

**ढ. आगे की प्रक्रिया**

175. इस अंतिम जांच परिणाम में निर्दिष्ट प्राधिकारी के इस निर्धारण के विरुद्ध कोई अपील अधिनियम/नियमावली के संगत प्रावधानों के अनुसार सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष की जाएगी।

अनन्त स्वरूप, निर्दिष्ट प्राधिकारी

**MINISTRY OF COMMERCE AND INDUSTRY**

(Department of Commerce)

(DIRECTORATE GENERAL OF TRADE REMEDIES)

**NOTIFICATION**

New Delhi, the 14th August, 2024

**FINAL FINDINGS**

Case No. AD (OI) -14/2023

**Subject: Anti-dumping investigation concerning imports of “Epichlorohydrin” originating in or exported from China PR, Korea RP and Thailand.**

**F. No. 6/15/2023-DGTR.—A BACKGROUND OF THE CASE**

1. Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as “the Act”) and the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the “Anti-Dumping Rules” or “the Rules”) thereof, Epigral Limited (formerly known as Meghmani Finechem Limited) (hereinafter referred to as the “applicant” or “domestic industry”) filed an application before the Designated Authority (hereinafter also referred to as the “Authority”) for initiation of an anti-dumping investigation concerning imports of Epichlorohydrin (hereinafter also referred to as the “product under consideration” or the “subject goods” or “ECH”) from China PR, Korea RP, Taiwan and Thailand.
2. The Authority, on the basis of prima facie evidence submitted by the applicant, issued a public notice vide Notification F. No. 6/15/2023-DGTR, dated 26<sup>th</sup> September, 2023, published in the Gazette of India, initiating an anti-dumping investigation into imports of the product under consideration from China PR, Korea RP and Thailand (hereinafter referred to as the “subject countries”) in accordance with Rule 5 of the Anti-Dumping Rules to determine the existence, degree and effect of any alleged dumping of the subject goods and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry. However, in the absence of prima facie evidence regarding the dumping of the product under consideration from Taiwan, the Authority did not find it appropriate to initiate the investigation into imports from Taiwan.

**A. PROCEDURE**

3. The procedure described below has been followed with regard to the investigation:
  - a. The Authority notified the embassy of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Rule 5(5) of the Anti-Dumping Rules.
  - b. The Authority issued a public notice dated 26<sup>th</sup> September 2023, published in the Gazette of India, Extraordinary, initiating an anti-dumping investigation concerning imports of the subject goods from the subject countries.
  - c. The Authority sent a copy of the initiation notification dated 26<sup>th</sup> September 2023, to the governments of the subject countries, through their embassies in India, known producers and exporters from the subject countries, known importers/users as well as other interested parties, as per the addresses made available by the applicant and requested them to make their views known in writing within the prescribed time limit.
  - d. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the governments of the subject countries, through their embassies in India, in accordance with Rule 6(3) of the Anti-Dumping Rules. A copy of the non-confidential version of the application was made available to other interested parties, wherever requested.
  - e. The Authority also forwarded a copy of the notice to known producers/exporters from the subject country, known importers/users in India, other Indian producers and the domestic industry as per the addresses made

available by the applicant and requested them to make their views known in writing within 30 days of the initiation notification. The Authority sent a questionnaire to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the Rules:

- i. Dongying Rich Chemical Co. Limited, China PR
  - ii. Farmasino Pharmaceuticals (Jiangsu) Co. Limited, China PR
  - iii. Infoark International Co. Limited, China PR
  - iv. Nanjing Beinuo Pharmaceutical Co. Limited, China PR
  - v. Synchem International Co. Limited, China PR
  - vi. Zibo Feiyuan Chemical Co. Limited, China PR
  - vii. Aditya Birla Chemicals (Thailand) Limited, Advanced Materials, Thailand
  - viii. Advanced Biochemicals (Thailand) Co. Limited, Thailand
  - ix. Samsung Fine Chemicals Co. Limited, Korea RP
- f. In response to the initiation notification, the following producers/exporters from the subject countries filed questionnaire response:
- i. Jiangsu Ruixiang Chemical Co. Limited (“Ruixiang”), China PR
  - ii. Ningbo Huanyang New Material Co. Limited (“Huanyang”), China PR
  - iii. Canko Marketing, Inc. Korea RP
  - iv. Everlite Korea Co. Limited, Korea RP
  - v. Hanwha Corporation, Korea RP
  - vi. Hanwha Solutions Corporation, Korea RP
  - vii. Lotte Fine Chemical, Korea RP
  - viii. Minjin Corporation, Korea RP
  - ix. AGC Vinythai Public Co. Limited, Thailand
  - x. Samsung C&T (Thailand) Company Limited, Thailand
- g. The embassies of the subject countries in India were requested to advise the exporters/producers from their country to respond to the questionnaire within the prescribed time limit.
- h. The Authority sent importer’s / user’s questionnaire to the following known importers of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.
- i. Atul Limited
  - ii. Cardolite Speciality Chemicals India LLP
  - iii. Endoc Lifecare Private Limited
  - iv. M/s Granules India Limited sim Industries Ltd.
  - v. Grasim Industries Limited M/s Cardolite Speciality Chemicals India LLP
  - vi. Hindustan Speciality Chemicals Limited
  - vii. IPCA Labs
  - viii. Krishna Antioxidant
  - ix. Paarichem Resources LLP
  - x. Praful Venture
  - xi. Resins and Plastics
  - xii. Rishabh Metal
  - xiii. Synthokem Labs
  - xiv. Unidrugs Limited

- i. In response to the initiation notification, the following importers/users submitted a response to the questionnaire response:
- i. Atul Limited
  - ii. Cardolite Speciality Chemicals India LLP
  - iii. Grasim Industries Limited
  - iv. Hindustan Speciality Chemicals Limited
- j. Additionally, the following parties registered themselves as an interested party or made submissions during the course of the investigation:
- i. Trade, Legal Affairs and Planning Division, Ministry of Trade, Industry and Energy, Government of Korea
  - ii. Trade Interests and Remedies Division, Department of Foreign Trade, Government of Thailand
  - iii. China Chlor-Alkali Industry Association, China PR
  - iv. Rishabh Metals and Chemicals Private. Limited
  - v. Sandeep Organics Private Limited
- k. A copy of the initiation notification and non-confidential version of the application was sent to the following associations on 5<sup>th</sup> October 2023.
- i. FIEO
  - ii. FICO
  - iii. ASSOCHAM
  - iv. CII
- l. A copy of the initiation notification and non-confidential version of the application along with a copy of the economic interest questionnaire was sent to the following ministry on 5<sup>th</sup> October 2023. However, the Authority has not received any comments:
- i. Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers
- m. In addition to the above, DCM Shriram Limited, an upcoming producer of the subject goods who is in the process of setting up its production facilities, filed a letter supporting the application made by the domestic industry.
- n. The Authority made available the non-confidential version of the submissions made by the various interested parties. A list of all the interested parties was uploaded on the DGTR website along with the request to all of them to email the non-confidential version of their submissions to all the other interested parties.
- o. A request was made to DG Systems to provide the transaction-wise details of imports of the subject goods for the injury period and also the period of investigation. The Authority has relied upon the DG Systems data for computation of the volume of imports and required analysis after due examination of the transactions.
- p. The non-injurious price (hereinafter referred to as the 'NIP') has been determined based on the cost of production and reasonable return on capital employed for the subject goods in India, based on the information furnished by the Domestic Industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the AD Rules, 1995 so as to ascertain whether anti-dumping duties lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- q. The period of investigation (POI) for the purpose of the present investigation is 1<sup>st</sup> April 2022 to 31<sup>st</sup> March 2023 (12 months). The injury period will cover the period of investigation and the three preceding financial years 2019-20, 2020-21, and 2021-22. Further, since the applicant was operational only during the period of investigation, data has been analysed by (a) splitting the period of investigation into quarters; (b) as per the project report; and (c) by considering 80% capacity utilization.
- r. The Authority circulated the disclosure statement containing all essential facts under consideration for making the final recommendations to the Central Government to all interested parties on 12<sup>th</sup> July 2024. The Authority has examined all the post-disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority has not been repeated for the sake of brevity.

- s. The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority, in this final finding.
- t. The Authority sought further information from the applicant to the extent deemed necessary. The verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the present investigation. The Authority has considered the verified data of the domestic industry in its analysis of the present case.
- u. The Authority sought further information from the other interested parties to the extent deemed necessary. The verification of the data provided by the other interested parties was conducted to the extent considered necessary for the purpose of the present investigation.
- v. In accordance with Rule 6(6) of the Rules, the Authority provided an opportunity for the interested parties to present their views orally in a public hearing held on 8<sup>th</sup> February 2024. The parties presented their views in the oral hearing and were requested to file written submissions of the views expressed orally, followed by rejoinder submissions.
- w. Information provided by the interested parties on a confidential basis was examined with regard to the sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on a confidential basis were directed to provide a sufficient non-confidential version of the information filed on a confidential basis.
- x. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the views/observations on the basis of the facts available.
- y. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported with evidence and considered relevant to the present investigation.
- z. ‘\*\*\*’ in this final findings represents information furnished by an interested party on a confidential basis and so considered by the Authority under the Rules.
  - aa. The exchange rate adopted by the Authority for the subject investigation is 1 US\$ = Rs. 81.06
  - bb. The following abbreviations have been used in this document:
    - a. ECH = Epichlorohydrin
    - b. NIP = Non-injurious price
    - c. POI = Period of investigation
    - d. PUC = Product under consideration

## B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. At the stage of initiation, the product under consideration was defined as under:

*“3. The product under consideration in the present investigation is Epichlorohydrin, abbreviated as ECH. The chemical name of the product, which is also used in the customs classification is 1-chloro-2,3-epoxypropane. Its chemical formula is C<sub>3</sub>H<sub>5</sub>ClO.*

*4. It is a colourless liquid with a pungent, garlic-like odour, moderately soluble in water, generally produced with purities of greater than 99%. It is a colourless liquid with a pungent, garlic-like odour, moderately soluble in water, generally produced with purities of greater than 99%. It is majorly used to make epoxy resins, which account for nearly 80% of its consumption. It is also used in pharmaceutical API, water treatment, paper chemicals, synthetic rubbers, surfactants, adhesives, elastomers, plastics and rubbers and as a strength additive in papers. The product can be produced using propylene as well as using glycerine.*

*5. The product under consideration is conventionally produced using propylene, where propylene chlorination is done at high temperatures to produce allyl chloride. Following allyl chloride separation and allyl chloride hydrochlorination, dichlorohydrine is produced and allylchloride is recovered. Dichlorohydrine undergoes saponification to produce ECH which is then purified. However, such a production process results in high waste generation and thus, requires high capital expenditure for disposal. To overcome these challenges, ECH is now produced using bio-based glycerine, which is an environment-friendly production process.*

6. *The subject goods are classified under Chapter 29 of the Customs Tariff Act under the heading 2910 under the subheading 2910 30 00. The customs classification is only indicative and is not binding on the scope of the product under consideration.*”

**C.1 Submissions by other interested parties**

5. With regard to like article, the other interested parties have submitted that the Certificate of Analysis of the subject imports should be compared with that of the domestic industry. Further, the other interested parties also made the following submissions:

- a. ECH sold for use in the epoxy industry are sold in bulk and in ISO tanks, whereas ECH sold for use in APIs is sold in lesser quantities and in drum packing, which are priced higher. Thus, there is a need to consider PCN for the produce based on differences in the pricing as a result of end-usage of the subject goods.

**C.2 Submissions by the domestic industry**

6. The domestic industry has submitted that it has produced like article to the imported product under consideration. The domestic industry has also submitted its specification sheet.

**C.3 Examination by the Authority**

7. The product under consideration in the present investigation is Epichlorohydrin or ECH, having the chemical name 1-chloro-2,3-epoxypropane. Its chemical formula is  $C_3H_5ClO$ . It is a colourless liquid with a pungent, garlic-like odour, moderately soluble in water, generally produced with purities of greater than 99%. It is mainly used to produce epoxy resins. It is also used in pharmaceutical API, water treatment, paper chemicals, synthetic rubbers, surfactants elastomers, adhesives, and rubber. It is also used as a strength additive in paper.
8. ECH is classified under Chapter 29 of Schedule I of the Customs Tariff Act, 1975 under the tariff code 2910 30 00. The customs classification is only indicative and is not binding on the scope of the product under consideration.
9. None of the other interested parties have made any submissions with regard to the scope of the product under consideration. Accordingly, the Authority has considered the same scope of the product under consideration, as defined in the notice of initiation, for the purpose of the final findings.
10. The Authority notes that the domestic industry has claimed that goods produced by it is like article to the subject goods originating in or exported from the subject countries. The subject goods can be produced using two routes – using the propylene route or using the glycerine feedstock route. The domestic industry has produced ECH using the glycerine feedstock route. However, the domestic industry has submitted that there are no differences in the subject goods manufactured using propylene, if any, and those manufactured using glycerine. ECH produced using both routes have the same technical and physical characteristics, applications, pricing and customers. None of the other interested parties have claimed any difference in the subject goods produced using the propylene or glycerine route. The Authority also notes that the producers in China and Thailand have also produced the subject goods using glycerine. Thus, the Authority notes that the subject goods produced by the domestic industry and those imported from the subject countries are comparable in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. In view of the same, the Authority concludes that the subject goods produced by the domestic industry are like article to the product under consideration imported from the subject countries.
11. With respect to the argument raised by the Government of Korea concerning the consideration of PCN, it is noted that the party failed to raise such argument within the time limits prescribed by the Authority in its initiation notice. Thus, submissions made at such a belated stage in the investigation cannot be considered. In any case, none of the responding producers/exporters, including those from Korea RP have requested for creation of PCN on such grounds. Thus, such an argument cannot be accepted.

**C. SCOPE OF THE DOMESTIC INDUSTRY & STANDING**

**D.1 Submissions by other interested parties**

12. No submissions have been made by the other interested parties with regard to the existence of domestic industry and standing.

**D.2 Submissions by the domestic industry**

13. The following submissions have been made by the applicant with regard to the domestic industry and standing:
  - a. The applicant is the sole producer of the subject goods in the country, having commenced production in June 2022.

- b. DCM Shriram Limited and Grasim Industries Limited are also in the process of setting up production facilities for manufacturing ECH.
- c. The applicant has submitted that it has not imported the subject goods from the subject countries and is not related to any exporter or importer of the alleged dumped article.

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

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

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

15. The present application was filed by Epigral Limited (formerly known as Meghmani Finechem Limited). At present, Epigral Limited is the sole producer of the like article in India. Thus, the production by the applicant accounts for 100% of the total production of ECH in India. The applicant is not related to any exporter or importer of the alleged dumped article and has not imported such article. Thus, the Authority holds that Epigral Limited constitutes “domestic industry” under Rule 2(b) of the Rules and the application meets the requirements of Rule 5(3) of the Rules.

## **D. CONFIDENTIALITY**

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

16. The following submissions have been made by the other interested parties with regard to confidentiality.
  - a. The applicant has claimed excess confidentiality in violation of Trade Notice 10/2018.
  - b. The domestic industry has claimed excessive confidentiality and has relied on confidential figures in the petition and written submissions, without providing a non-confidential summary, causing prejudice to other interested parties.
  - c. The applicant has not provided a non-confidential version of the project feasibility report, depriving other interested parties of an opportunity to formulate a response and any submissions in relation to such projections is thus, baseless.
  - d. The applicant has incorrectly indexed the figures for the period of investigation in Proforma IVA which should be a sum of all indexed numbers for each quarter.
  - e. The applicant has claimed confidentiality regarding its flowchart of the production process.
  - f. The applicant has claimed excessive confidentiality and has not given even trends regarding the cost of raw materials, return on investment, and number of days of shutdown. Further, the calculation of normal value, injury margin and price undercutting has also been claimed confidential.
  - g. In response to the contentions of the applicant, it was submitted that the impact of duties has been calculated using cost structure and input expenses of users, which is business sensitive. The user industry is not required to disclose actual information and is only required to give a reasonable summary to the extent possible.
  - h. With regards to capacity expansion by Grasim, detailed aspects and costs involved are business-sensitive information. Public information shared by the applicant is only a general statement and does not take into account total expenditure and adjustments for capacity consumption.
  - i. Details of long-term contracts between users and suppliers are highly business-sensitive.
  - j. Channel of distribution and method of claiming adjustment to export prices is highly commercially sensitive information.

