To be published in Part-I Section I of the Gazette of India Extraordinary

No. 7/24/2018-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 3rd October, 2019

FINAL FINDING

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 Yarn originating in or exported from Bangladesh, as requested by M/s Natore Jute Mills (Producer), Bangladesh and M/s PNP Jute Trading LLC (Exporter/Trader), USA initiated on 2.07.2018.

No. 7/24/2018-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 ñJute productsò 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 duties 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 Natore Jute Mills (Producer), Bangladesh and M/s PNP Jute Trading LLC (Exporter/Trader), USA 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 ñJute Yarn/Twine (multiple folded/cabled and single), Hessian Fabrics and Jute Sacking Bagsò originating in or exported from Bangladesh wherein AD measure has been imposed on ñJute Productsò vide Customs 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.7/24/2018-DGAD dated 2nd July 2018, for determination of individual dumping margin for the purposes of imposition of the anti-dumping duties levied on the dumped imports of ñJute Yarn/Twine (multiple folded/cabled and single) Hessian Fabrics and Jute Sacking Bagsò originating in or exported from Bangladesh, in respect of M/s Natore Jute Mills (Producer), Bangladesh and M/s PNP Jute Trading LLC (Exporter/Trader), USA.

5. Ministry of Finance notified the provisional assessment on all exports of the subject goods made by of M/s Natore Jute Mills (Producer), Bangladesh and M/s PNP Jute Trading LLC (Exporter/Trader), USA till completion of the aforesaid NSR investigation vide Notification No.41/2018-Customs (ADD) dated 24th August, 2018.

6. The period of investigation for the purpose of this New Shipper Review was fixed as 1st July, 2018 to 31st March, 2019.

B. <u>PROCEDURE</u>

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

(i) The Authority issued a public notice vide Notification No. 7/24/2018-DGAD dated 2nd July, 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 exporterôs 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, M/s Natore Jute Mills (Producer), Bangladesh and M/s PNP Jute Trading LLC (Exporter/Trader), USA. IJMA representing the Domestic Industry of ñJute Productsò in India also filed their representations.

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

(vii) The Authority held an Oral Hearing on 8th July, 2019 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 disclosure statement.

(ix) The Authority issued a disclosure statement dated 30th August 2019 to the participating interested parties.

(x) *** in the statement represents information furnished by interested parties on confidential basis and so considered by Authority under the AD Rules.

(xi) Exchange Rate of Rs. 71.92 per USD has been adopted for POI.

C. PRODUCT UNDER CONSIDERATION

8. The product under consideration in the original investigation is óJute Productsô 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 pertains to the exports of PUC as defined in the original investigation as stated in the initiation notification.
9. The present investigation relates to proposed exports of Jute Yarn/twine (multiple folded/cabled and single) and Jute Sacking Bags (of the two product types under the product under consideration as stated in Final Findings dated 20th October, 2016) by M/s. Natore Jute Mills (Producer), Bangladesh and M/s PNP Jute Trading LLC (Exporter/Trader), USA as per the application filed by them before the Authority in accordance with the Act and the AD Rules.

D. SUBMISSIONS BY VARIOUS INTERESTED PARTIES AND DOMESTIC INDUSTRY :

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

i. IJMA submits that the applicant sought the present initiation without providing adequate and necessary information and evidence in terms of the Act, the AD Rules and Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (ñADAò), the understanding of the Directorate with regard to new shipper reviews that has prevailed in last five years, and the decisions of the Designated Authority and CESTAT with regard to new shipper.

ii. Further, till date, petition lacks any information and evidence to ñshowò that the applicant satisfies the requirements of Rule 22 and therefore, the present investigation must be terminated immediately.

iii. While a bona fide new shipper has the right to seek individual margins, at the same time, the Designated Authority needs to ascertain that the claims are bona fide and there is no abuse/ misuse/ circumvention of anti-dumping duties. It is for this reason that the applicant needs to be strictly put to establish that (a) they are genuine/bona fide exporters who have made bona fide sales (b) they have not exported goods in the original investigation and (c) they are not related to producer or exporter of subject

goods who is attracting anti-dumping. In the instant case the applicant does not fulfil any of the criteria.

iv. There is nothing in the application which shows that the essential requirements have been fulfilled. As held by the Honôble tribunal in the matter of H & R Johnson (India) Limited v. Designated Authority that ñThe word ñshowò is not meant to prescribe just a formality of a bare assertion by the applicant that the applicant is not ñrelatedò.

v. The applicant has failed to provide evidence 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, leave aside the evidences to establish the same. The requirement under the law is ñto showò, i.e., ñdemonstrateò and not ñclaimò or ñstateò.

vi. The applicant has also secured a trader for its product in USA and not India where it has made exports, or in Bangladesh, where the producer is located and where there is a large number of traders. A producer in Bangladesh had to search a trader all the way in US to export to India.

vii. The applicants sought prospective period as period of investigation i.e., a period which is subsequent period to the initiation of investigation under Rule 22. Reference is made to the decision by Honôble CESTAT in Tiles case wherein the concept of prospective POR has been heavily criticized.

viii. By the reason of prospective period of investigation, the applicants have been able to manipulate and doctor the price by (a) making only ceremonial exports, i.e., 90 MT of exports, (b) at artificially high price. It is pertinent to note here that despite imposition of ant dumping duties, imports from Bangladesh has been significant. However the exporter has chosen to export low volume of subject goods which is in insignificant in relation to total imports. It seems from the conduct of the applicant that they are not serious about the fate of the present matter and the current exercise is to merely an attempt to try luck if they can get a favourable margin. Their actions do not indicate that they are serious about exporting their products.

ix. It appears from the reply of the exporter to questions on evidence of irrevocable contractual agreements of sales of the product under consideration to India that there is no commitment or contract with a prospective customer. This clearly indicates that not even a serious effort have been made by the applicants to export goods prior to the filing of the application.

