicant should not have exported the product under consideration in any form during the investigation period to be eligible for new shipper review. The Designated Authority granted individual rate of duty to various co-operating producers/exporters for each category of product based on exports made by those producers/exporters during the POI. If any producer/exporter had not exported a particular category of product then those producers were subject to residual rate of duty with respect to that particular category. Respondent exported Jute yarn/twine & Hessian Fabrics to India during the POI. However, the Respondent did not export sacking bags during the POI. Accordingly, M/s Janata Jute Mills Ltd. was granted individual anti-dumping duty rates for Jute yarn/twine & Hessian Fabrics but for sacking bags, it was subjected to residual rate of anti-dumping duty.

iv. It is clear that the anti-dumping investigation comprised of three different product categories and each product category was treated separately for imposition of anti-dumping duty. The Designated Authority did foresee the situation wherein a particular product type was not exported by any producer/exporter. Accordingly, it was duly noted in the final finding as follows:

> "*If any product type viz. Yarn/Twine, Sacking Bag or Hessian Fabric has not been exported by any sampled producer/exporter, dumping margin and injury margin as determined for residual category of producers/exporters has been accorded to such producer/exporter for the product type not exported to India during POI. Any producer/Exporter who has not exported during POI can apply for review as per rule 22 of AD rules*."

v. The aforesaid observation of the Designated Authority in the final finding has already settled that producer/exporter who has not exported a product category during the POI can apply for new shipper review.

vi. The domestic industry has emphasized that if individual dumping margin is determined for new shipper, it will be unfair to the non-sampled producer/exporter in the original investigation. Thus, when sampling methodology is adopted in the original investigation, new shipper should not be granted individual margin of dumping.

vii. Firstly, the domestic industry has failed to note second proviso of Rule 17 which provides for determination of individual margin of dumping for even non-sampled producers who submits necessary information. Thus, when the Designated Authority is obliged to consider request for individual margin of dumping for producer or exporter in the same investigation in which methodology for sampling is adopted, there can be no rationale for denying such right to a new exporter in a new shipper review. Thus, no prejudice is caused to non-sampled producer vis-à-vis new shipper.

viii. Secondly, Rule 17 provides for determination of individual margin of dumping for producer/exporter. However, in case the number of exporters, producers, importers or types of article involved are very large, the authority is allowed to limit its finding to a sample of interested parties. On the other hand, new shipper review, which is carried out under Rule 22 of the Anti-dumping Rules provides for determination individual margin of dumping for

the new shipper. Unlike Rule 17, it does not provide for adoption of sampling methodology. There is nothing to suggest that proviso to rule 17 should be superimposed on Rule 22.

ix. Thirdly, consistent practice of the Authority to interpret Rule 22 to determine individual margin of dumping for exporters is consistent with its obligations under the WTO Anti-dumping Agreement.

x. Fourthly, it is incorrect to equate new shipper with non-sampled producer/exporter in the original investigation. Unlike non-sampled exporter, new shipper did not export during the original period of investigation and had no opportunity to get selected for individual examination in accordance with Rule 17.

xi. Lastly, it is not clear why domestic industry is claiming prejudice on behalf of non-sampled exporter.

xii. Domestic Industry submitted that it is burdensome for the Authority to initiate new shipper reviews for every applicant in the present case. However, the domestic industry cannot decide that conducting new shipper review for more than one exporter is burdensome for the Authority. It is upto the Authority to decide what is burdensome. Also, Rule 22 of the Anti-dumping Rules & Article 9.5 of the Anti-dumping Agreement do not permit for rejection of new shipper review request on the ground that there are many probable exporters seeking new shipper review. In fact, the Designated Authority has conducted as many as eight new shipper review investigations in respect of imports of *Vitrified/Porcelain Tiles from China PR and UAE*. Thus, apprehension of more new shipper review applications cannot be a ground for rejection of new shipper review application and can certainly not be a ground to terminate the review which is already initiated. Lastly, it is noted that rejection of new shipper review on the ground that it is burdensome or that is not appropriate due to any other reasons which is not expressly provided in Article 9.5 of the Anti-dumping Agreement is inconsistent with the obligations under Article 9.5. Thus, it is clear that there cannot be rejection of new shipper review on the ground that it is burdensome.

xiii. Domestic industry claims that exporters can request for mid-term review of existing anti-dumping duty if the applicable anti-dumping duty is higher than the current dumping margin. Mid-term review is initiated under Rule 23 of the Anti-dumping Rules if there is change in circumstances, which are long-lasting in nature. There is no claim regarding change in circumstances in the present case by the Respondent.

xiv. A priori denial of de-minimis dumping margin for a new shipper is not permissible. Article 5.8 of the Anti-dumping Agreement and Rule 14(c) of the Anti-Dumping rules provides that there shall be immediate termination of cases where the authorities determined that the margin of dumping is less than two percent i.e. *de minimis***.** If there is no individual dumping margin determination for new exporter pursuant to new shipper review then there will be no occasion for application of Article 5.8. Any interpretation that excludes application of the entire provision *a priori* cannot be adopted. It is also not doubted that Article 5.8 [and thereby Rule 41(c) of the Anti-dumping Rules] is applicable in case of new shipper review. Panel in *Canada -Welded Pipes* observed that:

> *It seems to us that there is an obvious reason why the relevant parts of Article 5.8 might apply in this context, namely to ensure that new shippers with de minimis margins of dumping are not subject to anti-dumping duties in the same way as exporters examined in the original investigation.*

xv. Rule 22 (2) provides that the Central Government may resort to provisional assessment for exporter made by the new shipper during the pendency of the new shipper review. NSR investigation was initiated specifically on the import of Jute Sacking Bags by the Designated Authority *vide* initiation notification dated 1st January 2018. The relevant para of the initiation notification is as under:

> "The present investigation relates to proposed exports of Jute Products by M/s Janata Jute Mills Limited (Producer and Exporter) **specifically Jute Sacking Bags** in terms of the application filed before the Authority in accordance with the Act and the AD Rules." (emphasis added)

xvi. However, the initiation notice in paragraph 3, the Authority inadvertently noted that:

> **"The Authority recommends provisional assessment on all exports of the subject goods made by M/s Janata Jute Mills Limited till this review is completed,** in accordance with Rule 22 of the AD Rules and having regard to Customs Notification No. 01/2017 – Cus (ADD) dated 5th January, 2017 and Customs Notification No. 11/2017 – Cus (ADD) dated 3rd April, 2017" (emphasis added)

xvii. Ministry of Finance *vide* Customs Notification No. 30/2018 – Customs (ADD) dated 30th May 2018 had notified provisional assessment of the "Jute Products" and thereby includes Jute Yarn/Twine, Hessian Fabric and Sacking Bags. The relevant extracts of the Customs Notification dated 30th May 2018 is as under:

