

NON-CONFIDENTIAL

**F. No. 7/26/2021 - DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building, Parliament Street, New Delhi-110001**

FINAL FINDING

(Case No. AD (SSR) /2021)

Dated 24th June, 2022

Subject: Sunset review investigation concerning imports of “Toluene Di-isocyanate” originating in or exported from China PR, Japan and Korea RP.

A. BACKGROUND OF THE CASE

F. No. 7/26/2021-DGTR: - 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’ or ‘AD Rules’) thereof;

1. The Designated Authority had initiated an anti-dumping investigation in respect of imports of “Toluene di-isocyanate” originating in or exported from China PR, Japan and Korea RP on 5th October 2016. The Authority recommended provisional anti-dumping duty vide preliminary findings dated 28th March, 2017. The Ministry of Finance imposed provisional duty vide Notification No. 25/2017- Customs (ADD) dated 5th June, 2017. Thereafter, final finding was issued vide notification no. 14/36/2016-DGAD dated 13th December 2017 confirming the imposition of definitive anti-dumping measures on the imports of subject goods from China PR, Japan and Korea RP which was implemented by the Central Government vide Notification No.3/2018-Customs (ADD) dated 23rd January 2018. The said duties were levied for a period of 5 years. Vide custom Notification no. 19/2022-Cus (ADD) dated 03.06.2022, the said duty was extended till 27.09.2022
2. In terms of Section 9A(5) of the Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on expiry of five years from the date of such imposition. The Authority is required to review whether the expiry of anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury.
3. Rule 23(1B) of the Rules provides as follows:

" any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry, within a reasonable period of time prior to the

expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. "

4. In accordance with the above, the Authority is required to review, on the basis of a duly substantiated request made by or on behalf of the domestic industry, as to whether the expiry of an anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury.
5. Gujarat Narmada Valley Fertilizers & Chemicals Limited (hereinafter referred to as the 'applicant' or 'domestic industry') had filed an application before the Designated Authority (hereinafter referred to as the "Authority"), in accordance with the Act and the Rules, for initiation of the sunset review investigation concerning imports of "Toluene diisocyanate" (hereinafter referred to as 'subject goods' or 'product under consideration') originating in or exported from China PR, Japan and Korea RP (hereinafter referred to as 'subject countries').
6. In view of the duly substantiated application by the applicant, the Authority in accordance with Section 9A(5) of the Act read with Rule 23(B) of the Rules, initiated a sunset review investigation vide Notification No. F. No. 7/26/2021-DGTR for Case No. AD (SSR) - 20/2021 dated 27th August 2021 to review the need for continued imposition of the duties in force in respect of the subject goods, originating in or exported from the subject countries and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.
7. The scope of the present review covers all aspects of the previous investigations concerning the subject goods issued vide Final Finding No. 14/36/2016-DGAD dated 13th December 2017

B. PROCEDURE

8. The procedure described below has been followed in this investigation:
 - i. The Authority notified the Embassies of the subject countries in India about the receipt of the present application before proceeding to initiate the investigation in accordance with Rule 5(5) of Rule supra.
 - ii. The Authority issued a notification dated 27th August 2021, published in the Gazette of India, Extraordinary, initiating a sunset review of the anti-dumping duties imposed on the imports of the subject goods, originating in or exported from the subject countries.
 - iii. The Authority sent a copy of the initiation notification dated 27th August 2021 to the Embassies of the subject countries in India, known producers and exporters from the subject countries, known importers/users and other interested parties, as per the addresses made available by the applicant and requested them to make their submissions available information within the prescribed time-limit in accordance with Rule 6(4) of the Rules.
 - iv. A copy of the letter and questionnaire sent to the producers/exporters was also sent along with the names and addresses of the known producers/exporters from the subject countries. Embassies of the subject countries in India were also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit.

- v. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the Embassies of subject countries in India in accordance with Rule 6(3) of the Rules supra.
- vi. The Authority sent exporters' questionnaires to the following known exporters in the subject countries in accordance with the Rule 6(4) of the Rules to elicit relevant information:
 - a. Bayer Material Science (China) Co., Ltd, China PR.
 - b. Changzhou Dahua Group Co., Ltd, China PR.
 - c. Shanghai BASF Polyurethane Co., Ltd, China PR.
 - d. Wanhua Chemical Group Co., Ltd, China PR
 - e. Yantai Juli Fine Chemical Co. Ltd. China PR.
 - f. Henan GP Chemicals Co.,Ltd, China PR
 - g. Fujian Petrochemical Industrial Group Co. Ltd., China PR
 - h. Mitsui Chemicals & SKC Polyurethanes, Japan.
 - i. Nippon Polyurethane Industry Co., Ltd, Japan.
 - j. BASF Company Ltd, Korea RP.
 - k. Everlite Korea Co., Ltd, Korea RP
 - l. Hanwha Chemical Corporation., Ltd, Korea RP
 - m. IMS Corporation, Korea RP
 - n. OCI Corporation/ OCI Company Ltd. Korea RP.
 - o. PP and Y International Co. Ltd, Korea RP
 - p. Covestro Polymers (China) Co.
- vii. The following companies have filed the exporter questionnaire responses as producers/exporters of the product under consideration:
 - a. Covestro Polymers (China) Company Limited, China PR
 - b. Covestro (Hong Kong) Limited, China PR
 - c. Covestro (Shanghai) Investment Company Limited, China PR (MET Questionnaire)
 - d. Wanhua Chemical Group Co., Ltd, China PR
 - e. Wanhua Chemical (Singapore) PTE. Ltd., China PR
 - f. Wanhua Chemical Fujian Co., Ltd., China PR
 - g. Wanhua Chemical (Yantai) Sales Co., Ltd. , China PR
 - h. Wanhua Chemical (Ningbo) Trading Co., Ltd. , China PR
 - i. BASF Company Ltd., Korea RP
 - j. Hanwha Solutions Corporation, Korea RP
 - k. Everlite Korea Co. Ltd. Korea RP
 - l. IMS Corporation, Korea RP
 - m. PP & Y International Co. Ltd., Korea RP
- viii. The Authority forwarded a copy of the notification to the following known importers/ users of subject goods in India and advised them to make their views known in writing within the prescribed time limit in accordance with the Rule 6(4) of Rules:
 - a. Aadi Polymers Pvt. Limited
 - b. Allied Foam Pvt. Limited
 - c. DuraPuff (Silvassa) Pvt. Limited
 - d. Fancy Foam Pvt. Limited
 - e. Hindustan Polyfoam Pvt. Limited
 - f. Jindal Foam and Co.
 - g. Kurlon Limited

- h. MH Polymers Pvt. Limited
 - i. Tirupati Foam Limited
 - j. Pyarelal Foam (South) Pvt. Ltd
 - k. Prime Comfort Products Pvt. Limited
 - l. Springwel Mattresses Pvt. Limited
 - m. Sheela Group Co., Limited
 - n. Shree Malani Foams Pvt. Limited
 - o. Sunrise Foam Product Pvt. Limited
 - p. Springfeel Polyurethanes Pvt. Limited
- ix. The following importers/users from have responded by filing questionnaire response
- a. BASF India Limited
 - b. Covestro (India) Private Limited
 - c. Flexipol Foams Private Limited
 - d. M.H. Polymers Pvt Private Limited
 - e. PU Foams. Private Limited
 - f. Shree Malani Private Limited
 - g. Sheela Foams Limited
 - h. Tirupati Foam Limited
 - i. Wanhua International (India) Private Ltd
- x. Legal submissions have also been filed by Indian Polyurethane Association.
- xi. A list of all the interested parties was uploaded on DGTR's website along with the request therein to email the NCV of their submissions to all the other interested parties since the public file was not accessible physically due to ongoing global pandemic.
- xii. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of the subject goods for the past three years, and the period of investigation, which was received by the Authority. The Authority has relied upon the DGCI&S import data for computation of the volume & value of imports and injury analysis. Analysis has been done and it has been found that there is no significant difference in the analysis done by the Authority and the applicant.
- xiii. Table verification of the information and data submitted by the domestic industry and the responding producers in the subject countries was carried out to the extent deemed necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of this disclosure statement. Additional/supplementary information was sought from the applicant and other interested parties to the extent deemed necessary
- xiv. The Non-Injurious Price (hereinafter referred to as 'NIP') is based on the optimum cost of production and the cost to make & sell the subject goods in India based on the information furnished by the domestic industry and in accordance with Generally Accepted Accounting Principles (GAAP) and Annexure III to the Rules. Such non-injurious price has been worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to address injury to the applicant.
- xv. The Authority held oral hearing on 27th December 2021 to provide an opportunity to the interested parties to present information orally in accordance with Rule 6(6). The oral hearing was held through video conferencing in view of the special circumstances arising out of the COVID-19 pandemic. All the parties who presented their views in the oral hearing were requested to file written submissions in order to enable opposing interested parties to file rejoinders thereafter.

- xvi. The period of investigation for the purpose of the present review is from 1st April 2020 to 31st March 2021 (12 months). The injury analysis period includes the period of investigation and the preceding three, 2017-18, 2018-19 and 2019-20.
- xvii. The submissions made by the interested parties during the course of the investigation and the oral hearing, have been addressed in this disclosure statement, to the extent considered relevant by the Authority.
- xviii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information have been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.
- xix. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has treated such parties as non-cooperative and recorded its finding on the basis of 'facts available'.
- xx. In accordance with Rule 16 of the Rules, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 12th May, 2022 and comments received thereon, considered relevant by the Authority, have been addressed in these final findings. The Authority notes that most of the post disclosure submissions made by the interested parties are mere reiteration of their earlier submissions. However, the post disclosure submissions to the extent considered relevant are being examined in these final findings.
- xxi. The exchange rate for the period of investigation has been taken by the Authority is USD = Rs 75.22.
- xxii. '***' in these final finding represents information furnished by interested parties on confidential basis and so considered by the Authority under the Rules.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

9. The product under consideration in the original investigation was described as follows:

"Toluene di-isocyanate (TDI) is an organic compound with the formula CH₃C₆H₃(NCO)₂. Two of the six possible isomers are commercially important: 2,4-TDI (CAS: 584-84-9) and 2,6-TDI (CAS: 91- 08-7). 2,4-TDI is produced in the pure state, but TDI is often marketed as 80/20 and 65/35 mixtures of the 2,4 and 2,6 isomers respectively. The PUC in the present investigation concerns TDI having isomer content in the ratio of (80:20) and any other grades are beyond the scope of product under consideration."

TDI is a clear liquid and is used for production of Flexible Polyurethane Foam, Furniture cushion, Industrial Gaskets, Protective pads for Sports & Medical use, Automobiles: Seats, Furniture, Lining, Sun visors etc., packing: Electronic items, Frozen Foods, Medicines, Audio-video Computer CD's etc.

C.1 Submissions made by the other interested parties

- 10. The following submissions have been made by the interested parties during the course of the investigation:
 - a. The applicant cannot supply BHT free material, whereas US and European markets have banned the exports of TDI that is not BHT free. The Respondent request the Authority to examine whether the petitioner produced and sold BTS

- free TDI during the POI in commercial quantities. Accordingly, BTS free TDI should be excluded from the scope of the PUC.
- b. The applicant is manufacturing the TDI and MDI blend in the ratio of 80:20. However, they are unable to manufacture the TDI and MDI blend with the ratio 65:35. Therefore, it must be expressly excluded from the product scope.
 - c. The IPUA submits that TDI is produced in two isometric concentrations of 80:20 and 65:35. The scope of the product under consideration should specifically exclude TDI having isomer content in ratio other than 80:20.
 - d. Further, the applicant has failed to clarify whether the data set in petition is pertaining to the TDI with 80:20 ratio only and other variants have been segregated while presenting the data to avoid distortion of the injury analysis.
 - e. The Authority has not explained the various grades except 80:20 of TDI manufactured by the applicant domestic industry and being imported to India and if the domestic industry data and the import data clearly excludes those products.

C.2 Submissions made by the domestic industry

11. The following submissions have been made by the applicant during the course of investigation.
 - a. The present application being an application for sunset review, the scope of the product under consideration remains the same as was defined by the Authority in its previous finding.
 - b. The Authority in the original investigation concluded that goods produced by the applicant is a like article to the goods that is imported into the domestic market. There has been no development in the technology and the product produced by the applicant continues to remain like article.
 - c. On the submission of users requiring the BHT free material for exports to EU and USA, the applicant can supply BHT free subject goods.
 - d. Demand of BHT free TDI is insignificant, and the submission has been raised only to divert the Authority's attention to baseless arguments.
 - e. Any user who intends to use BHT free material for export purpose can import the same without payment of any anti-dumping duty under advance authorization scheme.
 - f. The applicant is not producing TDI having isomer content 65:35.
 - g. The applicant has sold TDI-MDI blend in the market and the process of blending is very simple and the ratio of blending can also be changed as per the requirement of the consumers.

C.3 Examination by the Authority

12. In the original investigation, the product under consideration in the original investigation was described as under:

"Toluene di-isocyanate (TDI) is an organic compound with the formula CH₃C₆H₃(NCO)₂. Two of the six possible isomers are commercially important: 2,4-TDI (CAS: 584-84-9) and 2,6-TDI (CAS: 91-08-7). 2,4-TDI is produced in the pure state, but TDI is often marketed as 80/20 and 65/35 mixtures of the 2,4 and 2,6 isomers respectively. The PUC in the present investigation concerns TDI having isomer content in the ratio of (80:20) and any other grades are beyond the scope of product under consideration."

TDI is a clear liquid and is used for production of Flexible Polyurethane Foam, Furniture cushion, Industrial Gaskets, Protective pads for Sports & Medical use, Automobiles: Seats, Furniture, Lining, Sun visors etc., packing: Electronic items, Frozen Foods, Medicines, Audio-video Computer CD's etc.

13. On the submission regarding the clarification of the product under consideration that TDI having isomer content in ratio other than 80:20 should specifically be excluded from the scope, it is noted that the scope of the product under consideration is restricted to TDI having isomer content 80:20 and TDI having any other isomer content is outside the product under consideration. Thus, the scope of PUC already excludes the TDI with isometric concentrations of 65:35. There is no ambiguity on the scope of the product under consideration.
14. Regarding the submission of the other interested parties for exclusion of TDI-MDI blend of 65:35 ratio, the Authority notes that blending of TDI & MDI involves simple mixing of TDI 80:20 (PUC) with MDI (another chemical). There is no change in chemical composition during this process. The TDI-MDI blend produces foam and the hardness of foam depends on the percentage of TDI and MDI in it. TDI and MDI may be blended in different proportions like 70% – 30%, 80% – 20%, 50% - 50% etc, respectively.
15. Thus, TDI-MDI blend is an altogether different product and is not covered in the scope of the PUC.
16. On the submission of BHT free TDI required for exporting final products to Europe and United States of America, the Authority notes that as per information available on record, demand for BHT free TDI is insignificant and the users can import BHT free TDI under advance authorization scheme without payment of duty.
17. The applicant has claimed that the subject goods exported to India are identical to the goods produced by the domestic industry and the interested parties have also not established any difference in the goods produced by the applicant and the imported product. The Authority notes that the subject goods produced by the applicant are comparable to the imported goods from the subject countries in terms of chemical characteristics, product specifications, technical specifications, manufacturing process & technology, functions & uses, pricing, distribution & marketing, and tariff classification of the goods. The two are technically and commercially interchangeable. Accordingly, the Authority proposes to hold that the subject goods produced by the applicant are 'Like Article' to the subject goods being imported from the subject countries.

D. DOMESTIC INDUSTRY AND STANDING

18. Rule 2(b) of the Antidumping Rules defines domestic industry as under:

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

importers thereof in such case the term, 'domestic industry' may be construed as referring to the rest of the producers."

D.1 Submissions made by the other interested parties

19. The other interested parties have not filed any submissions disputing the standing of the applicant.

D.2 Submissions made by the domestic industry

20. The following submissions have been made by the applicant during the course of the investigation.
- a. The applicant is the sole producer of the subject goods in India.
 - b. The applicant has not imported the the subject goods from the subject countries.
 - c. The applicant is neither related to the exporter of the subject goods from the subject countries nor the importers of the subject goods in India.
 - d. The applicant satisfies the requirement of the Rules

D.3 Examination by the Authority

21. Rule 2(b) of the Rules defines domestic industry as under:

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

22. The present application has been filed by M/s Gujarat Narmada Valley Fertilizers & Chemicals Limited. The applicant is the sole producer of the subject goods in India. The applicant has not imported the subject goods from the subject countries and is not related to any exporter in the subject countries or importer in India. Accordingly, the Authority determines that the applicant constitutes domestic industry under Rule 2(b) of the Rules and the application meets the requirements of 'standing' under Rule 5(3).