x. The exports made by the applicants during the period of investigation in a new shipper review case must be bona fide commercial transactions of reasonable volume and price to be a basis for a dumping margin. It needs to be seen whether the sales under consideration is typical and will be representative of the new shipperôs future sales. If a producerôs or exporterôs transactions involve price, quantities, and overall circumstances that do call into question the commercial viability of those sales, the genuineness of those sales, both in terms of value and volume, should be examined.

xi. Other country laws, such as US, Brazil, Canada, EU, Turkey, Taiwan and Vietnam etc are pertinent to note in this regard, which also provides that the transactions undertaken by the exporter should be bona fide and commercial in nature.

xii. The Authority has specifically prescribed that the quantities exported by the exporter should be in commercial quantity so as to receive an individual margin of dumping. The applicant had argued that the trade notice was issued recently and thus will have effect for future cases, it is submitted that the principle highlighted is not a new principle. The principle of actual exports been made in commercial quantity has been recognized by the Authority as well as Hon'ble CESTAT in past.

xiii. If an exporter is allowed a margin based only on a small volume of exports or based on an expectation of exports, this would open the scope for manipulation of prices by the exporter for obtaining a lower margin.

xiv. There is no questionnaire response from the importers of the product under consideration. 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

xv. The applicants have claimed excessive confidentiality without any good cause and for the sole objective of hiding information from the domestic industry and preventing the domestic industry from defending its interests.

xvi. The applicants have provided no evidence whatsoever to demonstrate how the export price claimed by them is reasonable, reliable, representative and sufficient for the purpose of determination of export price.

xvii. There is no comparison with the imports into India to demonstrate reliability of the export price.

xviii. There appears grossly incomplete information with regard to both domestic selling price and cost of production of different types of the product to demonstrate adequacy and sufficiency of information and evidence. Nor the Designated Authority has information on record to account for differences in product types.

xix. Without prejudice, if the Authority concludes that applicant satisfies the condition and individual duties are justified, it is then submitted that the applicant 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.

xx. The domestic industry is additionally concerned for the reason that the domestic industry has sufficient reasons to believe that the quality and quantity of evidence and information provided by the exporters from Bangladesh has always remained a MAJOR ISSUE in all past investigations.

11. **Submissions by the Applicant Producer/Exporter:**

i. The applicants fulfils the requirements to be treated as a new shippers as stipulated in Rule 22 of the AD Rules which has it basis in Article 9.5 of the WTO AD Agreement. Rule 22 says that 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. The applicant meets these requirements.

ii. It is reiterated that the applicant in the present NSR investigation did not export the subject goods to India during the original POI nor are related, with emphasis to all the connotations of the term órelationô in the context of an NSR review as stipulated either in the rules or as notified by way of administrative trade notices, to any of the producers or exporters attracting anti-dumping duties on subject goods as notified therein.

iii. Apart from the submission and certifications to substantiate the conditions of Rule 22, the applicant has submitted detailed documents which cover details and certifications on commencement date of production of subject goods by the company, audited reports and other statutory certifications, details of purchase of plant and equipments etc which will further establish the claims of the new shipper applicant.

iv. The applicant fully meet the requirements of Rule 22 and further submit that the parties have no intention to dump the material in India and it is very essential to subject their bona fide exports to new shipper review for determination of individual margins based on the facts of actual exports made by them. The applicant has exported significant volume of the subject goods to India during the POI fixed. In case of applicants, the exports of PUC were in the range of 500 to 600 MT during the POI.

v. NSR investigations are integral part of the AD Agreement and also Indian AD Rules and the provision enables a new producer or exporter as defined therein to prove his case as a new exporter which will enable the Authority to examine whether there is any element of dumping in case of exports by such a new exporter. Allegation of IJMA against NSR is not of any basis.

vi. Neither the Agreement nor the Rule stipulate any specific volume or price of export as a condition for determination of individual margins in an NSR. What makes an unrelated new shipper ónewô is precisely the fact that, during the original investigation period it did not export the subject goods to the territory where the subject goods were subjected to an anti-dumping investigation.

vii. In fact the WTO Appellate Body clearly held against any laws framed putting in volume requirements in the conduct of a review as per Article 9.5 of the AD Agreement and the decision of the WTO Appellate Body in Mexico ï Anti-Dumping Measures on Rice in this regard is binding on the Indian Authority as well read with the judgment of the Honôble Supreme Court in GM Exports matter.

viii. In certain past cases, the Authority declined to grant individual margin to the new exporter as the Authority found the volume of exports by the new exporter as too insignificant to be considered as commercially representative Quantity to be adopted for according individual Dumping Margin to the applicant Producer/Exporter. However, present case shows that the volume in the present case is very significant and the export price concerning such significant volume needs to be treated as inherently reliable.

ix. The new shippers in the present case meets all the basic conditions as per Rule 22 and also the additional conditions emanated as part of the practices by the Authority in the

recent past, both in terms of the requirement of reasonableness of volume and the trustworthiness of the price.

x. It has been contended by IJMA that the no individual margins should be determined for the new shippers here and in any case it cannot be anything other than the margins applicable on the ónon sampled category of exportersô as found in the original case. The contention has no legal basis. The rule clearly says that the Designated Authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers. It has been clarified by the Authority about its decision to adopt the margin for the non-sampled category in one of the NSRs concerning PUC while publishing the Final Findings concerning Melamine that it was ó*constrained by the facts of the case had decided to only accord non-sampled category of AD duty to the applicant'.*

xi. Any view taken under such constraining scenarios cannot become a rule especially in view of the clear legal position given in Rule 22 which requires the Authority to determine individual margins for the new shippers based on their relevant data.