> *"*..Now, therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid recommendation of the designated authority, hereby orders that pending the outcome of the said review by the designated authority**, the subject goods, when originating in or exported from Bangladesh or Nepal by M/s. Janata Jute Mills Limited (Producer) and imported into India, shall be subjected to provisional assessment till the review is completed***"* (emphasis added)

xviii. Prior to the issuance of customs notification of provisional assessment, Nil rate of duty was applicable for Hessian Fabric and 20.6 USD/MT on jute yarn/twine exported by Janata Jute. However, customs authorities are also now requiring provisional assessment on imports of these goods exported by Janata Jute and is requesting furnishing of bond & bank guarantee for exports of jute yarn and twine.

xix. Rule 22 of the Anti-dumping Rules requires provisional assessment of goods in respect of which new shipper review is initiated and not for any other products on which no new shipper review is initiated.

xx. There is no requirement of provisional assessment for exports of Jute Yarn/Twine and Hessian Fabric made by Janata Jute as the anti-dumping duty is already in force on export of these two products and there is no ongoing new shipper review of anti-dumping duty on

these two products for exports made by Janata Jute. Insistence of bank guarantee is putting an onerous burden on the importers and is creating uncertainty about the actual liability of anti-dumping duty on the imports of Jute Yarn/twine and Hessian Fabric. We request the Designated Authority to clarify that new shipper review is initiated for export of Sacking Bags by Janata Jute and therefore provisional assessment is recommended only for import of Sacking Bags in accordance with Rule 22(2) of the Anti-dumping Rules and not for other Jute Products namely Hessian Fabric & Jute Yarn/Twine.

xxi. The fact that Sadat Jute Industries Ltd. is the related entity of the Respondent and that there is no other related entity of the Respondent in Bangladesh was also clearly submitted by the Respondent in the original investigation. Respondent has also provided complete information regarding its related entity in Bangladesh in the application requesting new shipper review. In the application filed before the Authority, the Respondent has clearly stated:

> "*Sadat Jute Industries Ltd. is the related entity of the Applicant. Sadat Jute Industries does not manufacture sacking bags. It only manufactures jute yarns/twines. The Applicant is not related to any other exporter or producer in Bangladesh or Nepal who are subject to anti-dumping duty*."

xxii. In order to ensure maximum compliance, the Respondent did file the exporters questionnaire response as per the new format prescribed by the Authority vide Trade Notice dated 28th February 2018. All the relevant information such as production process, list of major shareholders, sales route of the PUC to India etc. are provided by the Respondent as part of the questionnaire response.

xxiii. The domestic industry claims that prospective period of investigation cannot be considered for determination of dumping margin in a new shipper review because it creates possibility of manipulations by the new shipper/exporter. In order to ensure that Respondent has made bona fide sales and there are no manipulations, the Authority can compare the export price of sacking bags exported by Janata Jute prior to the date of initiation of new shipper review i.e. during 1st January 2017 to 31st December 2017 with the export price of sacking bags exported by Janata Jute after the date of initiation of new shipper review i.e. from 1st January 2018 to 30th June 2018. We also note that the excerpt from the T*iles* case cited by the domestic industry refers to an observation of the Hon'ble CESTAT which was discussed by the Hon'ble High Court of Delhi in *H and R Johnson (India) Limited v. Union of India & Ors.* [2008 (232) E.L.T. 390]. The High Court expressed its disapproval of the very same paragraph cited by the domestic industry and noted that in the case of a first-time shipper, a retrospective period cannot be taken. Based on this, the High Court agreed that, with respect to New Shipper Review, a prospective period of investigation must be allowed and cannot be ruled out.

xxiv. Domestic industry claims that the Respondent has not provided details of its exports prior to the initiation of investigation. Domestic industry relies on the format prescribed by the Authority for initiation of new shipper review. The present investigation was initiated on 1st January 2018 i.e. before the Authority prescribed the format for application to be filed new shipper for requesting initiation of new shipper *vide* Trade Notice No. 08/2018 dated 25th

April 2018. Prior to the issuance of this Trade Notice, there was no application format prescribed by the Authority to request for initiation of such new shipper review. Thus, it is legally incorrect to claim that Respondent has not provided information in accordance with the format prescribed by the Authority.

xxv. Domestic industry requests the Authority to club all the existing new shipper reviews for administrative convenience. The domestic industry does not provide any legal basis for such request. Authority is required to determine individual margin of dumping for different new shippers if the conditions required under Rule 22 are satisfied. Moreover, six new shipper reviews are already initiated on different dates and are currently at different investigation stage of investigation. POI and product category for each new shipper review is different. Factual issues arising in these reviews will also be different. Moreover, even though no specific timeline is prescribed under the rules for completion of the review, it is expected that the review is completed in a timely manner. Article 9.5 of the Anti-dumping Agreement, which provides for the new shipper review, specifically provides that new shipper review should be completed on an accelerated basis.

xxvi. The domestic industry has also claimed that individual export price and dumping margin of new exporters may not be materially different and therefore there is no requirement to conduct new shipper review. This assumption is generic and has no factual basis. In any case, if the export price is not materially different then these exporters would be subjected to the same or similar anti-dumping rate pursuant to the review. It will not cause any prejudice to the interest of the domestic industry.

xxvii. Domestic industry places reliance on the EU law to submit that in case sampling has been done in the original investigation, then the new shipper must be granted cooperating non-sampled rates rather than individual dumping margin. In addition to this, it is also claimed that the prices at which different buyers in India have purchased the goods from different suppliers in Bangladesh (essentially, export prices) cannot be materially different and therefore, the cooperating non-sampled rate should be applied. It is noted that EU law reproduced by the domestic industry and submit that the provision contained in EU law appears to go beyond the law contained in the ADA. In any case, such commitments are not globally applicable and Indian AD Rules and the Act do not provide for the same. Thus, it is not possible for the Designated Authority to incorporate such provisions of EU law given the clear and unequivocal mandate of the Indian law.