E. MISCELLANEOUS SUBMISSIONS

E.1 Submissions made by other interested parties

23. The following submissions have been made by other interested parties during the course of the investigation:
- a. The Authority had in the review investigation of Ammonium Nitrate excluded Indonesia from the scope countries and in the Uncoated Copier Paper review investigation excluded Thailand. Similarly, Korea should be excluded from the scope of the investigation as there is no injury or likelihood of dumping and injury.
 - b. Specifically, the imports from Korea have declined by 72%, LV of Korea is significantly higher (6.2 %) than NIP and LV from the other subject countries

during the POI. Further, the capacity utilization of BASF company remained in the same range throughout the period of injury.

- c. The applicant has raised the issue of tariff concessions on import of subject goods from Japan and Korea under the FTA as well as inverted duty structure. The Designated Authority is not the appropriate forum to raise these issues.
- d. The applicant is enjoying duty from almost all major sources of imports.
- e. The applicant adopts an erratic pricing policy and changes prices on an average 2-3 times a month by virtue of its monopolistic position and anti-dumping duty protection.
- f. Imports are required in order to bridge the demand and supply gap as the applicant cannot cater to the entire demand.
- g. Production facilities of the applicant are located in the western corner of the country making supply chain difficult for eastern and deep southern customers. Imports become more viable from ports rather than depend on the sole producer.
- h. Extension of anti-dumping duty is not a norm but an exception. Facts of the present case do not require extension of duties.
- i. With the expiry of the anti-dumping duties, the exporters will try to recover their prices and the landed price will increase.
- j. Domestic users require level playing field against anti-competitive and monopolistic behavior of the applicant.

E.2 Submissions by the domestic industry

24. The following submissions have been made by the applicant during the course of the investigation:
- a. In case of review investigation of Ammonium Nitrate, Indonesia was removed from the scope of review as there were no imports from the country and the domestic industry in that case could not establish likelihood of dumping and injury.
 - b. Reason for exclusion of Thailand from the scope of review of uncoated paper was that (a) the dumping margin was de-minimis (b) the imports were de-minimis and (c) the Authority did not find any likelihood of injury.
 - c. As required by the Part II of the questionnaire, the responding producers were required to provide information on production, sales and exports in their respective countries. However, as per the non-confidential version of the response shared with the applicant, Covestro Polymers and BASF Limited have not provided the relevant information.
 - d. The applicant has fulfilled its obligation of providing the import data in PDF format as stated in the Trade Notice 07/2018. The Authority authorizes all the interested parties to obtain such data.
 - e. Indian Polyurethane Association (IPUA) was asked by the Authority during the Oral Hearing to substantiate its claim of demand in India being more than 1 lakh tons and reason for imports was demand and supply gap, however, no information has been provided.
 - f. IPUA has not established its credential to participate in the present investigation.
 - g. The submission made by the other interested parties that the producers in the subject countries will look to increase their prices with the expiry of duties, implies that the producers have absorbed the anti-dumping duties. Further, it is believed that exporters will increase their prices, there is a likelihood of diversion of third country exports to India as the exporters will find it beneficial to sell in the Indian market.

E.3 Examination by the Authority

25. The Authority notes that the applicant has provided a duly substantiated application based on which the present sunset review investigation was initiated. The present sunset review investigation was initiated based on the data/information provided by the domestic industry and the Authority has initiated the sunset review investigation after prima facie satisfying itself that there is sufficient evidence of dumping and likelihood of continuation or recurrence of dumping and consequent injury to the applicant.
26. On the submission of participation of Indian Polyurethane Association, the Authority notes that in accordance with Rule 2(c) and 6(5), a consumer association may participate in an anti-dumping investigation in cases when the PUC is sold at retail level. In cases where the PUC is not sold at retail level, the industrial users may participate. Further, all interested parties have been given an opportunity to present their views orally in the oral hearing and all submissions filed by the interested parties have been taken into consideration for the purpose of the present finding.
27. Regarding the erratic pricing policy adopted by the applicant domestic industry, the Authority notes that there is a significant fluctuation in the selling price of the applicant as well as the price of imports. Both the landed price of imports and the selling price of the applicant show an increasing trend in the first quarter of the period of investigation, declined in the next quarter and then further increased thereafter. Further, the applicant has admitted in the application that there has been significant fluctuation in his selling price, landed price of imports and the prices of raw materials during the period of investigation. Therefore, when the prices have fluctuated significantly due to market forces, there is no merit in the argument that the applicant has kept an erratic pricing policy.
28. Regarding the submission of inverted duty structure made by several interested parties, the Authority notes that imposition of an anti-dumping duty has an objective of neutralising unfair trade practice of dumping. Since AD is not a normal basic duty but only a remedial measure, the argument against inverted duty structure is trivial and simply a fact. ADD cannot be used as an instrument to remedy any difficulty faced by the domestic industry due to tariff concessions under FTA.
29. With regards to DGCI&S data, the Authority notes that the data has been shared with the interested parties relating to volume & value of imports from the exporting countries into India. Further, the applicant has provided a complete list of transaction wise import data. It is also noted that any interested party can obtain data independently from the DGCI&S and lodge its own counter claim based on the data so received. The Authority notes that the procedure for sharing and procuring import data has been laid down in the Trade Notice 07/2018 dated 15th March 2018. It provides that (i) the sorted import data relied upon by the domestic industry can be shared in hard copy & (ii) interested parties can seek authorization from the Authority for seeking raw transaction by transaction import data from DGCI&S. Hard copy of the sorted import data was made accessible to the interested parties based upon declaration/undertaking as per prescribed format. The interested parties who requested for procurement of import data from DGCI&S and provided undertaking as per Trade Notice 07/2018 were also granted authorization to obtain import data in excel file from DGCI&S.

30. There has been submission by the other interested parties requesting exclusion of Korea RP from the scope of subject countries as there is no injury, or likelihood of dumping and injury due to exports from Korea RP. For this submission, the interested parties have relied upon SSR investigation of ammonium nitrate in which Indonesia was excluded from the scope subject countries and SSR investigation of uncoated copier paper wherein Thailand was excluded from the scope of subject countries. In this regard, the Authority notes that the facts of the investigations referred to by the interested are not similar to the facts of the present investigation. In case of sunset review of ammonium nitrate, Indonesia was excluded as there were no imports from Indonesia during the POI and the likelihood of dumping or injury w.r.t exports from Indonesia could not be established. Further, in the sunset review of uncoated copier paper, Thailand was excluded as the dumping margin during the POI was de-minimus and the likelihood of dumping or injury could not be established. However, in the present case, the applicant had established continuing injury and likelihood of dumping or injury in case the anti-dumping duties are ceased. Further, during the course of the investigation, none of the interested parties have provided any justification for exclusion of Korea RP from the scope of the subject countries.
31. IPUA has provided estimate based on production quantity of the user industry that consumes TDI as input material. Based on estimate production of the finished products including Flexible Slab Foam, Moulded Foams, Adhesives in Flexible packaging and consumption pattern for these products, IPUA has estimated total demand to be 1 lakh ton. However, the IPUA has failed to provide authentic report that can substantiate their claim.

F. CONFIDENTIALITY

F.1. Submissions made by the other interested parties

32. The following submissions have been made by the interested parties with regards to confidentiality:
- The applicant has claimed excessive confidentiality which violates Rule 7 of the anti-dumping rules.
 - Manufacturing process, purchase/sales policy, names of raw materials, relationships with foreign producers etc. have not been disclosed by the applicant.
 - The Authority had in the previous finding disclosed capacity, production and sales figures of the domestic industry which has been claimed confidential by applicant.
 - Global capacity information is as per ICIS report data which has been claimed as confidential even though it does not contain business sensitive information.
 - The domestic industry has claimed excess confidentiality in complete contravention of trade notice 10/2018 dated 7th September, 2018

F.2. Submissions by the domestic industry

33. The following submissions have been made by the domestic industry with regards to confidentiality:
- Sales channel has been claimed confidential by BASF Limited and Covestro Polymer.

- b. Items of price adjustments in the normal value and export price has been claimed confidential by Hanwha Solutions Corporation.
- c. Information on production and demand of the product under consideration in the subject countries has been claimed confidential with no indexation provided by Hanwha Solution Corporation and Wanhua Chemical Group.
- d. Reply to question on whether raw material has been purchased from related supplier or produced captively has been claimed completely confidential by Hanwha Solution Corporation.
- e. Contrary to the submission of the other interested parties, the applicant has in fact disclosed the range of non-injurious price for both the plants.
- f. The applicant has made complete disclosure of information as required by the Trade notice 10/2018 dated 7th September.
- g. All relevant information considered by the Authority for injury analysis has been provided by the applicant as per the trade notice issues.

F.3. Examination by the Authority

- 34. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties as per Rule 6(7) and Trade Notice No. 10/2018 dated 7th September 2018 read with Trade Notice 01/2020 (as extended by the Authority till further notice).
- 35. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provide as follows:

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

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

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

- 36. Submissions made by the domestic industry and the other opposing interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been

considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

G. DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

G.1 Submissions made by other interested parties

37. The following submissions have been made by other interested parties during the course of investigation:
- a. Covestro China meets the criteria laid down rebutting the non-market economy presumption as per Annex I, Paragraph 8 of the Rules.
 - b. Covestro China is a 100% owned subsidiary of Covestro Germany. There is no holding by the Chinese Government or Chinese company or individual.
 - c. The board of directors comprise of 3 members and all three of them are appointed by Covestro Germany. A supervisor has also been appointed by Covestro Germany.
 - d. Covestro China imports Toluene from Korea, Japan and also sources it locally. Covestro's purchase price of raw materials reflects the prices on the international market.
 - e. There are no restrictions by the Government of China on business operations of Covestro China.
 - f. Covestro China is not in derogation or exemption from any laws in China PR.
 - g. Financial statements of Covestro China are prepared by GAAP of China PR and the same are audited by one of the Big 4 Audit Firms.
 - h. TDI market is a price transparent market with prices posted daily by PU daily and weekly by ICIS. Covestro China sells its products on the basis of these prices.
 - i. In the anti-dumping investigation of High Tenacity Polyester Yarn originating in or exported from China PR, the Authority had accepted the MET claim on the basis of same grounds.
 - j. Methodology suggested to use the raw material export price from the country of origin (not the domestic selling price) and the conversion cost of the domestic industry, is without any legal basis and should not have been accepted.
 - k. Decision of Hon'able CESTAT in the matter of Kuitun Jinjiang Chemical Industry Co. Ltd. vs Union of India does not exclude the relevance of 'level of development' for selection of an appropriate third country when the export from such third country to another third country is to be considered.
 - l. The Authority needs to determine that Taiwan is an appropriate market economy third country based on level of economic development.
 - m. Even after engaging in imports and exports for a long time, the applicant does not have access to trade journals publishing prices.
 - n. The applicant has chosen to adopt methodology inconsistent with the Anti-dumping Agreement or the Customs Tariff Act.
 - o. It is evident from the past practices of the Authority in matters like Choline Chloride that resale price by the related importer is not considered for determining the landed price in case the importer is related to the exporter.
 - p. Since Wanhua Chemical Group Co. Ltd. started production only in 2018, a separate dumping margin should be determined for the Wanhua Chemical Group.

- q. The application does not provide positive evidence for likelihood of continuation or recurrence of dumping and injury due to alleged imports as required by Article 3(1) and 3.5 of the ADA.

G.3 Submissions made by the domestic industry

- 38. The following submissions have been made by the domestic industry during the course of investigation:
 - a. The claim of Covestro Polymer for market economy treatment is solely on the ground that the entire share capital is held by a company set up in Europe. Shareholding of the company is not the sole criteria for claiming market economy treatment.
 - b. Two producers from China PR filed responses but only Covestro China has claimed market economy treatment and Wanhua Chemical Group has not.
 - c. If Covestro Polymers claims that it is operating under market economy conditions, it is required to show that how its costs and prices are not at the same level as for Wanhua Chemical Group. Comparison should be made between domestic selling price, cost of raw materials, cost of utilities and other expenses of both the producers.
 - d. Covestro Polymers has reported in its annual report that it competes with Wanhua Chemical, BASF, Dow Chemical and Huntsman. The fact that both producers compete in the domestic market of China establishes that the price in Chinese market are affected due to non-market conditions.
 - e. The price of Toluene in China are impacted due to the non-market conditions. The import price of Toluene in China will naturally be in line with the price of Toluene in China. The price in China is lower than the global import price and the price of the applicant.
 - f. Comparison of CFR prices and South East Asia prices show that prices in China are lower for most of the months.
 - g. Domestic price and cost cannot be considered unless the Chinese producer demonstrates that there is no state intervention in determination of cost and price, prices reflect market value and there is no restriction in the volume of sales in domestic or export market.
 - h. Covestro India Private Limited imports from its related entities Covestro Polymers in China and other related producers in other countries. The product is captively used and also sold in the domestic market. However, as per price trend observed in market, prices at which Covestro India Private Limited imports is significantly higher than the price at which it resells in the domestic market.
 - i. Constitution of China permits engagement with the non-public sector. As per Article 11 of the Constitution, the State is assigned the role of an interventionist that goes beyond protecting the rights and interests of the non-public sector and the State shall “encourage, support, and guide” their development. Article 15 of the Constitution directly states that the country practices socialist market economy and makes it clear that the same is done by variety of different instrument such as incentivizing and restricting to guide the economy.
 - j. The General Program of the Chinese Communist Party Constitution also plays an important role in development of the socialist market economy. It states that a decisive role of market forces in resource allocation and ensures the government plays its role better. It establishes a sound system for macroeconomic regulation. Covestro China has not established how they are not governed under the basic foundation program of Chinese Communist Party.

- k. President Xi Jinping, in his work report, speeches and the General Program of the amended CCP Constitution reaffirmed leadership of the Party over 'all work'. The same is also stated in Articles 6 and 7 of the Constitution and subsequent legislation such as Article 1 of the Law on State-Owned Assets in Enterprises.
- l. China has resorted to top-down interventionist industrial policy to achieve industrial modernisation and economic goals. It is done by having an elaborate system of plans covering all aspects of the economy and levels of government. It is established that Covestro China is working with the support of Chinese Government.
- m. Role of the State in the Chinese economy goes beyond mere ownership. It is not uncommon to find privately owned companies have close links to the government. Companies will not necessarily be registered in a category that reflects the ultimate ownership. It is recorded that Chinese government through creating 'special management shares', is pushing some of its largest private tech companies to offer the State a stake in them and a direct role in corporate decisions.
- n. President of Covestro China, has stated publicly that Pudong's highly efficient local government and extensive services provided to companies have helped Covestro make the move to the area.
- o. Even when it comes to allocating factors of production, the State remains completely dominant in finance. If the Covestro China has taken some form of lending from the Chinese banks, it clearly implies that there is some form of state intervention.
- p. Top Chinese chemical companies have expanded their capacities and have often focused on products for which China used to depend on imports. China has built dedicated chemical parks around user industries to fit the State policy of reducing dependency on imports. The issue of overcapacity is particularly relevant in the chemical industry. Economy in China is largely under the influence of Government control which is evident from these industrial parks set up by Government and the Chinese Five Year plans.
- q. The 13th FYP for the Petrochemical and Chemical Industry (2016-2020) defines overall quantitative development targets for growth and profitability to be achieved by the sector. It also imposes government control over production capacity where it considers it to be in excess. The plan also confirms the goal of rebalancing overcapacity levels through sales abroad. It further influences management of supply/demand in foreign markets. The Shanghai Foreign Investment Guide mentions the Plan and also proudly cites the case of 'Germany's Covestro'. This shows that Covestro enjoyed the benefits and advantages provided by the State.
- r. The Plan even provides for the use of trade remedy rules for implementing the goals mentioned above making it clear that they will intervene and support such corporate activity abroad.
- s. Besides the tax incentive programmes that China uses to support the implementation of chemical plans, a scheme of rebates on the value-added tax (VAT) of up to 17% have been available for exports and imports of certain chemicals, as well as certain raw materials that are imported to manufacture finished goods for re-export. The Chinese authorities adjust VAT rebate levels to fulfil industrial policy goals.
- t. President of Covestro China, acknowledged in an interview that the prices of natural gas in China are controlled by the Chinese government. Covestro has

purchased natural gas at a price which is not at a market price and the share of natural gas is significant in total cost of production of TDI and therefore, the Authority cannot accept the cost claimed by the producer for the purpose of determination of normal value.