xii. The contention of IJMA that present NSR was initiated without adequate evidences to prove the condition of Rule 22 is denied as bereft of any merit. The petition contained evidences to show that the new shipper did not export the subject goods to India during the original POI and the new shippers are not related to any producer or exporter who is attracting ADD. Also, significant time has elapsed since initiation of the present matter and the DI could not produce any piece of evidence to contradict the claims of the applicants.

xiii. The contention of IJMA qua the prospective POI has no basis. There has been significant number of NSRs initiated and concluded after the Tiles matter wherein the POI was fixed as prospective. The practice of prospective POI is correct in view of the provisions in Rule 22 which says that 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 and this rule shall be otiose if the new shipper has to export before initiation of NSR.

xiv. It has been contended by IJMA that by the reason of prospective period of investigation, the applicants have been able to manipulate and doctor the price by (a) making only ceremonial exports, i.e., 90 MT of exports, (b) at artificially high price. The contention has no basis. The applicant here has exported about 500-600MT (and not 90 MT as contended) of subject good which is a substantial volume and no such substantial export could have been possible at a manipulated price as alleged.

xv. It has been contended by IJMA that there are not any commitments to export to India shows the exporter is not serious. The contention has no basis. The exporter has exported about 500-600MT of subject goods during the POI which is a substantial volume.

xvi. It has been contended by IJMA that the exports in NSR review must be a bona fide commercial transaction. It can be noted that the new shipper in the present matter exported significant volume to determine individual margins. This is without prejudice to our submission that the WTO Appellate body in Mexico-Rice matter has clearly ruled

that the authorities cannot impose any volume requirements in the conduct new shipper reviews under the aegis of Article 9.5 of the AD Agreement which is the basis of Rule 22 of Indian AD Rules. However, the volume of exports in the present matter invariably fulfils certain parameters put in place by the Authority to examine the reasonableness of exports as evident in some of the recent NSR findings.

xvii. It has been contended by IJMA that there is no questionnaire response from the importers of the product under consideration and the applicants have claimed excessive confidentiality. Both the contentions have no basis. The importers in the present matter are not related parties of the applicant and the exporter in no way could have acted in a manner to ensure those parties file the IQ Response. The applicant claimed confidentiality as permissible in the Rule. In fact, the parties have given even the range of actual exports so that the DI gets a better idea of the case in hand.

xviii. It has been contended by IJMA that applicants have provided no evidence whatsoever to demonstrate how the export price claimed by them is reasonable, reliable. The contention has no legal or factual basis. The fact remain the applicant has exported significant quantity to India which itself proves the reasonability of the price. No such exports could have been possible with an artificially inflated price.

xix. It has been contended by IJMA that importer concerned have not cooperated with the Designated Authority and the Designated Authority cannot verify the information and satisfy itself that there is no compensatory arrangement between the exporter and importer. The contention has no basis. There are many cases concluded by the Authority where the importers did not cooperate but export price claimed by the exporters were verified and accepted. Non-cooperation by the importer no way vitiates the credibility of price claimed by the exporter and there are other mechanisms used to verify the same such as data from customs/DGCI&S etc.

xx. It has been contended by IJMA that there appears grossly incomplete information with regard to both domestic selling price and cost of production of different types nor the Designated Authority has information on record to account for differences in product types. The contention has no basis. The EQ Response filed by the applicants has all applicable product type information.

xxi. It has been contended by IJMA that quantity of evidence and information provided by the exporters from Bangladesh has always remained a MAJOR ISSUE in all past investigations. Such assertions have no basis. It is felt that the Authority initiates and conducts an investigation when a case for such an investigation is clearly shown and not merely as alleged.

E. EXAMINATION BY AUTHORITY

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

"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 ï

"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 Natore Jute Mills (Producer), Bangladesh and M/s PNP Jute Trading LLC (Exporter/Trader), USA have jointly filed an application before the Authority seeking individual dumping margin on ñJute Productsò and requested for initiation of the new shipper review.

16. As regards the eligibility of the applicants as ôNew Shippersô, the Authority has conducted detailed examination of the claims made by the applicants including table study of various

documents submitted with respect to data/ information filed by them. Such examinations were conducted in view of the requirements of Rule 22 and the past practices of the Authority. No interested party has provided evidence of non-fulfilment of condition by the producer/exporter for NSR by way of any substantive evidences other than submissions. The Authority therefore proposes to hold that the applicants are eligible to seek a New Shipper Review in the instant case.

F. DETERMINATION OF INDIVIDUAL DUMPING MARGIN FOR THE APPLICANT

i. Overall sales of PUC and non PUI during POI of applicant producer

17. The producer/exporter have produced and sold both PUC (Yarn and Sacking Bag) and Non PUC (sacking cloth) and Hessian Bag during the POI as below:

In MT

	Yarn	Sacking Bag	Sacking Cloth	Hessian Bag
Production	***	***	***	***
Total Sales	***	***	***	***
Domestic Sales	***	***	***	***
Sales to India	***	***	***	-
Sales to 3rd countries	-	-	-	-

The count wise/variety wise sales details are as under:

Sr. No.	PCN	India			Domestic		
		Volume (MT)	Value (BDT)	Price BDT/MT	Volume (MT)	Value (BDT)	Price (BDT/MT)
	CB						
1	28 LBS 6 PLY	-	-	-	***	***	***
	Hessian						
2	14LBS 1 PLY	***	***	***	-	-	-
3	28 LBS 1 PLY	***	***	***	-	-	-
	Sacking						
4	12 LBS 2 PLY	-	-	-	***	***	***
5	14 LBS 1 PLY	***	***	***	***	***	***
6	22 LBS 2 PLY	***	***	***	***	***	***
7	28 LBS 1 PLY	***	***	***	-	-	-
8	**Sacking Bag**	***	***	***	***	***	***
	Grand Total	***	***	***	***	***	***

ii. Normal Value

18.

