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F. No. 7/34/2018-DGTR
Government of India
Department of Commerce
Ministry of Commerce & Industry
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi – 110001

Dated the 18th July, 2019

NOTIFICATION

FINAL FINDINGS

Subject: Sunset review Investigation concerning imports of PVC Suspension Grade Resin from China PR, Thailand and USA.

F. No.7/34/2018-DGTR: Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995, as amended from time to time (hereinafter also referred to as the Rules) thereof;

A. Background of the case

1. WHEREAS, the original investigation concerning imports of the subject goods from the Taiwan, China PR, Indonesia, Japan, Malaysia, Thailand, USA and Korea RP was initiated by the Authority and thereafter Final Finding Notification was issued by the Authority vide Notification No. 14/8/2006-DGAD dated 26th December, 2007 recommending imposition of definitive duty. On the basis of recommendations made by the Authority in the final findings, definitive anti-dumping duty was imposed with w.e.f. 23rd January, 2008 through Notification No. 11/2008. Post issuance of the final finding, the Authority issued a corrigendum dated 14th February, 2008 through Notification No. 14/8/2006-DGAD making modification in the duty table and the same was imposed accordingly by the Customs Authorities through Notification no. 38/2008 dated 24th March, 2008. Aggrieved by the order; interested parties approached the CESTAT and the matter was remanded back to the Authority. Post investigation, the Authority re-affirmed the decision passed by the Authority on 26th December, 2007. An expiry review investigation was conducted and the Authority recommended continued imposition of duty on the subject countries excluding Korea. The Ministry of Finance extended definitive anti-dumping duty vide notification No. 27/2014 dated 13th June, 2014.

2. WHEREAS, an investigation was initiated against the imports of subject goods from EU and Mexico through Notification No. 14/1012/2012-DGAD dated 5th October, 2012. The

i. The product under consideration in the present investigation is PVC Suspension Resin, which is homo-polymer of vinyl chloride monomer (suspension grade) which is the same as was examined and concluded upon by the Authority in the original investigation. Since there are no major developments since the previous investigations with regard to the product under consideration, the scope of the product under consideration is required to be kept same as that of original investigations.

ii. Petitioners had agreed for exclusion in the previous investigations of certain products for the reason that these are totally different products as compared to suspension PVC and the domestic industry was not even producing these products earlier. Even when some of these products such as CPVC are now made in India, the same in any case are entirely different products, produced in different plants and after making significant investments. These products constitute totally different products as compared to the product under consideration. The scope of the product under consideration is limited to PVC Suspension Resin.

iii. The subject goods are classified under chapter 39 of Customs Tariff Act, 1975 under the sub-heading 39041020 but have also been imported under other subheadings 39041090, 39042120, 39042190, 39042210, 39042290, 39049000. The Custom classification is indicative only and not binding on the scope of investigation.

iv. The use of multiple HS codes is very widespread and continues even after the Govt. has specified HS code for the product under consideration. Petitioners are unable to ascertain whether ADD has been collected on all such imports in the past or not. Therefore, the petitioners request the Authority to kindly consider extension of ADD for product falling under 3904 classification.

C.2 <u>Views of the other interested parties</u>

8. Following submissions were made by the domestic industry with regards to the product under consideration:

i. The customs classification is only indicative and not binding. Further, this issue is for the CBIC to address. Domestic Industry's request to impose ADD on all imports under 3904 classification is untenable as the said tariff heading extends to other products not within the scope of PUC.

ii. The DGTR in its Manual of Operating Practices for Trade Remedy Investigations (at page 38) has already specified that, "*The application of sunset review, in terms of Rule 23(1B) of the Rules can only be brought against the defined scope of PUC in the original investigation. Neither the applicant nor the Authority on its own can alter the scope of the PUC during the sunset review.*" Thus, the Authority must refrain from any amendment to the scope of the PUC in the present sunset review investigation even in terms of expanding the classification of the PUC

C.3 <u>Examination by the Authority</u>:

9. The product under consideration in the present investigation is "homo-polymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under Customs Classification No. 3904". The product under consideration

excludes specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin. The product under consideration has also been referred to as "Poly Vinyl Chloride (PVC) Resin", "Suspension Grade" or "PVC Suspension Resin".

10. The subject goods are classified into different grades based on their K-value. Main applications of the subject goods depend upon their K-value; higher the K-value, higher the molecular weight. Low molecular weight PVC suspension finds main application in rigid film & sheet, blow moulded bottle and other injection moulding articles. Higher molecular weight PVC suspension finds major application in extrusion pipes and profiles. Still higher PVC suspension along with high porosity finds typical applications in wires & cables and other flexible applications such as shoe lasts, flexible films, etc.

11. The present investigation being a sunset review investigation and anti-dumping duties being in force on the imports of the subject goods from the subject countries, the Authority considers that the scope of the PUC in the present investigation remains the same as that in the original and subsequent review investigation. Moreover, none of the interested parties have made any quantified submission requesting modification (including curtailment) in the scope of the review. In this regard the last concluded SSR finding issued vide Notification No. 21/29/2011-DGAD dated 4th April, 2014 is relied upon, wherein the product under consideration was considered as follows:

7. The product under consideration in the present investigation is homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification no. 3904.21. The product under consideration however, excludes the specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin . The product under consideration is the same as considered in the original investigation.

8. The product under consideration does not have dedicated HS Code and the imports are cleared under different HS Codes falling under 3904. The customs classification is indicative only and in no way binding on the scope of the present investigation and proposed measures.

10. Having regard to the evidence on record and initiation notification, the Authority considers it appropriate to keep the scope of the product under consideration to the same as was considered in the original findings.

12. The Authority notes the submissions made in response to the disclosure regarding stipulation of the ITCHS at 4 digit level. The Authority in this regard notes that while different ITCHS may be quoted by producers/exporters, the product description assumes primary over the ITCHS as the same is indicative, keeping in view such concerns, classification of the PUC is mentioned at 4 digit level as was the case earlier. It is also clarified that the custom classification is only indicative in nature and not binding.