- u. Market distortion has been found in several anti-dumping and countervailing proceedings by other Authorities such as in case of Aluminium Converter Foil and Aluminium Extrusions decided by the European Commission. USDOC has also concluded in detailed study that China PR has not transitioned into a market economy and continues to operate under NME principles.
- v. Even the Indian Authority has not accepted MET claims in various investigations such as the anti-dumping investigation of Electrical insulators and Para Nitro aniline (PNA).
- w. As per Section 9A(b) of Act, where export price is unreliable because of association between the producer in subject country and related entity in India, export price is required to be computed on the basis of price at which the imported articles are first resold to an independent buyer.
- x. BASF has stated in response that it has made all its exports to India to related customers BASF India Limited. However, as per market information of the applicant, related entity of BASF India is not an importer on record. Either significant volume of imports are not reported in import data or related entity is only providing agency services in India.
- y. Hanwha Solutions Corporation has a related entity in India named Hanwha Chemical India Private Limited which is engaged in marketing and distribution services of all type of chemical products and to do agency business for the sale of these products. Services provided are in nature of agency services which require adjustments for commission.
- z. Responding producers were required to explain each adjustment claimed by them so as to carry out a fair comparison. However, none of the producer has provided any explanation for adjustment claimed.
- aa. Decline in import price is much more than the decline in price of raw material and the same is because the foreign producers were faced with oversupply and they started dumping their goods in the global market.
- bb. On a comparison of import price with the prices published in the trade journal. import price into India is even below the prices published.

G.4 Examination by the Authority

39. Under Section 9A(1)(c), normal value in relation to an article means:

- i. The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or*
- ii. When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:*
 - a. comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

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

40. The Authority sent questionnaires to the known producers/exporters from the subject countries, advising them to provide information in the form and manner prescribed by the Authority. The following producers from the subject countries and their importers have filed exporter's questionnaire response along with their related exporters or importers:

- a. Covestro Polymers (China) Company Limited along with Covestro (Hong Kong) Limited and Covestro (Shanghai) Investment Company Limited
- b. Wanhua Chemical Group Co., Ltd along with Wanhua Chemical (Singapore) PTE. Ltd., Wanhua Chemical Fujian Co., Ltd., Wanhua Chemical (Yantai) Sales Co., Ltd., Wanhua Chemical (Ningbo) Trading Co., Ltd. and Wanhua International (India) Private Limited.
- c. BASF Company Ltd, Korea RP and BASF India Limited
- d. Hanwha Solutions Corporation along with Everlite Korea Co. Ltd., IMS Corporation and PP & Y International Co. Ltd.

Determination of Normal Value and Export Price for cooperating producers and exporters

A. China PR

41. Article 15 of China's Accession Protocol in WTO provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- a. *In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*
 - i. *If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
 - ii. *The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*
- b. *In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in*

that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China PR may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China PR.

- c. The importing WTO Member shall notify methodologies used in accordance with sub paragraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with sub paragraph (b) to the Committee on Subsidies and Countervailing Measures.*
 - d. Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector.*
42. It is noted that while the provision contained in Article 15 (a) (ii) has expired on 11.12.2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession Protocol require criterion stipulated in para 8 of the Annexure I of the Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming the market economy status. It is noted that since the responding producers/ exporters from China PR have not submitted response to MET/supplementary questionnaire in the form and manner prescribed, the normal value computation is required to be done as per provisions of para. 7 of Annexure I of the Rules.
43. The Authority notes the following relevant provisions related to normal value computation under the Anti-Dumping Rules. Provisions under Para 7 and Para 8 of Annexure I to the Anti-Dumping Rules are as under:

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

8. (1) The term “non-market economy country” means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in subparagraph (3).

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an antidumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country. Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether: (a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values; (b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts; (c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and (d) the exchange rate conversions are carried out at the market rate. Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph.

(4) Notwithstanding, anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph (3), has been, by publication of such evaluation in a public document, treated or determined to be treated as a market economy country for the purposes of anti-dumping investigations, by a country which is a Member of the World Trade Organization.”

Covestro Polymers (China) Company Limited, Covestro (Hong Kong) Limited, Covestro (Shanghai) Investment Company Limited and Covestro India Pvt. Ltd.

MET Analysis

44. Covestro Polymers (China) Company Limited has claimed MET status stating that TDI being transparent market, the producer Covestro should be granted MET. Covestro Polymers has filed the MET Questionnaire and cited anti-dumping investigation of

High Tenacity Polyester Yarn originating in or exported from China PR where in producer Hyosung Chemical Fiber was granted MET status based on the direct control of the entity by parent based in Korea, alignment of raw material price with the international prices, and the negotiated rate of utilities at market competitive price

45. In this regard, the Authority notes that Market Economy status is granted to a producer, if the producer is able to show that procurement of land, provisioning of raw material and utilities, and financing of project is conducted at market price without any interference of the government.
46. The Authority notes that MET claims were granted to Hyosung Chemical Fiber in the final finding cited by Covestro based on the direct control of the entity by parent based in Korea, alignment of raw material price with the international prices, and the negotiated rate of utilities at market competitive price. In the present case, the Covestro has argued that considering the Covestro China is controlled by the parent company, raw material prices are in line with international market prices and Covestro China is not in derogation or enjoys exemption from any laws in China. Covestro China has also submitted land use right agreement with local authority in Shanghai to substantiate the MET claim. However, the domestic industry has argued that the natural gas for production of TDI is supplied to Covestro China by government owned entities, whereas the price of natural gas in China is controlled by the concerned government controlled entities.
47. Paragraph 8(3) of Annexure I of the AD Rules enlists the criteria which the Authority must consider while determining non-market economy country claims, as extracted below:

“(3) The designated authority shall consider in each case the following criteria as to whether:

(a) the decisions of concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs, substantially reflect market values;

(b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets other write barter trade and payment via compensation of debts;

(c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and

(d) the exchange rate conversions are carried out at the market rate”

48. In the present case, Covestro has failed to provide relevant information including allocation of land use rights, control of raw material cost used in production of TDI by government authority in China PR, labor cost incurred in production, and pricing of utilities consumed in production that needs to be examined by the Authority for determination of MET status. Rather, Covestro has admitted that price of Toluene, raw material for production of TDI, are regulated by Chinese government or government-controlled entities. In addition, the utility like natural gas is also supplied by the government entities to Covestro. Therefore, the Authority rejects the MET claim made

by Covestro Polymers due to failure to share requisite information that can substantiate their MET claim.

Normal Value

49. As the MET claim of M/s Covestro Polymers (China) Company Limited is rejected and none of other producers from China PR have claimed determination of normal value on the basis of their own data/information, the normal value is determined in accordance with para 7 of Annexure-I of the Rules which reads as under:

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

50. Para 7 lays down hierarchy for determination of normal value and provides that normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other country, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin. Thus, the Authority notes that the normal value is required to be determined having regard to the various sequential alternatives provided under Annexure-I.
51. The Authority also notes the existing jurisprudence on constructing the normal value in case of a non-market economy contained in the Supreme Court judgement in *Shenyang Mastsushita S. Battery Co. Ltd. vs M/s Exide Industries Ltd.* (Civil Appeal No. 617112003 dated 2312/2005), Guwahati High Court in *M/s Century Plyboards (I) Ltd & Anr.-vs- Union of India & tur.* (W.P No. 6568/2017 dated 411012018) and CESTAT, Principal Bench, New Delhi in *Apollo Tyres Ltd, vs Union of India* (Appeal No. C1768,600,601,773,769/2005-AD-dated91912005), *Kuitun Jinjiang Chemical Industry Co. Ltd. vs Union of India* (Appeal no. 52291 of 2019 dated 5th August 2020). These judgements provide directions regarding implementation of para 7 of annexure 1 to AD Rules with respect to the choice of an appropriate option, and associated obligations thereof.
52. The Authority notes that normal value could not be determined on the basis of prices or constructed value of the product in an appropriate market economy third country or the

export prices from such a third country to other countries, as the relevant information has neither been made available by the applicant or an interested party, nor is available with the Authority from any public source.

53. Accordingly, normal value is determined on the basis of the price actually paid or payable in India on the basis of estimates of cost of production, duly adjusted to include selling, general & administrative costs of the domestic industry by adding reasonable profits.

Export Price

54. Covestro Polymers (China) Company Limited ("Covestro China") is a producer of subject goods in China PR. Covestro China has one related exporter namely Covestro (Hong Kong) Limited ("Covestro Hongkong"), one related entity involved in sale of PUC in the domestic market namely, Covestro (Shanghai) Investment Company Limited ("Covestro Shanghai") and related importer namely, Covestro India Pvt. Ltd. ("Covestro India"). All these companies have participated in the present investigation and have provided the relevant details to the Authority in the prescribed formats.
55. Covestro China has exported the subject goods directly to related importer in India and also through its related exporter Covestro Hongkong. It is noted that during the POI, Covestro China has produced and exported 670 MT of subject goods directly to Covestro India and 5,672 MT of subject goods through Covestro Hongkong to related and unrelated customers in India. Covestro India has consumed the subject goods for manufacturing value added products and has also resold some quantity of the subject goods to unrelated customers in India. Covestro China has claimed adjustments on account of ocean freight, insurance, inland transportation, port and other related expenses and credit cost.
56. The adjustments towards ocean freight, insurance, inland transportation, port and other related expenses, and credit cost have been verified and accepted by the Authority. The Authority has examined the profitability of Covestro Hongkong in relation to exports of subject goods to India and it was noted that Covestro Hongkong is earning profits on exports of subject goods to India. The Authority has also examined the profitability of Covestro India with respect to resale of the subject goods in India and it was noted that Covestro India is earning profits on resale of subject goods in India. Accordingly, the export price for the subject goods at ex-factory level for the group has been determined and shown in the dumping margin table below.

Wanhua Chemical Group Co., Ltd. (Producer) and Wanhua Chemical (Singapore) Pte. Ltd (Exporter)

Normal value

57. The producer has not claimed market economy treatment. Therefore, the normal value has been determined as per the methodology explained above.

Export price

58. As noted, Exporter Questionnaire Responses has been filed by Wanhua Chemical Group Co., Ltd. (Producer) and Wanhua Chemical (Singapore) Pte. Ltd (Exporter), along with their related importer in India namely Wanhua International (India) Pvt. Ltd. They have also filed EQR of three of other related company in China namely Wanhua Chemical Fujian Co., Ltd, Related producer, Wanhua Chemical (Yantai) Sales Co., Ltd., Related Trader in Domestic market, Wanhua Chemical (Ningbo) Trading Co., Ltd., Relater Trader. However, these three companies are not involved in sales to India hence EQR for these three companies are not taken in to consideration for calculation of net export price.
59. The subject goods produced by Wanhua Chemical Group Co., Ltd. have been exported to India by related exporter namely Wanhua Chemical (Singapore) Pte. Ltd. The sales by the exporter are both to related importer Wanhua International (India) Pvt. Ltd. as well as to the unrelated customers in India. It is noted from the response that during the POI, Wanhua has exported *** MT of the subject goods out of which *** MT are sold to unrelated customers and balance *** MT to related importer.
60. Exporters have claimed adjustments on account of ocean freight, marine insurance, port expenses and inland transportation and the same is allowed by the Authority after examination.
61. From the information on record, it is noted that M/s Wanhua International (India) Pvt. Ltd., the related importer, has resold *** MT of subject goods during the period of investigation at a loss. There is a consistent tendency of M/s Wanhua International (India) Pvt. Ltd., the related importer, of importing the subject goods at a higher price and selling the same in Indian market at a lesser price and incurring losses. This consistent importing at a price higher price than the others, has not been explained. The Authority, therefore has adjusted the loss both in the net export price and the landed value.
62. Accordingly, the net export price at ex-factory level for the group has been calculated and is mentioned in dumping margin table below.

Other producers

Determination of net export price

63. The net export price for non-cooperative producers/exporters from China PR has been determined based on facts available in terms of Rule 6(8) of the Rules. The net export price so determined is mentioned in the dumping margin table below.

B. Korea RP

BASF Company Limited, Korea

Normal value

64. Based on the information furnished in the EQ responses, the Authority notes that BASF Company (hereinafter referred to as "BASF / Exporter") is a producer of the subject goods. The exporter has exported the subject goods in the Indian market to its related company, namely, BASF India Ltd., which has also filed the questionnaire response.

65. BASF has sold ***MT of the subject goods in the domestic market during the POI whereas, it has exported ***MT of the subject goods to India. The Authority has examined whether their sales are made in ordinary course of trade in terms of the Annexure I to the Anti-dumping Rules. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of subject goods. If profit making transactions is more than 80% of the total sales, then all the transactions in the domestic sales has been considered for the determination of normal value and in cases, profitable transactions is less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value.

Export price

66. It is noted that BASF exported ***MT of the subject goods to India during the POI. The Authority has verified the responses of exporter and BASF India Ltd. BASF has claimed adjustment on accounts of ocean freight, insurance, inland transportation, port charges, packing cost and credit cost and the same have been allowed by the Authority.
67. It is noted from the response that producer/exporter has exported ***MT to India through its related entity namely M/s BASF India to customers in India. From the response filed by related importer, it is seen that the sales made by importer shows profit. Accordingly, the ex-factory export price is calculated and mentioned in the dumping margin table below.

M/s Hanwha Solutions Corporation, M/s Everlite Korea Co. Ltd., M/s IMS Corporation and M/s PP & Y International Co. Ltd. (Producer/Exporter)

Normal Value

68. During the POI, Hanwha Solutions Corporation, Korea RP, has sold ***MT of subject goods in the domestic market to unrelated parties only. The domestic sales are in sufficient volumes when compared with exports to India. To determine the normal value, the authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to the cost of production of subject goods. If profit making transactions is more than 80% of the total sales, then all the transactions in the domestic sales has been considered for the determination of normal value and in cases, profitable transactions is less than 80%, only profitable domestic sales have been taken into consideration for the determination of the normal value.
69. Hanwha Solutions Corporation, Korea RP, has claimed adjustment on account of inland transportation, packing expenses and credit cost and the same have been allowed by the Authority. Accordingly, normal value at ex-factory level for Hanwha Solutions Corporation, Korea RP, has been determined and the same is shown in the Dumping Margin Table below.

Export Price

70. During the POI, Hanwha Solutions Corporation, Korea RP, has sold *** MT of subject goods of invoice value *** indirectly to India through three unrelated traders namely,

Everlite Korea Co. Ltd., IMS Corporation and PP & Y International Co. Ltd., Korea RP.

71. Hanwha Solutions Corporation, Korea RP, has claimed adjustment on account of inland transportation, domestic handling charge, credit cost, bank charges and packing expenses and the same have been allowed by the Authority. Accordingly, export price at ex-factory level for Hanwha Solutions Corporation, Korea RP, has been determined and the same is shown in the Dumping Margin Table below.

Other producers

72. The Normal value and export price for non-cooperative producers/exporters from Korea RP has been determined based on facts available in terms of Rule 6(8) of the Rules. The values so determined is mentioned in the dumping margin table.

C. Japan

73. The Authority notes that none of the producers/exporters from Japan have participated in the present investigation. For the non-cooperative producers/exporters, the Authority has determined normal value and net export price on the basis of facts available in terms of Rule 6(8) of the Rules. The values so calculated is provided in the dumping margin table below.

F.4.3 Dumping Margin

74. Considering the normal value and export price determined as explained above, the dumping margin is calculated and shown below. It is seen that the dumping margin is positive in respect of all the responding producers except M/s Hanwha Solutions Corporation and for exports from Japan.

SN	Particulars	Normal value	Net export price	Dumping Margin	Dumping Margin	Range
		USD/KG	USD/KG	USD/KG	%	%
A	China PR					
1	Covestro Polymers China Company Limited	***	***	***	***	0-10
2	Wanhua Chemical Group Company Limited	***	***	***	***	20-30
3	Any other producer	***	***	***	***	30-40
B	Korea RP					
1	BASF Limited	***	***	***	***	20-30
2	Hanwha Solutions Corporation	***	***	***	***	-
3	Any other producer	***	***	***	***	60-70
C	Japan					
1	Any	***	***	***	***	20-30

H. EXAMINATION OF INJURY AND CAUSAL LINK

H.1 Submissions made by other interested parties

75. The submissions of the interested parties with regard to injury and causal link are as under:
- a. If April-June 2020 quarter is excluded from the injury and likelihood analysis, it will show significant improvement in the performance of the domestic industry in the period of investigation.
 - b. Imports from China PR have not been very high even prior to the levy of the duty and remained in the region of 5000-11000MT in view of the huge demand supply gap.
 - c. The applicant is operating at 96% of the capacity utilization. A decline of 4 points compared to base year where significant period was without economic activity shows robust growth of the applicant.
 - d. As per the annual report of 2020-21, the applicant's market share has increased to become 66%. Market share of the applicant increased by 3%, and that of the subject countries has declined by 49%.
 - e. There is no decline in production, capacity utilization and productivity and significant decline in the inventory.
 - f. Domestic sales of the applicant have increased. Any decline in the sales is due to the decline in the demand.
 - g. The applicant was in abnormally high profits in the base year and comparison cannot be made with the base year profits.
 - h. The applicant's performance has improved as it was suffering losses in 2019-20 with duty on the imports and has started making profits in the period of investigation.
 - i. Decline in performance of these parameters is because depreciation costs of the domestic industry which have doubled in the injury period.
 - j. The Authority in the safeguard investigation on Cold Rolled Flat Products of Stainless Steel of 400 Series, held that high depreciation and finance charges were responsible for the losses as a result of which the causal link failed.
 - k. Total sales have declined due to excessive captive consumption which has increased by more than 13 times from 100 to 1259 during the period of investigation.
 - l. Cost of sales of the applicant for export operation and domestic operations is disproportionate during the period of investigation.
 - m. Net fixed assets, working capital and capital employed of the applicant have increased without corresponding increase in capacity.
 - n. As per annual report of the applicant, it has performed exceedingly well in the period of investigation and TDI plant achieved highest ever capacity utilization.
 - o. There is no requirement of the monthly comparison of parameters as there is no significant variation in the prices of raw material in the next 7 months of the POI, whereas the POI was the period of lockdown due to covid 19. Further, it is not the consistent practice of the Authority to examine the aforesaid parameters on a month-wise basis. Examination of such data on a month-wise basis does not provide an accurate picture of the aforesaid parameters for the POI as a whole.