a. During the table study, the representatives of the company gave details in support of their claim related to major raw-material i.e. Jute purchase register prepared manually on daily basis, Production records i.e. Monthly Production reports submitted to Bangladesh Jute Mills Association (BJMA), copies of VAT Returns, sales records, Audited Accounts of the company for the POI. The company has submitted that separate accounts for its manufacturing and trading activity. The practising Chartered Accountant vide its certificate dated 15.07.2019 certified that Audited Accounts of the company for the POI

and other Accounts/Financial Records are maintained and reported in accordance with accounting principles generally accepted in Bangladesh as per IASs referred by ICAB following BFRS. The basic records of the producers/exporters were by and large not professionally organised and were of times also in Bangla, and required translation. However, the audited accounts of the POI for the manufacturing activity has been considered as the basis for calculating cost of production. The company has not maintained separate accounting/cost records for the yarn, sacking cloth and sacking bags. Further, different type/ count of yarn (i.e. CB, CRT, CRT & Vegetable Oil Treated of different LBS and Count) sacking cloth and sacking bags (of different LBS and Count) are being produced by company and there is a variation in the sales prices among the different types of yarns and sacking bags.

b. During the POI the company has produced *** MT of Yarn, *** MT of Sacking Cloth and *** MT of Sacking Bag. The company has submitted a summary of Production and Sales of different types of yarn, Sacking Cloth, Sacking Bag. The raw-material consumption is booked by the companies for all the products together and no separate records were available for the different type/ count of yarn, sacking cloth and sacking bags. The raw-material consumption value has been allocated by the company based on the production quantity. The costs of utilities, packing materials, consumables, employee cost, depreciation, repairs & maintenance and other manufacturing overheads have been allocated by the company to the product concerned on the basis of production value. Finance cost, other administration overheads and selling overheads have been allocated on sales value basis. As per the certified Appendix 5 in respect of M/s. PNP Jute Trading LLC (Exporter/Trader) they are selling at profit and the same has been considered.

c. The company is not maintaining separate records for the different type of products, however, keeping in view that the products which are sold at higher prices will also have higher cost, the cost of raw-material has been allocated based on production quantity, utilities and conversion cost has been allocated based on the production value and administration and finance cost has been allocated based on the sales value. Accordingly, the average cost of production of Yarn, Sacking Bag and Sacking Cloth is worked out as BDT ***/MT, BDT ***/MT and BDT ***/MT respectively.

d. The Authority notes that in the original investigation, the methodology adopted for computing ôNormal Valueô of Yarn was on weighted average basis including all varieties of Yarn. The original investigation was conducted on a historical POI and opportunity for export price being adjusted for a favourable dumping margin was not available as could happen in a New Shipper Review. Therefore weighted average approach would be largely representative. The instant being a New Shipper Review wherein the Yarn varieties exported to India have different cost and price. Grade wise/count wise cost of production is an important parameter. The Authority notes that keeping in view that no count wise cost for different varieties of Yarn has been provided, it is not possible to compute the cost of production under consideration i.e Yarn on a count wise/variety wise and apply the OCT test on domestic or for 3rd country exports appropriately as the case may be. The Authority under these constraints is unable to establish a normal value for different variety of Yarns exported to India during the Period of Investigation. The Authority has dealt comments by the applicant producer/exporter and the submissions by the Bangladesh High Commission and Domestic Industry in response to the disclosure statement in the later paras appropriately.

iii. Export Price

19. The Authority reiterates that in the disclosure statement dated 30th August, 2019 it was held that the producer/exporter has exported to India through PNP Jute Trading LLC, USA. It was noted that the producer has sold in domestic market and to India during POI, no sales to 3rd countries were made during the POI. It was found that the shipper PNP Jute Trading LLC, USA have sold each of the consignment after keeping some margin hence for calculation of net export price the at ex-factory level sales of the producer to the shipper has been taken in to consideration. During POI they have exported 16 consignments totalling to *** MT including *** MT of sacking bag and *** MT of Yarn at an invoice value of ***US$ (***US$/MT) (CNF). The adjustments have been claimed on the basis of actual expenses incurred on inland freight, Port expenses and bank charges. Based on the above the average net export price to India separately for Yarn and Sacking Bag has been claimed as ***$/MT and ***$/MT respectively.

The Authority notes that the producer/exporter has exported *** MT of Yarn which includes, Hessian and Sacking variety and *** MT of Sacking Bag during POI to India. The exports of Yarn and Sacking Bag by applicant exporter constitute about 1-2% and 0-0.5% of the total imports from Bangladesh respectively in POI.

The Authority has compared the prices of export of different varieties of Yarn on sample basis to the extent feasible during POI to India by the applicant with other exporters from Bangladesh to check if the export prices of different variety of Yarn of the applicant exporter were realistic. On comparing the export price of 28/1 sacking variety of the applicant exporter with other exporters (account for 20-30% of total exports of applicant) it is noted that the export prices of the applicant exporter is higher by 10-15% for the specific grade. For other specific grades comparative data for such a comparison is not available. However, keeping the comparison of 28/1 grade as stated above, the Authority does not consider it appropriate to consider the export price of the applicant exporter reliable. As regards the other PUC type i.e. sacking bags as its quantity is just 0-0.5% of total imports of sacking bags from Bangladesh, it cannot be considered as significant to establish a reliable export price of sacking bags to India. The post disclosure submissions of the applicant producer/exporter and domestic industry on consideration of export price are dealt in later paras appropriately.

iv. Dumping Margin

20. The Authority in the view of (iii) and (ii) above is constrained to establish an Individual dumping margin for the PUC under this investigation. The Authority however notes that the applicant producer has provided cost of production on an overall basis. If the weighted average cost of production for all varieties of Yarn exported to India with appropriate profit of 5% and export price of applicant exporter (appropriately adjusted in view of price variation stated in (iii) above) are compared, Dumping in the range of measure applied on non sampled producers/exporters in the original investigation would be evident. The export quantity of sacking bag to India is quite insignificant for establishing a reliable export price. The Authority has dealt post disclosure comments by the applicant producer/exporter and also the domestic industry on grant of individual dumping margin to the applicant producer/exporter in the later paragraphs appropriately.