13. With regard to like article, Rule 2(d) of the Anti-Dumping Rules provides as under:

> *"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;*

14. After considering the information on record, the Authority holds that there is no known difference in product under consideration exported from subject countries and the subject product produced by the Indian industry. The subject goods produced by the domestic industry is comparable to the subject goods exported from subject countries in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.

15. Thus, the Authority holds that the subject goods produced by the petitioners are like article to the product under consideration exported from the subject countries, in accordance with the Antidumping Rules.

D. Scope of domestic industry & standing

D.1 Views of the domestic industry

16. The following submissions have been made by the domestic industry in this regard–

i. M/s Chemplast Sanmar Limited, M/s DCW Limited and M/s DCM Shriram Ltd. are the petitioners in the present investigation, who command "a major proportion" of total India production.

ii. M/s Chemplast Sanmar Limited, the suspension poly vinyl chloride Business/Undertaking of the Sanmar group has been transferred to and vested in M/s Chemplast Cuddalore Vinyls Limited. This has been approved under a composite scheme of Arrangement / de-merger by the Hon'ble National Company Law Tribunal, Single Bench, Chennai ("NCLT"), under section 230 and 232 of Companies Act, 2013, vide its order dated 29th April, 2019.

iii. M/s DCM Shriram Limited has a joint venture company, namely M/s Shriram Axiall Private Limited (now known as Westlake), which is involved in production of PVC compounds. The company has imported an insignificant volume of product under consideration from its related company, namely, Axiall LLC (Westlake), in USA. Details of which are on record. The imports made by this related company are insignificant in terms of production, consumption and imports in India.

iv. Even if there is a related company in USA engaged in production of PUC and exporting it to India, the same should not imply ineligibility of a domestic producer in India. While Axiall LLC has exported the PUC to India, Shriram Axiall Private Limited has

not imported product under consideration from Axiall LLC. Statement of imports by Shriram Axiall Private Limited shows that there is small (negligible) volume of imports from Thailand.

v. While Axiall LLC (Westlake) has exported to India, DCM Shriram should not be treated as ineligible since Shriram has no direct or indirect control over Axiall. DCM itself has brought request for extension of ADD on imports from USA (which implies that DCM has sought duty on such exporter).

vi. Petitioner companies with the exception of DCM Shriram certified that none of them is related to any importer of the subject goods into India, that none of them has imported the subject goods into India and that none of them is related to any exporter of the subject goods from the subject countries.

vii. There are two more producers of the subject goods in India namely; Reliance Industries Limited and Finolex Industries Limited. The fact that petitioning companies constitute major proportion in the Indian production cannot be denied on the ground that one of the major producers of the subject goods RIL is not participating in the present investigation. The petitioners should not be penalized for non-participation by RIL.

viii. The share of petitioning companies in Indian production collectively is 30.14%. While production of Reliance Industries Limited is also quite significant, the same does not imply that production of the petitioning companies does not constitute "a major proportion" in Indian production.

ix. There can be more than one major proportion in any industry. In a situation where there is more than one proportion in India, the authority is required to consider whether the industry before the authority constitute "a major proportion" even when another industry before the authority may also constitute "a major proportion". Under present circumstances, the industry before the authority clearly constitutes a major proportion.

x. The petitioners have not claimed continued injury but have claimed likelihood of recurrence of injury. While continued injury to the domestic industry is largely determined based on performance of the domestic industry and therefore constitution and composition of domestic industry assumes greater relevance and importance, in a case where the request for extension of duty is based on likelihood or recurrence of injury, what is relevant to the authority is the parameters impacting the determination of likelihood of recurrence.

xi. There is no information on record to show that information of non-participating Indian producers is such that the same will establish absence of likelihood of recurrence of injury. There is no claim of interested parties that exclusion of data of non-participating producers will lead to material distortion in the analysis. It is only a conjecture of the interested parties.

xii. The Authority has issued several determinations where the share of petitioners was much below 50% threshold. It is not even mandatory for Authority to determine injury within the meaning of Article 3 of the WTO Agreement. Petitioners have not claimed that dumped imports have caused continued injury. Such being the case, assessment of injury within the meaning of Article 3 in any case is neither relevant nor necessary.

D.2 Views of the other interested parties

17. The following submissions have been made by the other interested parties in this regard –

i. There should be a strong support for continuation of duty. The domestic industry represents only 30% production of DI. The companies having major proportion are not supporting the petition.
ii. No source of information is given for arriving at the production of the other Indian Producers.
iii. DCM Shriram is not eligible domestic industry as it is related to one of the exporters in USA and has imported the PUC over the injury period.
iv. Petition is silent on the source of information obtained for Reliance Industries and Finolex as well as the computation of the eligibility of the petitioners as regards standing. The production of RIL and Finolex has to be proved by the domestic producers themselves unless it can be proved by some other document.
v. Reliance is also placed on 'Seamless Tubes and Pipes from China PR' wherein the applicant accounted for only 27% Despite the petition containing letters of support, Authority held that in absence of information from the supporters, injury and causal link could not be carried out and terminated the investigation. Further the legitimacy of the claim of the petitioner as regard to 30% production has not been proved through credible evidence.
vi. As per Rule 2(b), DCM Shriram is ineligible for being within Domestic Industry as it is related to an exporter viz. Axiall LLC, having partnered together with it to form a 50:50 joint venture viz. Shriram Axiall Pvt Ltd.
vii. DCM Shriram and Axiall LLC are in a position to legally and operationally exercise restraint over Shriram Axiall. Shriram Axiall has made imports from the subject countries resulting in it behaving differently from non-related producers. The standing of the Domestic industry be reassessed by discounting the production of DCM Shriram to assess if the other applicants constitute the threshold of 25%.
viii. RIL operations must be analysed to determine state of Domestic Industry.
ix. The standing of applicants as 'domestic industry' is suspect as they allegedly account for only 30% of production of subject goods, a claim not substantiated by any evidence except a mere statement to the effect and production figures whose source has not been disclosed. No information provided by RIL and Finolex, who constitute a major proportion of production in India, regarding their production during POI. Furthermore, as RIL and Finolex, participated in the previous investigations but have abstained from this sunset review, the applicants do not constitute major proportion any longer.
x. Imports by Shriram Axiall should be compared with DCM Shriram's own production and consumption which will correctly reflect the proportion of imports made by it and whether the same is significant. Standing of Domestic Industry should be reassessed after exclusion of DCM Shriram.