xxviii. Domestic industry has claimed that Respondent has incorrectly relied on the WTO decision in *Mexico – Definitive Anti-dumping Measures on Beef and Rice* to submit that anti-dumping duty rate meant for co-operative non-sampled exporter cannot be granted to new exporter. The Domestic industry has relied on the provision in the EU law and requested the Authority to follow the same practice. In this regard, we submit that Article 9.4 of the Anti-dumping Agreement provides for determination of anti-dumping duty for non-sampled exporters. Article 9.5 of the Anti-dumping Agreement provides for determination of duty for new shipper. Thus, provision governing anti-dumping duty for non-sampled exporters and for new shipper is different and there is no rationale for commingling the two provisions or reading them in a manner that reads into both provisions. There is no legal basis for applying anti-dumping duty rate determined for non-sampled cooperating exporters in

accordance Article 9.4 to a new exporter for whom anti-dumping duty is to be determined in accordance with Article 9.5 of the Anti-dumping Agreement. Article 9.5 does not borrow provisions of Article 9.4 and does not incorporate the same by reference. Also, nothing contained in Article 9.5 leads to the deduction that provisions of Article 9.4 can be borrowed for the purpose of Article 9.5.

xxix. It is submitted that though *Mexico – Definitive Anti-dumping Measures on Beef and Rice* arose out of different facts and circumstances, there can be no doubt that the Panel and Appellate Body report is conclusive regarding the legal issue of applicability of sampling provision to new shipper reviews. We reiterate that in the absence of cross referencing in Article 9.5 to Article 9.4 (sampling), there can be no interpretation or expanded reading of the legal provisions as contained under Article 9.5 and resultantly, Rule 22 of the AD Rules.

xxx. Domestic industry claims that various information such as memorandum and articles of association, details of ownership, the export documents relating to export of the product under investigation, the products produced and exported, name and information of related parties. We submit that such a claim is baseless, and the Respondent has discharged its full responsibility in the matter. It is also submitted that the documents for which confidentiality has been claimed are not public domain documents and contain business confidential information. As per Trade Notice 1/2009 dated 25 March, 2009, the Respondent was required to furnish separate copies of the confidential and non-confidential versions. The same has been done. Based on the distinction between the two versions, the Authority may accept or reject the request for confidentiality on examination of the nature of the information. It is submitted that certain documents, such as Memorandum & Articles of Association of the Respondent, were not susceptible to summarization and the titles of the document are sufficient for understanding the nature / content of the documents. The purpose of providing a non-confidential summary is to ensure that the responding party is enabled to respond to the same and counter any arguments arising from such documents. However, in the present scenario, these documents are provided for the information of the Designated Authority concerning the authenticity of the Respondent and its legal existence, and not in support of any legal contentions raised.

xxxi. Domestic industry has sought additional information pertaining to the Respondent's sales of sacking cloth in view of the Anti-Circumvention investigation being undertaken by the Authority. In this regard, it is submitted that the purpose and objective of the new shipper review and the anti-circumvention investigation are completely distinct. It is also submitted that the products examined under the two investigations are also completely distinct. There is no rationale for commingling the two investigations in any manner.

xxxii. Domestic industry has claimed that the hearing conducted by the Authority is not "effective" in so far as relevant information is filed by the interested parties and made available to all other interested parties. In this regard, it is submitted that all relevant evidence pertaining to the criteria encapsulated in Rule 22 have been supplied to the Authority along with non-confidential versions thereof prior to the oral hearing. All such documents remained available in the public file. Therefore, the claims of the domestic industry are merely statements and merit no consideration at all. We request the Authority to reject such statements.

xxxiii. Domestic industry claims that the lack of response from importers is evidence that the Respondent has somehow attempted to suppress the fact that a token export was made at unrealistic price in order to obtain a low or no dumping margin and thereafter aggressively dump the volumes. We note that the domestic industry has recorded its theories and made no legal or factual submissions in this paragraph. It is submitted that the neither the Respondent nor the Authority itself can compel an independent importer to participate in an ongoing investigation. Therefore, the lack of such participation does not evidence anything. The domestic industry's submissions are merely accusatory statements and theories with no legal or factual merit. We request the Authority to reject such statements.

xxxiv. Domestic industry has reiterated its submissions that the low volume of exports by the Respondent shows that the transactions are somehow not *bonafide*. There is no merit in such claims. The Respondent reiterates that the only criteria applicable to new shipper reviews is contained in Rule 22. The attempts to expand Rule 22 by reading in additional criteria regarding "representative" or "sufficient" exports, is illegal and has already been determined to be so by the WTO Panel and Appellate Body in *Mexico – Definitive Anti-dumping Measures on Beef & Rice.*

xxxv. The domestic industry has requested the Authority for grant of another hearing. We request the Authority to note the vagueness of the submissions made by the domestic industry, its failure to make itself aware of facts and circumstances of the original investigation as recorded in the Final Findings issued by the Authority and its attempts at misguiding the present investigation. We submit that the domestic industry failed to take note of documents supplied by the Respondent herein and which were made available in the Public File by the Authority, prior to the hearing conducted, and is now claiming that the hearing was ineffective because it did not have access to the relevant information.

11. **The submissions made by importer/user (M/s Chiranjilal Gourishanker & Co. and Unnati Overseas) are as follows:**

- **It is noted that similar submissions are made by M/s Golden Floor Furnishing Pvt. Ltd. (importer/user)**

i. It is submitted that M/s Janata jute mills limited participated and cooperated in the anti-dumping investigation during the period of investigation. During the period of investigation (1st April, 2014 to 31st march, 2015), M/s Janata jute mills Limited had only exported Jute Yarn/Twine and Hessian Fabric to India. The Authority evaluated individual dumping margin and recommended individual rate of anti-dumping duty on jute yarn/twine (20.68 US$/MT) and hessian fabric (Nil Duty) exported by M/s Janata Jute Mills Limited. Since, M/s Janata Jute Mills limited did not export jute sacking bags during the POI, residual rate of anti-dumping duty (138.97 US$/MT) was applicable on exports of jute sacking bags by Janata Jute Mills Limited to India.

ii. M/s Janata jute mills limited applied for a New Shipper Review under Rule 22 of anti-dumping rules for jute sacking bags. NSR investigation was initiated specifically on the

import of jute sacking bags by the designated authority vide notification dated 1st January, 2018.

iii. Rule 22 of the Anti-Dumping Rules requires provisional assessment of goods in respect of which NSR is initiated and not for any other products on which no NSR is initiated. Accordingly, the initiation notification issued by the Designated Authority recommended provisional assessment of anti-dumping duty on exports of Jute Sacking bags made by Janata Jute Mills Ltd. till the completion of the New Shipper review.

iv. Thus, it is clear that provisional assessment was required only for imports of sacking bags from M/s Janata Jute Mills Ltd., for which NSR was initiated and is ongoing. However, ministry of Finance vide Customs Notification No. 30/2018 – Customs (ADD) dated 30th May, 2018 had notified provisional assessment of the "Jute Products" including Jute Yarn/Twine, Hessian Fabric and Sacking Bags.

v. It is submitted that the ministry of finance had inadvertently recommended provisional anti-dumping duty on subject goods i.e. all three jute products namely Jute Yarn/twine, Hessian Fabric and Sacking Bags. Customs authorities are now requesting for a bond/bank guarantee from the importers on imports of Jute Yarn/Twine and Hessian fabric from M/s Janata Jute Mills Ltd. There is no requirement of provisional assessment for exports of Jute Yarn/twine and Hessian Fabric made by Janata Jute Mills Ltd. as the anti-dumping duty is already in force and there is no ongoing NSR of Anti-dumping duty on these Jute products for exports made by Janata Jute Mills Ltd. Insistence of bank guarantee is putting an onerous burden on the importers and is creating uncertainty about the actual liability of anti-dumping duty on the imports of Jute Yarn/Twine and Hessian Fabric.