G. Post Disclosure Comments

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

i. In NSR investigation it needs to be shown that exports made by the new shipper applicant during the period of investigation in a new shipper review case is bona fide commercial transaction, which is to be the basis for a dumping margin. The purpose was not to ñascertain the fair value of the merchandise but examine each sale for its commercial reasonableness

ii. Import volume is negligible of total imports. Moreover, the exporter must establish appropriateness and reliability of export price having regard to the export volume. The examination done by the Authority has shown that the export price is not representative

iii. There is no reason bonafide or otherwise provided by the exporter to show how the exporter has been able to export goods at a higher price than the others when the same type of good is being imported at much lower price.

iv. Other parameters that can be examined for appropriateness of the export price such as the price at which domestic industry has sold the product under consideration, unless the exporter demonstrates the reasons for differences in prices for different parties, Absence of compensatory arrangements between the importer and its buyer and exporter and importer, price at which the goods have been resold by the importer etc.

v. Applicants have made no efforts to seek questionnaire response from the importer in India. The importer in India has not come on board in this investigation. In view of no questionnaire response from the importers, the applicant has not established how the Designated Authority can ascertain appropriateness of the import price

vi. The applicants have provided nothing which can be construed to imply that the applicants have shown to the Designated Authority that they satisfied the requirement under Rule 22

22. **M/s M.S. Pothal & Associates representing the exporter/Producer submitted the following post disclosure comments:**

A. The grounds for rejection of cost in the context of determination of normal value of the PUC produced by the applicant needs reconsideration as the rejection is not just and fair.

i. The legal framework of determination of dumping margin for an article exported by the producer or exporter is provided under Section 9A (6A) and rules to enable the process has been framed under Rule 10 by giving effect to Annexure I.

"The designated authority while determining the normal value, export price and margin of dumping shall take into account inter alia, the following principles -

1. The elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or

producer under investigation, provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records reasonably reflect the cost associated with production and sale of the article under consideration".(Emphasis added)

ii. The above text of Annexure I to the Anti-dumping Rules clearly has its basis in Article 2.2.1.1 of the WTO Anti-dumping Agreement. While interpreting the requirements of Article 2.2.1.1, the WTO Panel In Egypt ï Steel Rebar noted that both Articles 2.2.1.1 and 2.2.2 "emphasize two elements, first, that cost of production is to be calculated based on the actual books and records maintained by the company in question so long as these are in keeping with generally accepted accounting principles but that second, the costs to be included are those that reasonably reflect the costs associated with the production and sale of the product under consideration.

iii. In the present investigation, the applicant has submitted the cost information pertaining to the product under consideration as per the records maintained by the company which is as per GAAP. The Company has no system of maintaining the count wise cost for different varieties of Yarn because such a costing is not part of the normal course of business. Para 17. b. of the Disclosure acknowledges that the applicant is a producer of single type of PUC which is Jute Yarn and the cost of the same was available. Para 17.c. in the Disclosure statement as reproduced above nowhere says that the applicant failed to show that their cost records are maintained as per GAAP or any element of costs do not reflect the cost associated with the PUC which is Yarn (Jute Products) in terms of any particular element of cost. Further please note that company produces yarn of three varieties namely CB, Hessian and Sacking, within these three varieties there are number of counts in each of three varieties, and in counts there are number of plies, hence for a small scale company it is not viable to maintain type wise raw material cost for each of the PCNs. The observation is only that it is not possible to compute the cost of production of different types of yarn on count wise/variety wise as the count wise costing is not provided. This cannot be a fair ground for the rejection of cost concerning PUC.

iv. As the applicant has provided the cost for PUC which is Yarn here, the observation that the relevant cost for PUC is not available needs reconsideration though at later part in the Disclosure the Authority noted that the applicant has provided weighted average cost for the PUC. As far as cost of different types of yarn is concerned, the applicant suggested that the main cost is on account of raw materials and the cost of raw material could have been allocated based on sales value ratio concerning different types of yarn. This is based on the principle that the product which has a higher realization in the market has a higher cost as well. Such a method is reasonable and could have enabled the Authority to determine even the type wise cost of yarn though the requirement of Rule is to determine the cost for the PUC and not for its *inter se* types. Without prejudice, type wise cost of yarns on the above basis is enclosed.

v. The applicant in the context of type wise cost also submits that Annexure II to the WTO AD Agreement clearly addresses a situation where the information provided may not be ideal in all respects at para 5 of Annexure II. Absence of type wise cost needs to be seen in this context. The Agreement clearly says that even though the information provided may not be ideal in all respects, this should not justify the authorities from

disregarding it, provided the interested party has acted to the best of its ability. In the present case, the applicant has acted to best of its ability as the applicant has provided cost as per its records at PUC level and also provided type wise cost on a proper allocation basis. The determination of cost on a type wise basis could be a matter of allocation and a pragmatic and normally followed methodology for the same was also suggested.