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

17. The following submissions have been made by the domestic industry with regard to confidentiality.
  - a. The other interested parties have claimed excessive confidentiality and have claimed complete answers as confidential in violation of Rule 7 of the Anti-Dumping Rules and Trade Notice No. 10/2018. Further, the parties have failed to provide a statement of reasons as per the format prescribed under Trade Notice No. 1/2013.
  - b. AGC Vinythai Public Company Limited claimed excessive confidentiality with regard to adjustments for normal value and export price, channel of distribution, write up of manufacturing process, raw materials

used and post invoicing discounts.

- c. AGC Vinythai Public Company Limited has not provided information that is available in the public domain, such as details of raw materials and inputs purchased from related parties, ownership structure of the company and the installed capacities.
- d. The users have claimed complete confidentiality with regards the alleged impact of duties, impact of alleged dumping or subsidization on the domestic industry, prevailing prices, other causes of injury to domestic industry, existence of long-term contracts, etc.
- e. Information such as proposed capacity expansions by Grasim Limited and list of products sold by Cardolite Specialty Chemicals India LLP, which is available in the public domain, has been claimed confidential by the respective users.
- f. Hanwha Corporation, Hanwha Solutions, Lotte Finechem and Samsung C&T have not provided details of related parties engaged in the sale and production of the subject goods, in violation of requirements of Trade Notice 10/2018. Further, all such exporters have claimed confidentiality with regard to shareholding structure which is publicly available.
- g. Lotte Finechem and Samsung C&T have claimed confidentiality with regards to the write-up of manufacturing process, raw materials and the description of the subject goods sold.
- h. Lotte Finechem has submitted an incomplete response inasmuch as the producer has not submitted information under Appendix 10, despite claiming that it captively produced inputs for use in ECH.
- i. Ningbo Huanyang and Jiangsu Ruixiang have claimed excessive confidentiality with regards to related parties engaged in the production and sale of ECH, write-up of manufacturing process, raw materials used, description of the subject goods sold, the channel of distribution and all adjustments for export price comparability.
- j. Ningbo Huanyang and Jiangsu Ruixiang have filed inconsistent responses and have submitted different information in different parts of the response.
- k. In response to the comments filed by the other parties, it was submitted that the comments were time-barred, having been filed beyond the time limit notified in the initiation notification.
- l. The domestic industry has provided indexed figures in a manner which allows comparison of information with each quarter and the figures for the period of investigation have been proportionately adjusted to reflect the data for a quarter.
- m. The project feasibility report of the domestic industry is highly business sensitive information and the same was not required to be disclosed under Trade Notice No. 10/2018. Further, the domestic industry is also not required to disclose price undercutting under the Trade Notice.

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

18. The Authority made available the non-confidential version of the information provided by various parties to all the other interested parties as per Rule 6(7) of the Rules.
19. About confidentiality of information, Rule 7 of Anti-dumping Rules provides 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 a confidential basis to furnish a non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible to 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.”*
20. The information provided by the interested parties on a confidential basis was examined with regard to sufficiency of such claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted, and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, the parties provided information on a confidential basis were directed to provide sufficient

non-confidential versions of the information filed on a confidential basis. It is noted that the various interested parties complied with such directions and made appropriate disclosures.

21. With regards to the arguments raised by the interested parties regarding the confidentiality claimed by the applicant concerning its project feasibility report, the Authority notes that such arguments were filed beyond the prescribed time of 7 days from the date of receipt of the non-confidential version of the application, as per the initiation notification. Further, the domestic industry has claimed that the information contained in the project feasibility report is business sensitive and disclosure of the same would be detrimental to their interests. The Authority has accepted such a claim of the domestic industry.
22. With regards to the arguments raised by the domestic industry concerning the excessive confidentiality claimed by the producer, AGC Vinythai Public Company Limited, the Authority notes that the exporter has claimed that such information is business sensitive and details of such transactions cannot be disclosed to other interested parties. Such a claim has been accepted by the Authority.

#### **E. MISCELLANEOUS SUBMISSIONS**

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

23. The following submissions have been made by the other interested parties about miscellaneous issues:
  - a. Retrospective imposition of anti-dumping duty is not allowed as per the decision of the Authority in the mid-term review concerning anti-dumping duty imposed on imports of Sodium Tripoly Phosphate from China PR.
  - b. Since historical dumping has not been established by the domestic industry, the requirements for retrospective imposition of duty are not met.
  - c. The current period of investigation is not representative of the normal market conditions as it was affected by significant global price fluctuations for ECH, its raw material and downstream products.
  - d. The period of investigation must be determined based on data collected over a sustained period, which is not impacted by other externalities, as held by the Appellate Body in EC–Tube or Pipe Fittings.
  - e. The period of investigation must be for a minimum period of two years.
  - f. The domestic industry should be allowed to file an application for initiation of anti-dumping investigation only after they have been in operation for a minimum of 2 years.
  - g. The minutes of meeting the domestic industry should be submitted.
  - h. The investigation should adhere to WTO guidelines.
  - i. The use, duty and prices of refined and crude glycerine are different and thus, accurate reference must be made to avoid any confusion.
  - j. The basic customs duties on imports from China is 5.775% under AIPTA, while the duty for imports from Korea RP and Thailand is 0%. The basic customs duty on imports from Taiwan is 8.25%.

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

24. In response to the submissions made by the other interested parties, the domestic industry submitted as under.
  - a. In response to the contention that the period of investigation was not appropriate, having had significant fluctuations, it was submitted that the prices of chemical products witness significant fluctuations and if one were to consider a period of investigation with no fluctuations, no investigation could be conducted for chemical products.
  - b. The WTO Appellate Body in EC – Tube or Pipe Fittings held that a period of investigation should be a sustained period, which was 12 months in the case as this would allow a proper evaluation of dumping and injury while taking into account any fluctuations. The Appellate Body also held that situations of major changes during or after the period of investigation which result in the elimination of dumping or injury can be addressed through review mechanisms.
  - c. Under Rule 5(3A), the period of investigation shall normally be for twelve months and may be for a maximum period of eighteen months.
  - d. The contention that the domestic industry must have been in operation for at least 2 years before filing an application is not appropriate since a domestic producer can request for initiation of an anti-dumping investigation even before starting production as per the practice of the Authority and the various decisions of the WTO Panel.
  - e. The contention of the other interested parties that retrospective imposition of duties is not allowed as held in one investigation is not tenable as non-imposition of retrospective duties in one case cannot mean that duties cannot be imposed retrospectively in other cases. The need for retrospective duties should be seen about the facts of the case and the legal position.

- f. The domestic industry shall provide such information as is required by the Authority.
- g. The domestic industry has provided its technical specification sheet in the petition.

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

- 25. With regards to the claim that the current period of investigation is not representative of normal market conditions as there were significant price fluctuations during such period, based on the price information submitted by various interested parties, it can be seen that the prices of the subject goods, as well as the raw materials, have witnessed significant fluctuations in the past as well. Further, the domestic industry has claimed that price fluctuations have continued in the post-POI period as well. Further, fluctuations in the prices of products are not uncommon. However, normally, prices fluctuate in response to fluctuations in factors of cost of production. In the present case, the domestic industry has demonstrated that the prices of ECH have fluctuated in a manner which does not align with the prices of the raw materials. The fluctuations do not indicate that the current period of investigation is inappropriate.
- 26. The other interested parties have also relied upon the decision of the WTO Appellate Body in the case of EC - Tube or Pipe Fittings to claim that the period of investigation should be for a sustained period and that such period should not be affected by any variations. However, the WTO Appellate Body had rejected the arguments of Brazil for consideration of a smaller period of investigation which was unaffected by fluctuations. Rather, it was held that the period of investigation should be sustained, such as 12 months, which takes into consideration any market vagaries. The Appellate Body went ahead to state that in a situation where variations or fluctuations in certain factors result in the elimination of dumping or injury, the interested parties are free to seek review under the Anti-dumping Agreement.
- 27. With regards to the claim that the domestic industry should be allowed to file an application for an anti-dumping investigation after being in operation for a minimum of 2 years, it is noted that there is no requirement under the Act or Rules that a company must be in operation for a minimum of 2 years before it can seek remedy from the Authority. Thus, there is no merit in the claim that the domestic industry must operate for a minimum of two years before filing an application.
- 28. As regards the claim that the period of investigation should consist of a minimum period of 2 years, the Authority notes that Explanation to Rule 5(3) of the Rules provides that the period of investigation shall be for a period of 12 months normally and for reasons recorded, it can be for a minimum period of six months and a maximum period of eighteen months. Therefore, a period of 2 years cannot be considered a period of investigation in any situation.
- 29. With regards to the claims regarding the consideration of basic customs duty of 5.775% for determination of landed value for China PR, the Authority has determined the landed value for all the subject countries considering the basic customs duties as applicable during the period of investigation.
- 30. With regards to the submission concerning retrospective imposition of duties, the Authority notes that the non-application of duties in the past does not prevent the Authority from recommending retrospective imposition of duties in present or future cases. Should the Authority find it appropriate to recommend imposition of duties, it may also examine the need for recommending retrospective imposition of duties. Some of the interested parties have contended that retrospective imposition is not permissible, as there is no history of dumping. The Authority notes that the provisions of Section 9A(3) do not require a history of dumping as a mandatory condition to be satisfied for retrospective imposition of duty. As per clause (i) of sub-section (3), duties may be imposed retrospectively where there is a history of dumping or the importer was, or the importer should have been, aware that the exporter practices dumping and that such dumping would cause injury. The Authority would arrive at its final determination in accordance with such legal position.

## **F. DETERMINATION OF NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

### **G.1 Submission by other interested parties**

- 31. The other interested parties have made the following submissions with regard to the normal value, export price and dumping margin.
  - a. The applicant has not explained efforts made to obtain information related to domestic selling prices in Thailand for determination of normal value.
  - b. The applicant has not demonstrated how Korea RP and Thailand are comparable in terms of economic conditions and has only considered comparability in terms of volume exports.
  - c. The Authority should treat the exporters from Hanwha group as co-operative interested parties as they have provided all required information.
  - d. Normal value determined for China PR based on the cost of production of domestic industry is in contravention to the hierarchal approach provided under Para 7 of Annexure-I and affirmed by CESTAT in

Kuitun Jinjiang Chemical Industry Co., Ltd. vs. Union of India and the Supreme Court in Shenyang Matsushita S. Battery Co. Ltd. vs. Exide Industries Ltd.

- e. Construction of normal value based on cost of production of domestic industry would be detrimental to the exporters as such cost is inflated due to high start-up costs and procurement of key raw materials at higher value.
- f. The normal value for co-operating Chinese producers should be calculated based on the normal values determined for market economy countries which are also part of this investigation.
- g. Dumping margin and injury margin should be determined on a monthly basis for fair comparison due to significant price variations during the period of investigation in the prices of glycerine and ECH.
- h. The determination of dumping margin using W-T methodology would not be appropriate due to wide price variations which may lead to absurdities in calculation.
- i. The use of W-T methodology is an exception, as held by the Appellate Body in case of U.S. – Washers, and should not be applied as there is no significant differences in the export prices among purchasers, regions or time periods in the present case.
- j. The Authority should refrain from carrying out “zeroing” for the calculation of dumping margin as it is against its own practice and the principles of WTO.
- k. LFC has exported goods based on international market price determined by ICIS and it is unreasonable to expect that LFC would maintain separate market prices specifically for the Indian market.
- l. AGC Vinythai has made all appropriate disclosures regarding all affiliated party transactions and will cooperate with the Authority during the verification process.
- m. Export Declaration and CAROTAR are used for valuation, but such valuation is beyond the scope of DGTR as it is a matter for DRI. Since the CIF prices from Korea RP and Thailand are higher, under-invoicing will not serve any purpose with regards to imports under duty concession.

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

32. The following submissions have been made by the domestic industry with regard to the determination of normal value, export price and dumping margin:
  - a. The dumping margin for the foreign producers must be calculated using the W-T methodology since there is a pattern of export prices which differs significantly in the last two quarters of the period of investigation as compared to the first two quarters.
  - b. The WTO Appellate Body in US - Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea, upheld the application of W-T methodology for addressing situations of targeted dumping and noted that there must be an intelligible pattern of price differentiation, the pattern must be in relation to transactions priced lower than other transactions, the differences in prices must be significant and not merely nominal and such pattern transactions must be separate from other non-pattern transactions.
  - c. The WTO Appellate Body also held that determination of dumping margin using W-T methodology should be limited to pattern transactions and non-pattern transactions should not be considered for the determination of dumping margin. Further, all export sales should be considered as a denominator for determination of dumping margin.
  - d. Determination of dumping margin using the W-W or T-T methodology would lead to masking of level of dumping in second half of the year by the undumped transactions in the initial period.
  - e. The domestic industry has not claimed zeroing. Rather, the claim of the domestic industry is consistent with the WTO position.
  - f. Advanced Biochemicals (Thailand) Co. Limited, which was the producer of ECH during the period of investigation, has failed to provide information concerning sale of the subject goods to its parent company, AGC Vinythai Public Company Limited.
  - g. Advanced Biochemicals (Thailand) Co. Limited / AGC Vinythai Public Company Limited must demonstrate that sufficient volume of sales made in the domestic market are in the ordinary course of trade. If the volume of sales in the ordinary course of trade is low, then the normal value for the producer must be determined on their exports to third country.
  - h. The Authority must examine whether the purchase of raw materials or inputs by Advanced Biochemicals (Thailand) Co. Limited / AGC Vinythai Public Company Limited from its parent companies and various related parties are at arm's length price, failing which the cost of production for the producer must be

adjusted for prices of raw materials / inputs as prevailing in the international market.

- i. The marketing and servicing fees paid by Advanced Biochemicals (Thailand) Co. Limited / AGC Vinythai Public Company Limited to their related entity in India, namely AGC Asia Pacific (India) Private Limited, must be adjusted as selling, general and administrative expenses of the related marketing entity in the export price determined for the exporter.
- j. The domestic industry provided normal value for Thailand on the basis of information as was reasonably available to it at the time of filing response.
- k. For selection of appropriate third country for a market economy, there is no requirement to consider the level of development. Since the second largest quantum of exports from Thailand is to Korea, it is appropriate to consider the same for determination of normal value.
- l. The domestic industry has provided information regarding adjustments to normal value as was reasonably available at the time of filing of application.
- m. Normal value cannot be determined based on prices in Thailand or Korea, as the opposing parties have not demonstrated that such countries are comparable to China in terms of level of development of the economy or the product concerned.
- n. Normal value for producers / exporters from China PR should be determined based on the price payable in India, which is based on the cost of production of the domestic industry along with a reasonable profit.
- o. The cost of production of the domestic industry is not inflated and is not affected by any start-up costs which are not considered as part of the cost of production. Further, the domestic industry has no objection to use of international prices of refined glycerine and caustic soda for determination of normal value, as per the past practice of Authority.
- p. The export price has been determined based on the CIF prices of the imports adjusted for ocean freight, marine insurance, commission, bank charges, port expenses and inland freight to arrive at the ex-factory level.
- q. The claim for determination of dumping and injury margin on monthly basis is a tactic for delay. In any case, the domestic industry has provided information on quarterly basis, which can be considered.
- r. The dumping margin for the subject countries is positive and significant.