## E. EXAMINATION BY AUTHORITY

12. Rule 22 of the Anti-Dumping Rules provides as follows –

*"22. Margin of dumping, for exporters not originally investigated.*

*(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.*
*(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:*

*Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if*

*such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review."*

13. Article 9.5 of the WTO Agreement states as under –

*"9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review."*

14. In terms of the aforesaid Rule, provisions in the WTO Agreement and the past practice of DGTR, a New Shipper Review investigation is to be carried out under following circumstances for the purpose of determining individual dumping margin in respect of any exporter or producer from the subject country attracting ADD:

    i. that the exporter or producer has not exported the product under consideration during the period of investigation, and
    ii. that exporter or producer shows that they are not related to any of the exporter or producer in the exporting country who are subject to the anti-dumping duties on the product concerned.

15. In the instant case, M/s Janata Jute Mills Ltd. filed an application before the Authority seeking individual dumping margin on jute sacking bags and requested for initiating the new shipper review.

16. As regards the eligibility of the producer/exporter for claiming 'NSR', the Authority has correlated the claim made by the producer/exporter with respect to data/ information filed by the producer/exporter in the original investigations. No interested party has provided evidence of non-fulfilment of condition by the producer/exporter for NSR by way of any substantive evidence. The Authority therefore holds that the producer/exporter is eligible to seek a New Shipper Review in the instant case.

**Scope of Investigation**

17. The Authority notes submissions by the importers regarding the field formation interpreting Rule 22 applicability on all three types covered in Product under Consideration in original investigation and clarifies that the scope of product under review from NSR is Jute sacking bags only as stated in Para 1 of the initiation notification dated

1.1.2018. The other two product types i.e. Jute Yarn/Twine (multiple folded/cabled and single) and Hessian Fabric covered in the PUC in the original investigation are not part of this review and hence the AD duties applicable on these two types will be as stipulated in S. No. 9 and 10 in Custom Notification No. 11/2017-Cus (ADD) dated 3rd April, 2017.

**Determination of Dumping Margin and AD measure**

**Normal Value**

18. The producer/exporter has provided Cost of Production (COP) of the subject goods during POI. The Authority has determined ex-factory COP as ***Taka/MT with addition of 5% profit, the normal value comes to Taka/MT (*** $/MT).

**Ex-Factory Export Price**

19. The Authority notes that producer/exporter has exported *** MT during POI at CIF of 82655.66 Taka/MT. After considering adjustments on Inland freight, Port charges and Bank charges to an extent of *** taka, *** taka and ***US$ respectively for the exports to India. The Ex-EP for the only transaction comes to *** Taka/MT (*** $/MT). The Authority notes that export subsidy claimed as an adjustment for Ex-EP is not admissible as was also held in the original finding in para 127 (v) of Final Finding dated 20th October, 2016 being not one of the identified adjustments under Article 2.4. However, appropriateness of this export price is considered below.

20. The Authority notes that the producer/exporter has done only one transaction (export) of sacking bags on 9.2.2017 to India of only *** MT quantity. In the original investigation, the 2 sampled producer/exporter considered for individual dumping margin had exported much significant quantities i.e. more than 800 MT individually. The non-sampled producers/exporters who had cooperated were accorded dumping margin on the average dumping margin of the 2 sampled producers/exporters. The annual demand of sacking bags in India is the range of almost 50000 MT, therefore establishing that price of a small quantum of consignment is representative requires appropriate analysis.

21. The Authority notes that there is no stipulation on the quantum of exports to be made by a New Shipper during the chosen POI. However for the export price to be representative for the POI, the Quantum and spread of exports should be such that it ensures representativeness, appropriateness and reliability of the export price. The Rule 22 provides for determining individual dumping margin for a New Shipper. The POI chosen may be both historical and prospective as there is no bar in the AD Rules regarding choice of POI. The Hon'ble High Court of Delhi in H and R Johnson (India) Limited vs. Union of India through order dated 14.05.2008 taking cognizance of Hon'ble CESTAT's order dated 27.8.2007 has clarified regarding POI being of a prospective period. In the instant case, the POI considered is both historical and prospective that too of a sufficient duration, to provide the producer/exporter a reasonable and fair opportunity. The producer/exporter did not export during the post initiation period of POI. The Authority notes that producer/exporter has submitted regarding delay in issuance of Custom Notification under Rule 22 by the Department

of Revenue but no details of loss of any confirmed commitment on exports have been stated by the producer/exporter. The trend of past exports and non availment of post initiation period for exports indicates that the producer/exporter not seem to be seriously interested in the Indian market.

22. The Authority notes that the producer/exporter exported only one transaction during the historical period. The Authority in order to establish representativeness of the export price has examined transactions of sacking bags during the same month by other importers and also the average monthly import price of sacking bags during POI from Bangladesh. Comparison on both fronts indicates that there is quite a variation in export prices over time and even types of sacking bags. Since Normal Value has been determined on the basis of Cost of Production for the entire POI i.e. 18 months period, computation of dumping margin by comparing average normal value of 18 months on one hand and with a single export transaction is not reasonable and appropriate.

23. Therefore with only one transaction of a limited quantity of exports, the Authority does not consider it appropriate to accord a specific dumping margin based on this data to the producer/exporter.

24. However, the Authority notes that the producer/exporter has nevertheless shown intent to export and has also undertaken exports though small and therefore Authority accordingly considers AD measure applicable to non-sampled category to applicant producer/exporter rather than the residual category of measure.