vi. Notwithstanding the above, the moot question which emanates from the observation of the Authority in para 17.c. is that can the Authority adopt a different approach in the determination of cost of the article under investigation in the context of normal value in a New Shipper Review for the primary reason that POI of the present NSR is a prospective period which is known to the applicant at the time of exports or the investigation in question is a new shipper review?. Our respectful submission is that such an approach has no legal sanctity and the methodologies provided in Annexure I are applicable in every determination of dumping margin be it a fresh investigation or new shipper review. Also, the nature of investigation per se which is NSR here does not vitiate or prejudice the reasonableness of cost in any manner nor nature of investigation can be a ground to dispute the reasonableness of cost. Nature of review cannot be a ground per se to determine the reasonableness of cost and reasonableness of cost has to be examined based on reasonableness of various elements of cost involved in the claims of the applicant and cannot be merely on a presumptive basis citing the nature of investigation. It is respectfully submitted that such a view goes against the purpose of new shipper review as envisaged in Article 9.5 of the AD Agreement and such a view can seriously prejudice the rights of the applicant and the prospective POI in the present case was determined by the Authority as permissible under the law. Once the POI is determined as permissible in the law, the same cannot be a ground to doubt the credibility of cost and price claimed by the applicant and such a presumption goes against the premises of present initiation. It is requested that the normal value may kindly be determined based on principles envisaged in Annexure I to the Rules viz. determination of cost in the context of normal value like any AD investigation and an NSR applicant should not be placed on a different pedestal while determining his cost.

vii. It is also submitted that the requirement under the law is to determine dumping margin for the product under consideration and not type wise and in that context, disregarding the cost of PUC which is as per the records maintained by the company based on GAAP is not justified at all. In EC ï Bed Linen, the WTO Appellate body found as follows;

> *"53. We see nothing in Article 2.4.2 or in any other provision of the Anti-Dumping Agreement that provides for the establishment of 'the existence of margins of dumping' for types or models of the product under investigation; to the contrary, all references to the establishment of 'the existence of margins of dumping' are references to the product that is subject of the investigation. Likewise, we see nothing in Article 2.4.2 to support the notion that, in an anti-dumping investigation, two different stages are envisaged or distinguished in any way by this provision of the Anti-Dumping Agreement, nor to justify the distinctions the European Communities contends can be made among types or models of the same product on the basis of these 'two stages'. Whatever the method used to calculate the margins of dumping, in our view, these margins must be, and can only be,*

established for the product under investigation as a whole. We are unable to agree with the European Communities that Article 2.4.2 provides no guidance as to how to calculate an overall margin of dumping for the product under investigation" (Emphasis added)

viii. Thus, absence of type wise/count wise cost maintained by the applicant for the inter se types of the PUC cannot be a ground to reject the cost of the PUC as maintained by the applicant. Had the applicant failed to submit the cost of PUC as per the two main requirements i.e records as per GAAP and reasonableness of cost as provided in the Rule, it would have been a different issue. In the present case, the applicant has provided required data as per the Rule to determine normal value and the rejection of cost for the grounds given therein are not justified at all and we crave before the Authority to reconsider the same in the interest of justice and fairness.

B. The grounds for rejection of export price as claimed the applicant needs reconsideration as the rejection is not just and fair.

i. As a primary submission, it is reiterated that the applicant has exported significant volume of subject goods and no such volume level could have been possible at a price unreasonably higher than the prevailing market price. The applicant exported at a price comparable to the prevailing market prices and it was no way an inflated price.

ii. The comparison of export price of the applicant with some exports made by the other exporters as a sample is not a fair method to check the reliability of the export price of the applicant as the sample selected is not representative at all in terms of volume and level of trade. The applicant vide its letter dated 1.9.2019 requested for the entire data of exports of PUC from Bangladesh for a proper comparison but the same is not provided. Any such comparison has to be on a reasonable basis and the sample selected here are miniscule. Until and unless, the export price of the applicant is compared to a significant portion of total export of the same kind of PUC from Bangladesh to India during the POI made by other exporters, no fair view can be arrived without any distortion in the approach.

iii. The export price as relied upon by the Authority in the corroborative sample appears to be at CIF level and not at landed level. The PUC is attracting ADD for majority of the exporters and any price comparison needs to be made by taking such duty into consideration. The applicant exported the PUC subject to the present review and no ADD was applicable on such PUC at the time of imports. Thus, the import price of an importer importing from an exporter in the residual category of exporter, who got the lowest duty and exporter with no duty cannot be compared at the same breadth. The element of duty clearly comes in the price at the end of the importer and any comparison has to be made at the landed level to see what the actual price of imports was. Hence, the observation that the price of the applicant was 15-20% higher and hence not reliable needs reconsideration based on facts of trade.

iv. It is to be noted here that the applicant also exported the subject goods to India in the Post POI period .The post POI imports do not have any bearing on the determination of dumping margin and even the price during Post POI reflects such level of prices which

is comparable to the prices in POI. It may be please be noted that the company has exported substantial quantity in the post POI period which also shows the reliability and consistency of price. We request the Authority to consider post POI price of export also to examine the veracity of export price claimed by the applicant for the POI. The price during the post POI would clearly show that the allegation of exporter inflating the price to get a lower margin is completely baseless.

v. We are further enclosing a circular issued by Bangladesh Jute Mills Corporation ,wherein it can be seen that the price for CB 10 LBS/1 Ply is listed as *** US$ per MT as international export price. Our price during POI was BDT *** which is equal to US$ *** per MT. It can be seen that our price is comparable to Govt. decided price. The relevance of this circular is that though such prices are not strictly binding as a bench mark, such prices clearly indicated the price range prevailing in the market and the applicant also exported at a realistic price comparable to such notified price to India. It cannot be said that the applicant exported at an unrealistic price not at par with what other exporters were considering.

vi. We are further enclosing a letter issued by Bangladesh Jute Goods Exportersô Association, wherein they have disclosed the international price of 14/1 and 28/1 sacking quality yarns, this price also matches our export price during the POI. This is also indicative of the fact that the applicant was not exporting at any artificial prices to India and such prices were very prevalent in the market parlance.

vii. Thus, based on the above it is submitted that the view of the Authority on the export price claimed by the applicant as proposed in the Disclosure needs reconsideration based on facts and we crave for the same in the interest of justice and fairness.