- p. Demand analysis done by the applicant excluded COVID period but the COVID period was not excluded in analysis of other parameters. The Authority is requested to analyze information with and without the COVID period.
- q. Injury faced by the domestic industry was on several factors such as Covid, imports from other countries, shutdown, imports from Japan, decline in demand and other internal inefficiencies. Petitioner itself has admitted that Covid-19 related lockdowns in the POI has impacted its economic performance. Despite the lockdown, the petitioner's economic performance has been healthy.
- r. The petitioner's submissions regarding injury during this period are incorrect.
- s. The Authority must also call for records of number of days of closure of TDI plant by GNFC during the period of investigation.
- t. There is no suppression or depression effect as the applicant has been able to increase its prices.
- u. Contrary to the submission that it exported due to adverse domestic market condition, the applicant has stated in the annual report that the exports are on account of its dominant positioning in the global market.
- v. Positive price undercutting is not because imports are at dumped prices but because of the high prices charged by the applicant under monopolist pricing situation.
- w. Imports from Korea RP cannot be cumulated as they have sharply declined.
- x. Japanese exporters had exported certain quantities at lower price because of their ethical standards and commitment to honor old contracts against which there was a delay in supply despite prices being high. This should not be considered as high price undercutting.
- y. No volume effect as imports significantly and continuously declined from the base year to the period of investigation. Increase in imports in the period of investigation is only to bridge the gap to supply to the domestic market during the lockdown.
- z. There is no price effect because even when price undercutting became positive, landed price increased by 30% indicating that the applicant suppressed its domestic selling prices to show price undercutting.
- aa. Decline in the return on investment is attributed to the sudden and sharp increase in the capital employed over the injury period.
- bb. The increase in inventory is required to be seen in connection with the increase in domestic sales. Inventory hasn't increased in isolation.
- cc. Though the production and capacity utilization have declined in the post POI, domestic sales have increased. On the other hand, export sales have significantly declined for the petitioner. Due to the lack of segregation of production as intended for domestic sales or export sales, the respondent submit that decline in export sales has caused decline in production and capacity utilization.
- dd. Volume of the imports decreased in 2018-19 and 2019-20. However, instead of the profitability parameters improving, they significantly declined. When imports increased slightly, the profitability parameters also increased. Same is also noticed for price undercutting.
- ee. The Authority should verify the petitioner's data regarding decline in selling price, which contradicts the publicly available information regarding the price trend of the PUC.
- ff. The reason for decline in the petitioner's profitability is the increase in cost of sales, whereas there was steep increase in cost of sales by over 30 indexed points in post POI from the POI.

- gg. The petitioner has incorrectly stated their market share as 50-55 %, which is rather 66%. The petitioner's claim of being forced to export due to competition from subject imports is incorrect, as the petitioner's export sales have in fact decreased over the injury period.
- hh. The applicant claimed that its recovery is below 22%. 22% return for non-injurious price is not a guarantee for recovery as held by CESTAT ruling in Bridge Stone Tyre Manufacturing & others vs. Designated Authority.
- ii. The claimed ROCE is incorrect as the petitioner has calculated ROCE by including financial performance for export sales as well, rather petitioner must show performance of ROCE for domestic operations only.
- jj. Due to Covid pandemic, there was time lag issue in the pricing of the goods.
- kk. During the oral hearing, the applicant claimed its capacity was around 87,000 MTPA but by its annual report it is 64,000 MTPA and its website claims it to be 67,000 MTPA.
- ll. Production facilities of the applicant are located in the western corner making the supply chain difficult for eastern and deep southern customers. Imports become more viable from ports rather than depend on the sole producer.
- mm. The applicant has export obligations under EPCG scheme which is confirmed by its annual report. The report states that a substantial quantity exported under deemed export schemes to EOUs and SEZs
- nn. Data provided by the applicant under para 70 of the application and format IVA-II are misleading and contradictory. Similarly, indexed data given for domestic sales and demand in Para 58 and Para 66 are contradictory to each other making the data unreliable.
- oo. There is no substance in the claim that though the volume of imports from the subject countries have declined over the injury period, they have remained quite significant in absolute and as well as in relation to production and consumption.

H.2 Submissions made by the domestic industry

76. The submissions of the domestic industry with regard to injury and causal link are as under:
- i. Performance in the period of investigation has been impacted by three factors – (a) COVID-19 (b) dumped imports from the subject countries and (c) imports from other countries resorting to dumping in India.
 - ii. The demand has declined in the period of investigation as compared to 2018-19 because of the COVID-19 pandemic.
 - iii. Volume of imports from the subject countries declined over the injury period but have remained significant in absolute and also in relation to production and consumption.
 - iv. Even if the volume does not increase further, this volume per se is sufficient to cause injury to the applicant.
 - v. Landed price of imports from the subject countries was below the selling price of the domestic industry. Therefore, the imports were undercutting the prices of the domestic industry.
 - vi. Due to significant fluctuation in prices of the imports, the Authority is requested to calculate month-wise price undercutting.
 - vii. Imports were not suppressing or depressing domestic industry prices with the protection of ADD.
 - viii. The capacity of the domestic industry has remained constant over the injury period and is more than the demand in the country.

- ix. The applicant holds 50-55% market share and is constrained to undertake unwanted and less remunerative exports.
- x. The production, capacity utilisation and domestic sales declined in the period of investigation whereas the imports increased.
- xi. The applicant can cater the entire demand in the country, but its market share is significantly low.
- xii. The applicant suffered losses in the previous year 2019-20 due to imports from the other countries now attracting duty. While the performance has improved in the period of investigation, the current profits are very low.
- xiii. The current return earned by the applicant is significantly low considering the investments made.
- xiv. The value of closing inventory lying with the applicant at the end of the period of investigation was for more than Rs ***.
- xv. The ability of the domestic industry to raise capital investment is impaired. The production facilities for the product under consideration are highly capital intensive.
- xvi. Dumping has intensified over the injury period. Barring China PR, the duties were recommended on dumping margin, it shows that barring China PR, the dumping margin was lower than the injury margin in the original investigation.
- xvii. Even if the volume of imports does not increase per se, the current volume is sufficient to cause injury to the domestic industry.
- xviii. Performance of the domestic industry deteriorated further in the post-period of investigation and that is only due to the imports from the subject countries.
- xix. The Authority is requested to make appropriate adjustments for the period of the lockdown and unlockdown in various relevant parameters and issue appropriate direction to all interested parties.
- xx. No material inefficiencies in the cost of production. Dahej Plant of the applicant is a new plant whereas Bharuch Plant being an old plant is fully depreciated. Not a single day of shutdown in the period of investigation is due to inefficiency.
- xxi. Captive consumption is for creating TDI-MDI blend which was further resold in the market.
- xxii. On the submission of export obligation of the applicant on the new plant, there is no export obligation for the applicant during the period of investigation. The export obligation of the applicant was completed in the earlier years.
- xxiii. The return earned by the applicant is significantly lower, if export profits are also considered.
- xxiv. The return earned by the applicant considering its total sales is not even sufficient to earn bank rate of interest.
- xxv. The Authority may kindly make appropriate adjustments for the period of lockdown and unlockdown in various relevant parameters to all interested parties.
- xxvi. As high as 48% of the production was exported by the domestic industry at a price materially below the domestic prices. The consumers in the country have preferred the low-priced dumped imports.
- xxvii. Adverse performance of the domestic industry in the exports undertaken by it is attributed to the dumping of the product in the country
- xxviii. On the submission of significant difference in the price of domestic and export operations, there is no material difference in the cost of production for domestic and exports. The difference is in the cost of production of the two plants.
- xxix. On the submission that the applicant's profits in the base year were abnormal and should be disregarded, it has not been substantiated why should it be disregarded.

- The domestic industry aligns its prices to the import price. As the import prices in the base year were higher, the applicant was able to fetch adequate prices.
- xxx. Cost of Dahej plant is higher as it is a new plant and has higher incidence of depreciation and other fixed expenses. Bharuch Plant being an old plant is fully depreciated.
 - xxxi. Captive consumption undertaken is hardly 100 MT in the period of investigation and is not even 0.02% of the production undertaken by the applicant and is for creating TDI – MDI blend which was further resold in the market.
 - xxxii. On the submission of increase in the net fixed assets of the applicant, net fixed assets have actually declined. The increase is because of allocation between domestic and export sales and change in the ratio of the two.
 - xxxiii. On the submission of the other parties on the statements in the annual reports, the applicant has even in the annual reports admitted that its plant is underutilized. Performance in the period of investigation has improved as compared to the previous year when it was in losses.

H.3 Examination by the Authority

- 77. Rule 11 of the Rules read with Annexure-II provides that an injury determination shall involve an examination of factors that may indicate injury to the domestic industry, “.... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Rules.
- 78. The Authority has taken note of various submissions made by the domestic industry and other interested parties on injury and causal link and has analyzed the same considering the facts available on record and applicable laws. The injury analysis made by the Authority ipso facto addresses submissions made by the domestic industry and other interested parties.
- 79. In consideration of the various submissions made by the interested parties in this regard, the Authority has examined the current injury, if any, to the domestic industry before proceeding to examine the likelihood aspects of dumping and injury.
- 80. As regards the submission of other interested parties on the difference in the capacity reported in the anti-dumping formats and the annual reports, the Authority notes that the capacity in the anti-dumping formats has been considered on the basis of capacity as per pollution board control and capacity in the annual reports is as per the name plate capacity. On an analysis of the monthly production of the applicant, it is seen that the applicant can infact produce more than the name plate capacity. The Authority has

therefore, as per its consistent practice, considered the capacity as provided in the pollution board certificate.

81. Regarding the submissions of injury due to Covid period, the Authority notes that the current injury is examined over the period of investigation. Injury if any due to other factor has been examined in the causal link. In any case, the Authority has also considered likelihood examination in this disclosure statement.
82. On the submission of the other interested parties on significant difference in trend of cost of sales of domestic and export operations and increase in capital employed, the applicant has provided justification for the trend which has been examined by the Authority. In this regard, it is noted that the difference lies in the cost of production of two plants. The information provided after due examination has been considered by the Authority for injury analysis.
83. As regards the issue of monthly analysis of injury parameters, the Authority notes that the practise of normalization adopted for computation of NIP in accordance with Annexure III of the AD Rules has taken care of any distortion due to closure of plant on account of covid during April 2020 to June 2021. Thus, Authority has performed the injury analysis based on the normalized data for the injury period, as the injury parameters excluding COVID data will not have any impact on the injury analysis, which has been performed on the normalized data from the period of injury.

H.3.1 Assessment of Demand

84. The Authority has determined the demand or the apparent consumption of the product in India, as the sum of the domestic sales of the sole Indian producer, and the imports from all sources. The demand so assessed is given in the table below.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Sales of the applicant	MT	***	***	***	***
	Trend	Indexed	100	120	121	110
2	Imports from the subject countries	MT	30,484	24,038	15,608	16,418
3	Imports from the countries attracting duty	MT	1,190	7,235	18,976	15,890
4	Import from other countries	MT	1,473	1,346	1,334	1,692
5	Demand	MT	***	***	***	***
	Trend	Indexed	100	109	115	106

85. It is seen that the demand for the subject goods increased till the year 2019-20 but has declined in the period of investigation. The domestic industry has submitted that the decline in demand is due to the Covid-19 pandemic. Overall, the demand has increased over the injury period.

H.3.2 Volume effect of dumped imports

Import volume and share of subject countries

86. The effects of the volume of dumped imports from the subject countries as well as imports from other countries have been examined by the Authority as follows.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Subject countries-	MT	30,484	24,038	15,608	16,418
i	China P RP	MT	11,064	10,858	7,148	7,258
ii	Japan	MT	1,280	1,320	3,880	4,040
iii	Korea RP	MT	18,140	11,860	4,580	5,120
2	Imports from countries attracting ADD	MT	1,190	7,235	18,976	15,890
3	Subject countries imports in relation to-					
A	Indian Production	%	***	***	***	***
	Trend	Indexed	100	77	51	56
B	Demand/Consumption	%	***	***	***	***
	Trend	Indexed	100	72	45	51
C	Total Imports	%	91.97%	73.69%	43.45%	48.29%

87. It is seen that :-
- Imports from the subject countries declined after the imposition of duties till the year 2019-20. While the imports from the subject countries declined, the imports from other countries attracting anti-dumping duty increased.
 - The imports from the subject countries have increased again in the period of investigation. However, the imports are still below the volume as compared to the base years.
 - Imports from other countries attracting anti-dumping duty have declined in the period of investigation with the imposition of duty.
 - Imports in relation to total production, consumption and total imports have declined till the year 2019-20 but increased again in the period of investigation.
 - While the volume of imports from subject countries are below the volume of base year, they are significant in absolute and relative terms.

H.3.3 Price effect of dumped imports

88. With regard to the effect of the dumped imports on prices, it is required to be analysed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in normal course.
89. Accordingly, the Authority has examined the impact on the prices of the domestic industry on account of dumped imports of the subject goods from the subject countries with reference to price undercutting and price suppression/depression, if any. For the purpose of this analysis the cost of sales and Net Sales Realization (NSR) of the domestic industry have been compared with the landed price of imports from subject countries.

a. Price undercutting

90. The Authority has determined the Price undercutting by comparing the landed price of imports from the subject countries with the net sales realisation of the domestic industry in India.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Net Sales Realisation	₹/MT	***	***	***	***
2	Subject Countries as a whole-					
i	Landed Price	₹/MT	2,39,412	2,20,464	1,17,746	1,53,103
ii	Price Undercutting	₹/MT	***	***	***	***
iii	Price Undercutting	%	***	***	***	***
iv	Price Undercutting	Range	10-20%	(0-10)%	0-10%	10-20%
3	China P RP					
i	Landed Price	₹/MT	2,12,733	1,90,961	1,18,466	1,63,734
ii	Price Undercutting	₹/MT	***	***	***	***
iii	Price Undercutting	%	***	***	***	***
iv	Price Undercutting	Range	30-40%	0-10%	0-10%	0-10%
4	Japan					
i	Landed Price	₹/MT	2,48,219	2,48,925	1,13,413	1,30,068
ii	Price Undercutting	₹/MT	***	***	***	***
iii	Price Undercutting	%	***	***	***	***
iv	Price Undercutting	Range	10-20%	(10-20)%	0-10%	30-40%
5	Korea RP					
i	Landed Price	₹/MT	2,55,063	2,44,305	1,20,295	1,56,210
ii	Price Undercutting	₹/MT	***	***	***	***
iii	Price Undercutting	%	***	***	***	***
iv	Price Undercutting	Range	0-10%	(10-20)%	0-10%	10-20%

91. It is seen that the landed price of imports from the subject countries was below the selling price of the domestic industry resulting in price undercutting.

b. Price suppression/depression

92. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to depress the prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree, the Authority notes the changes in the costs and prices over the injury period.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Cost of sales	₹/MT	***	***	***	***
	Trend	Indexed	100	116	109	104
2	Selling price	₹/MT	***	***	***	***
	Trend	Indexed	100	74	45	63
3	Landed price	₹/MT	2,39,412	2,20,464	1,17,746	1,53,103

	Trend	Indexed	100	92	49	64
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93. It is seen that the selling price of the applicant was below cost of sales in the year 2019-20 and it was in losses. Though, the selling price and the landed price of the imports have decreased by almost the same amount from base year upto the POI, but still the selling price has remained above the landed price of the imports during the entire injury period except 2018-19.

H.3.4 Impact on economic parameters of the domestic industry

94. Annexure - II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. The Anti-Dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity: factors affecting domestic prices, the magnitude of the margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments. Accordingly, various injury parameters relating to the domestic industry are discussed herein below.

a. Capacity, production, capacity utilization and domestic sales.