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

33. The responses to exporters' questionnaire have been filed by the following producers/ exporters:
  - i. Jiangsu Ruixiang Chemical Co. Limited ("Ruixiang"), China PR
  - ii. Ningbo Huanyang New Material Co. Limited ("Huanyang"), China PR
  - iii. Canko Marketing, Inc. Korea RP
  - iv. Everlite Korea Co. Limited, Korea RP
  - v. Hanwha Corporation, Korea RP
  - vi. Hanwha Solutions Corporation, Korea RP
  - vii. Lotte Fine Chemical, Korea RP
  - viii. Minjin Corporation, Korea RP
  - ix. AGC Vinythai Public Co. Limited, Thailand
  - x. Samsung C&T (Thailand) Company Limited, Thailand
34. The domestic industry has claimed that there is a pattern of export prices which differs significantly in the last two quarters of the period of investigation as compared to the first two quarters and therefore, the dumping margin should be determined using the W-T methodology. On the other hand, the other interested parties have claimed that the Authority must not undertake zeroing. The Authority has examined the information with respect to margins based on W-W and the information provided by the domestic industry with respect to the W-T methodology in its written submission. It is noted that in the case of imports from Thailand, the information submitted does not show that the price differences in the export prices between different periods cannot be adequately accounted for using the W-W methodology. In view of the same, the dumping margin is not required to be calculated using the W-T methodology as per the provisions of Article 2.4.2 of the WTO Anti-dumping Agreement and para 6(iv) of Annexure – I to the Anti-Dumping Rules. With respect to the exports from China PR and Korea RP, though the differences in prices are more significant, the injury margin

is lower than the dumping margin determined for the cooperative and non-cooperative exporters from such countries. In view of the same, whether there is a need for the application of W-T methodology for exports from China PR and Korea RP is not necessary.

35. The Authority also notes that there have been wide variations in the prices of the subject goods imported during the period of investigation. This has been highlighted both by the domestic industry and by the opposing parties. During the first half of the year, the prices of the subject goods remained high, while the prices declined significantly during the second half of the year. Therefore, in order to account for such variations, the Authority has determined the normal value and export price for all foreign producers and exporters on a quarterly basis.

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

#### **Normal value for China PR**

36. The Authority notes the following relevant provisions with regard to the determination of normal value for China PR. 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 the market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner, keeping in view the level of development of the country concerned and the product in question and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay of 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 non-market 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.”*

37. At the stage of initiation, the Authority proceeded with the presumption of treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China PR to respond to the notice of initiation and provide information on whether their data/information could be adopted for normal

value determination. The Authority sent copies of the market economy treatment / supplementary questionnaire to all the known producers/ exporters in China PR to provide relevant information in this regard.

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

*“(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: 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; The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China PR 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 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.*

*(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (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 non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”*

39. The Authority notes that while the provisions of Article 15 (a)(ii) of China PR's Accession Protocol have expired with effect from 11<sup>th</sup> December 2016, the provision under Article 2.2.1.1 of the Anti-Dumping Agreement read with obligation under 15(a)(i) of the Accession Protocol require criterion stipulated in Para 8 of the Annexure 1 of Anti-Dumping Rules to be satisfied through the information/data to be provided in the supplementary questionnaire for claiming MET status.
40. The Authority notes that none of the producers/exporters from China PR has filed the supplementary questionnaire response to rebut the presumptions as mentioned in para 8 of Annexure – I of the Rules. Under these circumstances, the Authority has to proceed in accordance with para 7 of Annexure – I of the Rules.
41. It is noted that paragraph 7 of Annexure-I to the AD Rules stipulates three methods of constructing the normal value for non-market economies: (a) on the basis of price or constructed value in a market economy third country; (b) export price from a third country to other countries, including India; and (c) on any other reasonable basis. The Authority notes that under the provisions of paragraph 7 of Annexure-I to the AD Rules, the normal value must first be determined on the basis of the price or constructed value in a surrogate country, or the price of the exports from such country to other countries, including India.
42. At the stage of filing the application, the domestic industry submitted that the normal value for China PR should be constructed based on the price actually paid or payable in India for the like product, duly adjusted, if necessary, to include a reasonable profit margin.
43. It is to be noted that no information/evidence has been provided by the parties for the construction of the normal value on the basis of the first and second methods. While the domestic industry has claimed that the normal value for China should be determined based on the price of exports from the appropriate surrogate country into India, namely Belgium or Saudi Arabia, it is noted that the volume of exports from such third countries is de-minimis. Further, while the interested parties have claimed that the normal value for China should be determined based on the prices in Thailand or Korea, they have not established that either of the countries is appropriate in view of the level of development of the country concerned and the product in

question.

44. In the absence of the above information/evidence, it is not possible for the Authority to determine normal value on the basis of the first or second method. Therefore, the Authority has decided to construct normal value based on the third method, i.e., on any other reasonable basis including the price actually paid or payable in India, for each quarter of the period of investigation. The Authority has constructed the normal value on the basis of the price paid or payable in India.
45. For this purpose, the Authority considered the optimized cost of production of the domestic industry for each quarter, with an addition of selling, general and administrative expenses and reasonable profits. The weighted average normal value for the period of investigation is mentioned in the dumping margin table below.

#### **Export price for China PR**

##### **Jiangsu Ruixiang Chemical Co. Limited (Ruixiang)**

46. Jiangsu Ruixiang Chemical Co. Limited (Ruixiang) is a producer of the subject goods in China PR. Ruixiang has sold the product under consideration directly to unaffiliated importers in India. It is noted that during the period of investigation, Ruixiang has exported \*\*\* MT of the subject goods to unrelated importers in India. The adjustments towards freight, credit cost, insurance, and bank charges have been accepted for the purpose of the present final findings. Accordingly, the Authority has determined the export price on a quarterly basis, and the weighted average export price for the period of investigation is mentioned in the dumping margin table below.

##### **Ningbo Huanyang New Material Co. Limited (Huanyang)**

47. Ningbo Huanyang New Material Co. Limited (Huanyang) is a producer of the subject goods in China PR. Huanyang has sold the product under consideration directly to unaffiliated importers in India. It is noted that during the period of investigation, Huanyang has exported \*\*\* MT of the subject goods to unrelated importers in India. The adjustments towards ocean freight, credit cost, insurance, inland transportation, port and other related expenses and bank charges have been accepted for the purpose of the present final findings. Accordingly, the Authority has determined the export price on a quarterly basis, and the weighted average export price for the period of investigation is mentioned in the dumping margin table below.

#### **Export price for all non-cooperative producers/exporters from China PR**

48. The export price for other non-cooperative producers/exporters from China PR has been determined based on the facts available in terms of Rule 6(8) of the Rules.

#### **Normal value for Korea RP**

##### **Hanwha Solutions Corporation (HSC)**

49. Hanwha Solutions Corporation (HSC) is a producer of the subject goods in Korea RP. HSC has sold \*\*\* MT of the subject goods in the domestic market during the period of investigation whereas, it has exported \*\*\* MT of the subject goods to India. The Authority notes that the domestic sales are in sufficient volumes when compared with exports to India. 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 the subject goods HSC has claimed price adjustments on account of credit cost and inland transportation and the same is allowed by the Authority. Thus, the normal value at ex-factory level for HSC has been calculated for each quarter and the weighted average normal value for the period of investigation is mentioned in the dumping margin table below.

##### **Lotte Fine Chemical (LFC)**

50. Lotte Fine Chemical (LFC) is a producer of the subject goods in Korea RP. LFC has sold \*\*\* MT of the subject goods in the domestic market during the period of investigation whereas, it has exported \*\*\* MT of the subject goods to India. The Authority notes that the domestic sales are in sufficient volumes when compared with exports to India. 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 the subject goods. LFC has claimed price adjustments on account of inland transportation, loading charges, inspection fees, credit costs and packing costs and the same is allowed by the Authority. Thus, the normal value at ex-factory level for LFC has been calculated for each quarter and the weighted average normal value for the period of investigation is mentioned in the dumping margin table below.

#### **Normal Value for other producers/exporters in Korea RP**

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

**Export Price for Korea RP****Hanwha Solutions Corporation (HSC), Hanwha Corporation (HC), Canko Marketing, Inc. (Canko), Everlite Korea Co. Limited (Everlite) and Minjin Corporation (Minjin)**

52. Hanwha Solutions Corporation (HSC) is a producer of the subject goods in Korea RP. HSC has exported the subject goods to India through Hanwha Corporation (HC), Canko Marketing, Inc. (Canko), Everlite Korea Co. Limited (Everlite) and Minjin Corporation (Minjin). HC, Canko, Everlite and Minjin have sold the subject goods directly to un-related customers in India. During the period of investigation, HSC has exported the goods through the following distribution channels.

HSC → HC → Unrelated customers in India

HSC → Canko → Unrelated customers in India

HSC → Everlite → Unrelated customers in India

HSC → Minjin → Unrelated customers in India

53. It is noted that during the period of investigation, HSC has exported \*\*\* MT of the product under consideration directly to unrelated customers in India. The adjustments towards inland freight, ocean freight, brokerage, port charges, marine insurance, credit cost, commission and bank charges have been claimed for sales to India. The same has been accepted for the purpose of the present final findings. Accordingly, the Authority has determined the export price on a quarterly basis, and the weighted average export price for the period of investigation is mentioned in the dumping margin table below.

**Lotte Fine Chemical (LFC) and Samsung C&T (Thailand) Company Limited (SCT)**

54. Lotte Fine Chemical (LFC) is a producer of the subject goods in Korea RP. LFC has exported the subject goods to India through Samsung C&T (Thailand) Company Limited (SCT), a trader in Thailand. LFC and SCT have claimed that the goods are directly shipped from Korea to India and SCT acts merely as a trader. LFC has also exported \*\*\* MT of the subject goods to India through IMS Corporation. However, since exports through IMS Corporation are minimal, the same have been excluded for the purpose of the present investigation. LFC and SCT have sold the subject goods directly to unrelated customers in India. During the period of investigation, LFC has exported the goods through the following distribution channels.

LFC → SCT → Unrelated customers in India

55. It is noted that during the period of investigation, HSC has exported \*\*\* MT of the product under consideration directly to unrelated customers in India. The adjustments towards ocean freight, customs clearance fees, inland transportation, insurance, credit cost, inspection fees, packing cost and bank charges have been claimed for sales to India. The same has been accepted for the purpose of the present final findings. Accordingly, the Authority has determined the export price on a quarterly basis, and the weighted average export price for the period of investigation is mentioned in the dumping margin table below.

**Export price for all non-cooperative producers/exporters from Korea RP**

56. The export price for other non-cooperative producers / exporters from Korea RP has been determined based on the best available in terms of Rule 6(8) of the Rules.

**Normal value for Thailand****AGC Vinythai Public Co. Limited**

57. AGC Vinythai Public Co. Limited (AVT) is a producer of the subject goods in Thailand. AVT has sold \*\*\* MT of the subject goods in the domestic market during the period of investigation whereas, it has exported \*\*\* MT of the subject goods to India. The Authority notes that the domestic sales are in sufficient volumes when compared with exports to India.
58. With regards to the claim by the domestic industry that AVT has purchased raw materials and inputs from its parent company and other related parties, it is noted that the exporter has provided complete details of all raw materials and inputs purchased from its related parties for the production of the subject goods. The Authority has verified the information submitted by the exporter. It is noted that the purchases of raw materials and the inputs by AVT (formerly known as Advanced Biochemical (Thailand) Co. Ltd.) from its related parties are at an arm's length basis.
59. With regards to the claim by the domestic industry that AVT has sold the subject goods to its related parties in the domestic market during the period of investigation, it is seen that during the period of investigation, Advanced Biochemical (Thailand) Co. Ltd. had sold other products to its related parties, which were not sales

of the subject goods. The same has been verified by the Authority.

60. 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 the subject goods. The company has claimed price adjustments on account of insurance and inland transportation and the same is allowed by the Authority. Thus, the normal value at ex-factory level for AVT has been calculated for each quarter and the weighted average normal value for the period of investigation is mentioned in the dumping margin table below.

#### **Normal Value for other producers/exporters in Thailand**

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

#### **Export Price for Thailand**

##### **AGC Vinythai Public Co. Limited (AVT)**

62. AGC Vinythai Public Co. Limited (AVT) is a producer of the subject goods in Thailand. AVT has directly sold the product under consideration to unrelated customers in India. During the period of investigation, AVT has exported the goods through the following distribution channels.

AVT → Unrelated customer in India

63. The domestic industry has contended that AVT has paid certain marketing fees and services fees to its related party which should be adjusted in the export price. In this regard, the Authority requested further information from the exporter with respect to the marketing fees. The exporter submitted that it entered into a services agreement with its related party to provide certain services on a non-exclusive basis. AVT has paid marketing fees on a monthly basis and on the basis of a fixed formula. It is noted that since AVT has sold only ECH during the period of investigation, the marketing fees paid by AVT to its affiliate is directly related to exports of ECH to India. Accordingly, the marketing fees paid by AVT to its related party has been adjusted in the net export price determined for the exporter.
64. It is noted that during the period of investigation, AVT has exported \*\*\* MT of the subject goods to unrelated customers in India. The adjustments towards ocean freight, surveyor cost, insurance, handling charges, inland freight and credit cost have been claimed and the same have been accepted by the Authority. Accordingly, the Authority has determined the export price on a quarterly basis, and the weighted average export price for the period of investigation is mentioned in the dumping margin table below.

#### **Export price for all non-cooperative producers/exporters from Thailand**

65. The export price for other non-cooperative producers / exporters from Thailand has been determined based on the best available information in terms of Rule 6(8) of the Rules.