25. The Authority notes submissions of both Domestic Industry and the producer/exporter regarding appropriateness in awarding quantum of measure applied for non-sampled producers/exporters to the applicant producer/exporter in a NSR. The Authority appreciates that to the extent possible a NSR applicant needs to be granted an individual dumping margin based on their actual exports during a NSR investigation. However to evaluate this, the producer/exporter needs to export a volume which is of a commercial quantum so as to ensure establishing that the export price to be credible and not tainted. Merely undertaking some token exports does not enable the Authority to establish credibility of the Export Price. The Authority appreciates the submission that had the producer/exporter exported in the original investigation he could have opted for being in sampled category and that the same opportunity needs to be given to him in a NSR investigation. As stated above, such a producer/exporter is provided an opportunity under Rule 22 of AD rules which needs to be seriously availed by the applicant producer/exporter in a manner to establish a justified claim. In event of this not happening the AD measure applicable to non-sampled producers/exporters which are average of sampled producers/exporters would in no way be unfair if applied to the applicant producer/exporter. It needs to be appreciated that the non-sampled producer/exporter could also be either above the aforesaid average level or below it. Therefore for the applicant producer/exporter in the instant case, the same non-sampled category of measure is appropriate and justified.

## F. POST DISCLOSURE COMMENTS

26. M/s TPM representing the domestic industry submitted the following post disclosure comments:

(i) An exporter will be eligible for a separate duty only if it has effectively discharged his obligation by demonstrating that the requirements under Rule 22 have been met. It is submitted that it is the exporter applicant that has to show that the mandatory conditions have been fulfilled for an NSR and not the Domestic Industry. There is nothing in the application, written submissions and even in the Disclosure Statement issued which shows that these requirements have been fulfilled. Documents demonstrating eligibility as new shipper review are required by Designated Authority for considering an exporter as a new shipper. It needs to be shown that sufficient sales have been made to establish an appropriate export price.

(ii) The domestic industry has extensively submitted in the written submissions the fact that the applicant is a dishonest exporter. In the present investigations, admittedly the applicant has a related entity named 'Sadat Jute Industries Limited'. However it has been claimed that the said producer does not produce Jute Sacking Bag, it only produces Jute yarn and hence has not submitted questionnaire response. It is pertinent to note here that the applicant did not disclose the facts as regards to its related party in the original investigation. Further, exporter's questionnaire was sent to 'Sadat Jute Industries Limited', a related company of Janata Jute Mills Limited, the responding exporter in the original investigation and the applicant in the instant investigation. However despite being a producer/exporter of Jute Yarn/twine, as has been claimed in the application for the current investigation, 'Sadat' considered it irrelevant to respond to the questionnaire in the previous investigation. There is no mention of 'Sadat' in the original investigation except for the fact that the questionnaire was sent seeking a response but was not replied to. The current application states that 'Sadat' is engaged in the manufacture of Jute Yarn/twine. However, the domestic industry finds it astonishing as to why the said related party avoided filing the questionnaire response in the original investigation when it was engaged in the production of the PUC even at the time of the original investigation. This only implies that in the absence of complete response, the questionnaire response itself in the original investigation was incomplete and the applicant received an individual duty. It was claimed at the time of the oral hearing that the applicant had stated in the original investigation that they have a related party which has not exported subject goods. This is a factually incorrect and misleading statement. Applicant may be put to prove this statement. Relevant page from the non-confidential version of the questionnaire response was earlier enclosed with the written submissions. It would be seen that the exporter clearly stated that it does not have any related or subsidiary company involved in the product under consideration. Appropriate information should have been provided by M/s Sadat Jute Industries Ltd.

(iii) It is submitted that the minimum mandatory information that the new questionnaire for NSR investigation issued by the Authority on 25th April, 2018 requires the following:

a. *Copy of your sales ledger during the POI*
b. *List of monthly sales per country after the POI*
c. *Articles of Association/Memorandum of Association*
d. *Certificate of registration*
e. *List of major shareholders of the company during the POI*
f. *Membership certificates (Trade associations etc.)*
g. *Export licenses, if applicable*
h. *Production licenses, if applicable*
i. *Sales routes of the product under consideration to India*
j. *Production process of the product under consideration*
k. *Evidence supporting the installed capacity of the plant for PUC*
l. *Invoicing procedure for the product under consideration*
m. *Brochure and general company documentation*
n. *Two sets of export documents to India for exports made after POI and before the POI.*
o. *Evidence of irrevocable contractual agreements of sales of the product under consideration to India*
p. *Sample purchase invoices of production equipment for the purpose of manufacture of the product under consideration*
q. *Sample purchase invoices of raw materials used for the purpose of the manufacture of the product under consideration*

(iv) The mere fact that the authority did not make any specific prescription earlier and has now made specific prescription for the application does not imply that such information is not necessary for the present investigations. It only implies that – (a) this information was required at the stage of petition itself; (b) the requirement lists out very specific document that should be provided to establish the eligibility and (c) the documents that are required by the authority in order to establish eligibility. Thus, the interested party cannot escape the requirement only because it has been listed subsequently. The format is only clarificatory in nature. The format establishes what is considered relevant, appropriate and necessary for the purpose of establishing a case. Thus, insufficient information and evidence has been provided by the applicant.

(v) NSR pose an inherent risk to a domestic industry that has obtained relief from unfairly traded imports through the imposition of an antidumping duty order. As is often the case, an exporter or producer requests a new shipper review based on one or a handful of high price sales or exports the subject goods during the period of investigation which are not commercially reasonable for a company operating under normal course of trade. The combination of a high "all others" rate and the new shipper's high price compared to other import prices could mean two things: either the new shipper truly means to replicate the high price sale upon which it predicated the review, or, the new shipper will take advantage of one high price sale to secure a lower-than-average dumping margin, and then typically charge a far lower price (low enough to undercut the

competition that has a higher dumping margin, but still high enough to make a hefty profit which would otherwise be unavailable). It needs to be seen whether the sales under consideration is typical and will be representative of the new shipper's future sales.

(vi) It needs to be shown that exports made by the new shipper applicant during the period of investigation are sufficient enough to grant dumping margin based on its own normal value and export price. Not only that the exporter had only one export transaction in a product where demand in India is in the region of **13,70,000** MT (for 18 months of the POI of the present case) and there were at least **322** known export transactions from Bangladesh to India. If exporters from Bangladesh would export **43,626** MT product during the POI of the original investigations and if there could have been **1,430** transactions in that POI for the product type, it is not normal that the applicants have just one export transaction and wishes the Designated Authority to fix dumping margin on the basis of such export transactions. The concept of 'bona fide sale' is necessary to counter attempts at avoidance of anti-dumping duty by undertaking mala fide transactions during POR of new shipper review. The purpose is not to "ascertain the fair value of the merchandise, but examine exports for their commercial reasonableness".