95. The Authority has considered capacity, production, capacity utilization and sales volume of the domestic industry over the injury period.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Capacity	MT	***	***	***	***
	Trend	Indexed	100	100	100	100
2	Production	MT	***	***	***	***
	Trend	Indexed	100	103	101	96
3	Capacity Utilisation	%	***	***	***	***
	Trend	Indexed	100	103	101	96
4	Domestic Sales	MT	***	***	***	***
	Trend	Indexed	100	120	121	110
5	Export sales	MT	***	***	***	***
	Trend	Indexed	100	78	86	75
6	Demand	MT	***	***	***	***
	Trend	Indexed	100	109	115	106

96. It is seen that: -
- The capacity of the domestic industry remained constant over the injury period and is more than the demand in the country.
 - The production and capacity utilization of the applicant increased in the year 2018-19, then declined marginally in the period 2019-20 as the imports from the

other countries increased. The production and capacity utilization of the applicant have further declined in the period of investigation.

- c. The domestic sales of the applicant increased till the year 2019-20 but have declined in the period of investigation. The decline in the domestic sales is more than the decline in the demand of the goods.
- d. The production, capacity utilisation and the domestic sales have declined over the injury period.
- e. The domestic industry is being forced to use a significant share of production for export purpose which instead could have been used to cater the domestic demand.

b. Market share

97. The Authority has examined effect of the dumped imports on the market share of the domestic industry as under.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Share of the applicant	%	***	***	***	***
	Trend	Indexed	100	110	106	103
2	Share of imports from the subject countries	%	***	***	***	***
	Trend	Indexed	100	72	45	51
3	Share of imports from countries attracting ADD	%	***	***	***	***
	Trend	Indexed	100	557	1,388	1,255
4	Share of imports from other countries	%	***	***	***	***
	Trend	Indexed	100	84	79	108

98. It is seen that-

- a. The market share of the applicant increased in the year 2018-19 but declined in the period 2019-20 as the imports from other countries increased. The market share of the applicant has further declined in the period of investigation.
- b. The applicant could have catered the entire demand in the country, however, it is saddled with a market share of around 50-55% over the injury period.
- c. Imports from the other countries attracting duty increased till 2019-20 but has declined in the period of investigation with the imposition of anti-dumping duty.
- d. The market share of imports from the subject countries declined till 2019-20 but have increased in the period of investigation with a decline in domestic sales of the applicant and imports from other countries attracting duty.

c. Profit or loss, cash profits and return on investment.

99. Performance of the domestic industry has been examined in respect of profits, cash profits and return on capital employed.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Cost of Sales	₹/MT	***	***	***	***
	Trend	Indexed	100	116	109	104

2	Selling Price	₹/MT	***	***	***	***
	Trend	Indexed	100	74	45	63
3	Profit / Loss	₹/MT	***	***	***	***
	Trend	Indexed	100	33	-19	23
4	Profit / Loss	₹ Lacs	***	***	***	***
	Trend	Indexed	100	39	-23	25
5	Cash Profit	₹ Lacs	***	***	***	***
	Trend	Indexed	100	44	-17	35
6	PBIT	₹ Lacs	***	***	***	***
	Trend	Indexed	100	37	-22	24
7	ROCE	%	***	***	***	***
	Trend	Indexed	100	31	-20	15

100. It is seen that-

- The applicant was earning profits in 2017-18, which declined drastically in 2018-19. With dumping intensifying from other countries, the performance of the applicant deteriorated further in 2019-20 and it suffered significant financial losses.
- Profitability of the applicant has improved in the period of investigation as it has recorded profits.
- The cash profit and profit before interest and tax have followed the similar trend of profits. They declined significantly in the year 2018-19 before turning negative in the year 2019-20. However, the applicant has earned cash profits and profit before interest and tax in the period of investigation.
- The applicant has made positive return on investment in the period of investigation.

d. Inventory

101. Inventory position of the domestic industry over the injury period is given below: -

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	Opening Inventory	MT	***	***	***	***
2	Closing Inventory	MT	***	***	***	***
3	Average Inventory	MT	***	***	***	***
	Trend	Indexed	100	281	254	230

102. It is seen that the inventory with the applicant increased in the year 2018-19 but declined in the year 2019-20 as the applicant was able to increase its sales. It is however seen that the average inventory held by the applicant in the period of investigation is still significantly high. It is also seen that the applicant had undertaken significant exports at adverse prices in order to prevent any pile up of inventories.

e. Employment, wages and productivity

103. The situation of the domestic industry with regard to employment, wages and productivity was examined.

SN	Particulars	UOM	2017-18	2018-19	2019-20	POI
1	No of Employees	Nos	***	***	***	***
	Trend	Indexed	100	104	102	95
2	Salary & Wages	₹ Lacs	***	***	***	***
	Trend	Indexed	100	139	141	124
3	Productivity per day	MT/Day	***	***	***	***
	Trend	Indexed	100	103	101	96
4	Productivity per Employee	MT/Nos	***	***	***	***
	Trend	Indexed	100	99	99	101

104. It is seen that employment levels of domestic industry increased till the year 2018-19 but have declined thereafter. The salary and wages of the domestic industry have increased over the injury period but declined in the period of investigation. Productivity of the applicant has moved in line with the production. It is however also noted that the above parameters are not solely dependent on dumping and governed by different laws in the country.

f. Growth

105. Examination of growth parameters of the domestic industry during the injury period is shown below.

SN	Particulars	UOM	2018-19	2019-20	POI
1	Production	Y/Y	2.61%	-1.57%	-4.80%
2	Sales	Y/Y	19.55%	1.40%	-9.15%
3	Profit/(Loss) per unit	Y/Y	-67.43%	-159.18%	-218.06%
4	Inventory	Y/Y	181.09%	-9.77%	-9.24%
5	Market Share	Y/Y	9.53%	-3.67%	-1.91%
6	Profit before Tax	Y/Y	-61.07%	-160.01%	-207.25%
7	Cash Profit	Y/Y	-56.20%	-138.23%	-307.30%
8	PBIT	Y/Y	-63.13%	-159.55%	-209.95%
9	ROI	Y/Y	-68.72%	-162.87%	-173.88%

106. It is seen that the volume parameters of the applicant have recorded a negative growth over the injury period due to dumping from various sources. The price parameters showed negative growth in 2019-20 and they have shown a negative growth in the period of investigation.

g. Ability to raise fresh capital.

107. It is seen that applicant had invested Rs *** crores on its new plant in the year 2014 and its current profits are low as it is recovering from ill effect of dumping.

h. Magnitude of dumping.

108. It can be seen that the dumping margins is positive and significant from the subject countries except in case of M/s Hanwha Solutions Corporation.

I. CAUSAL LINK

109. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than dumped imports which are injuring or are likely to cause injury to the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. While the present investigation is a sunset review investigation and causal link has already been examined in original investigation, the Authority examined whether other known listed factors have caused or are likely to cause injury to the domestic industry. It was examined whether other factors listed under the AD Rules could have contributed or are likely to contribute to the injury suffered by the domestic industry.

a. Volume and price of imports from third country

110. It is seen that there were imports above de-minimis limits from other sources including European Union, Saudi Arabia, Chinese Taipei and United Arab Emirates. An anti-dumping duty has been imposed against the dumped imports from these countries in the December 2020. Therefore, for a significant period in the period of investigation, imports from these countries were entering the domestic market at dumped prices. As has also been admitted in the application, the imports from these sources were also a cause of injury to the applicant.

b. Contraction in Demand and / or change in pattern of Consumption

111. The demand of the product under consideration increased till the year 2019-20 but has declined in the period of investigation because of COVID in the country. While the demand declined in the period of investigation, the imports from subject countries in India have increased in the period of investigation. The domestic sales of the applicant have also declined in the period of investigation.

c. Trade restrictive practices

112. The Authority notes that there is no trade restrictive practice.

d. Development of technology

113. The Authority notes that technology for production of the product has not undergone any change.

e. Export performance

114. The Authority has considered injury data for the domestic operations separately for the injury analysis.

f. Performance of other products

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

J. MAGNITUDE OF INJURY MARGIN

116. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Anti-Dumping Rules read with Annexure III, as amended.

The NIP of the product under consideration has been determined by adopting the information/data relating to the cost of production provided by the domestic industry and duly certified by the practicing accountant for the period of investigation. The NIP has been considered for comparing the landed price from the subject countries for calculating injury margin. For determining the NIP, the best utilisation of the raw materials and utilities has been considered over the injury period. Best utilisation of production capacity over the injury period has been considered. Extraordinary or non-recurring expenses have been excluded from the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the PUC was allowed as pre-tax profit to arrive at the NIP as prescribed in Annexure III of the Rules and being followed.

117. Based on the landed price and NIP determined as above, the proposed injury margin for producers/exporters as determined by the Authority is provided in the table below.

SN	Particulars		NIP	Landed price	Injury margin	Injury margin	
			USD/MT	USD/MT	USD/MT	%	Range
A	China PR						
1	Covestro China Limited	Polymers Company	***	***	***	***	30-40
2	Wanhua Group Limited	Chemical Company	***	***	***	***	10-20
3	Any other producer		***	***	***	***	80-90
B	Korea RP		***	***	***	***	
1	BASF Limited		***	***	***	***	30-40
2	Hanwha Corporation	Solutions	***	***	***	***	0-10
3	Any other producer		***	***	***	***	90-100
C	Japan		***	***	***	***	
1	Any		***	***	***	***	50-60

118. It is seen that the injury margin in respect of all the participating producers is positive. Further injury margin is positive for Japan.

K. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

K.1 Submissions made by other interested parties

119. The following submissions have been made by other interested parties during the course of investigation:
- Request to examine 6 months of post-period of investigation data to see likelihood or recurrence of dumping and injury to the domestic industry.
 - The applicant relied on global capacities to conclude global oversupply implying oversupply from the subject countries. No information has been provided for 2020-21.

- c. The capacity figures provided in the table are of global capacity and not of the subject countries. No information has been provided for 2020-21. Further, the excess capacities in non-subject countries can be the cause of global oversupply.
- d. In the *Indian Spinners Association v. Designated Authority*, 2004 (170) ELT 144, it was held that mere existence of surplus production capacity cannot be taken as posing a clearly foreseen and imminent threat of injury.
- e. Covestro China has been operating at optimum capacity. There exists no excess or spare capacity.
- f. No capacity addition was done by Covestro China during the injury period.
- g. The petitioner's claim of overcapacity in the subject countries has no basis and ICIS report mentioned in the petition as basis for such claim has not been provided.
- h. Respondent submit that "surplus capacity" cannot refer to just any capacity over and above the domestic demand in the subject countries. Such an understanding is exceptionally flawed in a globally integrated market. Rather, "surplus" refers to idle capacities left over after meeting domestic and global demand
- i. Respondent submit that Beijing Winter Olympics have forced the Chinese Government to shut down production by polluting units in China including those manufacturing the PUC. This has deeply contracted the supply and will continue to be major influencer to keep supply level restricted for next 12 months.
- j. The petitioner has claimed decline of demand in China, which could lead to increased imports to India once ADD is lifted. However, the petitioner has failed to provide relevant evident substantiating the decline of demand in China.
- k. Export orientation of China is as low as 14% compared to 46% of Japan and 59% of Korea RP.
- l. Since anti-dumping duty has been in force for more than four (4) years, the exporters from the subject countries have already found alternative markets for exporting the PUC and made arrangements contractual or otherwise with the importers or users in the third countries. The petitioner argument that significant share of production in the subject countries is diverted towards export and the same will be diverted to India are without any basis, evidence, constitute mere conjecture, and needs to be dismissed.
- m. Imports from China are priced higher than other countries. Higher customs duty on imports from China PR and price undercutting is negative after imposition of anti-dumping duty.
- n. The production in China is largely intended for domestic consumption only.
- o. The applicant has in its annual report admitted balanced global market for TDI.
- p. The applicant has predicted that it will be profitable even after expiry of duties which rules out likelihood.
- q. The petitioner has alleged that if anti-dumping is revoked, its return on investment will be negative. Respondent submits that petitioner's projections are pure conjecture and without any basis. Rather, the economic performance of the petitioner post POI has been very strong.
- r. No basis to claim regarding slump in demand in China or India being a lucrative market.
- s. Price undercutting declined in the injury period. Actual performance disproves any likelihood of recurrence of injury.
- t. No positive evidence given by the domestic industry to prove likelihood. In the sunset review investigation of *PVC Flex Film from China PR*, Authority terminated the investigation because of a lack of evidence to prove likelihood.

- u. Mere existence of dumping and injury margins do not mean that injury will be caused to the domestic industry. Therefore, these submissions are irrelevant. Merely because exports are being made to third countries from the subject countries does not mean likelihood of recurrence of dumping and injury. The viability of the Indian market for users such as the respondent is important given that the petitioner is the only manufacture of the PUC in India. Due to gap in supply by DI to user industry, it is important that producers from the subject countries consider Indian market for their export for benefit f user industry in India.
- v. In response to the allegation of the domestic industry that import price of the PUC from China PR into India is lesser than the published ICIS prices, respondent submit that comparison of TDI export price to India from the respondents with the ICIS TDI prices, it can be seen that TDI export price to India from the Respondents was in line with published ICIS prices during the POI

K.2 Submissions made by the domestic industry

120. The following submissions have been made by the domestic industry during the course of the investigation: -

- a. Continued dumping even when duties were imposed itself establishes the likelihood of continuation of dumping and injury in the event of cessation of anti-dumping duty.
- b. Imports from the subject countries are priced much below the non-injurious price and injury margin is significant.
- c. The applicant competes with imports directly on the basis of the price and if the duties are not extended, it will have adverse volume and price effects on the performance of the domestic industry.
- d. The volume of dumped imports from the subject countries have remained quite significant even after the imposition of the duties.
- e. Positive price undercutting even after anti-dumping duty in force, itself establishes that the cessation of duties will lead to a significant adverse effect on the prices of the domestic industry.
- f. The demand of the product under consideration in China PR has been facing a continuous decline as manufacturers involved in foam industry have shifted their production base from China to Taiwan.
- g. Covestro Polymer and BASF Limited use significant portion of their capacity to dump goods into India establishing that Indian market in important for the producers.
- h. Around 14% of production in China, 46% of production in Japan and 59% of production in Korea is being used for export purposes. India being a lucrative market, the producers will try to shift their surplus production to India.
- i. Global capacities are higher than the demand and therefore, there is a situation of global oversupply with respect to the product. Similar situation persists is applicable for producers in the subject countries.
- j. 83%, 59%, 70% of exports from China PR, Japan and Korea RP respectively are at dumped prices. Cumulatively, the associated volumes are far higher than Indian demand.
- k. 99% exports from China PR, Japan and Korea RP are at injurious prices. Cumulatively, the associated volumes are far higher than Indian demand.

- l. 48%, 63%, 46% of exports from China PR, Japan and Korea RP are at prices below than Indian prices. Cumulatively, the associated volumes are far higher than the Indian demand.
- m. Response filed by the responding producers also show that there is likelihood of injury.
- n. Export sales to India of all the responding producers have increased in the period of investigation.
- o. Wanhua Chemical Corporation has admitted that it is planning to expand in future.

K.3 Examination by the Authority

121. The present investigation is a sunset review of duties imposed on the imports of subject goods from China PR, Japan and Korea RP. Under the Rules, the Authority is required to determine whether cessation of existing duty is likely to lead to continuance or recurrence of dumping and injury to the domestic industry.
122. The Authority has examined the likelihood of continuation or recurrence of injury considering the requirement laid down under Section 9A (5), Rule 23 and parameters relating to the threat of material injury in terms of Annexure - II (vii) of the Anti-dumping rules, and other relevant factors brought on record by the interested parties.
123. In accordance with the practice of the Authority, the third country exports have been examined to see the pricing behaviour of the producers in the subject countries. Further, the Authority has also examined if the exports to the other countries are at prices injurious to the domestic industry and prices below the Indian prices to examine the likely increase in imports to India in the event of cessation of duties.
124. It is seen that producers from China PR and Korea RP have participated in the present investigation. However, there is no response from Japan. Therefore, the Authority has considered information provided by the responding producers for examining likelihood of injury for China PR and Korea RP. For Japan, the Authority has considered information provided by the applicant.

K.3.1 Idle capacities

125. Information with respect to surplus capacities with the producers in the subject countries is given below. The Authority has examined the information for period of investigation to examine likelihood of injury.