D.3 Examination by the Authority:

18. The petition was filed by Chemplast Sanmar Limited, now known as, M/s Chemplast

Cuddalore Vinyls Limited, DCW Limited and DCM Shriram Ltd. Apart from the petitioners, there are two other producers of the subject goods in India namely Reliance Industries Limited and Finolex Industries Limited.

19. It is noted that the petitioning companies have not imported the subject goods from the subject countries. However, related party of M/s DCM Shriram Limited, i.e., M/s Shriram Axiall Private Limited which is involved in production of PVC compound has imported the subject goods from Thailand and other countries. It is noted that imports made by Shriram Axiall Private Limited from subject country (Thailand) is merely 62 MT which extremely negligible in relation to imports of the product in India, Indian production & consumption and production of DCM Shriram Limited.

20. It has been contended that DCM Shriram Limited is related to a producer in USA. The Authority notes that the explanation to Rule 2 (b) provides that the domestic producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person subject to the condition that are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers. It has not been shown that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

21. It is noted that Shriram Axiall Private Limited has not imported product under consideration from Axiall LLC, despite the fact that the company is partly owned by the US producer. The collaboration is of technical nature. As noted earlier, Shriram Axiall Private Limited, has imported goods from other countries which is insignificant in relation to imports of the product in India, Indian production & consumption and production. The Authority therefore considers that these imports do not render DCM Shriram Ltd. as ineligible domestic industry under the Rules.

22. As regards the contention that the production of the petitioners occupies only 30% of the total Indian production, information from other domestic producers were sought. However these producers have not responded to the present investigation. It is further noted that in a sunset review investigation where the request for extension of anti-dumping duties is not based on continued injury to the domestic industry and is rather based on likelihood of recurrence of injury, it is the information of exporters that is more pertinent to examine whether or not there exists likelihood of recurrence of injury. The Authority notes that in response to the disclosure, various interested parties have submitted that M/s Shriram Axiall LLC be excluded, M/s RIL has not participated and in event of its participation being an efficient unit, the NIP would be covered and thereby the likelihood of injury being impacted. .

23. In view of the above, the Authority holds that the production by the petitioning companies constitutes ‘a major proportion’ of total Indian production of the like product and that the application satisfies the requirements of ‘standing’ under Rule 5 of the AD Rules (even

though the same was not applicable at the stage of sunset review) and constitute 'Domestic Industry' in terms of Rule 2(b) of the AD Rules.

E. Miscellaneous submissions

E.1. Views of the Domestic Industry

24. The following miscellaneous submissions have been made by the Domestic industry:

i. Domestic industry filed an application seeking extension of ADD against imports from EU, Mexico, Taiwan, China PR, Indonesia, Japan, Malaysia, Thailand and USA on the basis of their consideration that extension of ADD in respect of these countries is appropriate. The authority on the basis of prima facie evidence considered it appropriate to initiate the investigation only against China, Thailand and the USA. In any case it is for the authority to decide against who the investigation should be initiated. The other interested can refer the initiation notification in this regard.

ii. As regards the argument that Indian producers as a business tool to further increase market share in various products, it may be seen that list given by the interested parties itself shows that they are referring to only caustic soda (where the petitions are filed by AMAI, and there are more than 36 producers for the product in the country, and where DCW, DCM and Chemplast are only some of the producers in India), Soda Ash (the leading producers of soda ash in the country are GHCL, Nirma and Tata Chemicals). Petitioner's production constitutes hardly 10% of Indian production, Methylene Chloride (where production of Chemplast Sanmar is again much lower than Indian production. Gujarat Flurochemical is the leading producer of the product in the country). It is only PVC paste resin where Chemplast Sanmar is the only producer and who has taken relief under anti-dumping law.

iii. Other interested parties have attempted to present misleading position before the authority. What is relevant for the purpose of this investigation or other investigations is whether the PUC is being exported to India at dumped prices and whether the same is causing injury to Indian industry. The fact that the Indian industry has taken relief under the law for a number of other products is entirely immaterial to the process.

iv. There is no specific methodology involved in identifying the PUC. All transactions where description states "suspension" has been considered as product under consideration. The present case being a sunset review, and the product not holding varied descriptions, there is no necessity of clarifying the import methodology.

v. The information that can be procured from MCA is totally different from the vast information that is available in the annual report. Thus, the annual report is confidential in nature. However, petitioners downloaded information from MCA has been filed separately.

vi. Aspect of public interest cannot be limited to mere demand supply gap. Considering that significant fresh investments are in the pipeline, imposition of ADD is vital in order to ensure that these investments remain viable. GOI has earlier imposed ADD and extended the same which in itself establishes that imposition of ADD on the PUC shall be in public interest.

vii. The petitioners have already disclosed all such information that is required to be disclosed as per the practice followed by the authority.

viii. The petitioners are unable to make any submissions on the dumping margin for the reason that the exporters' have claimed almost entirety of the questionnaire response as confidential. The NCV of the questionnaire response are nothing but only empty formality.

ix. Confidentiality claimed by exporters is not as per the trade notice. The EQRs filed are deficient and are devoid of any critical information.