#### **G3.2. Dumping Margin**

66. The normal value, export price and dumping margin in the present investigation is determined on a quarterly basis and is as follows:

**Dumping Margin Table**

S.N.	Producers	NV	EP	DM	DM	Range
A	<b>Thailand</b>	\$/MT	\$/MT	\$/MT	%	
1	AGC Vinythai Public Company Limited (AVT) (Formerly known as Advanced Biochemical (Thailand) Co., Ltd. )	***	***	***	***	10-20%
2	Any Other	***	***	***	***	15-25%
B	<b>Korea RP</b>	***	***	***	***	
1	Hanwha Solutions Corporation	***	***	***	***	30-40%
2	Lotte Fine Chemical Co. Ltd	***	***	***	***	40-50%
3	Any Other	***	***	***	***	45-55%
C	<b>China PR</b>	***	***	***	***	
1	Jiangsu Ruixiang Chemical Co., Ltd.	***	***	***	***	25-35%
2	Ningbo Huanyang New Material Co., Ltd.	***	***	***	(***)%	Negativ

						e
3	Any Other	***	***	***	***%	30-40%

## G. ASSESSMENT OF INJURY AND CAUSAL LINK

### H.1 Views of other interested parties

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

- i. The subject imports from Thailand are not competing with imports from China PR and Korea RP as their volume trends have moved differently and thus, such imports cannot be cumulatively analysed as per Article 3.3 of the Anti-dumping Agreement.
- ii. Imports from Thailand have not caused injury to the domestic industry as they have moved in line with the Indian consumption.
- iii. The subject imports from China do not have ability to impact price as the volume of imports from China is significantly lower than imports from Thailand while the landed price from China is significantly higher than Thailand.
- iv. Based on the information submitted, the injury margin for LFC would be negative. Injury, if any, is likely caused due to exports from Thailand.
- v. The existence of a producer of ECH in 2013 that has since ceased to exist, does not prohibit the Authority from examining material retardation to the establishment of a domestic industry in the present case.
- vi. Determination of injury margin considering only injurious volume of imports is not consistent with Article 3.1 of the Anti-dumping Agreement.
- vii. During the period of investigation, the volume of imports has not increased in the same ratio as increase in demand, which is much higher as the applicant commenced production. Prior to the period of investigation, imports and demand moved in tandem in absence of domestic production.
- viii. The claim of the applicant that the volume of imports should have declined with its commencement of production cannot be accepted as a nascent industry takes considerable time to stabilize and create market presence. Nevertheless, subject imports have declined in each quarter of the period of investigation while the sales of the domestic industry have increased.
- ix. Since the applicant has just started production and has faced shutdowns, the volume of imports in relation to production would naturally be higher.
- x. The increase in volume of the subject imports during the period of investigation is only a rebound in export quantities following the economic standstill caused due to COVID-19 pandemic.
- xi. The increased share of the subject imports in overall imports is simply on account of the subject imports replacing the non-subject imports and does not imply any adverse impact on the applicant. The applicant has itself replaced the market share of the subject imports.
- xii. The demand in India has shown a positive trend and thus, even in absence of domestic production, the subject imports would show an increase.
- xiii. The subject imports have not suppressed the prices of the domestic industry, as imports from Thailand have declined despite reduction in import price.
- xiv. Import prices have followed the trend of prices in the international market, and fluctuated due to change in the price of the raw materials and the decline is not due to dumping.
- xv. The claim of the applicant that the exporters are supplying at lower prices to the Indian market must be rejected as the source or methodology used to arrive at the claim have not been provided.
- xvi. The target prices set by the applicant are unrealistic given the market scenario that existed during the period of investigation and any failure to meet such targets cannot be associated to the subject imports.
- xvii. The volume and price data alleged for examining price behaviour of the exporters is significantly different than the data provided in Proforma IVA as well as from the data independently extracted from Trade Map.
- xviii. The Authority must examine the information submitted by cooperating exporters to analyse the trends of the prices of the subject goods.
- xix. The applicant procured raw material at high prices and stocked the same for 3-4 months in order to

- facilitate the commissioning of its plant, as admitted in the earnings call for Q3 and Q4. On the other hand, the most competing imports procured raw material in an economically efficient manner.
- xx. The prices of glycerine and ECH peaked in May 2022 and declining after June 2022, when the applicant commenced operations. Production of ECH using refined glycerine imported till June 2022 when prices peaked, led to a high cost for the domestic industry. Further, the labour cost of the domestic industry has also increased.
  - xxi. The domestic industry used refined glycerine till September 2022, instead of crude glycerine which is more cost effective as there was a difference of \*\*\*% between their prices during the period of investigation. The domestic industry used crude glycerine at a much later stage. Thus, they may be unable to achieve desired market share due to conscious decision to choose production process based on glycerine.
  - xxii. In view of steep decline in prices of ECH over the period, the Authority should conduct quarterly analysis between price and cost of production instead of an annual analysis, as per past practice in various cases.
  - xxiii. The CIF price of almost all chemicals declined in the period of investigation due to Ukraine – Russia war, Israel war, financial instability in Sri Lanka, Bangladesh, Pakistan etc.
  - xxiv. Since Grasim Limited and DCM Shriram Limited are not currently producing ECH, it is unclear as to why such producers are investing in the product.
  - xxv. Since the domestic industry was not operational for the entire period of investigation, injury parameters for a limited period of operation would not demonstrate an accurate picture of health of the industry.
  - xxvi. The projected parameters of the applicant cannot be relied upon as they are dependent on specific market conditions without taking into account significant price fluctuations which affect operational cost and profitability.
  - xxvii. The imports have not hampered the capacity utilization of the domestic industry and it has been able to gradually increase the same, as acknowledged in its annual report 2022-23 and the quarterly earnings call in Q2 of FY24.
  - xxviii. The capacity utilization of the applicant is impressive for an industry in nascent stage and despite facing shutdowns.
  - xxix. There is no adverse volume effect of the subject imports on the applicant as their market share has increased, even if not to targeted levels.
  - xxx. Despite plant shutdown in Q3, the domestic industry was able to rapidly increase its sales and production in Q4 as compared to Q1, which was in line with the expectations expressed in the quarterly earnings call.
  - xxxi. The applicant has claimed that even at optimum capacity utilization it would be facing losses based on project report without providing non-confidential version of the report.
  - xxxii. The inability of the applicant to sustain operations can be attributed to multiple shutdowns, which signifies operational inefficiencies. Such shutdowns are likely on account of unavailability of raw material and commercial unviability due to fall in price of ECH and increase in price of glycerine.
  - xxxiii. As the domestic industry is a new entrant in the market, it would take some time to establish itself due to market dynamics and immediate switching of suppliers by the users is not the solution.
  - xxxiv. Quarterly fluctuation of inventory level considered in isolation cannot be indicative of injury as they must be analysed as long-term trends and in relation to other parameters such as sales price, sales volume, profit, etc.
  - xxxv. The increased inventories with the domestic industry are only due to preference of the user industry based on track record of the exporters, ongoing contracts and the difference in the quality of product delivered.
  - xxxvi. The contract period adopted by the pharmaceutical sector is January to December and thus, the applicant has not had the opportunity to establish itself.
  - xxxvii. The performance of the domestic industry must be analysed against the challenging conditions in which it entered the market.
  - xxxviii. The post-POI performance of the applicant must also be examined, as had been the practice of the Authority in the case of CPVC, Styrene Butadiene Rubber and Resins.

- xxxix. To eliminate the effects of change in production methods and procurement practice from refined to crude glycerine during the period of investigation, the claimed non-injurious price must be adjusted. The average cost of crude glycerine (and not refined glycerine) for the period of investigation should be considered, based on either actual price of imports into India or average ICIS prices and actual incremental cost of refining crude glycerine based on post-POI operations of the applicant may be considered. Further, the Authority must consider \*\*\*% as the optimum capacity utilization to determine optimum production to ensure that the non-injurious price is not affected by market dynamics which may have caused injury.
- xl. High depreciation and interest costs due to production inefficiencies, plant operating at reduced capacity and higher raw material consumption is likely to skew the calculation of non-injurious price and resultant injury.
- xli. The Authority must examine whether applicant has paid any royalty fee for technology transfer agreement to acquire the unconventional production technique, resulting in inflated cost of production.
- xlii. The inability to attain projected profitability of the domestic industry is not due to imports, but other factors.
- xliii. The domestic industry is focussed more on the export market and has even established storage tanks in major ports in Europe.
- xliv. Tamilnadu Petroproducts Limited established an ECH plant to cater to the needs of its JV company, Petro Araldite Pvt. Ltd. which ceased operations due to poor performance. This led to discontinuation of ECH operations by TPL.
- xlv. The applicant has admitted in their earning calls that there is a decrease in the global demand for epoxy, fluctuations in the raw material prices and global economic slowdown.
- xlvi. The effect of imports from Taiwan and other countries must be considered in the present investigation.
- xlvii. The end-users prefer less of Chinese produced ECH.

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

68. Following submissions have been made by the domestic industry with regard to the Injury and causal link are as follows.
- i. The imports from all the subject countries may be cumulatively analysed as the requirements under Article 3.3 of the Anti-dumping Agreement and para (iii) of Annexure II of the Anti-dumping Rules are all satisfied.
  - ii. Contrary to the contention of the interested parties, for the purpose of cumulative analysis, the Authority is not required to conduct country-wise volume and price analysis as pre-condition to cumulation as observed by the Appellate Body in EC-Tube or Pipe Fittings.
  - iii. The fact that the domestic industry was not operational for the entire period of investigation has no relevance to the present investigation as the underlying assumption in an analysis of material retardation is that the industry has not been in operation for a reasonable period of time.
  - iv. Contrary to the claims of the domestic industry, the differences in the prices of raw materials were adequately factored into the projections made by the domestic industry in the information submitted to the Authority.
  - v. Despite commencement of production in India during the period of investigation, the subject imports increased by 44% as compared to the base year and by 20% as compared to the previous year. Further, the volume of imports has remained high in the post-POI period as well.
  - vi. The subject imports have increased by 16% in relation to domestic consumption and were almost six times of the total domestic production.
  - vii. While the demand for the subject goods has increased by 23% over the period, the volume of imports increased at a much higher rate of 44%, during the same time.
  - viii. The subject imports are in excess of the demand-supply gap for ECH in India.
  - ix. The market share of the subject imports has increased from \*\*\*% in 2019-20 to \*\*\*\*% in 2022-23. In comparison, the domestic industry gained a minimal market share despite having the capacity to cater to more than \*\*\*% of the market.
  - x. The landed price of the subject imports continuously declined during each quarter of the period of investigation and such decline is higher than the decline in prices of raw material.

- xi. While the subject imports were priced higher than the non-subject imports till 2021-22, the price of the subject imports declined significantly in the period of investigation and were priced 13% lower than the non-subject imports.
- xii. Considering the prices of refined glycerine and caustic soda, while the subject goods were priced at least USD 700-1,000 higher than the raw material cost, the mark-up over raw material declined significantly in the period of investigation and was even negative in the third quarter. The trend of declining mark-up over raw material costs is visible even when prices of crude glycerine are considered.
- xiii. The foreign producers have deliberately reduced their export prices for the Indian market and the export price to India was significantly lower than export price to rest of the world and the next largest markets during the period of investigation.
- xiv. The subject imports were significantly undercutting the domestic prices and the target prices of the domestic industry, despite the fact that the domestic industry reduced its prices and chose to sustain losses. The stiff price competition from the subject imports has continued in the post-POI period as well.
- xv. The lower priced imports have depressed the prices of the domestic industry, as it was forced to reduce its selling price, at a much higher rate than the decline in the price of crude glycerine and caustic soda, in order to compete with significantly lower landed prices.
- xvi. While the prices of raw material declined during the period of investigation, the prices of ECH declined at a much sharper rate.
- xvii. The other interested parties are attempting to mislead the investigation by citing simple price differences between crude and refined glycerine without any basis. If the prices of ECH are compared with the prices of refined glycerine or crude glycerine, it would show an inordinate decline in price of the subject imports.
- xviii. The other interested parties have failed to provide any evidence in support of their claim that the prices of the subject goods have moved in tandem with global indices.
- xix. The producer in Thailand, AGC Vinythai, has engaged in aggressive pricing as it is forced to run its ECH plant in order ensure consumption of hydrochloric acid gas, generated as a by-product from its PVC plant.
- xx. The domestic industry commenced operations with a high capacity utilization, but was forced to curtail production due to minimal market share and accumulation of inventories and utilized less than 1/3rd of its capacity. Such production and capacity utilization are much lower than the projected levels due to incessant dumping.
- xxi. The domestic industry was forced to suspend production only after 3 months of operations and the production remained suspended for the entire third quarter. The production was also suspended for more than 2 months in post-POI period.
- xxii. The subject imports have adversely affected the ability of the domestic industry to sell in the market and its domestic sales accounted for a minimal share of its capacities and less than half of its total production.
- xxiii. The domestic sales and market share of the domestic industry are much lower than their projections. Further, the sales of the domestic industry are lower than its projections even in the second year of operations.
- xxiv. A minor increase in the market share of the domestic industry cannot be treated as absence of injury, since any producer commencing production expects to gradually gain market share.
- xxv. The domestic industry has accumulated inventories, which are significantly higher than its production in certain months and domestic sales throughout the period of investigation. Further, the inventories were significantly higher than the projected levels and have continued to remain high in the second year of operations.
- xxvi. The inventory holding period in relation to domestic sales was more than one year and in relation to production was equivalent to six months.
- xxvii. Despite earning profits in the first month of operation, the domestic industry faced significant losses, cash losses and negative return on investment as the foreign producers aggressively reduced their prices. The losses suffered were in contrast to projected profitability in the first year of operations.
- xxviii. The subject imports have forced the domestic industry to sell below its variable cost and as a result, the

- contribution of the domestic industry became negative during the period of investigation.
- xxix. At current prices, the domestic industry would have faced significant losses even if it operated at the projected capacity utilization and it would have been impossible to break-even.
- xxx. The profitability of the domestic industry was the highest when the prices of glycerine were higher, while the profitability deteriorated as the prices of glycerine declined.
- xxxi. The refined glycerine imported by the domestic industry was sufficient to be utilized within a quarter, but the same was stocked for a longer period as the subject imports prevented the domestic industry from utilizing its capacities. In any case, the domestic industry would have suffered higher losses, had it procured raw material at prices prevailing during the period of investigation or if it has used crude glycerine as raw material.
- xxxii. The other interested parties have made references to the statements made by the applicant in its annual report and quarterly earnings calls in isolation and have not provided the context or complete references, in order to suit their purpose.
- xxxiii. There is no provision under the law which provides substitution of the raw material cost of the domestic industry for a different raw material and the costs as recorded in the books of the domestic industry must be considered. In any case, the raw material costs are higher.
- xxxiv. The provisions of Annexure III allow consideration of best utilization of production capacities over the period and not the optimum utilization of capacities. Even if the Authority considers the optimum utilization, the same should be based on projected utilization, and not 100%. Further, where the domestic industry is operating at such low utilization, it would not deploy resources and incur expenses as it would if it was operational at full capacities.
- xxxv. The other interested parties have not cited any production inefficiencies which would lead to higher costs. The domestic industry has claimed non-injurious price considering optimum utilization of glycerine, which is anyway lower than average industry consumption.
- xxxvi. Injury to the domestic industry must be seen as it exists and a non-attribution analysis is not required to be conducted with regards to factors inherent to the domestic industry, as held by the WTO Appellate Body in EU – Biodiesel (Argentina), the CESTAT in Nippon Zeon Co. Ltd. v. DA and the Authority itself in past investigations.
- xxxvii. There were no contracts that prevented the user industry from procuring goods from the domestic industry as users typically enter into contract for only 50-60% of their demand, while the remaining demand is fulfilled on spot basis. Further, existence of contracts cannot justify extremely low-priced imports.
- xxxviii. The pharmaceutical industry purchases goods on spot basis or under quarterly contracts and are not limited by any annual contracts. In any case, the domestic industry has been in operation for almost two years and have still continued to suffer, implying that low sales of the domestic industry are not due to contract period of pharmaceutical industry. Moreover, the pharmaceutical industry does not account for a large share of the total consumption.
- xxxix. While one of the major epoxy producers purchased high volumes from the domestic industry, it started importing ECH once the prices started declining, thereby indicating that the users are not limited by any contracts but by availability of cheap products.
- xl. The domestic industry has exported its goods at higher prices, which implied that the product of the domestic industry does not suffer from quality issues.
- xli. The shutdown faced by the domestic industry was not due to raw material shortage, fluctuation in raw material prices, legal compliances, power shortage, lack of adequate capacity or investment capacities.
- xlii. The domestic industry has not added any technology transfer fees to its cost of production. In any case, any producer using a technology would pay such fees and the same is not unique to the domestic industry.
- xliii. Other than the subject countries, there are significant imports only from Taiwan, but such imports are higher priced and have not caused injury to domestic industry.

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

69. Rule 11 of Antidumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, "... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles

and the consequent effect of such imports on domestic producers of such articles...". In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.

70. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The Authority has noted that the present application is with respect to material retardation to the establishment of an industry. Thus, prior to undertaking a detailed injury examination, the Authority has examined whether the domestic industry was an established industry to such an extent that the same permits assessment of injury in the form of material injury, or the domestic industry was an embryonic or nascent industry, in the process of establishment, and not having sufficient past history to permit assessment of injury in the form of material injury.