SN	Particulars		Capacity	Production	Idle capacity	Idle capacity as % of Indian demand	
			MT	MT	MT	%	Range
A	China PR						
1	Covestro China Limited	Polymers Company	***	***	***	***	20-30
2	Wanhua	Chemical	***	***	***	***	40-50

	Group Limited	Company				
B	Korea RP					
1	BASF Limited		***	***	***	60-70
2	Hanwha Solutions Corporation		***	***	***	40-50
C	Japan		***	***	***	20-30

Source: EQR, ICIS Report

126. It is seen that ***% of capacity of Covestro Polymers, ***% of capacity of Wanhua Chemical, ***% of capacity of BASF, ***% of capacity of Hanwha were idle in the period of investigation. In case of Japan, it is seen that ***% of capacities in Japan are lying idle. It is seen that the producers have set up capacities significantly higher than the demand in their respective country and will try to utilise their capacities for export purpose.

K.3.2 Export orientation

127. Information with respect to export orientation of the producers in the subject countries is given below. The Authority has examined the information for period of investigation to examine likelihood of injury.

SN	Particulars	Production	Exports	Export orientation as % of Indian demand	
		MT	MT	%	Range
A	China PR				
1	Covestro Polymers China Company Limited	***	***	***	120-130
2	Wanhua Chemical Group Company Limited	***	***	***	250-260
B	Korea RP				
1	BASF Limited	***	***	***	130-140
2	Hanwha Solutions Corporation	***	***	***	120-130
C	Japan	***	***	***	80-90

Source: EQR, ICIS Report

128. It is seen that the producers in subject countries are utilizing a significant share of their production for export purpose.

K.3.3 Third country dumping

129. Information with respect to third country dumping is given below.

SN	Particulars	Exports to third countries at dumped price	Total exports to third countries	Exports at dumped prices as % of Indian demand
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		MT	MT	%	Range
A	China PR				
1	Covestro Polymers China Company Limited	***	***	***	70-80%
2	Wanhua Chemical Group Company Limited	***	***	***	20-30%
B	Korea RP				
1	BASF Limited	***	***	***	60-70%
2	Hanwha Solutions Corporation	***	***	***	70-80%
C	Japan	***	***	***	70-80%

Source: EQR, ICIS Report

130. It is seen that a significant share of exports of the responding producers to third countries are at dumped prices. Further, on the basis of data provided by the applicant, it is seen that even exports from Japan to third countries are at dumped prices. These dumped exports to third countries are significant in relation to demand in India.

K.3.4 Third country injurious exports

131. Information with respect to third country injurious exports is given below:

SN	Particulars	Exports to other countries at injurious price	Total exports to third countries	Exports to other countries at injurious price		Exports to other countries at injurious price % of Indian demand	
		MT	MT	%	Range	%	Range
A	China PR						
1	Covestro Polymers China Company Limited	***	***	***	90-100%	***	110-120
2	Wanhua Chemical Group Company Limited	***	***	***	90-100%	***	80-90
B	Korea RP						
1	BASF Limited	***	***	***	90-100%	***	120-130
2	Hanwha Solutions Corporation	***	***	***	90-100%	***	110-120
C	Japan	***	***	***	90-100%	***	80-90

Source: EQR, ICIS Report

132. It is seen that significant exports of cooperating producers to third countries are at prices which are injurious to the domestic industry. Further, on the basis of data

provided by the applicant, it is seen that ***% of exports from Japan to third countries are also at injurious prices.

K.3.5 Price attractiveness

133. Information with respect to price attractiveness is given below:

SN	Particulars	Exports to other countries below price to India	Total exports to third countries	Exports to other countries below price to India		Exports to other countries below price to India % of Indian demand	
		MT	MT	%	Range	%	Range
A	China PR						
1	Covestro Polymers China Company Limited	***	***	***	90-100%	***	110-120
2	Wanhua Chemical Group Company Limited	***	***	***	70-80%	***	60-70
B	Korea RP						
1	BASF Limited	***	***	***	80-90%	***	100-110
2	Hanwha Solutions Corporation	***	***	***	80-90%	***	100-110
C	Japan	***	***	***	60-70%	***	50-60

Source: EQR, ICIS Report

134. It is seen that significant share of exports of cooperating producers to third countries are at prices below the price to India. On the basis of data provided by the applicant, it is seen that ***% of exports from Japan to third countries are at prices below export price to India. The Authority proposes to consider this along with other indications for likelihood of dumping and injury at the stage of final findings.

135. The post disclosure submissions have been received from the interested parties. The issues raised therein have already been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity the submissions by the interested parties are being examined as below:

L. POST DISCLOSURE COMMENTS

Submissions of the domestic industry

136. The domestic industry made the following submissions:

- i. The methodology of determining normal value based on the optimized cost of production of the applicant is not appropriate as it assumes that subject countries plant are operating at optimum level which is unreasonable/unfair to the applicant. Thus, the applicant requests the Authority to determine the normal value on the basis of weighted average actual cost of the domestic industry or the actual cost of responding producers.
- ii. The applicant repeatedly regularly requested the Authority for determination of transaction wise margin. This is critical in present case since the exporter has very insignificant exports. With such varying trend in the prices, comparison of weighted average export price with weighted average normal value is highly misleading to show the effective dumping margin.
- iii. In a situation where imports have occurred at significantly varying prices at or around the same month and over the investigation period, our concern is the low-priced imports, which coupled with the likely volume becomes relevant to show the extent of injury that the imports can cause to the domestic industry.
- iv. Considering there is variation of 118 % in import prices for the same exporter, such fluctuation cannot be appropriately accounted by using the weighted average import price. It is a fit case where the Authority should consider transaction-based dumping margin and injury margin.
- v. Despite operating with idle capacities, the producers in subject countries are utilizing a significant share of their production for export purposes. Export orientation of the producers in subject countries is significantly high considering the Indian demand.
- vi. The majority of the third country exports to India are at injurious prices. As already provided during the investigation, the Indian market offers lucrative prices to the producers in the subject countries. Therefore, it is very likely that they will divert their third country exports to India once the duty is withdrawn.
- vii. The Indian market is a price sensitive market. Consumers negotiate on the basis of prices quoted by the exporters. If the present anti-dumping duties are not continued, the landed import price will decline. Thus, the applicant will suffer price injury if the duties are not extended.
- viii. As the import price is impacted by the anti-dumping duty in force. Thus, no definitive inference can be drawn from the change in the dumping margin or injury margin in such situations due to the fact that ADD is in place.
- ix. The applicant submits that any variation in duty will be contrary to the Act, the Rules and WTO Agreement on Anti-dumping.
- x. The applicant submits that the Authority is not required to redetermine the amount of anti-dumping duty in the present sunset review. Not only that Rule 23 does not require the Authority to determine the quantum of antidumping duty, but also, plain reading of Section 9A(5) states that the Authority is required to merely determine whether to recommend extension of anti-dumping duty for a further period of five years.
- xi. Considering the import price variation from different sources which would lead to unreliable margins calculation, performance of the domestic industry has improved with imposition of duties, and clear evidence of likelihood of dumping and injury if duty expires, any modification to the quantum of duty would not be appropriate.
- xii. The applicant submits that the return earned by Sheela Foam Limited (user industry) has increased continuously since the imposition of duty. It can be also seen that the profitability of the Shree Malani Foams Private Limited has also remained significantly high.

Submissions of the interested parties

137. The submissions of various opposing interested parties are summarized as follows:

- i. The dumping margin should be calculated based on the revised dumping margin/injury margin worked out in the disclosure statement. The Designated Authority previously, in cases where the exporters had intensified dumping during sunset review, determined revised duty based on the dumping margin/injury margin in current investigation.
- ii. Wanhua submits that the fact that the importing entity has sold the subject goods at a loss by selling at price lower than the import price is result of change in market situation after the subject goods have been imported. Wanhua has also submitted that the Designated Authority has erroneously applied test of association or compensation based on the difference between import price and resale price, whereas said test ought to be applied based on the price at the time of import by comparing the import price to the related and unrelated entities at the time of import.
- iii. Mere relation between the exporter and the importer should not lead to an automatic declaration of unreliability of the export price. Rather, it must be demonstrated that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer.
- iv. The Authority should reconsider the proposal to adjust the loss suffered in resale transactions by the related importers in the net export price, which is not justified. Alternatively, if the Designated Authority still doubts the reliability of the import price to the related entities, Wanhua has requested the Authority to make determination based on the import price to the unrelated entities which are in significant volume.
- v. If it is not shown that the prices are unreliable due to influences by way of relation of parties, then the landed price has to be considered based on the price already assessed by Indian customs and no further adjustments are essential and, in any case, customs was the competent authority to consider the effect of any such relation but there were no adverse determinations.
- vi. Having submitted as above, customs have already assessed the value of goods in question here and the relation of parties here did not lead to any reassessment of values declared by the company. The valuation has reached its finality already and the rules of valuation were made applicable as found appropriate by the customs authorities, which is the correct authority to apply such principles.
- vii. DGTR cannot overrule the landed price as calculated by Indian customs who is the competent authority to decide the valuation and any other method other than found applicable by the customs shall be in violation of the customs valuation rules.
- viii. The landed price as proposed in case of Wanhua is also inconsistent with the applicable valuation rules and warrants fair reconsiderations.
- ix. Indian Polyetherane Association (IPUA) submits that the applicant does not suffer any injury at all and is in a very comfortable position as is exemplified by their Annual Report for 2020-21. Further, the information given in the application does not substantiate that there is any likelihood of recurrence of injury as well.
- x. IPUA submits that the application, by very nature of the injury or likelihood or recurrence of injury claims made by the applicant, did not merit initiation of the

- sunset review and an objective preliminary examination of the application, in terms of the Rules, would not have led to initiation of this investigation.
- xi. IPUA submits that it was incumbent upon the applicant to file a duly substantiated application and the Authority was required to satisfy itself about the fact of duly substantiated facts in the said application before initiating a review. Further, IPUA submits that the Authority has failed to fulfil its obligation under Article 11.3 of ADA to ensure that the application is duly substantiated before this review was initiated.
 - xii. IPUA submits that the applicant is enjoying anti-dumping duty protection from almost all major sources of import. The Authority, through the antidumping action, should not help creation and perpetuation of monopoly in favour of the applicant and to the detriment of the user industries.
 - xiii. IPUA submits that the Authority has ignored the issue of PUC scope which includes TDI having isomer content in the ratio of 80:20 only and excluding TDI having isomer content in the ratio of 65:35 and all other grades. Further, IPUA submits since there is no clarification whether the domestic industry data as well as the import data clearly excludes those products other than TDI with isomer content in ratio of 80:20 both for volume and price analysis and dumping and injury margin determination, it is possible that all determinations have been made for both the product types and that is likely to have distorted the determinations.
 - xiv. IPUA submits it is consistent practice of DGTR that product/product type which is not commercially produced and supplied in the market cannot be included within the scope of the PUC. While acknowledging the fact that the domestic industry does not produce BHT free TDI, the domestic industry has only made an assertion that they have the capacity to produce this product and therefore, antidumping duty should continue on this product also.
 - xv. IPUA submits that whether the demand of a product type is significant or insignificant is not the issue. The issue is easy availability of the material without unnecessary duty burdens. Import under advance licence for export purpose carries its own transaction costs and time overruns and also deprives the exporters of the RoDTEP benefits. Thus, the alternative suggested by the Authority is a double jeopardy for the exporters.
 - xvi. IPUA submits that it is a common knowledge with all the entities involved in this sector that IPUA is the nodal representative body for the polyurethane users in India. Therefore, the Authority has rightly upheld the right of the Association to participate in the proceedings and oppose the application.
 - xvii. IPUA submits that price irrationality of the domestic producer compared to the price fluctuation of the basic raw material as well as the import price of the subject goods is evident from the data of toluene price, DI selling price and import price, which has not been considered by the Authority in its disclosure statement.
 - xviii. IPUA submits that user industry is suffering due to erratic supply issues of the subject good, considering the applicant is the sole domestic producer of the subject good and have its production issues, pollution control issues.
 - xix. IPUA submits that the demand estimate of the subject good as 1 lakh ton by the nodal representative body for the polyurethane and the foam producing industry is authentic as it has assessed the demand of the PUC by the user industries based on their consumption. Contrastingly, the Authority has accepted the demand estimate of the domestic industry without support of any authentic report.
 - xx. IPUA submits that the methodologies adopted by the applicant for estimation of continued dumping were inconsistent with the ADA or the Customs Tariff Act.

Hence, the Authority should not have accepted such claims of continued dumping based on such legally inconsistent methodologies for initiation of this review on the grounds of continuation of dumping. Therefore, this investigation should have been terminated instead of issuance of this disclosure statement.

- xxi. IPUA submits that methodology of adopting the export price from Taiwan to Vietnam for determination of Normal value for China is illegal. Further, the Authority has failed to provide methodology for determination of export price for Wanhua Chemical Group Co., Ltd.
- xxii. IPUA submits that disclosure of methodology of determination of Normal value is an essential fact that must be disclosed by the Authority before its final determinations and without a disclosure of the methodology of determination of the normal value the disclosure statement is grossly incomplete and the Authority is required to issue a fresh disclosure before proceeding further.
- xxiii. IPUA submits that certain abnormal adjustments made by the applicant in the freight costs while determining export prices on the ground that the CIF price of imports in 2020-21 had increased because of the significant amount of freight included in the prices, which suggest that dumping margin is bound to get inflated whereas objective examination of the export price would have revealed that there was no continued dumping.
- xxiv. IPUA reiterates that the applicant suffered no material injury during the period of investigation and there is no likelihood of recurrence of injury, which is evident from public announcements of the applicant and other information available in the public domain.
- xxv. IPUA submits that the Authority has not disclosed the detail of normalization of the injury parameters excluding Covid data.
- xxvi. IPUA submits that the claims made by the applicant in their application is contradicting their own Annual Report for 2020-21 where they themselves have gone on record that the company has achieved good operational performance during the year under review, in spite of prevailing Covid-19 pandemic situation.
- xxvii. IPUA submits that the Authority has failed to clarify anywhere in the disclosure statement whether the indexed data with regard to the injury parameters such as volume of imports and prices etc. pertain to the PUC alone (i.e., TDI 80:20) or covers all TDI, including 65:35 ratio also.
- xxviii. IPUA submits that the Designated Authority has failed to fulfil its obligations to carry out the analysis of 'actual and potential' decline in various factors despite the issue being highlighted by the respondents in accordance with Annex II of the Antidumping Rules and Article 3.4 of ADA.
- xxix. IPUA submits that the Authority has failed to determine that even after expansion of the capacity, domestic industry's capacity utilization has remained at same level. Therefore, any claim of volume injury due to dumped imports is highly untenable.
- xxx. IPUA submits that the Authority has failed to examine the fact the applicant has been exporting one third of its production, since increasing their capacity, to comply with its export obligations.
- xxxi. IPUA submits that there is a huge demand supply gap as the applicant is the only producer of the subject goods and also caters to the export market. Therefore, the users are forced to import the goods despite heavy antidumping duties against all possible sources of supply for last several years.

- xxxii. The rate in increase of sales volume of DI was much above the increase in demand. Further, the imports from the subject countries during the comparable period were almost half of the base year, indicating no volume impact as alleged.
- xxxiii. IPUA submits that the application gives no explanation why the cost of sales for the domestic market has gone up by 4 basis points while the cost of sales for the export market has gone down by 20 basis points during the same time period and why despite the fact that the cost of sales for the export market has come down so drastically, the applicant was selling in the export market at loss.
- xxxiv. IPUA submits that export prices showed price undercutting because of abnormally high prices charged by the DI amidst the monopolist pricing situation under antidumping protection.
- xxxv. IPUA submits that the volume and price parameters of the applicant domestic industry do not show any injury at all, whereas the domestic industry has made remarkable performance during the POI and made huge profits.
- xxxvi. IPUA submits that, by their own admission in their Annual Report, the applicant industry is in the pink of its health and neither suffers any material injury at present, nor there is any likelihood of imminent recurrence of injury to the Company on account of the alleged imports.
- xxxvii. IPUA reiterated that no positive evidence has been provided by the applicant to objectively establish that there is a likelihood of recurrence of dumping and consequent injury and all the arguments extended by the applicant is based on vague and unsubstantiated propositions.
- xxxviii. IPUA submits that the source of third country data examined by the Authority has not been disclosed to the interested parties, whereas the exporter questionnaire response does not provide any format for providing transaction wise third country export data.
- xxxix. IPUA submits that while the applicant appears to have been able to obtain transaction wise data from EQR, ICIS Reports to analyse the volume of exports from the subject countries to other countries at dumped and injurious prices, they were unable to get the price data in the said countries for determination of the normal values at the initiation stage.
- xl. IPUA submits there is no likelihood of significant increase in import volume considering the volume of imports has remained at the current level, with or without duty and antidumping duty against various countries, indicating thereby that there is an unmet demand which has to be fulfilled by imports.
- xli. IPUA submits that the price level is determined by the dominant domestic industry, whereas the removal of duty will bring back the healthy competition. Thus, the removal of duty would not cause any injury to the applicant in the foreseeable future considering the profitability position of the applicant.
- xlii. IPUA submits that the applicant has resorted to misleading data and information to fabricate a situation of likelihood of recurrence of dumping and injury and has made certain contradictory and vague claims which the Authority has failed to examine despite detailed submissions by the Respondents.
- xliii. Covestro request the Authority to confirm landed value and net export price determined in the disclosure statement, in its final findings as well.
- xliv. Covestro China had submitted the actual capacity and capacity utilization data to the Authority in Appendix 1 of the exporter's questionnaire response. The Authority is requested to rely on actual capacity and capacity utilization data of Covestro China while determining the idle capacity, if any. Covestro China had also submitted in its post-hearing written submissions that there is no idle capacity lying with Covestro China.