C. The applicant could provide verifiable information for the purpose of determination of individual dumping margin in case of its exports to India. Any proposal for an alternate methodology should be seen in this context.

i. Rule 22 of Anti-dumping Rules governing New Shipper Reviews clearly says *the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers.* The requirement is clearly determination of individual dumping margins and it cannot be adaptation of some other margins determined in the past or for some other parties.

ii. It is also respectfully submitted that the Authority has in a recent NSR concerning Janata Jute Mill NSR case concerning the same PUC had determined Individual Margin based on margins for non-sampled category. However, the Authority clarified its position on the said determination on the course of an eventual investigation concerning Melamine as follows; ñ*The Authority notes that in the same determination the Authority had emphasised the need to establish reasonableness and credibility of export price and constrained by the facts of the case had decided to only accord non-sampled category of AD duty to the applicant.*

iii. Thus, the adaptation of margin for the non-sampled category in the Janata Jute Mill case was the result of certain factual constraints in the said case and there are no such constraints in the present matter. The applicant has provided details to determine individual dumping margin and the exports by the applicant were substantial during the

POI. Any view taken under some constraining scenarios in some other cases cannot become a rule especially in view of the clear legal position given in Rule 22 which requires the Authority to determine individual margins for the new shippers based on their relevant data. Neither the Rule nor the anti-dumping Agreement provides for any provision which enables the Authority to adopt a margin for the NSR applicant other than that of the individual margin based on its own data like margin of the non-sampled category of exporters in the original case.

iv. Without prejudice, it is our respectful submission that the Authority shall be in a position to determine individual margin for the applicant and there shall be no need to adopt any other basis or adoption of best available information after proper consideration of these comments. The applicant would like to draw the attention of the Authority to Article 6.8 of the Anti-Dumping Agreement which allows investigating authorities to make determinations on the basis of facts available only in such cases where an interested party refuses access to or otherwise does not provide necessary information, or significantly impedes the investigation. None of the above conditions is applicable to the NSR applicant as the applicant have fully cooperated with the Authority and were willing to provide any other information that may be required by the Authority. Following WTO decisions are relevant in this regard;

a. In Argentina ï Ceramic Tiles, the Panel held that "It is clear to us, and both parties agree, that an investigating authority may disregard the primary source information and resort to the facts available only under the specific conditions of Article 6.8 and Annex II of the AD Agreement. Thus, an investigating authority may resort to the facts available only where a party: (i) refuses access to necessary information; (ii) otherwise fails to provide necessary information within a reasonable period; or (iii) significantly impedes the investigation."

b. In US ï Steel Plate, the Panel analyzed the extent of the limitation that paragraph 3 of Annex II puts on investigating authorities' right to reject information submitted and instead resort to facts available and did not accept the United States' position that 'information' in Article 6.8 means all information, such that Members have an unlimited right to reject all information submitted in a case where some necessary information is not provided.

c. The Panel in EC - Salmon (Norway) drew support from US ï Hot-Rolled Steel and US ï Steel Plate held that "Paragraph 3 of Annex II directs investigating authorities to take all submitted information into account for the purpose of its determinations when it is: (i) 'verifiable'; (ii) 'appropriately submitted so that it can be used in the investigation without undue difficulties'; (iii) 'supplied in a timely fashion'; and, where, applicable, (iv) 'supplied in a medium or computer language requested by the authorities'. Thus, paragraph 3 of Annex II calls upon investigating authorities to take into account all information that satisfies three, or sometimes four, cumulative conditions when making determinations. It follows that where all of the conditions are satisfied, an investigating authority will not be entitled to reject information submitted when making determinations.ò

23. **Comments to disclosure filed by Bangladesh High Commission:**

i. The three companies concerned filed all relevant information pertaining to Normal value of subject goods in Bangladesh and Export price of subject goods to India and

to other countries for the period of Investigation in the prescribed Exporter Questionnaire Response format and in timely manner. They cooperated with the Authority and provided with necessary information for determination of individual dumping margin.

ii. Despite full cooperation and submission of all relevant information, the Disclosure statement proposes not to determine normal values and export prices for our company. A perusal of the Disclosure statement shows that the Authority asserted that information pertaining to both normal value and export price of the producer/exporter are not reliable for the fundamental reason that the POI of the investigation was a prospective period or the applicant had the knowledge of the POI though we submitted verifiable data as maintained by the companies. The very purpose of the new shipper review is not to subject a new shipper to punitive residual duties in an earlier investigation and to provide an opportunity to prove his price behaviour in a prescribed POI for determination of individual margin of dumping. Therefore it would be a very unfair to disregard the normal value and export price of the producer/exporter on the ground that the investigation was done in a prospective period.

iii. The applicants have submitted verifiable cost of the ñjute productsò which was the product Chartered Accountant vide its certificate dated 15.07.2019 certified that Audited Accounts of the company for the POI and other Accounts/Financial Records are maintained and reported in accordance with accounting principles generally accepted in Bangladesh as per IASs referred by ICAB following BFRS. Since the producers and exporters maintain their data in a particular manner historically, they could not have changed their accounting methodologies only for this investigation. The records maintained by the applicants do not follow such type wise costing and such type wise cost is not a requirement of general business or business laws in Bangladesh. The type wise cost could have been determined based on a proper apportionment basis such as value of production etc. which is a standard method adopted for many investigations where the raw materials are same and the value of end product varies depending upon the grades, counts etc.

iv. The companies had exported significant quantities of the subject goods to India and to other countries during the POI. The applicants have acted to the best of their ability and provided verifiable cost of the subject goods. The prices were driven by the market and merely terming such prices as unreliable goes against the spirit of New Shipper Reviews.