(vii) In the instant case, the Authority has noted at para 20 that the exporter has made only one transaction in February 2017. Further the Authority has also observed that the exporter has not made any exports after that and thus it appears that the exporter is not serious about the Indian market. The Authority has also specifically noted as follows:

*Therefore with only one transaction of a limited quantity of exports, the Authority does not consider it appropriate to accord a specific dumping margin based on this data to the producer/exporter.*

(viii) Thus, it is apparent that the volumes of exports made by the applicants to India are miserably low having regard to the consumption in India. The exporter must show why it was not able to export higher volumes during the present period. The entire effort is highly stage managed. The transactions done by the applicants were atypical, mala fide and commercially unreasonable and it follows that the export price depicted by them should not be taken into consideration by the Designated Authority as they do not depict the price at which the applicants will sell PUC in the future. Such export price cannot be established by ceremonial export transactions. Such export price should be considered along with associated volumes having regard to the total imports in India and consumption of the product in the Country. In a situation where there were 13,70,000 MT imports involving 322 transactions, a party cannot contend that it was not able to export significant volumes due to ADD in place. In any case, existence of ADD in place cannot be an excuse for not being able to export. In fact, any argument that a party could not export due to ADD implies that the law presupposes that imposition of ADD shall lead to complete withdrawal of exports from the country

concerned. The review should be terminated on the grounds that appropriate export price is not available for comparison and the residual duty should be applied on the applicants.

(ix) The DI referred to the recent findings in the matter of NSR investigation concerning imports of R-134a, wherein the Authority specifically notes as follows as regards low volume of exports made.

*The applicants have not sold the subject goods in significant volumes vis-à-vis imports from China during the POI even when the applicants were entitled to provisional assessment and other producers/exporters were suffering antidumping duty. They have exported insignificant volumes which does not even merit individual determination. The entire effort in seeking individual dumping margin appears to lack seriousness on the part of exporter to export.*

(x) There is no questionnaire response from the importers of the PUC. It is from the Disclosure Statement that the domestic industry came to know that importers have made submissions in the present investigation. This further smoke conscious attempt to suppress the fact that a token export was made at unrealistic price in order to obtain a low or no dumping margin and thereafter aggressively dump the volumes. In view of no questionnaire response from the importers, the Designated Authority is prevented from ascertaining appropriateness of the import price. Therefore, absence of importer's questionnaire response is for the reason that the import transaction has been made at officially at normal high price and therefore there is a clear question of the entire case failing if the importer files a questionnaire response and shows the price at which goods were imported. If the goods were imported for trading purposes, the importer would have to show that it has sold the material at a profit considering the import price, it is impossible for an importer to show that it has sold the product at a profit. An importer could not have consumed the product in the market. The importer could have only sold the product in the market. It is only for this reason that there is only one export transaction only to mislead the authority that there is an export price.

(xi) Grant of dumping margin individual duty based on imports implies correct establishment of normal value and export price. Further, correct establishment of export price requires establishment of reasonableness of the import price. It is not a case where the Authority has granted a past period as the POI and therefore the applicant was not in a position to undertake significant exports because of ADD. It is a case where there are significant imports even after imposition of ADD and the exporter was given a provisional assessment order. Despite an average import of 3,636 MT and 543 MT per month from Bangladesh at the time of original investigation and current POI respectively, the applicant has undertaken a ceremonial export of just 20 MT only. Thus, the applicant in any case has not established that it should be granted individual duty based on its own dumping margin and grant of individual duty based on sampled cooperating exporters who were earlier investigated by the authority is inappropriate.

(xii) Notwithstanding, the domestic industry reiterates that the applicant may be given the weighted average duties given to the cooperating companies not included in the sample in the original investigation, since the original investigation involved sampling. Following are pertinent to note in this regard:

a. The applicant cannot demand a position more advantageous than the cooperating non-sampled producers of original case. If cooperating non-sampled producers were not given individual duties, the NSR applicant cannot insist on duty based on its own data.

b. Rule 17 entitles exporters to their own dumping margin. But this right gets superseded/ qualified/restricted by the sampling provision.

c. Burdon on the Designated Authority is the fundamental justification for sampling and should remain relevant even for NSR.

d. Any argument that non granting of individual dumping margin based on their own normal value and export price might lead to exaggerated dumping margin and these exporters may be made to pay a higher quantum of ADD as would have been payable, had that authority considered their own data may not always be true. In fact, there may be situation where the exporter's own data may show higher or lower dumping margin than the dumping margin determined for non-sampled cooperative exporters.

e. The NSR limits investigation only to dumping margin. The original duty on non-sampled cooperative producers may even be at injury margin. Thus, extending duty given to non-sampled cooperative producers can also lead to significant balance of interests of the competing interested parties. Thus, balance of convenience suggests that the duty earlier recommended to non-sampled cooperative producers would be just and fair to all parties to the investigations. In any case, it cannot be said that duty recommended on non-sampled cooperative producers at the time of original investigations based on sampling law is illegal, as it exceeds or is lower than actual dumping margin. In fact, duty on non-sampled cooperative producers is imposed even without assessing dumping margin.

f. A situation where exporter needs to pay a duty higher than its own dumping margin is addressed in review laws. Thus, the mere fact that a party in the category of non-sampled cooperative producers or NSR may have to pay higher duty than the dumping margin is well addressed under the law. In fact, a party may pay higher or lower duty than the actual dumping margin at the time of shipments. This is however addressed under review provisions.

g. Sample was decided by considering various aspects such as volume of imports and product coverage in the original investigation. The dumping margin determined at the time of original investigations is therefore based on a scientifically drawn sample.

h. Volume of exports made by the applicant is quite low as compared to total volume of imports of various kinds of jute products in general and sacking bag in particular. While it was appropriate to draw sample at the time of original investigations even when the volumes were low, in case of an NSR, where the

POI is partly retrospective and partly prospective, a low volume of exports by the applicant may be insufficient to determine export price.

i. Since export price is the price at which goods have been exported for consumption in Indian market, price at which different buyers in India have purchased the goods from different suppliers from subject country cannot be materially different. Considering the geographical proximity of the subject country there cannot be a material difference in expenses incurred by different producers in Bangladesh. The investigation has however shown that there has been significant variation in terms of export prices of subject goods by all the exporters on monthly basis as well as on transaction wise basis for the month in which the applicant exporter exported goods, i.e., February 2017.

j. It is also the practice of the EU to grant non sampled cooperative producers to NSR and the said practice has not been held illegal or even inappropriate by a court of law or WTO. While this is EU practice, this is clearly guiding in terms of permissibility of the methodology under the WTO Agreement.