- xliv. Covestro submits that Covestro China has furnished detailed responses furnishing the complete information regarding land use rights, raw material, labour cost and pricing of utilities in the aforementioned sections in its MET questionnaire response.
 - xlvi. Coverstro submitted that Toluene is also used for producing drug and is therefore under control of the Government. However, Government only controls purchase procedures and trading flow to ensure that Toluene purchased for manufacture of TDI is not used in production of drugs. License is also required for its each purchase transaction. Further, the respondent submits that there is no government involvement in the price at which Toluene is purchased by Respondents. Respondents purchase Toluene at prices negotiated with the sellers directly.
 - xlvii. Covestro submits that Authority is specifically required to assess whether cost and prices of raw materials are in accordance with market principles. Cost and prices of utilities, such as natural gas, electricity, water etc. is not specifically prescribed as a relevant criterion to be assessed by the Authority.
 - xlviii. Covestro submits that natural gas is also not a 'major input', as noted in Paragraph 8(3) of Annexure I of the Anti-dumping Rules, and only accounts for 0.8% of total costs incurred by Respondents in TDI production. Thus, any benefit received by Respondents owing to preferential price of natural gas has no significant impact on overall cost of production of PUC and consequent domestic prices of PUC.
 - xliv. Covestro submits that the Authority should at-least exclude quarter of April 2020-June 2020 affected by complete lockdown. Exclusion of quarter of April 2020-June 2020 will show significant improvement in performance of Domestic industry in the POI.
- 1. Respondents submit that objective assessment of the imports shows that imports have declined during the injury investigation period. As the antidumping duty was in force since June 2017, thus decline in imports during the injury investigation period cannot be attributed to anti-dumping duty which was prevalent during the entire injury period.
 - li. Export orientation as a percentage of Indian demand is not representative criteria used to assess likelihood of dumping and injury to the domestic industry. Comparison of total exports of the respondents with Indian demand gives an unrepresentative and exaggerated indication about export orientation.
 - lii. Respondent submits that export sales to India of subject goods is merely 6,341 MT, which is not more than 3% of its total sales during the POI. Respondents request the Authority to consider these submissions before issuing the final findings.
 - liii. Respondents submit that the injury caused to the domestic industry in the POI is due to Covid-19 and imports from third countries and not due to imports from China PR.
 - liv. The Authority has the discretion to recommend antidumping duty for less than 5 years period when the Authority concludes that shorter period of antidumping duty would be appropriate in the facts and circumstances of the case. Respondents request that even if continuation of anti-dumping duty is recommended, the Authority should recommend such continuation of duty for a period shorter than the full 5-year period.
- iv. Sheela Foam submits that the Authority has not quantified the demand for BHT-free TDI in India nor has the Authority provided the source for the same. In the absence of such data, the Respondent will not be able to appropriately comment on whether the Authority's assessment of demand for BHT-free TDI in India being low is correct. Nonetheless, the Respondent submits that the demand for BHT-free TDI is high and thus necessitates its exclusion, since the domestic industry does not manufacture the

same. Further, even Sheela Foam has sold the finished goods manufactured from BHT-free TDI in India during the POI.

- lvi. Sheela Foam submits that determination of product exclusion cannot be made based on demand for the particular grade or type being high or low, but whether the imported product is like the product produced by the domestic industry. In the present case, we have already demonstrated that BHT-free TDI is not like the PUC produced by the domestic industry, as it distinguishes from the subject goods in terms of health concern and consumer preference.
- lvii. Sheela Foam submits that availability of advance authorisation cannot be a factor to determine whether or not to exclude a product type/grade from the scope of the PUC. The Authority must only consider whether the products are like products, and whether the domestic industry produced and sold the excluded product in the POI in commercial quantities.
- lviii. The Authority has not considered the current demand for products made from BHT-free TDI in India and the increasing demand in the future. In the event, domestic demand for products made from BHT-free TDI increases in the future, the user industry would be severely prejudiced.
- lix. Sheela Foam submits that the confidentiality claimed and allowed by the Authority is excessive. The Petitioner is a public listed company, its annual reports are published online and discloses data such as capacity, capacity utilization, sales volume sales value, etc.
- lx. Sheela Foam submits that an increase in imports as a proportion of total imports is not at all a relevant factor under Annexure II to the AD Rules and hence cannot be considered by the Authority. The Authority is requested to withdraw its determination of the existence of volume effect based on this factor. The respondent submits that the absolute volume of subject imports is nearly half of base year levels. This strongly implies the absence of volume effect.
- lxi. Sheela Foam submits that the Authority's analysis does not conclusively state whether the landed price of the subject imports is depressing or suppressing the domestic industry's selling prices. We nonetheless submit that there has not been any such price suppression or depression by the subject country imports.
- lxii. Sheela Foam submit that the Authority's analysis about domestic industry being forced to export which could have been used for domestic demand is incorrect, as the domestic demand has declined and export sales have declined over the injury period. The subject country imports are not the cause for the decline in the domestic industry's production during the POI.
- lxiii. Respondent request the Authority to note that domestic sales volume has increased except in POI attributed to COVID situation, but same is higher than base year. Further, the domestic industry data for captive consumption of the PUC is not included in the disclosure statement.
- lxiv. Respondent submits that the market share data cited by the Authority in the Disclosure Statement is inconsistent with the market share data cited by the domestic industry in its Annual Report, which shows that the petitioner's market share is healthy i.e. in the range of 64-70 %.
- lxv. Even if the petitioner is suffering losses, the same is due to factors other than the subject imports, considering there is no such correlation of the volume and price undercutting by the subject imports to the petitioner's economic performance.
- lxvi. The volume of subject imports decreased in 2018-19 and 2019-20. However, instead of improving, the petitioner's profitability parameters significantly declined in these

two years. Interestingly, when the volume of subject imports increased slightly in the POI, the petitioner's profitability parameters significantly increased in the POI.

- lxvii. When price undercutting by the subject significantly declined in 2018-19 and 2019-20, the petitioner's profitability parameters significantly declined in these two years, instead of increasing. In fact, price undercutting was negative in these two years. In spite of the same, the Petitioner's financial parameters declined. Interestingly, when price undercutting was positive in the POI, there was a significant improvement in the Petitioner's financial performance.
- lxviii. Sheela Foam submits that mere increase in inventory in itself is not an indicator of injury. Further, the Authority's assertion that the petitioner had undertaken significant exports in order to prevent any pile up of inventories is factually incorrect as the petitioner's volume of exports has decreased in the injury period.
- lxix. Respondent submits that considering the domestic industry is being protected from the allegedly dumped imports from multiple sources still domestic industry has seen negative growth, thus injury to the domestic industry is due to factors other than allegedly dumped imports. Accordingly, the Authority must not recommend the continuation of anti-dumping duty on any imports of TDI into India.
- lxx. Authority is only required to examine whether the petitioner was constrained from being able to raise fresh capital. Since the petitioner had already made investments in 2014, and demand for the PUC in India having declined, there was no occasion for the petitioner to make additional investments.
- lxxi. Even if dumping margins are positive and significant, that in itself is not sufficient to continue antidumping duty on the subject imports. It needs to be examined whether there is a likelihood of continuation of dumping and injury.
- lxxii. Even though the petitioner's domestic sales declined in the POI, they were 10 indexed points higher in the POI than in the base year. On the other hand, the imports from the subject countries in the POI declined to half of that in the base year. Thus, even though the domestic demand declined in the POI, the domestic industry had more sales than the subject imports.
- lxxiii. The mere existence of surplus capacities is not sufficient to establish the likelihood of recurrence of injury, even if the producers in the subject countries are export oriented, it does not mean that they will start exporting to India once the anti-dumping duty ceases.
- lxxiv. Merely because exports are being made to third countries from the subject countries at allegedly dumped and allegedly injurious prices does not mean likelihood of recurrence of dumping and injury. The Authority has to show likelihood of diversion of exports to India upon cessation of ADD, which the disclosure statement has failed to show.
- lxxv. The petitioner's assertions about its economic performance declining in the event that ADD is revoked are negated by actual economic performance reported in public sources. This also negates the likelihood of recurrence of dumping and injury if ADD is revoked.
- lxxvi. The respondents humbly request the Authority to analyse the information excluding Covid period as well.
- lxxvii. BASF submits that the applicant has neither suffered any injury nor there is any likelihood of the dumping and the injury on account of the imports of the subject goods from Korea RP.
- lxxviii. The applicant has suffered the injury, if any, on account of other reasons and not on account of the imports of the subject goods from the subject country and particularly from Korea RP as evidenced from the following facts:

- lxxix. The capacity utilization of BASF Company Limited remained almost in the same range throughout the injury period. Accordingly, it is clear there is no likelihood of continuation or recurrence of the injury.
- lxxx. BASF submits that throughout the injury period less than 6% of the production of the BASF Company Limited was exported to India, which clearly shows that India is not an attractive market for it.
- lxxxi. BASF submits that the methodology of the third country dumping analysis and price attractiveness and injurious export analysis adopted by the Authority is fundamentally wrong and will lead to the absurd results as comparing a weighted average number with an individual number will always show some transactions below it.
- lxxxii. A sunset review, should normally not lead to any change other than the extension of the period for which the duties are supposed to be effective.

Examination by the Authority

138. The Authority notes that the post-disclosure comments/submissions made by the domestic industry and the other interested parties are mostly reiterations of their earlier submissions, which have already been examined adequately addressed in the disclosure statement or relevant paras of the present finding. The Authority has examined the submissions herein below to the extent relevant and not addressed elsewhere are examined as under:
- i. The normal value, export price and dumping margin have been calculated as per consistent practise of the Authority.
 - ii. Regarding the submissions of the producer/exporter from China that the sale subject goods at loss is the result of change in market situation after the subject goods have been imported, the Authority notes that during the same period, the price at which the related importer of other producer/exporter from China PR has purchased the subject goods is much lesser (almost 40-50%) than the price at which Wanhua India has purchased from its related producer/exporter. Further, there is a marked difference in the resale price of the two importers as well (almost 10-20%), the resale price of Wanhua, India being much less than the resale price of other related importer. The reason for this difference in resale price and purchase price has not been explained Wanhua Chemical. The Authority, therefore, holds that the export price of Wanhua Chemical is unreliable and has therefore, adjusted the loss incurred by the exporter in selling the subject goods to its related importer.
 - iii. The Authority notes the concerns of the interested parties regarding initiation of subject investigation based on petition filed by the domestic industry. In this regard, the Authority re-iterates that the applicant has provided a duly substantiated application based on which the present sunset review investigation was initiated after prima facie satisfaction of the Authority that there is sufficient evidence of dumping and likelihood of continuation or recurrence of dumping and consequent injury to the applicant.
 - iv. Regarding the submission of interested parties that the Authority should not help in creation of monopoly in favor of the applicant, the Authority holds that purpose of imposition of an anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping duty would not restrict imports

from the subject country in any way, and, therefore, would not affect the availability of the products to the consumers.

- v. The Authority has already held that the PUC in the present investigation concerns TDI having isomer content in the ratio of (80:20) and any other grades are beyond the scope of product under consideration. Further, the import data considered volume and price analysis for the purpose of present investigation concerns only the product under consideration as already defined by the Authority.
- vi. On the submissions by other interested parties on exclusion of BHT Free TDI from the scope of product under consideration, the Authority notes that transaction wise import data does not contain description sufficient enough to identify whether the subject goods being imported are BHT free or not. Therefore, it is not possible to identify if the imported product contains BHT or not. If BHT free TDI is excluded from the scope of product under consideration, non-availability of this information may lead to evasion of anti-dumping duty. Furthermore, the Authority has estimated the demand for BHT free TDI based on information submitted by the interested parties as per which it is about 5% of the total demand in India and is mostly for export purposes). This demand can easily be met through importing through Advance Authorization scheme.
- vii. The Authority also notes that as per the information provided by the applicant, none of the interested parties has raised any requirement of BHT Free TDI from it in the period of investigation and had there been a any requirement of BHT Free TDI from its users, the domestic industry could have supplied the same. The applicant has provided Lab Test Reports to show that it provides BHT Free TDI. Further, the applicant has also exported the subject goods containing BHT to US during the same period.
- viii. Regarding the submissions of interested parties on current demand for products made from BHT free TDI in India, the Authority notes that only one user has quantified its demand for BHT free TDI. Other users have made no such estimate nor is the information been made available to the Authority by any of the other interested party. In absence of such information, the Authority is unable to estimate the demand for products made from BHT free TDI in India.
- ix. Regarding price irrationality of the domestic producer, the Authority re-iterates that there is a significant fluctuation in the selling price of the applicant as well as the price of imports. Both the landed price of imports and the selling price of the applicant show an increasing trend in the first quarter of the period of investigation, declined in the next quarter and then further increased thereafter. Further, the applicant has admitted in the application that there has been significant fluctuation in its selling price, landed price of imports and the prices of raw materials during the period of investigation. Therefore, when the prices have fluctuated, there is no merit in the argument that the applicant has kept an erratic pricing policy.
- x. The Authority notes that while the interested parties have raised concerns regarding erratic supply of subject goods by the applicant who is the sole producer of subject goods in India, there is no documentary evidence on record that substantiates this claim.
- xi. The demand has been estimated as per consistent methodology of the Authority as the sum of total imports as per transaction wise import data obtained from DGCI&S and sales of the domestic industry as duly verified by the Authority.
- xii. The normal value for China is determined on the basis of the price actually paid or payable in India on the basis of estimates of cost of production, duly adjusted to

- include selling, general & administrative costs of the domestic industry by adding reasonable profits.
- xiii. The export price for Wanhua has been calculated on the basis of information submitted by the exporter as already stated in preceding paragraphs. Loss incurred by the exporter by selling the subject goods to the related importer has been adjusted in the export price as well as already explained in relevant paragraph.
 - xiv. The export price for all co-operating producers from subject countries have been calculated based on information submitted by them. The export price for non-cooperative producer/exporters from the subject countries has been determined based on facts available in terms of Rules 6(8) of the Rules. Therefore, there is no prejudice caused to any of the co-operating producer/exporters due to adjustments made by the applicant in freight costs in the application.
 - xv. The indexed data with regard to the injury parameters such as volume of imports and prices etc. pertain to the PUC alone (i.e., TDI 80:20)
 - xvi. As regards the claim of the interested parties that the applicant has been exporting one third of its production, since increasing their capacity, to comply with its export obligations, the Authority notes that as per information on record, there is no export obligation of the applicant during the POI.
 - xvii. The Authority notes that there is no demand supply gap as the capacity of the domestic industry is more than the demand in India.
 - xviii. On the submission of significant difference in the price of domestic and export operations, the Authority notes that this difference is in the cost of production of the two plants.
 - xix. The source of third country data examined by the Authority has been mentioned in the final findings. The transaction wise third country export data as submitted by the cooperating producer/exporter has been taken for the likelihood analysis.
 - xx. On the submissions of the interested parties that the applicant appears to have been able to obtain transaction wise data from EQR, it is noted that the Authority has obtained and analysed the transaction wise import data from the EQR. The Applicant has no access to this data.
 - xxi. The Authority has relied on actual capacity and capacity utilization data of Covestro China while determining idle capacity.
 - xxii. On submission of Covestro that the respondent has shared the land use right details, labour remuneration details, and market rate acquisition of the utilities and raw materials in MET questionnaire response, the Authority notes submission of allocating authority for the land use rights is not sufficient, as the exporter has failed to share the evidence suggesting that the land use rights were acquired at the fair market price after conducting a formal bidding process.
 - xxiii. With respect to labour inputs, the Authority notes that mere payment of standard salaries is not enough, unless the labour employed by the company has right to form union for negotiating fair terms of the employment and the work conditions with the employers. In addition, the comparison of the salary paid to the skilled workers and managers with salary paid across India is flawed, as the location of the respondent, i.e. Shanghai, which is considered financial capital of China, cannot be compared with India which has variation in terms of the development and the wage standards across different regions.
 - xxiv. Further, the cost and prices are also affected by provision of utilities and loans by the Govt. agencies, which are mostly State Controlled and have significant impact on the cost and prices of the subject goods. Therefore, the Authority does not find it

- appropriate to accept the cost and prices of the above producer in the domestic market in China for the purpose of determination of the normal value.
- xxv. The Authority notes that imports from subject countries have decreased during the injury period. However, the imports from subject countries still account for 23% of total demand of PUC in India and 48.29% of total imports of the PUC in India which is significant in absolute and relative terms. Further, with the imposition of AD duty on the PUC from subject countries during 2017-18, the imports from the subject countries started declining whereas the imports from non-subject countries started increasing. This clearly indicates a trade pattern shift.
- xxvi. Though the export sales of Covestro China to India is not more than 3% of its total sales, it accounts for 39% of total imports in India from the subject countries and 87% of total imports from China PR during the POI.