E.2 <u>Views of the other interested parties</u>

25. The following miscellaneous submissions have been made by the other interested parties:

i. The duty has been in force for more than 11 years and has served its intended purpose.

ii. Cumulation of imports from the USA is not possible with the imports from China and Thailand. Imports from USA are less than 3% and do not warrant cumulation with the imports from China and Thailand

iii. The investigation should not have been initiated considering the information contained in the petition or in fact, the lack thereof. Excessive confidentiality has been claimed without sufficient reasoning. Further it does not also contain sufficient/adequate evidence on dumping and/or injury and likelihood to justify initiation of the investigation.

iv. Reasons for the exclusion of subject countries not given in the initiation notification.

v. ADD has been used by the Indian producers as a business tool to further increase market share in various products. Company-wise list of ADD cases has been provided.

vi. The determination made by the authority in Soda Ash (Turkey and Russia) case are relevant, where case was not initiated on the ground of good performance of domestic industry.

vii. Excessive confidentiality has been claimed. Import methodology has been unduly claimed confidential. Chemplast Annual Report can be produced by paying the fees to MCA still the Annual Report has been claimed confidential.

viii. The "test" studying the behaviour of the subject countries on a month by month basis for a period of 10 years as suggested by the Petitioner is not part of the prescribed analysis for assessment of likelihood of dumping and injury. It is also noted that the price of some country being the lowest was a given in the said study. The Petitioners failed to observe that that the Chinese prices were not the lowest price in 92 instances out of 120.

ix. Authority must clarify the basis of its determination that there existed prima facie sufficient justification for initiation of investigation only against China PR, Thailand and USA. The Authority is requested to disclose the reasons for non-selection of certain other countries regarding which similar information was provided by the Petitioners (as for the subject countries) for seeking initiation of investigation.

x. The Authority has excluded five countries out of eight countries without providing appropriate reasons for exclusion of the same. The Director General should give

speaking order as why the other countries are excluded. In the past, during 1st sunset review investigation, the Authority itself had excluded Korea RP from the scope of subject countries and reasons for the exclusion of the same were explicitly explained as per Para 155 of the Final Findings No.21/29/2011-DGAD dated 4th April 2014. The same analogy should be applied herewith.

xi. As per information available with us, Chemplast has no plans for capacity addition in India. Reliance Industries has issued the project report for debottlenecking and expansion of Petrochemical Plant in March 2016. It got approved during April 2017, however, it has not started the expansion till date. Thus, Indian industry cannot solely depend on the domestic producers to fulfil the demand.

xii. The Petitioners have made averments regarding their investments which create suspicions of disclosing false information to the Hon'ble Designated Authority.

xiii. Petitioners have made various allegations of excessive confidentiality claimed by the Exporters. The Exporters submit their own allegations of excessive confidentiality claimed by the Petitioners

xiv. Non confidential version of the application is not as per Rule-7 and the trade notice.

xv. Only the Authority can seek information under the Rules. Further, the rules also prohibit delegation. Shri J.M. Bishnoi was appointed by the central govt. to assist the Authority. In view of the rules, the direction calling for post Post-POI data could not have been issued by any other person except for the Designated Authority. Further, it has been wrongly stated in the letter dated 9.4.2019 that such information was sought and intimated at the time of the oral hearing. Direction to provide information is without jurisdiction due to not being issued by the competent authority;

xvi. Post-POI information submitted by the interested parties pursuant to the subject letter ought to be discarded by the Designated Authority for purposes of its final determination.

xvii. In view of Trade Notice 5/2018, transaction wise third country data is not to be seen in case normal value has been claimed by the producer/exporter on the basis of their sales in the home market and in such cases, *format set out in this questionnaire with respect to exports to third countries may be ignored* . The Trade Notice mentions that it is in supersession of all previous instructions and trade notices issued earlier.

xviii. Directions cannot be given to provide information which is beyond the POI defined by the Authority since there is no provision under municipal law or AD agreement for considering data beyond the POI. The POI defined forms the basis for objective and unbiased determination whereas adoption of post POI data in selective cases introduces subjectivity would be inconsistent as well arbitrary.

xix. In case the Authority is of the opinion that post POI data may be relevant then it has the power to extend the POI. Unless the POI is extended, any information not within the period covered does not have any legal sanctity and would be extraneous for purposes of dumping and injury determination.

xx. Even assuming that the seeking of post POI data implies extension of the POI the same has reduced the time given to interested parties for furnishing the information to 3 weeks which is outside the scope of Rule 6(4) that allows minimum 30 days. In such a case even the domestic industry be directed to furnish the required data and the

interested parties be given an opportunity to present their views which would imply another hearing, fresh submissions and rejoinders.

E.3 Examination by the Authority

26. The various miscellaneous submissions considered relevant have been examined as under:

i. As regards to contentions raised on the reasoning for the exclusion of some countries, the Authority notes that the initiation notification specified that there was insufficient justification for conducting review investigations in respect of imports from EU, Mexico, Indonesia, Taiwan, Japan and Malaysia, thus the scope of the review investigation is restricted to imports of the product under consideration from China PR, Thailand and USA only.

ii. As regards the contention of non-disclosure of import methodology, it is noted that the all transactions where description states "suspension" have been considered as product under consideration in the present investigation. Further, the domestic industry had filed hard copy of the transaction wise import data which shows that all the transactions considered by the domestic industry as PUC involves "suspension" in the description. However, none of the interested party sought sorted transaction wise data in the form and manner prescribed.

iii. As regards the contention that the demand in the country is more than the supply ability of the producers, it is noted that the demand supply gap in country should not justify dumping. The dumping margin determined for all the subject countries during POI are positive despite imposition of anti-dumping duty.

iv. As regards the contention with regard to confidentiality of information, it is noted that information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The information related to imports, performance parameters and injury parameters of domestic industry has been made available in the public file. Business sensitive information has been kept Confidential as per practice. The Authority notes that any information which is available in the public domain cannot be treated as confidential.

v. As regard the argument that cumulation of USA imports with the imports from China and Thailand, it is noted that the Designated Authority has not found that the domestic industry is suffering continued injury. Separate information for the three countries is on record with likelihood analysis separately undertaken for each country.

vi. As regard the contention that the antidumping duty being in force for 11 years now and having served its intended purpose, the Authority notes that it proposed to examine the evidence of likelihood of recurrence of dumping and injury, as per rules.