27. M/s LKS representing the producer/exporter submitted the following post disclosure comments:

(i) The Authority has rejected the export price of Respondent and has not determined individual margin of dumping for the Respondent. The only reason provided by the Authority to support it's decision is that Respondent has exported limited quantity of sacking bags *vide* one export transaction during the POI. The Authority has noted that it is fair to extend the anti-dumping duty applicable to non-sampled producer/exporter to the Respondent.

***i. Insistence on commercial quantity of exports in a new shipper review for determination of individual margin of dumping is contrary to Rule 22 of the Anti-dumping Rules and Article 9.5 of the Anti-dumping Agreement***

(ii) In this regard, it is submitted that variation in import price of sacking bags in the same month has no bearing on the credibility or reliability of the export price of the Respondent. The price of Sacking Bags depend on the size/weight/type of stitching and the difficulty in weaving the fabric. Thus, it is expected that selling price by different exporters or purchase price by different importers would show variation even during the same period.

(iii) Pre-condition that exports should be in commercial quantum and/or should spread over the POI is directly contrary to Rule 22 of the Anti-dumping Rules and Article 9.5 of the Anti-dumping Agreement. Rule 22 of the Anti-dumping Rules states that the Authority shall carry out new shipper review to determine individual margin of dumping if (i) the producer or exporter has not exported the product to India during the period of investigation and (ii) this producer or exporter is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. The criteria mentioned in paragraph 1 of Rule 22 are the only criteria applicable to new shipper reviews under Rule 22 of the AD Rules.

(iv) There is no requirement under Rule 22 that exports by the new shipper should be of certain minimum quantity and/or that such exports should spread over a particular time period to allow determination of individual dumping margin. By so requiring, the

Authority has added additional criteria under Rule 22 of "representative" or "sufficient" exports. In other words, by requiring "representativeness" of exports, the Authority has imposed a condition which is not provided in Rule 22.

(v) In *Mexico –Rice*, Section 89D of Foreign Trade Act (FTA) of Mexico was challenged because Section 89D provided that the volume of exports of the party requesting for new shipper review should be representative. Article 89D permitted the Mexican investigating authority (Economía) to conduct an expedited review provided, *inter-alia*, the respondent exporter shows a "representative" volume of exports to Mexico during the period of review. The Appellate Body therein noted that by so requiring, Article 89D imposes a condition not provided for in the relevant provisions of the Anti-dumping Agreement. As such, Article 89D prevents Economía from granting a review in instances where the conditions set out in the relevant WTO provisions have in fact, been met by a respondent.[1] Consequently, the Appellate Body held that Section 89D of FTA is "as such" inconsistent with Article 9.5.

(vi) Thus, it is settled that the Authority cannot prevent Respondent from getting an individual dumping margin by adding conditions which are not provided under Rule 22.

***ii. Anti-dumping duty applicable for non-sampled exporters cannot be applied to a new shipper under Rule 22 of the Anti-dumping Rules***

(vii) In paragraph 25 of the disclosure statement, the Authority considered the Respondent as a non-sampled producer/exporter and has considered it fair to apply anti-dumping duty rate for non-sampled producer/exporter to the Respondent.

(viii) Rule 17 of the Anti-dumping Rules provides for individual margin of dumping for exporters but also provides that in case the number of exporters are very large, the authority is allowed to limit its finding to a sample of interested parties. On the other hand, Rule 22 of the Anti-dumping Rules provides for determination individual margin of dumping for a new shipper. Unlike Rule 17, Rule 22 does not contain any proviso and therefore does not permit adoption of sampling methodology in any circumstances. There is nothing to suggest that the sampling proviso to Rule 17 should be superimposed on Rule 22.

(ix) Likewise, Article 9.4 of the Anti-dumping Agreement provides for determination of anti-dumping duty for non-sampled exporters. Article 9.5 of the AD Agreement on the other hand provides for determination of individual rate of duty for a new shipper. Article 9.5 does not refer to Article 9.4 and rules of Article 9.4 do not apply to Article 9.5. In *Mexico –Rice*, the Panel in para 7.159 of the panel report noted that Article 9.4 of the Anti-Dumping Agreement, which provides for non-sampled anti-dumping duty rate does not apply to new shipper.

(x) Thus, new exporters and non-sampled exporting producers in the original investigation are not analogous and cannot be equated for the purpose of imposition of anti-dumping duty.

***iii. Evidence on record suggests that Respondent is interested in the Indian market and seriously availed the opportunity of new shipper review***

(xi) The Authority has incorrectly observed that the trend of past exports and non-availment of post initiation period for exports indicates that Respondent is not seriously interested

[1] Appellate Body Report, *Mexico – Rice*, para. 323-324

in the Indian market. Respondent exported 384 MT of sacking bags to India between 28th November 2015 to 14th December 2016.

(xii) The Authority has incorrectly noted that import of 23 MT is insufficient considering the demand of 50,000 MT of Sacking Bags. Demand of 50,000 MT during the POI of the original investigation cannot be compared with the import of 23 MT during the POI of this new shipper review. As per the information available to us through market intelligence, there were insignificant imports of Sacking Bags from Bangladesh during the POI of this new shipper review i.e. from 1st January 2017 to 30th June 2018. Thus, import of 23 MT by the Respondent is not an insignificant quantity in comparison with the total imports of Sacking Bags during this period.

(xiii) The Authority has noted the submission of the Respondent that there was delay in issuance of Customs Notification requiring provisional assessment. However, the Authority observes that no details of any loss of any confirmed commitment of exports have been stated. Respondent submits that customer has cancelled order of Sacking Bags pursuant to the imposition of anti-dumping duty on 5 January 2017. Respondent further submits that two purchase orders of Sacking Bags placed by the importer which were eventually cancelled due to the imposition of anti-dumping duty. It is clear that once the anti-dumping duty was imposed, Respondent was not able to secure orders from its customers in India to export higher volume of Sacking Bags. When the new shipper review was initiated on 1st January 2018, the Respondent was expecting the issuance of Customs Notification requiring provisional assessment in accordance with Rule 22. However, the Customs Notification requiring provisional assessment was issued only on 30th May 2018. Despite serious intent and willingness, Respondent was not able to export sacking bags to India as the anti-dumping duty of 138.97 USD/MT was definitively collected on exports of Sacking Bags even after initiation of new shipper review.