H. <u>Examination by Authority</u>

24. The Authority notes the submissions of the producer/exporter that in a new shipper review investigation the Authority cannot adopt a different approach to evaluate normal value. Further, the producer/exporter has cited the bed linen case. The applicant has also stated that company does not maintain count wise cost of production of yarn and that it has provided the average cost of production for different counts of yarn and that based on sales value, cost of product of different yarns could be evaluated. The Authority after noting the above submissions holds that the applicant has not denied that price and cost of different count of yarns vary. The Authority further holds that in situations which warrant an apple to apple comparison at different PCNôs of PUC, the Authority has undertaken such an exercise in past. The granular evaluation at PCN level may ultimately be averaged out

wherever considered appropriate. The bed linen case does not prohibit a PCN level comparison. The Authority also holds that in a NSR investigation where the applicant is exporting in a prospective period to have an individual dumping margin established, it is rather imperative that fair comparison at apple to apple be undertaken. The Authority in the instant case, noting the price variation amongst different counts of yarn, requested the applicant to provide count wise cost of production of yarn which the applicant could not provide. This constrained the Authority to established the normal value for different counts of yarn exported to India. The Authority, noting the methodology reiterated by the applicant to determine count wise cost of production for yarn, holds that in a scenario where the prices of yarn itself are subject of AD scrutiny, methodology to apportion some parts of cost of production on the sales price is not appropriate. Therefore, the Authority reiterates its inability to establish normal value for different counts of yarn as stated in the disclosure statement.

The Authority notes the submissions of applicants regarding export price of different counts of yarn during POI to India and its request to share the transaction wise import data adopted by Authority. The Authority clarifies that transaction wise data considered by Authority is DG-Systems data wherein the name of importer and exporter is available to the Authority on a confidential basis. The Authority has revisited the data and confirms its observation as given in the disclosure. The submission by the Bangladesh Jute Goods Exporters Association on international prices of yarn are merely opinions of reasonable price expressed by them and are not supported by any evidence. The prices to India by the applicant are compared with other import prices of same count which are as per the actual CIF data and therefore are infact credible rather than an opinion produced by the applicant. As regards referencing landed price instead of CIF of imports for comparison, the same is not appropriate as exports by the applicant producer/exporter cannot be considered as exports without an AD duty. These exports made by applicant are nevertheless under bond but are with a liability of residual ADD if applicant claims are not accepted. There cannot be an assumption of nil ADD pending a final determination. The fact that about 29% of exports by applicant producer/exporter prices are compared with other exporters for same grade/count i.e. 28/1 sacking which is though a reasonable indication of the fact that export prices of applicant producer/exporter are higher than other producers/exporters, to enhance the reliability of comparison as requested by the applicant, the Authority notes that export price of the applicant producer/exporter i.e. Natore and PNP is infact in the higher category when compared with other exporters in the POI. Under such circumstances, the Authority holds that the dumping margin evaluated considering normal value as average cost of production with 5% reasonable profit and ex-factory export price would not be reliable and appropriate. The only representative individual margin that can be accorded to the applicant is the non-sampled category of measure as evaluated in the original finding. The Authority also notes that the non-sampled producers/exporters in original finding have not requested for any review of the non-sampled margin accorded to them challenging them as not being appropriate or non-representative.

The Authority in view of the above, recommends measure of non-sampled category of producer/exporter on Jute Yarn for the applicant producer/exporter as well. For Jute Sacking Bag, the Authority holds that the quantum of exports is a miniscule quantity (0.3%) of the total exports of sacking bag during the POI and this cannot be considered as commercial quantity sale. The Authority notes the submission that there is no prescription of quantum of sales by an applicant producer/exporter in a new shipper review investigation and holds that the evaluation of individual dumping margin requires establishing a reliable export price. Merely undertaking some token exports does not

enable the Authority to establish credibility of the Export Price. The requirement of volumes is not for the purpose of prescribing some minimum threshold for determining individual dumping margin. The requirement of volumes is to establish reliability and appropriateness of the export price. Since the purpose of the present investigations is to determine individual dumping margin, the normal value and export price are the critical issues under consideration. Further, determination of export price has inherent linkage to the export volumes. Thus, the Authority has not prescribed export volumes as a condition precedent to determination of dumping margin, but has considered export volumes as one of the relevant criteria to determine appropriateness of export price reported. The Authority holds that the measure recommended for non-sampled category of producer/exporter is also an average of the measure recommended for individual sampled producers/exporters and would also be representative in the instant case. The Authority, noting the facts of the case and cooperation by the applicant producer/exporter, therefore recommends the measure applicable for the non-sampled category of producers/exporters of sacking bag for the applicant producer/exporter as well instead of the existing residual category measure.

I. Conclusions and Recommendations

25. 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 both for Yarn and Sacking Bag. Further, since this measure is based on application to the producer/exporter, this would indeed be fair and appropriate. Accordingly the existing Authority recommends as under:

i. Following entries at S. No. 51 and 52 be added to the existing duty table mentioned in C.N. No. 11/2017-Customs (ADD) dated 3/4/2017 as amended through C.N. No. 03/2019-Customs (ADD) dated 15/1/2019, or through Final Finding No. 7/7/2018-DGAD dated 19/9/2019 or Final Finding 7/25/2018-DGAD dated 3/10/2019.

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)**
51.	5307, 5310, 5607 or 6305	Sacking Bags	In all forms and specification	Bangladesh	Bangladesh	Natore Jute Mills	PNP Jute Trading LLC	125.21	US$/MT
52.	5307, 5310, 5607 or 6305	Yarn	In all forms and specification	Bangladesh	Bangladesh	Natore Jute Mills	PNP Jute Trading LLC	97.19	US$/MT

ii. Export of yarn and Sacking Bags made during POI i.e. 1/7/2018 to 31/3/2019 in accordance with the C.N. No. 41/2018-Customs (ADD) dated 24/8/2018 be regularised in accordance with (i) above. To further clarify the exports of yarn and sacking bag made by M/s Natore Jute Mills w.e.f. 1/7/2018 will be subjected to AD duty as stated in (i) above which would be conterminous with the existence of C.N. No. 11/2017-Customs (ADD) dated 3/4/2017.

(Sunil Kumar)
Additional Secretary & Director General