F. Market Economy Treatment (MET), Normal Value, Export Price and Determination of Dumping Margin

F.1. Views of the Domestic industry

27. The domestic industry inter alia submitted as follows:

i. The Authority is requested to kindly consider the price of the product under consideration from market economy third country to India. Significant exports in this period have been made from Taiwan and Korea. The Authority may therefore kindly consider adopting import price from Taiwan or Korea or an average of Taiwan and Korea into India for the purpose of determination of normal value.

ii. The petitioners for the purpose of determining normal value in market economy have referred to the prices of the subject goods quoted in leading trade journals i.e.; IHS Chemical publication. The details regarding the IHS Chemicals are on record.

iii. Published prices mentioned in well established trade journals clearly shows that the price of product in US market is significantly higher than the price at which goods have been exported to India.

iv. The normal value in Thailand has been claimed on the basis of the prices published in IHS Report for South East Asia.

v. Export price has been determined on the basis of weighted average price of imports of all known imports into India. Export price has been determined as the per unit import price from subject countries. The export prices have been, therefore, adjusted for ocean freight, marine insurance, commission, bank charges, port expenses and handling charges.

vi. The calculations of normal value and export price shows that the dumping margins are positive and significant. The Authority is requested to kindly determine monthly dumping margin because of the significant price variations in VCM and PVC prices.

vii. Increase in imports is higher from other countries, however, the price at which goods have come in from other countries is far higher than the price at which goods have come in from subject countries. Import volumes per-se cannot be considered as decisive factor for deciding the scope for subject countries. The other relevant consideration is price at which goods have come in from various countries.

viii. The prices published in IHS are treated very reliable by PVC producers and consumers globally. Most of the global trade happens after looking at the prices mentioned by I.H.S. Any argument that prices mentions in I.H.S. are unreliable is required to be rejected.

ix. In case of China, and considering provisions of Para 7 to Annexure I, normal value is required to be determined on the basis of price from a third country to other countries, including India. Accordingly, the import price from Taiwan or Korea or Taiwan & Korea can be considered for determination of normal value in case of China.

x. Reference is laid on final findings notified by the authority in more than 60 cases after Dec. 2015, wherein, authority has consistently determined normal value after following the provisions laid down under Para 7 of Annexure I. There is no change in

the legal position or the facts of the present case which justify a different consideration in this regard.

xi. The information provided by I.H.S. bears the qualification "For Use by Licensed Subscribers Only". In view of the same, petitioners are not in a position to make I.H.S report public. I.H.S report is one which is mostly used by leading producers of PVC resin globally. The respondents could have bought their own copy of the IHS reports relied on by the petitioners. IHS report is available for anyone who is willing to subscribe for same.

F.2 <u>Views of the interested parties</u>

28. The following submissions have been made by the other interested parties –

i. Imports from third countries have increased at much faster rate than import from subject countries. Dumping is happening from other countries.

ii. There are various inconsistencies with respect to the construction of normal value and export price, which impact the dumping margins projected by the Petitioners.

iii. Petitioners, belatedly in their Written Submissions, suggested that the Normal Value of the subject goods in China PR, in terms of paragraph 7 of Annexure I of the Indian AD Rules, may be constructed on the basis of the PUC from market economy third countries to India, such as Taiwan and Korea RP. Such selection of a surrogate country must follow due process. Firstly, proposal for selection of an appropriate surrogate country must flow from the Authority rather than the parties to the investigation. Secondly, once such a proposal has been made by the Designated Authority, due opportunity must be given to comment upon the appropriateness of the chosen surrogate country. Finally, it is only after such comments have been evaluated that the Designated Authority can proceed to finalize the surrogate country for the purpose of an investigation.

iv. Apart from the process for selection of a surrogate country, it is also critical that the Authority must receive response from the producers in the selected surrogate countries, providing information pertaining to their functioning, cost of production and selling prices. Specifically, in many previous investigations, the Authority refused to consider some countries as appropriate surrogate countries only due to non-availability of responses from producers in those countries.

v. Petitioners made adjustments to the import prices from Taiwan and Korea RP on an unsubstantiated basis. No sources were provided for the import prices or the freight, insurance and other charges or adjustments

vi. Consumption norms of participating exporters must be considered for determination of normal value even if normal value is constructed.

vii. There is no reason or basis to "construct" export price. The Authority has the EQRs filed by the producers / exporters from China PR and the same may be referred, as verified by it, for the establishment of Net Export Price for each of the participating Chinese producer / exporter.

viii. Names of the Chinese traders as reproduced by the Petitioners and the names of the participating members of the Association do not match. It appears that the Petitioners have compared prices of exports to India with prices of exports to rest of the world

ix. Petitioners appear to have provided data pertaining to traders who are not party to the current investigation, with the exception of Xinjiang Zhongtai Chemical Co., Ltd., Shandong Xinfa Import & Export Co., Ltd. and Yibin Tianyuan Group Co., Ltd. In the

case of all three traders, price comparison between prices for exports to India vis-à-vis prices for exports to rest of the world show a difference of merely 2%, with Indian prices being 2% lower. The Petitioners' parallel claim that the exporters' price to third countries is lower than their prices to India (and that therefore there is a likelihood of diversion to India) is totally defeated.

x. It was submitted that the normal value and dumping margin concerning the US producers referred in the petition for this investigation was based on prices published in IHS Report (IHS) for the North American market, according to the petition. The Normal Value during the POI was 80-100 Indian Rupees per KG, and the Dumping Margin was shown as 70-80%, depending on the month. However, the details of the calculation were not provided.

xi. The calculation of appropriate Normal Value relies on the accuracy of the published price index. SHINTECH argues that IHS price index for North America is not a suitable source of information to be used for such purpose.

xii. IHS contract price index is clearly not the representative of absolute values of actual prices in the PVC market in the United States and their use would lead to an unfair comparison of Normal Value and Net export price under WTO and Indian regulation. Petition states that the petitioners used the price information from IHS Report for the US market, which is clearly not appropriate for the purpose of the investigation.