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

71. It is seen that the WTO Anti-dumping Agreement or the Rules do not provide a definition for 'material retardation'. Footnote 9 to Article 3 of the WTO Agreement merely states as follows –

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

72. Similarly, Annexure II to the Rules merely clubs 'material injury', 'threat to material injury' and 'material retardation' under the definition of injury. There is no further explanation to what constitutes material retardation to the establishment of an industry.
73. It is, however, clear that 'material retardation' to an industry would be in reference to an unestablished industry and not an industry that is fully established. This is true because it is not logical for the Authority to find that a domestic industry was being injured by the dumped imports (which presupposes that such an industry was already established) and at the same time, it finds that the establishment of a domestic industry was materially retarded by those imports. The term 'unestablished' industry has not been provided in the WTO Agreement, the Act or the Rules. However, there has been a proposal at the WTO for an amendment to the Anti-dumping Agreement which provides some clarity as to the meaning of material retardation and the establishment of an industry. The relevant extract of the draft proposal is reproduced hereinbelow. Even though the said provision has not been incorporated in the Agreement so far, the Authority has considered the same as well for making the present determination:

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

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

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

76. Considering the above and in the absence of any prescribed methodology that the Authority must follow in deciding whether a domestic industry is established, the Authority has analysed the following parameters while examining whether the case is fit to examine material retardation.

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

77. It is seen that the applicant has set up a new manufacturing facility for the production of the subject goods by making significant investments. Prior to the commencement of production by the domestic industry, the entire demand for the subject goods was being satisfied by imports. Based on the factors examined below, it is seen that the domestic industry in the present case has not been established and the injury caused to the industry is in the nature of material retardation.

#### **a. Commencement of production by the domestic industry**

78. The domestic industry started commercial production during the period of investigation. Although the production of the subject goods has commenced in India, yet the performance of the domestic is below its projected figures. The production of the domestic industry during the period of investigation was only \*\*\*% of its projected production volume, at capacity utilization of only \*\*\*%. As against this situation, the domestic industry projected to achieve a capacity utilization of \*\*\*% in the first year of operation, implying a production of \*\*\* MT. Thus, the domestic industry has failed to achieve its projected performance due to the presence of dumped imports.

#### **b. Whether the production of the subject goods is merely a new product line in an existing industry?**

79. As mentioned hereinabove, the WTO Panel has observed that if the production of the industry is merely a new product line in an existing industry, it may not be a case of material retardation. However, the Panel stressed that what is important is the degree to which the existing infrastructure is utilized for the product under consideration. Further, the Panel observed that in addition to a new product line, the Authority must examine the degree of overlap with the existing infrastructure of the industry.

80. It is seen that the domestic industry set up a new manufacturing plant for the subject goods and started commercial production in July 2022. Further, since a new plant or production line was set up to manufacture the subject goods, there is no overlap between the existing infrastructure and the new plant that has been set up.

#### **c. Size of production and capacity in comparison to the size of the domestic market as a whole**

81. The domestic industry set up capacities during the period of investigation, which were sufficient to cater to \*\*\*% of the market. However, despite having sufficient capacities, the domestic industry was unable to fully utilize its capacities. Further, as against a production of \*\*\* MT, the domestic industry was able to sell only \*\*\* MT in the domestic market. While the subject imports commanded a market share of \*\*%, the domestic industry was able to cater to only \*\*\*% of the market. This shows that the imports prevented the domestic industry from supplying its production in the market.

#### **d. Stability of operations as compared to projected operations**

82. The performance achieved by the domestic industry in respect of various macro- economic parameters, such as production, domestic sales, capacity utilisation, market share, profits, cash profits and return on capital employed is materially below the levels projected by the domestic industry at the time of making investments. While the domestic industry was in a position to cater to more than 50% of the demand, its market share has

been limited to only \*\*\*%. Further, the domestic industry had projected profits in its very first year of operations. However, the domestic industry has not been able to recover its costs and even variable costs and is suffering significant financial losses. Further, the difference between the projected performance and actual performance achieved is too significant.

### H.3.3 Cumulative assessment of injury

83. Article 3.3 of the WTO agreement and para (iii) of Annexure II of the Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:

- a. The margin of dumping established in relation to the imports from each country is more than two percent expressed as a percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article, and
- b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

84. With regards to the argument raised by the other interested parties that imports from China do not have the ability to impact the volume or prices of the domestic industry, the Authority notes that Article 3.3 of the Anti-dumping Agreement as well as Para (iii) of Annexure II expressly provide the conditions to be satisfied before conducting a cumulative analysis of imports from all the subject countries. Such provisions do not require the Authority to undertake a country-wise analysis of prices as a condition prior to such cumulation. Such view has also been taken in the Appellate Body report in EC – Anti-Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil [DS/129/AB], wherein it was held as follows –

*“110. We find no basis in the text of Article 3.3 for Brazil's assertion that a country-specific analysis of the potential negative effects of volumes and prices of dumped imports is a pre-condition for a cumulative assessment of the effects of all dumped imports. Article 3.3 sets out expressly the conditions that must be fulfilled before the investigating authorities may cumulatively assess the effects of dumped imports from more than one country. There is no reference to the country-by-country volume and price analyses that Brazil contends are pre-conditions to cumulation. In fact, Article 3.3 expressly requires an investigating authority to examine country-specific volumes, not in the manner suggested by Brazil, but for purposes of determining whether the 'volume of imports from each country is not negligible'.”*

85. Further, the Government of Thailand has claimed that imports from Thailand do not have the same conditions of competition as the imports from China PR and Korea RP since the trends of volume of imports from Thailand are not similar to imports from such other subject countries. However, it is noted that analysis of similar volume and market share trends of imports cannot be considered as a criterion alone to determine whether the imports from one country are competing with imports from other countries. Article 3.3 of the Anti-dumping Agreement places no such obligation on the investigating Authority. This has been affirmed by the WTO Panel in its report in European Union – Anti-dumping Measures on Certain Footwear from China [WT/DS405/R], as can be seen from the following –

*“7.404 Turning to the alleged violation of Article 3.3, we see no basis in the text of Article 3.3 for China's view that an investigating authority must establish that imports from different countries have similar volume and market share trends, or that the conditions of competition in the different exporting countries were "similar" or "normal", in order to conclude that a cumulative assessment is appropriate in light of the "conditions of competition". As we observed above, Article 3.3 contains no specific mandatory or indicative factors that should be considered in assessing whether cumulative analysis is appropriate in light of the "conditions of competition". We note in this regard that the Appellate Body has rejected arguments that would create additional obligations under Article 3.3 of the AD Agreement. ....”*

86. Thus, merely because the volume trends of imports from Thailand have not moved in line with the imports from other countries, it cannot be said that such imports are not competing inter se. On the other hand, the imports from Thailand are commercially and technically substitutable with imports from other subject countries and with the like article produced by the domestic industry. Further, the subject goods imported from Thailand are used for same end-use application as the imports from other subject countries and the like article produced in India. Therefore, it is noted that imports from Thailand are directly competing with the imports from China PR and Korea RP.

87. In view of the above, the Authority concludes that:

- a. The subject goods are being dumped into India from the subject countries. The margins of dumping from each of the subject countries are more than the de minimis limits prescribed under the Rules.

- b. The volume of imports from each of the subject countries is individually more than 3% of the total volume of imports.
- c. Cumulative assessments of the effects of imports are appropriate as the exports from the subject countries not only directly compete with the like articles offered by each of them but also the like articles offered by the domestic industry in the Indian market.

88. Accordingly, the Authority concludes that it would be appropriate to cumulatively assess the effects of dumped imports of the subject goods from the subject countries on the domestic industry.

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

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

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

Particulars	Unit	2019-20	2020-21	2021-22	POI
Sales of applicant	MT	***	***	***	***
Trend	Indexed	0	0	0	100
Subject imports	MT	46,202	40,906	69,292	81,388
Other imports	MT	14,003	17,041	9,192	4,822
Consumption / Demand	MT	***	***	***	***
Trend	Indexed	100	96	130	150

90. It is seen that the demand for the subject goods declined in 2020-21, but increased thereafter in 2021-22 as well as in the period of investigation. The decline in demand during 2020-21 may be on account of Covid-19.

#### b) Import Volumes from the subject countries

91. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the transaction-wise import data procured from DG Systems. The import volumes of the subject goods from the subject country and the share of the dumped import during the injury investigation period are as follows:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Subject imports	MT	46,202	40,906	69,292	81,388
Thailand	MT	43,036	35,456	62,598	67,195
China	MT	92	1,360	3,943	8,339
Korea	MT	3,074	4,090	2,752	5,854
Other imports	MT	14,003	17,041	9,192	4,822
Total imports	MT	60,205	57,947	78,484	86,210
Sales of Domestic Industry	MT	0	0	0	***
Demand/Consumption	MT	***	***	***	***
Trend	Indexed	100	96	130	150
Total Indian production	MT	0	0	0	***
Trend	Indexed				100
Subject import in relation to:					
Total imports	%	77%	71%	88%	94%

Demand/Consumption	%	***	***	***	***
Trend	Indexed	100	92	115	118
Indian production	%	***	***	***	***
Trend	Indexed	0	0	0	100

92. It is seen that-

- The volume of imports of the subject goods declined in 2020-21, but increased thereafter in 2021-22 as well as in the period of investigation.
- The imports have increased despite the commencement of production by the domestic industry during the period of investigation.
- The imports accounted for almost \*\*\*% of consumption in India in the period of investigation. This is despite the fact that the domestic industry commenced production during this period, and had the capacity to cater to a significant share of the demand.
- The present volume of imports is inordinately high, having regard to the demand-supply situation in the country.
- Prior to the period of investigation, there was no production of the subject goods. However, even during the period of investigation, the volume of imports in relation to domestic production was more than seven times, despite the domestic industry commencing production.
- The imports from the subject countries account for 94% of the total imports in the period of investigation.
- The imports have increased at a much higher rate than the rate of increase in the demand for the subject goods. While the demand has increased by 50% over the period, the subject imports have increased by 76%.

93. The information provided by the domestic industry, and verified from the Trade Map, also shows that India is the largest export market for Thai producers, accounting for \*\*\*% of their exports. Further, India is the second largest export market for the producers in China and Korea, demonstrating that the Indian market is a key market for the producers in the subject countries.

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

94. In terms of Annexure II (ii) of the Rules, with regard to the effect of the dumped imports on prices, the Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

#### **a) Price undercutting**

95. Price undercutting has been determined by comparing the net sales realization of the domestic industry with the landed price of the imports for the period of investigation, for each quarter. The weighted average price undercutting is as below. It is seen that the price undercutting is positive and significant during the period of investigation.

Particulars	Unit	Q1	Q2	Q3	Q4	POI
Landed price	₹/MT	2,22,886	1,99,157	1,29,997	1,14,403	1,66,530
Net sales realization	₹/MT	***	***	***	***	***
Trend	Indexed	100	76	51	44	68
Price undercutting	₹/MT	***	***	***	***	***
Price undercutting	%	***	***	***	***	***
Price undercutting	Range	15-25%	0-10%	0-10%	0-10%	5-15%

*\*Weighted average of quarterly selling prices based on the volume of imports*

96. The domestic industry has also submitted that the landed prices of the imports is even below its projected selling price, with an even higher price undercutting. If the projected selling price of the domestic industry is considered, it would be seen that the subject imports were undercutting the target prices of the domestic

industry.

Particulars	Unit	POI
Landed price	₹/MT	1,66,530
Target price	₹/MT	***
Price undercutting	₹/MT	***
Price undercutting	%	***
Price undercutting	Range	10-20%

**b) Price suppression/depression**

97. In order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in the normal course, the changes in the costs and prices over the injury period, were compared as below.

Particular	Unit	2022-23 Q1	2022-23 Q2	2022-23 Q3	2022-23 Q4
Cost of Sales	₹/MT	***	***	***	***
Trend	Indexed	100	118	106	104
Selling Price	₹/MT	***	***	***	***
Trend	Indexed	100	76	51	44
Landed Price	₹/MT	***	***	***	***
Trend	Indexed	100	89	58	51

98. It is noted that in the second quarter, the cost of sales of the domestic industry increased whereas the selling price of the domestic industry declined significantly. Thereafter, in the third and fourth quarters, the cost of sales of the domestic industry declined. However, the selling price of the domestic industry declined at a much higher rate than the decline in the cost of sales, in order to compete with the landed price of imports. Further, the landed price of the imports remained significantly below the cost of sales of the domestic industry. Thus, it is noted that the subject imports have depressed the prices of the domestic industry. The applicant has also submitted that the imports have prevented them from achieving their target price as projected in their project report and they have been forced to sell the subject goods below their costs.

**c) Landed price below the raw material cost of the domestic industry**

99. The applicant has also claimed that the landed price of imports has reduced below the cost of raw materials in the second half of the period of investigation. It is seen that during the initial period of the injury period, the prices of ECH were much higher than the raw material cost. The prices of ECH started declining in the first half of 2022-23 when the domestic industry commenced production. However, in the last two quarters, the landed price of imports was lower than the cost of raw materials consumed. During the course of the investigation, the other interested parties argued that the domestic industry was unable to recover its costs as the domestic industry used refined glycerine in the production process, instead of crude glycerine. It was claimed that the domestic industry purchased high-priced refined glycerine, instead of the crude glycerine which was more cost efficient. In response, the domestic industry provided the international prices of crude glycerine to demonstrate that the price of ECH was lower than the prices of crude glycerine as well. It is noted that the producers in Thailand and China are also producing ECH using refined glycerine. Nevertheless, as highlighted by the domestic industry, even if the prices of crude glycerine are considered, the prices of ECH have followed a similar trend. While the mark-up over raw material cost was healthy till the first half of the period of investigation, it declined sharply in the second half of the period of investigation when the domestic industry commenced production.

*Figures in USD/MT*

Quarters	Import price of ECH into	Caustic Soda Prices	Refined Glycerine Prices	RM cost Considering refined glycerine	Mark-up over cost (ECH prices –	Crude glycerine Prices	RM cost Considering crude glycerine	Mark-up over cost (ECH prices –
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	India			price	RM)		price	RM)
1	2	3	4	5	6	7	8	9
2019-20 Q1	1,608	239	711	800-850	750-800	259	425-475	1125-1175
2019-20 Q2	1,696	224	645	750-800	900-950	223	375-425	1275-1325
2019-20 Q3	1,786	214	638	725-775	1000-1050	233	375-425	1350-1400
2019-20 Q4	1,625	194	617	800-750	950-900	229	375-425	1200-1250
2020-21 Q1	1,512	200	692	750-800	700-750	252	400-450	1050-1100
2020-21 Q2	1,355	204	775	850-900	450-500	292	450-500	850-900
2020-21 Q3	1,286	191	712	800-850	450-500	289	450-500	800-850
2020-21 Q4	1,528	174	790	850-900	600-650	355	525-575	950-1000
2021-22 Q1	1,972	183	874	950-1000	950-1000	440	425-475	1275-1325
2021-22 Q2	2,338	212	1,036	1100-1150	1150-1200	568	375-425	1450-1500
2021-22 Q3	2,597	288	1,246	1375-1425	1150-1200	677	375-425	1550-1600
2021-22 Q4	2,645	390	1,574	1750-1800	850-900	757	375-425	1450-1500
2022-23 Q1	2,845	456	1,834	2050-2100	750-800	773	400-450	1575-1625
2022-23 Q2	2,548	485	1,730	1950-2000	550-600	732	1000-1050	1325-1375
2022-23 Q3	1,580	555	1,309	1575-1625	(50)-0	493	1150-1200	650-700
2022-23 Q4	1,379	530	1,051	1300-1350	50-100	351	1200-1250	650-700

100. As a result, the domestic industry has been unable to recover their variable costs as well which has resulted in a negative contribution. As against a variable cost of ₹ \*\*\* per MT, the domestic industry was able to recover only ₹ \*\*\* per MT.

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

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

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

102. Capacity, production, sales and capacity utilization of the domestic industry over the injury period were as below. It may be noted that while the domestic industry established a capacity of 50,000 MT, the same has been proportionately adjusted since the domestic industry commenced operations in June 2022.