M. INDIAN INDUSTRY'S INTEREST AND OTTIER ISSUES

139. The interested parties made the following submissions against continuation of duty owing to public interest:
- i. The applicant is the sole producer in India and is trying to create monopolistic conditions in the Indian market by seeking trade remedies.
 - ii. The applicant is enjoying benefit in the form of duty for 5 years.
 - iii. Continuation of duty will cause harm to thousands of users in the MSME category. Large public interest will be served if investigation is terminated.
 - iv. There are over 400 members in the Association and more than 120 "Toluene Di-isocyanate" (TDI) users are involved in the manufacture of Mattresses, Furniture Foams etc. Most of the user industry is in the MSME sector.
 - v. Domestic users require level playing field against anti-competitive and monopolistic behavior of the applicant.
 - vi. Considering the volumes given in the original final finding, the current demand in India should be 80,000 to 85,000 and the applicant can cater only 50-55% of the Indian demand.
 - vii. Huge demand-supply gap and majority of the users belong to the MSME category.
 - viii. TDI and FSP – two raw materials account for over 95% of the cost of raw material of the foam produced are subjected to ADD adding an extra burden on user industry. User industry works on a thin margin of less than 5%.
 - ix. At the present rate of duty on TDI alone, additional cost is about 6-7%. Combined effect of FSP and TDI is around 11-12%.
 - x. About 20% of the polyurethane foam bedding market is already lost to bedding produced out of polyethylene foam, a cheaper substitute.
 - xi. Polyurethane industries which use TDI and FSP are import dependent to operate their units. They are already suffering from the Rupee-Dollar parity, Ocean Freight increase, Container shortage etc. and anti-dumping duties from almost all the major overseas sources are proving to be the last straw in the camel's back.
 - xii. Domestic users require level playing field against anti-competitive and monopolistic behaviour of the applicant.

M.2 Submissions by the domestic industry

140. The domestic industry made the following submissions in favour of continuation of existing anti-dumping duty:

- i. The product under consideration has been attracting anti-dumping duty since 2017 and the impact of the duty on the end consumers will not be a new phenomenon.
- ii. Impact of anti-dumping duty on Adhesive, PVC coated Paper, Polyurethane Resin, Phenyl Isocyanate and PU Foam is as below:-

SN	End product	Market price of end product	Impact on end product in %
1	Adhesive	Rs 5000 per KG	0.11%
2	PVC coated Paper	Rs 70/sqm	1.32%
3	Polyurethane Resin	Rs 1300 per KG	0.23%
4	Phenyl Isocyanate	Rs 650 per KG	1.22%
5	PU Foam Rate	Rs 420 per KG	1.74%

- iii. If the users fail to establish the adverse impact of duties, the impact provided by the applicant shows that duties had benefitted the applicant without having adverse impact on the end users.
- iv. Return earned by Sheela Foam Limited has increased continuously since the imposition of duty.
- v. Profitability of the Shree Malani Foams Private Limited has also remained significantly high.
- vi. With no demand-supply gap and no reliance on the imports, the Indian TDI industry is a totally Atmanirbhar Industry.
- vii. All the past investigations have clearly established that the applicant suffers due to dumping and extension of the duties will definitely be in the interest of the applicant.
- viii. If the sole producer is left to suffer, it can eventually be wiped out and the consumers will be left at the mercy of only the exporters. The applicant being established in the same national territory as the users, will keep the user interest.
- ix. Consumers are already enjoying concessional customs duty on the imports of subject goods from Korea RP and Japan.
- x. While there should have been trade surplus in the present case, the fact is that trade balance of TDI shows a deficit which seriously impacts the foreign exchange reserve of India and defeats the aim of making India a 5 trillion \$ economy.
- xi. Out of the claimed 120 TDI users in the association, only 5 users have participated and none of them fall in the MSME category. The association has not provided any material to establish its credentials.

M.3 Examination by the Authority

141. The Authority issued initiation notification inviting views from all interested parties, including importers, consumers and others. The Authority also prescribed a questionnaire for the users/ consumers to provide relevant information with regard to present investigation, including any possible effects of anti-dumping duty on their operations. The Authority considered whether continued imposition of duty will have any adverse impact on the public interest. During the course of the investigation, steps were taken to examine whether the imposition of the anti-dumping duties will be against the public interest. For this, the Authority has considered information on record

and interests of various parties, including the applicant, importers and users of the product.

- i. The Authority notes that the purpose of the anti-dumping duty, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Extension of anti-dumping measures would not restrict imports from the subject country/territory in any way, and, therefore, would not affect the availability of the product to the consumers.
- ii. Regarding the submissions of the interested parties that the imposition of anti-dumping duty will adversely affect the interests of the users belonging to the MSME sector, the Authority notes that it is recognized that the imposition of anti-dumping duty might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of this product. However, fair competition in the Indian market will not be reduced by the anti-dumping measure, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, extension of antidumping measure would remove the unfair advantages gained by dumping practices, prevent the decline in the performance of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.
- iii. On the submission of the interested parties that anti-dumping duty is significant cost to the end users, the Authority notes that some consumers filed questionnaire response. The submissions made by the consumers during the course of the investigation have been taken into account. The Authority notes that these interested parties have not shown with verifiable information that the imposition of the anti-dumping duties shall have significant adverse effect either on these consumers or the public at large. On the contrary, the applicant has provided quantified information of the impact of duty on Adhesive, PVC coated Paper, Polyurethane Resin, Phenyl Isocyanate and PU Foam. It is seen that the impact of the duty is not significant.
- iv. During the course of the investigation, it had been contended that there is a demand and supply gap which necessitates the imports. From the information on record, it was seen that there exists no demand and supply gap and the interested party were asked to provide the basis of the claim. The Authority notes that despite being asked to, no information has been provided. It is, therefore, seen that there exists no demand and supply gap and the imposition of the duty will not impact the availability of the products to the end users.
- v. The Authority also notes that the domestic industry has shown long-term commitment to the production in India by expanding its plant in the year 2014. The applicant had made significant investments on its new plant and it is necessary that such investments are protected to support the Indian economy.
- vi. It is further noted that the fact that the prices of the domestic industry are in line with the import prices excluding anti-dumping duty also shows that the domestic industry has not charged any undue benefit of duty in their prices. The domestic industry will compete with the duty paid imports.

- vii. It is recognized that a presence of healthy domestic industry is ultimately in the interest of the users. The recent experience in the Covid-19 period has also shown that the public at large is likely to suffer, if the products are not sufficiently available in the domestic market
- viii. The Authority has also analysed the effect of continuation of anti-dumping duties from the consumer's point of view and observed that it would be in the interest of domestic consumers of subject goods to have reliable Indian domestic producers capable of competing with foreign producers. This is possible when the domestic producers are able to recover from the injury suffered due to the imports. If the current practices of dumping is allowed to continue, the Indian domestic producer would face further injury giving foreign producers increased leverage as against domestic producers. Further, if the domestic industry is allowed to suffer, it will eventually be wiped out and the consumers will be again left at the mercy of the imported goods.
- ix. The Authority also notes that even though the duties were in force, the user industry has witnessed increase in revenues and profits. The applicant on the contrary is recovering from the past effects of dumping. Therefore, extension of the duties will provide support to the applicant.
- x. The Authority in view of above is of the opinion that the continuation of the present anti-dumping duty on the imports of product under consideration from subject countries would not be against public interest and rather continuation of anti-dumping duties will be in the larger public interest.
- xi. It is noted that the imposition of the anti-dumping duties on imports of subject goods would be in the interest of domestic producers of the subject goods in India. The measures would prevent further injury to the domestic industry and give time to them to compete against the exporters from the subject country.

N. CONCLUSIONS

143. Having regard to the contentions raised, information provided, submissions made and facts available before the Authority as recorded in these findings and on the basis of the determination of dumping, injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:
- a. The applicant domestic producer constitutes domestic industry under Rule 2(b) of the Rules and the application filed by them satisfies the criteria of standing in terms of Rule 5(3) of the Rules.
 - b. The product under consideration continues to be exported to India at prices below the normal value resulting in continued dumping except for M/s Hanwha solutions corporation whose dumping margin is negative. The volume of imports from the subject country is likely to increase significantly, considering the dumped and injurious price at which goods have been exported from the subject countries, high export orientation of producers/exporters and significant surplus capacities with producers/exporters in the subject countries.
 - c. Imports from the subject countries were significantly undercutting the domestic industry prices & the domestic industry has suffered depressing or suppressing effect

- on its prices. Further, the injury margin / price underselling is also significantly positive clearly indicating significant price effect on the domestic industry.
- d. The applicant was earning profits in 2017-18, which declined drastically in 2018-19. With dumping intensifying from other countries, the performance of the applicant deteriorated further in 2019-20 and it suffered significant financial losses. However, the profitability of the applicant has improved in the period of investigation as it has recorded profits.
 - e. The Authority has analysed the dumping and injury margin for the cooperative producer/exporters from China PR and Korea RP and also for all other exporters from Japan, the third subject country. It is noted that the exports reported by cooperating producers/exporters from Korea RP and China PR are in consonance with the quantum of imports reported in the transaction wise import data of DGCI&S. The imports reported by the cooperating producers/exporters from China PR and Korea RP are, in fact, higher when compared with the transaction wise import data of DGCI&S. The exporters report exports in POI with reference to the shipment date whereas the DGCI&S imports in POI are collated as per the reference date.
 - f. There is likelihood of continuation and recurrence of injury to the domestic industry due to the following:
 - i. The dumping of the subject goods have continued from the subject countries except for M/s Hanwha Solutions Corporation, Korea, despite anti-dumping duties being in force.
 - ii. The Authority to in order to evaluate the likelihood of dumping and injury in the event of cessation of anti-dumping duties considered idle capacity, export orientation, dumped exports, injurious exports and price attractiveness. DGTR has been consistently looking at these factors while evaluating the likelihood of dumping and injury in the event of cessation of anti-dumping duties as per Rules. In the instant case, since the capacity utilization of cooperative exporters in China PR and Korea RP is quite high i.e. 90-100% and 70-80% respectively, the third country diversion of exports by these cooperative producer/exporters to India would be of immense importance. Similarly, for Japan, where none of the producer/exporter have cooperated, the capacity utilization as per secondary sources is 80-90% which again indicates third country diversion to be a major factor of likelihood of dumping and injury. Notwithstanding the above, the capacities of producer/exporters are quite high and even the existing idle capacity is significant enough when compared with demand in India.
 - iii. The likelihood analysis of imports of the subject goods from Korea RP reveals that about 70-80% of export of subject goods by cooperative producer/exporters from Korea RP to third countries are dumped, 70-80% are injurious and 60-70% are at price below export price to India.
 - iv. In case of China PR, about 50-60% of export of subject goods by cooperative exporters from China PR to third countries are dumped, 90-100% are injurious and 80-90% are at price below export price to India.
 - v. There is no cooperation from producer/exporters from Japan, From the information available on Trade Map, it is noted that about 70-80% of export of subject goods by producer/exports of subject goods from Japan

to third countries are dumped, 90-100% are injurious and 60-70% are at price below export price to India.

- vi. The Authority has also evaluated the extent of dumping and injury margin of the third country exports by the cooperating producer/exporters from the subject countries. The adjustments reported for India have been appropriately adopted for this computation. The said margins are noted to be more significant than the margins from India.
 - vii. The volume of imports has also remained significant in absolute and relative terms.
 - viii. The cooperating producer/exporters have capacities significantly higher than the demand in their respective country fraction of which is sufficient to cater to entire Indian demand.
 - ix. The cooperating producer/exporters are utilizing a significant share of their production for export purpose.
 - x. There are significant exports to the third countries which are at prices below the non-injurious price of the domestic industry. A significant share of exports to third countries are also at dumped prices and at prices below the price in India.
 - xi. From the transaction wise details of exports of cooperating producer/exporters to third countries, the Authority notes that a significant percentage of these exports are dumped as well as injurious and at price below NSR of domestic industry in India. The said exports account for almost 286% of India's demand of subject goods. The magnitude of dumping and injury of these exports is much more than the present dumping and injury margins with respect to exports to India during the POI.
 - xii. Since India is a growing market, cessation of anti-dumping duties from the subject countries when export price from subject countries to third is below the dumped prices from India and are below the non-injurious prices clearly proves that continuation of duties is must for the Indian industry's survival.
- g. This gives clear indication that injury to the domestic industry is due to dumped imports from the subject countries. Therefore, in the event of expiry of existing antidumping duty, there is every likelihood that the dumped imports from the subject countries will increase.
- h. It is noted that the continuation of anti-dumping duties on the imports of the subject goods would be in the interest of domestic producers of the subject goods in India. The fact that this is a capital-intensive industry, the continuation of measure would prevent further injury and give time to the domestic producers to compete against the exporters from the subject countries.
- i. The Authority has considered whether continuation of anti-dumping duty would have adverse public interest. The Authority notes that there is healthy competition in the Indian market and continuation of anti-dumping duty would not lead to monopolistic or oligopolistic situation in the Indian market for the subject goods as the imports would continue at fair prices.

O. RECOMMENDATIONS

144. The Authority notes that the sunset review was initiated and notified to all the interested parties and adequate opportunity was given to all the interested to provide information on the aspects of dumping, injury and causal link and the likelihood of continuation or recurrence of dumping and injury.
145. Having initiated and conducted the sunset review into dumping, injury and causal link and the likelihood of continuation or recurrence of dumping and injury in terms of the provisions laid down under the rules, the Authority is of the view that continued imposition of anti-dumping duty is required on the subject goods from the subject countries.
146. Having concluded that there is likelihood of continuation of dumping and injury if the existing anti-dumping duties are allowed to cease, the Authority is of the view that continuation of duty is required on the import of PUC from the subject countries. The Authority examined as to what quantum of duty be recommended which would mitigate the dumping/injury on account of likelihood analysis as conducted above. The volume of dumped and injurious imports from cooperating exporters to India and to the rest of the world have been considered.
147. Under the aforesaid circumstances, the Authority considers it appropriate to recommend continuation of existing quantum of anti-dumping duty on the imports of the subject goods from the subject countries which would address and mitigate the likelihood of dumping and injury from the subject countries. The Authority, thus, considers it necessary to recommend continuation of existing definitive anti-dumping duty imposed vide Notification no. 03/2018-Customs (ADD) dated 23rd January 2018. Therefore, anti-dumping duty equal to the amount indicated in Col 7 of the duty table given below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of subject goods, as detailed in column 3 of the duty table, from subject countries for a further period of five years.

Duty Table

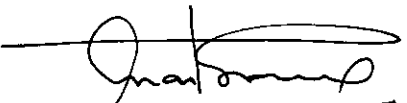
Sl. No.	Sub-heading	Description of goods	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	29291020	Toluene di-isocyanate	China PR	Any country including China PR	Covestro Polymers (China) Co., Limited	0.26	Kg	US\$
2	-do-	-do-	China PR	Any country including China PR	Wanhua Chemical Group Co., Ltd.	0.26	Kg	US\$
3	-do-	-do-	China PR	Any country including	Any producer other than	0.26	Kg	US\$

				China PR	producer at S.no. 1 and 2 above			
4	-do-	-do-	Any country other than the subject countries	China PR	Any	0.26	Kg	US\$
5	-do-	-do-	Korea RP	Any country including Korea RP	Hanwha Solutions Corporation	0.22	Kg	US\$
6	-do-	-do-	Korea RP	Any country including Korea RP	BASF Company Limited	0.31	Kg	US\$
7	-do-	-do-	Korea RP	Any country including Korea RP	Any producer other than producer at S.no. 5 and 6 above	0.44	Kg	US\$
8	-do-	-do-	Any country other than the subject countries	Korea RP	Any	0.44	Kg	US\$
9	-do-	-do-	Japan	Any country including Japan	Any	0.15	Kg	US\$
10	-do-	-do-	Any other than the subject countries	Japan	Any	0.15	Kg	US\$

148. Landed value of imports for the purpose of this notification shall be the assessable value as determined by the customs under the customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 88, 9 and 94 of the said Act.

P. Further Procedure

149. An appeal against the order of the Central Government arising out of these findings shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.


(Anant Swarup)
Designated Authority 24/6/2022