xiii. Instead, ICIS spot price index offers a sounder alternative for the calculation of Normal Value, and one which can be justified and checked against public sources and the other information available on record in the present investigation.

xiv. The prices considered by the Petitioners for determination of Normal Value are unreliable and inadmissible. There is no evidence that these rates are at ex-factory level. Petitioners have claimed arbitrary adjustments.

xv. Article 11.3 of WTO: ADA and Rule 23(1B) of the AD Rules 1995 mandates that initiation of sunset review must be upon a duly substantiated request by the domestic industry. In the Petition, Domestic Industry has determined NV for China based on cost of production of an efficient petitioner company without specifically mentioning which company. For MET countries, data provided in a trade journal viz. IHS Chemical Publication has been relied upon to construct NV.

xvi. Prices mentioned in trade journals are not admissible evidence or judicially noticeable facts unless based on public documents of the country for whom NV is being calculated as held in Dye Stuff Manufacturers Association of India: 2003(157) ELT 154 (Tri - Del) wherein it was also observed that journal data do not constitute "facts" and are irrelevant. Domestic Industry has not stated that data in IHS Chemical Publication has been sourced from public documents or proved such information to be reliable or accurate. Therefore, NV based on trade journals cannot be relied upon. Similarly, no evidence was provided by Domestic Industry with respect to adjustments in export price. Though Final Findings are issued on verified data, initiation of investigation should also be based on admissible evidence as otherwise, legal requirements regarding the same would be rendered superfluous

xvii. Normal value constructed by Domestic Industry cannot be relied upon because (i) average of highest price and lowest price considered for each month, (ii)

unsubstantiated 'delivery cost' has been added to artificially inflate NV, (iii) prices in IHS publication are region wise, not country-wise (iv) it is not known whether data in IHS publication covers all types of PVC Suspension Resin or only PUC, (v) while NV is determined at ex-factory level, IHS publication does not indicate level at which NV has been arrived at, what adjustments were taken into consideration, whether the prices were at bulk or retail level, whether any discounts were included, etc. Unless such adjustments are taken into account, NV will remain inflated.

xviii. Normal value constructed for China cannot be relied upon because (i) it is not known which petitioner company's data has been used to derive costs of production, (ii) standard of 'efficiency' itself is doubtful (iii) assuming that cost of Indian producers is same as that of China is not correct, (iv) Domestic Industry's failure to determine NV of China on price /constructed value in appropriate MET third country by stating that "the normal value in China of the product under consideration could not be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not publicly available" contradicts Domestic Industry's own claim that prices reported in IHS Publication constitute "reasonable, accurate and adequate information for determination of NV".

xix. Despite the expiry of China's accession protocol, the Indian authorities have wrongly supplied the MET Questionnaire.

F.3 Examination by the Authority

China

F.3.1 Determination of normal value and export price

Examination of Market economy claims, and normal value computation

29. At the stage of initiation, the petitioner proceeded with the presumption by treating China PR as a non-market economy country. Upon initiation, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of whether their data/information could be adopted for the purpose of normal value determination. The Authority sent copies of market economy treatment questionnaire to all the known producers/ exporters for providing relevant information in this regard. However, none of the Chinese producers/exporters have filed response claiming MET.

30. The Article 15 of China's Accession Protocol in WTO provides as follows: "Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict

comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China 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 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.

31. The Authority notes that on 11.12.2016 the provisions of 15 (a) (ii) have though expired, the provision under Article 2.2.1.1 of WTO read with obligation under 15 (a) (i) of the Accession protocol require criterion stipulated in para 8 of the Annexure 1 of India's AD Rules to be satisfied through the information/data to be provided in the supplementary questionnaire on claiming the MET status. The Authority notes that since none of the responding producers, exporters from China have submitted market economy treatment questionnaire response, the normal value computation is required to be dealt as per provisions of para 7 of Annexure-1 of AD Rules.

32. The Authority notes that no submission on normal value approach to be adopted as contained in para 7 of the annexure 1 to AD rules have been made. Further AD duty on imports of the subject goods has existed on a number of countries except South Korea which appears to be feasible option as its volume is comparable with China. The Authority has constructed normal value on the basis of Cost of Production of domestic industry with appropriate normation of various cost elements, adopting best practices and international raw material prices as considered appropriate. The normal value so computed is also broadly corroborated with the import price from Korea (at exfactory level).

Determination of Export Price for China PR

33. The following producers/exporters filed exporter's questionnaire (EQ) response in the present investigation:
    a. Chiping Xinfa PVC Co. Ltd and Shandong Xinfa Import & Export Co.Ltd. (exporter)
    b. CNSG Jilantai Salt Chlori Alkali Chemical Co.Ltd. (producer) and its related exporter CNSG Jilantai Salt Chemical (Group) Co. Ltd
    c. Yibin Haifeng Herui Co. Ltd. (producer) and its related exporter Yibin Tianyuan Group Co. Ltd.
    d. Tianjin LG Bohai Chemical Co. Ltd. (producer)
    e. Tianneng Chemical Co. Ltd (producer) and Xinjiang Tianye (Group) Co.Ltd (exporter)
    f. Tianjin Dagu Chemical Co. Ltd (producer and exporter) and Bohai Chemical HK Limited
    g. Xinjiang Shengxiong Chlor-Alkali Co. Ltd (producer) and Xinjiang Zhongtai Chemical Co. Ltd (exporter)

The exfactory export price for the aforesaid cooperative producers/exporters is evaluated as under:

34. **Yibin Haifeng Herui Co., Ltd. ("Haifeng Herui") and Yibin Tianyuan Group Co., Ltd. ("Yibin Tianyuan")**

The producer/exporter has exported *** MT of Subject goods to India during POI at a Gross invoice value of *** USD at a equivalent CIF price of *** $/MT. The Authority has considered adjustments (in $/MT) on Ocean freight, Ocean insurance, Port Charges and Bank Charges to an extent of ***, ***, *** and *** respectively. The exfactory export price after allowing above adjustments is considered as *** $/MT. The landed value is considered as *** $/MT.