Particular	Unit	2022-23 Q1	2022-23 Q2	2022-23 Q3	2022-23 Q4	POI	Projected
Installed Capacity	MT	***	***	***	***	***	***
Trend	Indexed	100	300	300	300	300	300
Production	MT	***	***	***	***	***	***
Trend	Indexed	100	108	0	168	113	254

Capacity Utilization	%	***	***	***	***	***	***
Trend	Indexed	100	36	0	56	38	85
Domestic Sales	MT	***	***	***	***	***	***
Trend	Indexed	100	445	309	760	484	2,903
Export Sales	MT	***	***	***	***	***	***
Trend	Indexed	100	1144	117	103	439	
Shut down days	No. of days	***	***	***	***	***	***

103. It is seen that:

- a. The domestic industry achieved a reasonably high level of capacity utilization, of \*\*%, in the first quarter itself. However, its capacity utilization declined subsequently.
- b. The domestic industry has not been able to fully utilize its capacities and was able to achieve a low utilisation of less than \*\*%, as against a projected utilization of \*\*%. Almost three-fourths of the capacity set up by the domestic industry remained idle during the period of investigation.
- c. The actual production of the domestic industry is \*\*% lower than the projected production.
- d. The domestic sales of the domestic industry have remained low throughout the period, and are only \*\*% of the projected sales volume.
- e. The domestic sales are only \*\*% of the capacity. Further, the domestic industry has been able to dispose of only \*\*% of its production in the domestic market.
- f. Since the domestic industry was not able to dispose of its production, it was forced to shut down its plant for significant periods. Since commencement of production in June 2022, the applicant was forced to shut down operations for a significant period of time owing to commercial unviability of operations. Of the total \*\*\* days of commencement of production, the domestic industry has remained shut down for more than 50% of the days.

104. Some of the interested parties have claimed that the domestic industry has focused on export markets. However, the Authority notes that the domestic industry is sitting with significant idle capacities. Therefore, even after effecting exports, the domestic industry had the ability to cater to a larger share of the domestic market. However, its market share has remained low.

**b) Market share**

105. The market share of the domestic industry and of imports are as shown in table below:

Particulars	Unit	2019-20	2020-21	2021-22	POI
Subject imports	%	***	***	***	***
Trend	Indexed	100	92	115	118
Other imports	%	***	***	***	***
Trend	Indexed	100	126	50	23
Domestic industry	%	-	-	-	***
Trend	Indexed	-	-	-	100

106. The Authority notes that since the domestic industry commenced production in the period of investigation, its market share improved. However, the subject imports accounted for almost 90% of the market share during the period of investigation, despite there being sufficient idle capacities with the domestic industry. Even while having a capacity sufficient to cater to more than half of the demand, the market share of the domestic industry was only \*\*%, which is much lower than the projected market share of \*\*%.

**c) Inventories**

107. The inventory position of the domestic industry over the injury period is given in the table below:

Particular	Unit	2022-23 Q1	2022-23 Q2	2022-23 Q3	2022-23 Q4	POI	Projected
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Opening Inventory	MT	***	***	***	***	***	***
Closing Inventory	MT	***	***	***	***	***	***
Average Inventory	MT	***	***	***	***	***	***
Trend	Indexed	100	109	99	139	197	57

108. It is noted that –

- The average inventories with the domestic industry have increased during the period of investigation as they have been unable to sell in the domestic market.
- The average inventories of the domestic industry are almost equal to half of their total production volume, despite undertaking exports of the subject goods.
- Further, the inventories are equivalent to 91% of the domestic sales volume, implying that the domestic industry has hardly been able to sell the goods.
- The inventory holding period of the domestic industry is extremely high, equivalent to more than one year in relation to domestic sales and almost six months in relation to production.
- The average inventories of the domestic industry were higher than the domestic sales of the domestic industry during each month of the period of investigation and exceeded production in all but one month of its operations.
- The average inventories are much higher than the projected inventories, despite the projection being at a higher capacity utilization.

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

109. Profitability, return on investment and cash profits of the domestic industry over the injury period is given in the table below:

Particulars	Units	2022-23 Q1	2022-23 Q2	2022-23 Q3	2022-23 Q4
Cost of sales	₹/MT	***	***	***	***
Trend	Indexed	100	118	106	104
Selling price	₹/MT	***	***	***	***
Trend	Indexed	100	76	51	44
Profit/ (loss)	₹/MT	***	(***)	(***)	(***)
Trend	Indexed	100	-47	-112	-132
Profit/ (loss)	₹ Lacs	***	(***)	(***)	(***)
Trend	Indexed	100	-208	-344	-1007
Cash Profit	₹ Lacs	***	(***)	(***)	(***)
Trend	Indexed	100	-110	-237	-638
Return of investment	%	***	(***)	(***)	(***)
Trend	Indexed	100	-82	-229	-695

110. It is seen that while the domestic industry initially earned profits in the first quarter, it has suffered significant losses from the second quarter onwards and its losses have increased in each quarter. Further, the cash profits and return on investment of the domestic industry have followed a similar trend. The domestic industry has incurred significant cash losses and its return on investment has become negative from the second quarter.

111. The applicant has claimed that the decline in profitability of the domestic industry is directly attributable to the decline in landed prices. It is noted that during the second quarter, and subsequently, the gap between the landed price and raw material cost declined sharply, with the landed price subsequently becoming lower than the raw material cost. This led to a significant impact on the profitability of the domestic industry, which deteriorated rapidly.

112. The applicant has also claimed that since the domestic industry commenced production only in the period of

investigation, its performance should also be analysed by comparing its actual performance with the projected performance considering cost structures at 80% utilization. Accordingly, the Authority has analysed the performance of the domestic industry as below.

Particulars	Unit	POI (Actual)	Projected	Normated
Cost of sales	₹/MT	***	***	***
Selling price	₹/MT	***	***	***
Profit/ (loss)	₹/MT	(***)	***	(***)
Profit/ (loss)	₹ Lacs	(***)	***	(***)
Cash Profit	₹/MT	(***)	***	(***)
Cash Profit	₹ Lacs	(***)	***	(***)
Return of investment	%	(0-10)%	10-20%	(0-10)%

113. It is noted that:

- While the domestic industry projected to achieve profits of ₹ \*\*\*crores in the period of investigation, it incurred significant losses of \*\*\* crores during such period. Further, even if the domestic industry operated at a capacity utilization of 80%, it would still incur losses at current prices.
- Similarly, the domestic industry has incurred cash losses of \*\*\* crores while it had projected cash profit of \*\*\* crores. The domestic industry would have incurred significant cash losses even if it operated at 80% capacity utilization.
- The return on investment of the domestic industry remained negative, in contrast with a projected return of \*\*\*.
- The domestic industry has also highlighted that it was forced to sell below its variable cost of production during the fourth quarter of the period of investigation. As a result, it has become impossible for the domestic industry to break even.

**e) Employment, productivity and wages**

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

Particulars	Unit	2022-23 Q1	2022-23 Q2	2022-23 Q3	2022-23 Q4	POI
No of employees	Nos.	***	***	-	***	***
Trend	Indexed	100	100	100	100	100
Salaries & Wages	₹ Lacs	***	***	-	***	***
Trend	Indexed	100	108	-	168	113
Productivity per day	MT/Days	***	***	-	***	***
Trend	Indexed	***	***	***	***	***
Productivity per employee	MT/Nos	***	***	-	***	***
Trend	Indexed	100	108	0	168	94

115. It is seen that the number of employees has remained stable throughout the period of investigation while the salaries have increased. The production of the domestic industry declined in the second quarter and was zero in the third quarter as the domestic industry shut down its operations. However, productivity improved in the last quarter as the domestic industry increased its production volumes. The domestic industry has not claimed injury on this account.

**f) Growth**

Particulars	Unit	2022-23 Q1	2022-23 Q2	2022-23 Q3	2022-23 Q4
Production	%	-	8%	-100%	100%
Domestic sales	%	-	345%	-31%	146%

Profit / loss	%	-	-309%	-65%	-192%
Profit / loss per unit	%	-	-147%	-138%	-18%
Cash Profit	%	-	-210%	-116%	-169%
Return on investment	%	-	-182%	-179%	-204%

116. As the domestic industry commenced production during the period of investigation, its volume parameters improved, after dipping in the third quarter. However, the profitability parameters of the domestic industry have declined in each quarter of the period of investigation and have not improved in any quarter.

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

117. The domestic industry had sourced investment for setting up capacity for the subject goods and was able to raise capital investment. The domestic industry has submitted that the volume of imports has continued to remain higher in the post-POI period upto December 2023, despite the domestic industry being in operation for more than one year. Due to the continued influx of imports, the domestic industry has been unable to increase its domestic sales, which have remained low. This has led to a significant accumulation of inventories, which is higher than the production and sales levels of the domestic industry in each of the months. As a consequence, the domestic industry was forced to undertake another shutdown for almost 2.5 months in the post-POI period. Further, the domestic industry has continued to suffer significant losses, negative cash flows and return on capital employed. Some of the interested parties had highlighted that the losses of the domestic industry were on account of the fact that it produced the like article using refined glycerine for part of the period of investigation. However, the Authority notes that the domestic industry clarified that during the post-POI period, it produced the like article using crude glycerine. However, even then, it has suffered significant losses.

**H.3.7 Overall assessment of injury**

118. The examination of the imports of the subject product and the performance of domestic industry clearly shows that:
- i. The volume of imports has increased significantly despite the fact that the domestic industry commenced operations. Further, the imports increased at a much higher rate than the increase in demand for the subject goods.
  - ii. The imports have remained high in relation to production and consumption.
  - iii. The imports have suppressed and depressed the prices of the domestic industry, and have prevented the domestic industry from achieving its projected prices.
  - iv. The prices of the subject imports declined sharply during the period of investigation and were undercutting the actual and projected prices of the domestic industry.
  - v. The landed price of imports is lower than the variable cost of the domestic industry in the last two-quarters of the period of investigation.
  - vi. The gap between the price of imports and the prices of raw materials has declined steeply over the period.
  - vii. Due to the cheaper imports, the domestic industry was forced to sell below its cost of sales and its variable costs.
  - viii. The domestic industry has been able to utilize less than 30% of its capacity, which is much below the projected utilization.
  - ix. The domestic industry was able to sell only slightly over half of its production volumes, that too having exported some volumes. On the other hand, the volume of domestic sales in the domestic industry has remained low.
  - x. The domestic industry was forced to undertake plant shutdowns, due to commercial unviability in the market.
  - xi. The domestic industry faced a significant accumulation of inventories in its first year of operation. Its inventories were more than the domestic sales during each month of the period of investigation.
  - xii. The profitability of the domestic industry deteriorated over the period, with increasing losses, cash losses, and negative return on capital employed.

- xiii. The domestic industry faced significant losses, cash losses and negative returns on investment during the period of investigation as against the projected profitability.
- xiv. The domestic industry would have faced losses, cash losses and negative returns at present prices even if it operated at 80% capacity utilization.
- xv. The imports have adversely impacted the ability of the domestic industry to raise further capital investments.
- xvi. The dumping margin is positive and significant.
- xvii. The imports are affecting the prices of the domestic industry.
- xviii. The performance of the domestic industry has continued to remain adverse even during the post-POI period.

119. In view of the foregoing, it is provisionally concluded that the subject imports have materially retarded the establishment of industry in India.

#### H. NON-ATTRIBUTION ANALYSIS

120. As per the Rules, the Authority, *inter-alia*, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. The factors which may be relevant in this respect include, *inter-alia*, the volume and prices of the imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than dumped imports could have contributed to the injury, which has resulted in the material retardation to the establishment of the domestic industry.

##### a. **Volume and price of imports from third countries**

121. The Authority notes that other than the subject imports, there were significant imports only from Taiwan and not from any other non-subject source. However, the subject goods were not exported at dumped prices from Taiwan during the period of investigation. Thus, the injury caused to the domestic industry cannot be attributed to the imports from Taiwan.

##### b. **Contraction of demand**

122. It is seen that demand for the product under consideration has steadily increased with only a slight decline in 2020-21. The demand for the subject goods is also expected to continue to grow and thus, the domestic industry has not suffered injury due to possible contraction in demand.

##### c. **Changes in the pattern of consumption**

123. There has been no known material change in the pattern of consumption of the product under consideration.

##### d. **Trade restrictive practices and competition between the foreign and domestic producers**

124. The imports of the subject goods are not restricted in any manner and are freely importable in the country. Since the domestic industry is the sole producer of the subject goods in the country, there is no possibility of *inter-se* competition between the domestic producers causing injury to the domestic industry.

##### e. **Developments in technology**

125. The Authority notes that there has been no known material change in the technology for the production of the product under consideration. The applicant has in fact set up a new production facility.

##### f. **Export performance**

126. The Authority has relied on segregated data for domestic and export operations, to the extent the same could be, for the purpose of injury analysis of the domestic industry.

##### g. **Use of inventories of raw materials**

127. Some of the interested parties have also contended that the profitability of the domestic industry is low since it uses inventories of raw materials purchased at high prices. In response to such contention, the domestic industry submitted information with regard to the profitability of the domestic industry, based on international prices of the raw materials. On the basis of the information provided, the Authority notes that the domestic industry would have suffered losses, even if it had purchased raw materials at international prices.

Particulars	Unit	Present performance	If international prices are considered
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Domestic Sales	MT	***	***
Cost of Production	₹/MT	***	***
Selling Price	₹/MT	***	***
Profit/(Loss)	₹/MT	(***)	(***)
Profit/(Loss)	₹ Lacs	(***)	(***)

#### **h. Impact of start-up costs on the cost of production**

128. The other interested parties have also argued that the cost of production of the domestic industry is inflated due to the start-up costs involved. However, the domestic industry has submitted that any start-up costs have been capitalized in the cost of assets and have not been included in the cost of production. Thus, the cost of production of the domestic industry is not inflated on account of any start-up costs.

#### **i. Issues regarding the quality or acceptability of the product**

129. Some of the interested parties have alleged that the domestic industry might have struggled to sell goods in the domestic market owing to the long approval process or issues with the acceptability of the product. However, the Authority notes that the domestic industry has been able to supply the goods in the export markets and that too, at profitable prices. Therefore, the fact that the domestic industry has been able to sell its goods in the export markets demonstrates that the product produced by it has been accepted globally. Further, the domestic industry has even submitted that it was able to sell its goods to customers in India before the import prices started declining to injurious levels.

### **I. MAGNITUDE OF INJURY MARGIN**

130. The Authority has determined the NIP for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The NIP of the PUC has been determined by adopting the information/data relating to the cost of production provided by the domestic industry. The NIP has been compared with the landed price of subject goods from the subject countries for calculating injury margin. For determining the NIP, the best quarterly utilization of the raw materials and utilities and best quarterly utilization of production capacity has been considered. Extraordinary or non-recurring expenses and/or assets have been excluded from the cost of production and/or NIP. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) deployed for the PUC has been allowed for recovery of interest, corporate tax and profit to arrive at the NIP as prescribed in Annexure III of the Rules.

131. Some of the interested parties have claimed that the raw material cost of the domestic industry should be adjusted to reflect the international prices and royalty expenses should not be considered. However, in accordance with the provisions of Annexure-III and as per practice, the Authority has considered the raw material cost and other expenses, as reflected in the books of accounts of the company, duly adjusted in accordance with the principles laid down in the law.

132. Since start-up costs are capitalized, the cost of production of the domestic industry is not inflated on this account. As regards depreciation, the Authority has considered the same based on the highest capacity utilization, of more than 80% achieved during the period of investigation.

133. With regards the argument raised by other interested parties that the injury margin should not be determined by considering only the injurious volume of imports as claimed by the domestic industry, it may be noted that the Authority has determined the landed price of all imports for each quarter of the period of investigation and compared the same with the non-injurious price of the domestic industry to calculate the injury margin.