(xiv) In fact, it would be incorrect on the part of the Respondent to export the subject goods at unfavourable prices by absorbing the anti-dumping duty in order to maximize quantity of exports of Sacking Bags. Respondent did not deviate from its standard practice and exported Sacking Bags to India during the POI only when it was able to obtain suitable price in accordance with market demand.

(xv) Moreover, the introduction of minimum quantity requirement is against the Authority's own decision in the original investigation. In the POI of original investigation, Respondent exported 6.99 MT of Hessian Fabric by two export transactions. This fact is noted by the Authority at page 45 of the final findings as well. The Authority accepted the Respondent's export price of Hessian Fabric based on these transactions and determined Nil anti-dumping duty rate. Needless to say, export quantity of 6.9 MT was not considered by the Authority as being unrepresentative or unreliable for the purpose of determination of individual dumping margin for the export of Hessian Fabric by the Respondent. Thus, there cannot be any different standard while determining the appropriateness of 23 MT of Sacking Bags in a new shipper review. It is not clear why the Authority has adopted a new and different standard in this new shipper review.

(xvi) Respondent wishes to highlight that it has extended full co-operation throughout the investigation process and provided all the data and information requested by the Authority. Moreover, the export transaction of 23 MT took place prior to the initiation of new shipper review, which evidences that there is no manipulation of export price. The export price information provided by the Respondent was duly verified by the Authority. Thus, the export price supplied by the Respondent is credible and there is no positive evidence to doubt the correctness or veracity of the information *per se*. Thus, it is clear

that the Respondent made *bona fide* sales and seriously availed the opportunity under Rule 22 of the Anti-dumping Rules.

(xvii) Lastly, Respondent submits that the Authority itself acknowledges that the applicant in a New Shipper Review needs to be granted individual dumping margin. The Authority also notes that the applicant has fulfilled the conditions prescribed under Rule 22. The Authority cannot add further conditions over and above the legal requirements prescribed under Rule 22. Respondent requests the Authority to re-consider its decision and grant individual margin of dumping to the Respondent in accordance with Rule 22 of the Anti-dumping Rules.

## G. EXAMINATION BY AUTHORITY :

28. The Authority notes post disclosure comments filed by M/s TPM on behalf of domestic industry and M/s LKS on behalf of M/s. Janata Jute Mills Ltd. (Producer and Exporter). The Authority notes that interested parties have made submissions related to sufficiency of quantity of exports of subject goods i.e. Sacking Bags being considered for NSR made during POI. The Authority notes that M/s LKS has mentioned that in original investigation also only 8 MT of Hessian Fabric was exported and that during this POI, the imports of Sacking Bags on an overall basis is much lower and that 23 MT of exports of Sacking Bags by them is sufficient, in this overall context M/s LKS has further stated that there is no stipulation of any threshold of export quantity in NSR under rule 22.

29. The Authority noting the aforesaid submissions holds that nature of enquiry in an original investigation and an NSR cannot be compared on aspects of approach, nature of diligence and analysis undertaken as challenges and constraints in these two investigations are quite different. While there is no threshold prescribed on minimum quantity of exports during POI in NSR under rule 22, it cannot be presumed that Authority will not apply appropriate diligence and approach to establish reasonableness and credibility of export price. One requirement towards this is availability of some reasonable quantity and its reasonable spread over POI for representativeness. The Authority notes the submission of LKS on variation of prices of sacking bags in the month of exports by M/s Janata Jute Mills Ltd. and appreciates that in a month there could be variations in the prices of Sacking Bags due to sizes, type of bag etc. However with the price of sacking bags being denominated on per MT basis, by and large equalizes the size variations. The other major parameter-impacting price could be the count of Yarn used. The usage of Sacking Bags is by and large for packaging applications and so quality variations are not expected to be wide spread. A single transaction of exports in the instant case certainly poses limitation to establish credibility of the export price for the PUC.

30. The Authority underscored in an 'NSR', the exporter is aware about the implications of export price on the measure to be recommended on him post exports. There is a challenge before the Authority to establish that the export price is not calibrated and managed but genuine. In case export prices to different customers from different customers are available and that over different time periods of POI, the comparison of these prices with other similar transactions of other exporters enables the Authority in establishing genuineness and reasonableness of export prices. Therefore in the instance case, the export behaviour of the applicant producer/exporter does not provide the Authority to undertake such an exercise.

31. The Authority notes that though the enabling custom notification of 30.05.2018 under the rule 22 was delayed, the exporter even after issuance of the notification did not export a single transaction. The rule 22 obligates the Authority to determine an individual Dumping Margin only and not the corresponding extent of injury to apply LDR.

**Conclusions**

32. The Authority therefore holds that in the given circumstances and facts of the case, the producer/exporter can only be considered for an AD measure as recommended for the non-sampled category of exporters in original investigation. This measure is since based on application of lesser duty rule and therefore in the given circumstances, its applicability to the producer/exporter would indeed be fair and appropriate. Accordingly the Authority recommends as under:

**Recommendation**

33. (i) Entry 47 be added to the existing duty table mentioned in para 132 of the notification no. 14/19/2015-DGAD dated 9/2/2017 (corrigendum to the notification no. 14/19/2015-DGAD dated 20/10/2016) as under:

| S. No. | Heading /sub heading | Description of Goods | Specification | Country of origin | Country of Export | Producer | Exporter | Duty amount | Unit |
|---|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| 47. | 5307,5310, 5607 or 6305 | Sacking Bags | In all forms and specification | Bangladesh | Bangladesh | Janata Jute mills Ltd. | Janata Jute mills Ltd | 125.21 | US$/ MT |

(ii) Exports of Sacking Bags made during POI i.e. 1/1/2017 to 30/6/2018 in accordance with the C.N. No. 30/2018-Customs (ADD) dated 30/5/2018 or not in accordance of this customs notification be regularised in accordance with (i) above. To further clarify the exports of sacking bags made by M/s Janata Jute Mills Limited w.e.f. 1/1/2017 will be subjected to AD duty as stated in (i) above which would be coterminous with the existence of C.N. No. 11/2017-Customs (ADD) dated 3/4/2017.

(iii) The other subjects goods i.e. Jute Yarn/Twine (multiple folded/cabled and single), Hessian Fabric and Jute Sacking Bags and Hessian Fabric if any exported by M/s Janata Jute Mills Ltd. during 1/1/2017 to 30/6/2018 are not part of this NSR and therefore they and their future exports by M/s Janata Jute Mills Limited continue to be governed by the C.N. No. 11/2017-Customs (ADD) dated 3/4/2017.

**(Sunil Kumar)**
**Additional Secretary & Director General**