35. **CNSG Jilantai Salt Chemical (Group) Co., Ltd. and CNSG Jilantai Salt Chlori-Alkali Chemical Co., Ltd.**

The Producer/exporter has exported *** MT of subject goods to India during POI at a Gross invoice value of *** USD at a equivalent CIF price of *** $/MT. The Authority has considered adjustments (in $/MT) on Ocean freight, Ocean insurance, Port Charges and Bank Charges to an extent of ***, ***, *** and *** respectively. The exfactory export price after allowing above adjustments is considered as *** $/MT. The landed value is considered as *** $/MT.

36. **Chiping Xinfa PVC Co Ltd. and Shandong Xinfa Import & Export Co. Ltd.**

The producer/exporter has exported *** MT of subject goods to India during POI at a invoice value of *** USD at a equivalent CIF price of *** $/MT. The Authority has considered adjustments (in $/MT) on Ocean freight, Ocean insurance, Port Charges and Bank Charges to an extent of ***, ***, *** and *** respectively. The exfactory export price after allowing above adjustments is considered as *** $/MT. The landed value is considered as *** $/MT.

37. **Tianneng Chemical Co., Ltd. and Xinjiang Tianye (Group) Co., Ltd.**

The above producer/exporter has exported *** MT of subject goods to India during POI at a Gross invoice value of *** USD at a equivalent CIF price of *** $/MT. The Authority has considered adjustments (in $/MT) on Ocean freight, Ocean insurance, Port Charges and Bank Charges to an extent of ***, ***, *** and *** respectively. The exfactory export price after allowing above adjustments is considered as *** $/MT. The landed value is considered as *** $/MT.

38. **Tianjin LG Bohai Chemical Co., Ltd.**

The above producer/exporter has exported *** MT of subject goods to India during POI at a Gross invoice value of *** USD at a equivalent CIF price of *** $/MT. The Authority has considered adjustments (in $/MT) on Ocean freight, Ocean insurance, Commission, Inland Freight, Port Charges Credit Cost and Bank Charges to an extent of ***, ***, ***, ***, ***, *** and *** respectively. The exfactory export price after allowing above adjustments is considered as *** $/MT. The landed value is considered as *** $/MT.

39. **Tianjin Dagu Chemical Co., Ltd. and Bohai Chemical (HK) Limited.**

The above producer/exporter has exported *** MT of subject goods to India during POI at a Gross invoice value of *** USD at a equivalent CIF price of *** $/MT. The Authority has considered adjustments (in $/MT) on Ocean freight, Ocean insurance, Inland Freight, Port Charges , Credit Cost and Bank Charges to an extent of ***, ***, ***, ***, *** and *** respectively. The exfactory export price after allowing above adjustments is considered as *** $/MT. The landed value is considered as *** $/MT.

40. **Xinjiang Shengxiong Chlor – Alkali Co., Ltd. and Xinjiang Zhongtai Chemical Co., Ltd.**

The above producer/exporter has exported *** MT of subject goods to India during POI at a Gross invoice value of *** USD at a equivalent CIF price of *** $/MT. The Authority has considered adjustments (in $/MT) on Ocean freight and Insurance, Inland Freight and Port, Commission, Credit Cost and Bank Charges to an extent of ***, ***, ***, *** and *** respectively. The exfactory export price after allowing above adjustments is considered as *** $/MT. The landed value is considered as *** $/MT.

41. **Residual Category**

The Authority has referenced the least export price i.e ex-factory export price and as well as landed value for residual category.

F.3.2 USA

42. **Determination of Normal value and ex-factory export price for USA-Cooperating producers/exporters and residual**

Cooperating producers/exporters

M/s Westlake Vinyls Company LP (Producer and Exporter); M/s Axial, LLC(Related Producer); M/s Westlake Vinyls Inc. (Related Producer)

Normal Value

M/s Westlake Vinyls Company LP (producer and exporter), comprising of M/s Axial LLC (Related Producer) and M/s Westlake Vinyls Inc. (related producer) have filed EQR. Only M/s Westlake Vinyls Company LP has exported *** MT of K 65 grade only to India during POI. The Authority notes that since the three entities are related, for the purpose of normal value, the domestic sales of all these three entities are to be considered. However for an apple to apple comparison the domestic sales of grade exported to India is being considered. Also the Authority notes that the producer/exporter has sold in the domestic market both to affiliated and non-affiliated buyers. Noting the price variations to these two groups, the Authority has considered domestic sales of K 65 grade by all the 3 entities only to unrelated buyers since prices to affiliated buyers and those to unaffiliated vary quite a lot. The domestic sales meet the significant quantity test and for the purpose of OCT test the Authority has referenced the weighted average exfactory cost of production as *** $/MT. On the basis of this test ***% sales are noted to be profitable. Accordingly with adjustments (in $/MT) on the domestic sales to the unaffiliated customers of K 65 grade for discount (all three types), rebates, freight, and credit cost to an extent of ***, ***, *** and *** respectively, the normal value is considered as *** $/MT.

The exfactory export price

The Authority notes that only M/s Westlake Vinyls Company LP (producer/exporter) has exported to an extent of *** MT of K 65 grade to India at a CIF of *** $/MT. The Authority has allowed adjustments (in $/MT) on packing, ocean freight, insurance, inland freight, port, credit cost, bank charge to an extent of ***, ***, ***, ***, ***, ***, *** respectively. The exfactory export price and landed value are adopted as *** $/MT and *** $/MT respectively.

43. **M/s Oxy Vinyls LP (Producer); and M/s Oxy Vinyls Export Sales LLC (Affiliated Trader in USA)**

Cooperating producers/exporters

Determination of Normal Value and Export Price

Oxy Vinyls, LP ("OVLP"), is the producer of the product under consideration from USA. OVLP has made sales to export markets (including India) through its affiliated exporter, namely Oxy Vinyls Export Sales, LLC ("OVLLC"). OVLLC in turn made sales to various export markets in the period of investigation through unaffiliated traders. For India, sales were

made through two particular unaffiliated traders, namely Tricon Dry Chemicals LLC and ICC Chemical Corporation ("ICC").