134. Based on the landed price and NIP determined as above, the injury margin for producers/exporters as determined by the Authority on a quarterly basis and is provided in the table below:

**Injury Margin Table**

S.N.	Producers	NIP	LP	IM	IM	Range
A	<b>Thailand</b>	\$/MT	\$/MT	\$/MT	%	
1	AGC Vinythai Public Company Limited (AVT) (Formerly known as Advanced Biochemical (Thailand) Co., Ltd. )	***	***	***	***	20-30%

2	Any Other	***	***	***	***	20-30%
<b>B</b>	<b>Korea RP</b>	***	***	***	***	
1	Hanwha Solutions Corporation	***	***	***	***	10-20%
2	Lotte Fine Chemical Co. Ltd	***	***	***	***	20-30%
3	Any Other	***	***	***	***	25-35%
<b>C</b>	<b>China PR</b>	***	***	***	***	
1	Jiangsu Ruixiang Chemical Co., Ltd.	***	***	***	***	0-10%
2	Ningbo Huanyang New Material Co., Ltd.	***	***	(***)	(***) %	Negative
3	Any Other	***	***	***	***	5-15%

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

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

135. The other interested parties have made the following submissions with regard to the Indian industry's interest:

- i. The applicant has misrepresented the impact of proposed duties by overstating the market price of epoxy resin in its calculation. The impact on epoxy producers ranges from 0% to 10% and is significant.
- ii. Imposition of duty is likely to result in an inverted duty structure for epoxy resins as the imports would be subject to basic customs duty (which is 0 for FTA partners) while epoxy producers in India would be subject to additional anti-dumping duty.
- iii. The impact of the imposition of duty is detrimental to the epoxy industry and the various downstream sectors such as paints and coatings, electronics, adhesives, water treatment chemicals, textiles, paper industry, etc. The epoxy producers would be unable to bear the increase in cost due to duty imposition and the same would be passed on to the customers, rendering the user industry uncompetitive.
- iv. Imposition of duty will negatively impact the rising foreign direct investments for the manufacture of epoxy in India and would deter entities such as Kukdo Chemicals who are planning to invest in the Indian epoxy sector.
- v. Imposition of anti-dumping duty would negatively impact the demand and prices of the upstream refined glycerine industry.
- vi. Imposition of anti-dumping duties on the subject goods would have a negative impact on the end-users as the end-users prefer importing the subject goods.
- vii. The domestic industry is unable to meet the volume requirements of the users as per confidential communication between the applicant and one of the users.
- viii. The domestic demand at present cannot be satisfied by the existing domestic production capacity.
- ix. Make In India and Atmanirbhar Bharat are beyond the scope of the present investigation.
- x. Duty concessions have been granted in the Union Budget 2023 on imports of crude glycerine specially for use in ECH.

### K.2 Submissions by the domestic industry

136. The domestic industry has made the following submissions with regard to the Indian industry's interest:

- i. The imposition of anti-dumping duty would be in the interest of the domestic industry, consumers, users and the public at large.
- ii. There is a need to make India self-reliant for ECH as the country was entirely dependent on imports, post cessation of operations by Tamilnadu Petroproducts Limited.
- iii. Imposition of duty to the extent claimed by the domestic industry would result in a maximum price increase which would still be lower than the prices charged by the exporters in the past. ECH purchased from the domestic industry at fair prices would result in a benefit of at least ₹ 185 crores to the consumers.
- iv. The users have themselves acknowledged in their written submissions that they would simply pass on the price increases to their end-consumers and as a result, the impact of even a 10% increase would be negligible on the end-consumers.

- v. Imposition of duties would help in the establishment of the ECH industry in India, which would increase the demand and prices of the upstream producers and would not negatively impact them.
- vi. Kukdo Chemicals has set up its plant for the production of further downstream products and since the upcoming epoxy plant would be feeding its existing plant, imposition of duties would have no impact on such investment.
- vii. The imports are currently threatening the viability of fresh investments of more than ₹ 1,300 crores in the country and there is a need to protect such massive investments.
- viii. As against a possible inflow of FDI of ₹ 250 crores considering Kukdo Chemicals' future investment, the Indian investment in like article of ₹ 1,000 crores cannot be allowed to suffer.
- ix. Post imposition of duty, the Indian industry would have sufficient capacities to cater to the entirety of the demand for the next five years.
- x. Other than the subject countries, producers in USA, Germany, Taiwan, Japan, Netherlands, Saudi Arabia, France, Italy and Czech Republic have significant capacities and may be able to divert their goods to the Indian market, if the subject imports decline hypothetically.
- xi. It is a well-established principle that demand-supply gap cannot be a ground for non-imposition of duties, as held by the High Court in *NOCIL Limited v. Government of India*, the *CESTAT in DSM Idemitsu Ltd. v. DA. and the Authority* in past findings.
- xii. Imposition of duty would lead to conservation of foreign exchange by USD 639 lakhs per annum.
- xiii. The presence of a competitive the domestic industry would ensure that the foreign exporters do not charge premium pricing from the Indian consumers, which was done in past as is evident from the high delta over raw material cost.
- xiv. There would not be a situation of monopolistic behaviour by the domestic industry as the Indian market is likely to be in a situation of oversupply by the time duties are imposed.
- xv. The domestic industry is producing ECH using bio-based glycerine route which is better for the environment, as compared to the traditional propylene route.
- xvi. There is an inverted duty structure with regards to the product under consideration, which has not been taken into account in the present investigation.
- xvii. The volume of imports of epoxy resin is presently very low. Kukdo Chemicals accounts for a majority of the share of imports, who are themselves in the process of setting up a plant for epoxy resin in India, which would result in further decline in the volume of imports.
- xviii. Imposition of duties would be advantageous for the users as the increase in import price post imposition of duties would still be lower than the normal value in the domestic market of the subject countries.
- xix. The end-users have preferred the subject imports over the domestic goods only because the subject imports are available at cheaper prices and not due to any other reason.
- xx. The applicant has not claimed imposition of duties only in support of Make In India and Atmanirbhar Bharat policies of the Government, but rather to further such policies.

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

137. The Authority notes that the primary objective of anti-dumping duties is to rectify the injury inflicted upon the domestic industry by the unjust trade practices of dumping, thereby fostering an environment of open and equitable competition in the Indian market. The imposition of anti-dumping measures is not designed to curtail imports from the subject countries arbitrarily. Rather, it is a mechanism to ensure a level playing field. The Authority acknowledges that the persistence of anti-dumping duties may influence the price levels of the product in India. However, it is crucial to note that the essence of fair competition in the Indian market will remain unscathed by the continuation of these measures. Far from diminishing competition, the imposition of anti-dumping measures serves to prevent the accrual of unfair advantages through dumping practices. It safeguards the consumers' access to a broad selection of the subject goods. Thus, anti-dumping duties are not a hindrance but a facilitator of fair-trade practices.
138. The Authority issued the initiation notification, inviting views from all interested parties including importers, users and consumers. An economic interest questionnaire was also prescribed to allow various stakeholders, including the domestic industry, producers/exporters and importers/users/consumers to provide relevant information concerning the present investigation, including the possible effect of anti-dumping duty on their operations.

139. The Authority notes that the response to the economic interest questionnaire, issued by it, was furnished by the domestic industry and by four users of the subject goods namely Atul Limited, Cardolite Speciality Chemicals India LLP, Grasim Industries Limited and Hindusthan Speciality Chemicals Limited. In its response to the economic interest questionnaire, the domestic industry has claimed that imposition of duty would not have any significant impact on the downstream users. In fact, purchasing ECH from the domestic industry at fair prices would lead to a benefit of ₹ 185 crores to the users. On the other hand, the users have claimed that imposition of duty would have an impact of upto 10% on their costs. The Authority notes that the users have themselves admitted that they would pass on any price increases to the downstream users. Therefore, it would not be appropriate to quantify the impact of duties on epoxy resin. The producers of epoxy resin cater to wide variety of downstream industries such as paints, adhesives, laminates, automotive coatings etc., which are further consumed by their downstream users. The domestic industry has contended that any price increase which would be passed on the users would result in negligible impact on the ultimate end-consumers.
140. The Authority notes that prior to the establishment of the plant by the domestic industry, India was completely import-dependent. While Tamilnadu Petroproducts Limited established a plant in the early 2010, the same was shut down due to cheap imports. This is evident from the statements made by the domestic industry in its financial statements. The domestic industry has made significant investments in the plant to manufacture the subject goods and make India self-reliant. The domestic industry has emphasized that if the dumping from the subject countries continues, the domestic industry will have no option but to permanently shut down its operations.
141. The other interested parties have argued that the imposition of duties would dissuade investment by foreign producers in the epoxy industry in India. The Authority notes that at present, only Kukdo Chemicals has announced plans to establish a plant for producing epoxy resin in India, in order to feed its downstream plant in India, at an investment of roughly ₹ \*\*\* crores. On the other hand, the Indian industry has already invested significant amounts in order to establish plants for ECH. In total, the Indian industry has already invested upwards of ₹ \*\*\* crores. Therefore, there is a need to protect such significant investments already undertaken. It is noted that large investments made by Indian producers in India cannot be forsaken in anticipation of future foreign investments.
142. The Authority further notes that the imposition of anti-dumping duty will not lead to scarcity of the subject goods in India. It is noted that anti-dumping duty does not restrict imports but ensures that imports are available at fair prices. The imposition of duty would, therefore, not affect the availability of the product. In any case, the upcoming capacity of the domestic industry would more than the demand in India, thereby ensuring that there remains sufficient supply in the country.

Total Indian Capacity	Epigral Limited	50 KT
	DCM Shriram	51 KT
	Grasim	50 KT
Total demand		90 KT
Excess supply		11 KT

The domestic industry has highlighted that the Indian industry would have sufficient capacity to cater to not only the present but also the future demand in the country.

143. Although the other interested parties have argued that the domestic industry does not have sufficient capacity to cater to the Indian demand, it is seen that the Indian industry as a whole would have sufficient capacity to meet the Indian demand. In any case, countries such as USA, Germany, Taiwan, Japan, Netherlands, Saudi Arabia, France, Italy and Czech Republic have sufficient capacities and the users can import the subject goods from such countries.
144. Some interested parties have claimed that the domestic industry is unable to meet the volume requirements of the users and have submitted communication with the domestic industry in support of the argument. However, the domestic industry has demonstrated that while it offered to sell the subject goods to the users, they refused to purchase the subject goods from the domestic industry as they preferred the cheaper imported goods, which the domestic industry was unable to match.
145. The other interested parties have also claimed that the imposition of duties would negatively impact the upstream producers. The Authority notes that the imposition of anti-dumping duties would allow the domestic industry of ECH to thrive. This would result in an increased demand for the upstream industry, resulting in increased prices. Thus, in no situation would the imposition of duties impact the upstream industry.
146. Lastly, the Authority notes that the anti-dumping duty would be limited to the extent of prices that would

remedy the injury caused to the domestic industry. In such a case, the current price at which the epoxy producers are importing the subject goods from the foreign exporters would remain lower than the price at which the foreign exporters are selling in their home markets. Therefore, even after the imposition of the anti-dumping duty, the prices of ECH in the Indian market would be lower than that in the subject countries. This would allow the epoxy producers in India a competitive advantage, compared to their global counterparts.

#### K. **POST DISCLOSURE COMMENTS**

147. The Authority circulated the disclosure statement containing all essential facts under consideration for making the final recommendations to the Central Government, to all interested parties on 12<sup>th</sup> July 2024. The Authority has examined all the post-disclosure comments made by the interested parties in these final findings to the extent deemed relevant. Any submission which was merely a reproduction of the previous submission and which had been adequately examined by the Authority has not been repeated for the sake of brevity.

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

148. The following post disclosure submissions have been made by the other interested parties.

- i. There are discrepancies in the import volume and profits submitted by the petitioner and those relied on in the disclosure statement.
- ii. While volume effect has been examined on a yearly basis, price effect has been analyzed on a quarterly basis. Imports have declined from Q1 onwards.
- iii. There were aberrational price spikes experienced during the period of investigation, making it unrepresentative, which is different from normal market variability.
- iv. The Authority should consider the overall cost of production of the POI for performing the ordinary course of trade test only for the domestic sales made in the Quarter 2 and Quarter 3 of the period of investigation and not for all sales made during the period of investigation. It is humbly submitted that in the event the Hon'ble Authority finds it inconsistent to apply the overall cost only for the domestic sales made in Quarter 2 and Quarter 3 of the POI, we request to consider the cost of production for the respective quarter only for the purpose of conducting ordinary course of trade test. Even if such sales are disregarded, normal value should be based on cost of production plus 5% as profits.
- v. There appears to be a discrepancy in the ex-factory export price as submitted by Jiangsu Ruixiang Chemical Co. Ltd. and that adopted by the Authority.
- vi. The Authority has selectively analysed the performance of the domestic industry, highlighting parameters where the performance is negatively impacted while ignoring other mitigating factors.
- vii. Examination of material retardation should not involve a comparison with projected performance.
- viii. The Authority has not examined the various criteria laid down in the Morocco case to conclude that the domestic industry was materially retarded.
- ix. The raw material is purchased under fixed contractual agreements and thus, costs of exporters would take some time to reflect change in the prices of product under consideration.
- x. The domestic industry has admitted in public statements that it is unable to increase sales due to existing long-term contracts.
- xi. The fluctuations in the international market price should be considered for calculation of non-injurious price. Further, a return of 22% should not be considered.
- xii. The Authority must calculate quarterly non-injurious price and then compare the weighted average non-injurious price and landed price against the weighted average of total import volume, which would result in a reduced injury margin.
- xiii. While imposition of duty on subject countries would result in lower prices for ECH, exporters from non-subject countries might negate such advantage by offering competitive prices.
- xiv. Contrary to observations of Authority, TPL had shut down its operations as its downstream purchaser PAPL ceased operations due to poor performance.
- xv. The decline in profitability of domestic industry is temporary as supply of bio-glycerin is expected to increase in coming years, resulting in reduced cost for domestic industry.
- xvi. The performance of the domestic industry has improved significantly in the post-POI period, showing a lack of injury.

- xvii. The domestic industry should provide details of duties and prices paid on imports of crude glycerine and the reason for importing crude glycerin.
- xviii. The users cannot switch their sources due to high production cost in other countries, high transportation costs, long transit period, higher landed cost due to customs duties, and high inventory cost with users to ensure uninterrupted production.
- xix. Imposition of duty would result in trade tensions with China.
- xx. Increased domestic production in less regulated environments could harm sustainability efforts.

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

149. The following post disclosure submissions have been made by the domestic industry.
- i. The dumping margin and injury margin determined for non-cooperative exporters from China should be re-quantified at least at the level of non-cooperating from other subject countries, in order to ensure non-participation by such exporters is not rewarded.
  - ii. The manner of determination of raw material cost for the purpose of calculation of non-injurious price may be reconsidered and reviewed.

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

150. The Authority has examined the post-disclosure submissions made by the domestic industry and the other interested parties and notes that some of the comments are reiterations of submissions which have already been examined suitably and addressed adequately in the relevant paras of the final findings. The issues raised for the first time in the post-disclosure comments/submissions by the interested parties and the domestic industry and considered relevant by the Authority are examined below.
151. With respect to the submission by the domestic industry concerning the re-quantification of the dumping margin and injury margin for the non-cooperative Chinese exporters, the Authority has determined the margins based on the facts available. It is also noted that the prices of imports from China are also higher than the prices of imports from Thailand and Korea RP. In view of the same, it is reasonable that the dumping margin and injury margin for China would be lower than that for the producers in Thailand and Korea RP.
152. As regards the submission that the raw material cost of the domestic industry to be reconsidered and reviewed for calculation of the non-injurious price, the Authority notes that raw material cost has been determined as per annexure III of the rules.
153. The Authority has obtained and relied upon details of imports from DG Systems, which may show different volumes than that claimed by the applicant. Further, the Designated Authority has relied upon verified information in examining the economic parameters. There is no material change in the economic parameters, as claimed by the applicant, and as considered by the Authority.
154. As regards the contention that the volume of imports has been analysed on a yearly basis while the price effect has been analysed on a quarterly basis, the Authority notes that in order to undertake examination of price effect of imports on the domestic prices, a quarter-wise analysis was undertaken, since the domestic industry was operational only during the period of investigation. On the other hand, the subject imports were entering the country for the entire injury period.
155. With respect to the arguments by AVT regarding the determination of normal value for the exporter, the Authority notes that the sales disregarded for the determination of normal value for the exporter are in consonance with the provisions of Article 2.2.1 of the Agreement. It is noted that the loss-making sales which were disregarded were made over an extended period. Further, Footnote 5 to Article 2.2.1 provides that sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value. In the present case, the loss-making sales are not less than 20% of the total volume of sales during the quarters. Thus, such sales were not found to be in the ordinary course of trade and were disregarded.
156. Further, the Authority has also examined the contention of the exporter that the overall cost of production of the POI should be considered for performing the ordinary course of trade test only for the domestic sales made in the Quarter 2 and Quarter 3 of the period of investigation and not for all sales made during the period of investigation. The Authority notes that such an approach would be inappropriate being selective in nature.

The Authority further notes that there is a significant decline in raw material cost over the period, with a decline in the prices as well. Therefore, in view of ensuring consistency of approach, the Authority has compared the prices in each quarter, to the cost of the same quarter for all exporters, to examine whether the

sales were made in the ordinary course of trade. The Authority does not find it appropriate to make any modifications to the dumping margin already determined.

157. With regards to the contention that the normal value for Q2 and Q3 for AVT should be calculated based on cost of production plus reasonable profit margin of 5%, it is seen that the exporter has not submitted any reasoning or justification regarding the reasonableness of consideration of 5% profit margin. For determination of the normal value, the Authority has considered the profit earned by the exporter itself in respect of sales of subject merchandise made at the same time period, which cannot be considered unreasonable. In this regard, the Authority notes that the provisions of Section 9A(1)(c) of the Act provide that when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country, normal value can be determined on the basis of 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. However, the provisions of Section 9A(1)(c) or the Rules do not define what profit margin shall be considered reasonable in this regard. The Authority notes that in a situation where the volume of profitable sales would have been less than 80%, but higher than 20%, the normal value would have been determined based on the price of profitable sales only, as per the consistent practice of the Authority. The price of profitable sales is essentially the cost of production plus the profit margin on profitable sales. However, simply because the volume of profitable sales is less than 20%, it cannot be considered that the profit margin on profitable sales is no longer an appropriate benchmark for the determination of normal value. Consideration of a benchmark of 5% in such a situation would effectively imply a more favourable treatment to a producer having a lower volume of profitable sales (that is, less than 20% of total volume), as compared to a producer having a higher volume of profitable sales (that is, more than 20% of total volume). The Authority further notes that the exporter has not explained any reason why the profit margin earned on the profitable sales in these two quarters should be considered unreasonable. On the contrary, the Authority notes that the profit margin earned in the remaining quarters of the period of investigation, where normal value has been determined based on selling price was even higher, at \*\*\*% in Q1 and \*\*\*% in Q4. In view of the higher profit margins earned in the two quarters, where normal value has been determined based on the selling price, it cannot be considered that the profit margin of merely \*\*\*% in Q3 and \*\*\*% in Q4 are unreasonable.
158. The Authority has considered projections of the domestic industry, after due adjustment for fluctuations in raw material cost. Further, it has been a practice of the Authority to consider and compare the actual performance of the domestic industry with the projected performance in material retardation cases. Such a comparison does not go beyond the scope of examination of the Authority.
159. With regards to the contention that the Authority has only selectively analysed injury parameters, it is noted that the Authority has examined every parameter listed under the provisions of Para (iv) of the Annexure-II to the Anti-dumping Rules in its injury examination. The other interested parties have not identified any specific parameters which have not been analysed in the disclosure statement.
160. With respect to claims that the volume of imports has declined when compared on a quarterly basis, the Authority finds that it is obvious that the volume of imports would be arrested once a new producer enters the market. Further, despite a decline in the imports over certain quarters, the volume of imports during the period of investigation was still higher than the previous year while the landed price of the imports declined. Thus, even though the volume of domestic sales increased, the growth of the domestic industry was retarded due to the presence of a significant volume of imports in the market.
161. With regards to the contention that global market prices are lower than the non-injurious price of the domestic industry which imported refined glycerin at higher cost, it is noted that the exporter from Thailand has also used refined glycerin in its production process, instead of deriving refined glycerin from crude glycerin. Thus, the higher cost of production would also have an equivalent impact on the cost and prices of the exporter. Further, NIP has been determined as per annexure III of the rules.
162. The Authority notes that with respect to the argument concerning the comparison of landed price with cost of production considering utilization of crude glycerine, one of the exporters has claimed that since they procured raw material at high cost under contractual obligations, their cost of production and resultant prices would decline over time and the effect would not be visible immediately. However, on the other hand, the exporter has also claimed that the domestic industry is facing injury due to its procurement of glycerine at high cost, which has resulted in a high cost of production. Therefore, on one hand, while the exporter is citing a business reality, on the other hand, it is claiming the same situation as a poor purchasing decision on the part of the domestic industry, where margin was determined based on comparison of prices. The Authority further notes that the exporter has shown dumping even in Q1 and Q4. Had the prices taken time to reflect the changes in raw material prices, the same would have been true for both, home market and export market. However, the same is not true in the present case.
163. With regards to the claim that a new producer in the market required considerable time to stabilize, the Authority notes that the domestic industry was operating at a high capacity utilization during the first quarter of

its operations. However, subsequently, the capacity utilization of the domestic industry declined which shows that it was forced to curtail operations due to the presence of significant volume of dumped imports and not because of initial operational inefficiencies.

164. With regards to the argument that the domestic industry faced low sales and capacity utilization due to existing contracts and time taken for sampling / quality approvals, the Authority notes that the other interested parties have not submitted any evidence to demonstrate that the poor performance of the domestic industry is due to such other factors.
165. The Authority notes that one of the exporters has claimed that the Authority incorrectly held that Tamilnadu Petroproducts Limited ceased operations due to cheap imports and that such flawed observation casts doubt over the investigation. It is noted that the exporter has not provided any evidence to prove its claim that the previous producer of ECH closed operations for reasons other than cheap imports. On the other hand, the annual reports of Tamilnadu Petroproducts show that the operations for ECH were closed due to presence of cheap imports.
166. With regards to the argument that the projected performance parameters of the domestic industry relied on in the material retardation analysis have not been disclosed, it is noted that such information is confidential in nature and the same cannot be disclosed publicly, to the detriment of the party making the submission.
167. With regards to the claim that the epoxy industry would suffer due to imposition of duties since any advantage offered due to low-priced imports of ECH from subject countries could be negated by exporters in non-subject countries which may offer competitive prices, it is noted that the subject countries in the present investigation are the major exporters of ECH globally. The information provided by the applicant shows that the subject countries have exported ECH at higher prices to third countries as compared to India and no evidence has been submitted to the contrary. Therefore, producers of epoxy in third countries are also obtaining ECH at higher prices. Further, the subject countries are also major exporters of epoxy to India and producers of epoxy in such countries are sourcing ECH at higher prices than the price of exports of ECH to India. This is evident from the fact that the dumping margin has been found positive, which shows that the prices of ECH in the subject countries are higher than the prices at which the same has been exported to India. Since the quantum of duty does not exceed the margin of dumping, even after imposition of duty, the prices of ECH in India would not be higher than that in the subject countries. Thus, the advantage available to the epoxy industry in India is not likely to be negated by exporters in non-subject countries.
168. As regards the claim that that Authority has not examined the criteria laid down by the WTO Panel in Morocco - Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey, it is noted that the Panel only laid down guidance for the criteria which an investigating authority may consider while examining material retardation. However, the Panel observed that Article 3.1 does not prescribe a specific methodology for determining whether an industry has been established and the Authority is allowed to use any reasonable methodology. Further, the other interested parties have not highlighted any parameters which suggests that the domestic industry was established and thus, did not suffer material retardation.
169. With regards to the claim that the ex-factory export price determined for Jiangsu Ruixiang Chemical Co. Ltd. varied from the information submitted by the exporter, the Authority has revised the export price determined for the exporter. The updated export price and dumping margin have been incorporated in the table hereinabove.
170. With regards to the arguments concerning determination of non-injurious for the domestic industry and consideration of return at 22% for such determination, the Authority notes that the non-injurious price for the domestic industry has been determined based on the established practice of the Authority and the injury margin has been determined accordingly.
171. As regards the argument that imposition of duties would result in increase in trade tensions with China, it is noted that both India and China are members of the WTO and signatories to the GATT and the accompanying agreements, including the Anti-dumping Agreement. Thus, any action undertaken pursuant to the provisions of the Anti-Dumping Agreement cannot be considered as a trigger for any trade tensions.

#### L. CONCLUSIONS AND RECOMMENDATIONS

172. After examining the submissions made by all the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes as below.
  - i. The application for initiation of the anti-dumping investigation into imports of Epichlorohydrin ("ECH") originating in or exporter from China PR, Korea RP and Thailand was filed by Epigral Limited (formerly known as Meghmani Finechem Limited).
  - ii. The product under consideration is Epichlorohydrin, which is a colorless liquid with purities greater than 99%. It is majorly used to make epoxy resins and is also used in pharmaceutical APO, water

- treatment, paper chemicals, synthetic rubbers, surfactants, adhesives, elastomers, plastics and rubbers and as a strength additive in papers.
- iii. The applicant has produced like article to the imported product under consideration.
  - iv. The applicant is the sole producer of the like article in the country and commenced commercial production during the period of investigation. The applicant set up a new manufacturing plant for the subject goods and its operations were not stabilized during the period of investigation. Thus, the applicant constitutes an establishing industry, and is the domestic industry for the purpose of Rule 2(b) of the Rules.
  - v. Two other producers, DCM Shriram Limited and Grasim Limited, are in the process of setting up production capacities for the subject goods.
  - vi. The producers in the subject countries are dumping the product under consideration into the Indian market.
  - vii. The demand for the subject goods increased over the injury period.
  - viii. The volume of imports increased over the injury period and were the highest during the period of investigation, despite the commencement of production by the domestic industry. The imports accounted for 94% of the total imports into the country and were higher than the demand-supply gap.
  - ix. India is the largest export market for the exporters in Thailand and was the second largest export market for exporters in China PR and Korea RP, which shows that India is a key market for the exporters in the subject countries.
  - x. The subject imports were undercutting the prices of the domestic industry in each quarter of the period of investigation. In fact, the subject imports were priced even below the projected selling price of the domestic industry, which restricted the domestic industry from reaching its target price.
  - xi. The imports have depressed the prices of the domestic industry.
  - xii. The landed price of the imports was even lower than the raw material cost, with the mark-up of the export price over the raw material cost reducing in the second half of the period of investigation when the domestic industry commenced production.
  - xiii. The domestic industry was unable to recover its variable cost which resulted in a negative contribution during part of the period of investigation.
  - xiv. As regards the effects of the dumped imports on the economic parameters of the domestic industry, the subject imports caused material retardation to the establishment of a new industry in India. The following are relevant in this regard –
    - a. While the domestic industry achieved high capacity utilization in Q1, its capacity utilization declined and almost three-fourths of its capacity remained idle.
    - b. The production and domestic sales of the domestic industry remained significantly low and below the projected production and sales.
    - c. Since the domestic industry was unable to dispose of its production, it was forced to shut down its plant for 50% of its total operational period during the period of investigation.
    - d. The domestic industry was able to cater to a minor share of 4% in the total despite having significant idle capacity while the imports accounted for 90% of the market share.
    - e. As a result, the domestic industry faced piling up of inventories, which were equal to almost half of their production and equal to 128% of the domestic sales. Further, the inventories in hand exceeded monthly sales in each month of operation.
    - f. The profitability of the domestic industry declined throughout the period of investigation and it suffered huge losses and cash losses. Further, the domestic industry earned negative returns on its investment since Q2. This is in contrast to the profits projected by the domestic industry.
    - g. Further, the domestic industry would have suffered significant losses even if it operated at 80% utilization at current prices.
    - h. While the volume parameters of the domestic industry improved, its profitability parameters declined in each quarter.
    - i. Due to the significant losses suffered and the negative return earned, the subject imports adversely impacted the ability of the domestic industry to raise capital investments.

- xv. Considering the above, it is clear that the domestic industry has suffered material retardation to its establishment due to the dumped imports.
- xvi. A comparison of the landed price of subject imports with the non-injurious price determined by the Authority shows that the injury margin is significant and positive for all responding exporters, barring one.
- xvii. The investigation has not shown any other factor, which could have caused injury to the domestic industry.
- xviii. The anti-dumping duty in the larger public interest as is evident from the following—
- The Indian industry has made major investments in order to manufacture the subject goods to make Indian self-reliant.
  - There is a need to protect significant investments undertaken by the Indian industry.
  - Imposition of duty would not have any adverse impact on the downstream users.
  - Imposition of duties would be advantageous for the users as the increase in import price post imposition of duties would still be lower than the normal value in the domestic market of the subject countries.
  - A producer of ECH was already forced to shut down operations in the past due to cheap imports.
  - Once the other Indian producers commence production, there would be no demand-supply gap in the country for the subject goods.
  - The subject goods can be imported from other countries as well at competitive prices.
  - The presence of three producers in the market would ensure that a monopoly is not created in the industry.
  - Imposition of duties would lead to conservation of foreign exchange in the country.
173. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the domestic industry, exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-dumping Rules, the Authority is of the view that imposition of anti-dumping duty is required to offset dumping and injury. Therefore, the Authority recommends the imposition of anti-dumping duty on imports of the subject goods from the subject countries.
174. Having regards to the lesser duty rule followed, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of the anti-dumping duty on the imports of subject goods originating in or exported from the subject countries, for a period of 5 years, from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Column 7 of the duty table appended below.

**Duty table**

S. N.	Heading	Description	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	2910 30 00	Epichlorohydrin	Thailand	Thailand	AGC Vinythai Public Company Limited (AVT) (Formerly known as Advanced Biochemicals (Thailand) Co., Ltd.)	298	MT	USD

2	-do-	-do-	Thailand	Any country, including Thailand	Any producer other than (1)	327	MT	USD
3	-do-	-do-	Any country other than Thailand, China PR and Korea RP	Thailand	Any	327	MT	USD
4	-do-	-do-	Korea RP	Korea RP	Hanwha Solutions Corporation	274	MT	USD
5	-do-	-do-	Korea RP	Korea RP	Lotte Fine Chemical Co. Ltd.	506	MT	USD
6	-do-	-do-	Korea RP	Any country, including Korea RP	Any producer other than (4) and (5)	557	MT	USD
7	-do-	-do-	Any country other than Thailand, China PR and Korea RP	Korea RP	Any	557	MT	USD
8	-do-	-do-	China PR	China PR	Jiangsu Ruixiang Chemical Co., Ltd	108	MT	USD
9	-do-	-do-	China PR	China PR	Ningbo Huanyang New Material Co., Ltd.	Nil	MT	USD
10	-do-	-do-	China PR	Any country, including China PR	Any producer other than (8) and (9)	216	MT	USD
11	-do-	-do-	Any country other than Thailand, China PR and Korea RP	China PR	Any	216	MT	USD

#### M. **FURTHER PROCEDURE**

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

ANANT SWARUP, Designated Authority