The Authority has undertaken a table verification of data filed by both OVLP, OVLLC, Tricon and ICC on various aspects of cost of production, domestic selling price, export price to India and other countries and adjustments claimed on export price to India.

The Authority considered the normal value, ex-factory export price and landed value as under:

Normal Value

During the POI, OVLP sold only one grade to India in the period of investigation i.e. OxyVinyls 225. OVLP submitted that this grade is not comparable to the other grades that fall under the purview of the product under consideration. OVLP has reported domestic sales and cost pertaining to only grade 225. The Authority notes that since this grade constitutes significant part of the sales in the domestic market, and comparison is to be undertaken on an apple to apple basis for grades exported to India, the response filed by the producer/exporter has been considered to evaluate the dumping margin. The Authority has computed the exfactory cost of production as *** $/MT. Oct test conducted on domestic sales indicate that *** % of transactions are profitable and therefore the Authority has accordingly referenced the overall domestic selling price.

OVLP's sales of the product to unaffiliated customers (directly), of quantity of *** MT. To arrive at the ex-factory price, post-factory expenses pertaining to inland freight, storage and credit cost are proposed to be to the extent of *** USD/MT, *** USD/MT and *** USD/MT respectively. The exfactory price i.e normal value comes to *** $/MT.

Export Price

In the POI, OVLP and OVLLC sold the PUC to India through two unaffiliated traders, namely ICC and Tricon. In the post-POI period, sales were made through another unaffiliated trader, i.e. Oxyde Chemicals Inc., USA ("Oxyde USA"), which sold the PUC to its related importer, namely Oxyde Chemicals & Polymers India Pvt Ltd ("Oxyde India"). All six companies filed their relevant questionnaire responses, and also filed post-POI sales data to India and other countries.

The Authority notes that the exporter has exported a total of *** MT to India during POI which include *** MT through ICC and *** MT through Tricon. From the weighted average CIF price of both traders of *** $/MT, the Authority has considered adjustments (in $/MT) on Ocean Freight, Ocean Inland, Inland Freight, Port Charge, commission, credit cost, landed cost charge, bank charge, charter's liability, courier fees, export LC fees, profit (trader), SGA (trader), related exporter SGA, related exporter profit, Inland freight (producer), storage cost (producer), credit cost (producer) as and ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, ***, *** respectively. The weighted average exfactory export price comes to *** $/MT.

44. **Residual Category**

Highest normal value and least ex-factory export price are referenced.

M/s Shintech who have only filed submission and no data as per exporter questionnaire response, for the prepare of dumping margin and injury margin assessment, they are treated in residual category.

F.3.3 Thailand

Determination of Normal value and exfactory export price for Thailand-Cooperating producers/exporters and residual

Cooperating producers/exporters

45. **Thai Plastic and Chemicals PLC (Producer), SCG Plastic Co. Ltd. (Related Exporter), SCG Performance Chemical Co. Ltd. (Related Exporter)**

M/s Thai Plastic and Chemicals PLC (TPC) , the producer has sold the subject goods through its two related marketing entities i.e M/s SCG Plastics Co. Ltd. and M/s SCG Performance Chemical Co. Ltd. during POI and post POI in the domestic market and as well as to India and countries other than India. The channel and grade wise details of domestic sales and exports to India are as under:

TPC sold *** MT to SCG Plastics in POI, who further exported *** MT to India, sold *** MT in their domestic market and exported *** MT to countries other than India.

The Authority notes that since M/s SCG Plastics Co. Ltd. and M/s SCG Performance Chemical Co. Ltd. are related to Thai Plastic and Chemicals PLC, the 'normal value' is computed on the basis of combined domestic sales of the two entities. SCG performance Chemical Co. Ltd. has sold only to a related entity in domestic market and therefore domestic sales of SCG Plastics Co. Ltd. of same grades (as exported to India) to unrelated entities which is *** MT have been referenced to compute the normal value.

The Authority notes that M/s SCG plastics has claimed adjustments inland freight, credit cost, bank charges, direct marketing, technical support, and RIL. The Authority notes that the producer/exporter has submitted that expenses on technical support and RIL charges (for training on domestic sales effort) are only incurred for domestic sales which could not be justified during the onsite verification. Subsequently though the producer/exporter has provided some data, it has not been established that the expenses are dedicated for domestic sales only. SGA expenses and profit are considered @ *** % and *** % for SCG Plastics and ***% and ***% for SCG Performance respectively both for domestic and export sales. Therefore adjustments (in Bhat/MT) on Inland freight (*** Bhat/MT); credit cost (*** Bhat/MT); bank charges (*** Bhat/MT), Direct marketing/SGA (*** Bhat/MT); profit (*** Bhat/MT).

After considering above adjustments on the domestic sales, the exfactory domestic selling price at the TPC level is compared with the exfactory cost of production of TPC considered as *** Bhat/MT. The OCT test on the domestic sales (at exfactory level) of exported grades to unrelated entities in domestic market indicate that all domestic sales are profitable. The normal value is thus computed as exfactory domestic selling price of all the transactions considered in the OCT test, which comes to *** US$/MT.

Exfactory export selling price

The Authority notes that both M/s SCG plastics and M/s SCG performance have exported to an extent of*** MT included *** MT of SCG Plastics. The grades exported are 258, 261, 286, SP 660, SG 660, SF 580, SG 701, SG 500, SG 585, SG 610 at a gross value of *** Bhat/MT. The Authority notes that the adjustment claimed as FE adjustment to an extent of *** Bhat/MT was not justified during the onsite verification and subsequently only internal memos of the marketing division and others have been provided. With no supportive conclusive justification, the Authority has not granted this adjustment. The Authority also notes that direct marketing expenses have been claimed for both domestic and export sales separately without any breakup of the same. The Authority has therefore applied the average SGA expenses (*** Bhat/MT) on both domestic and export sales for both the marketing entities as an adjustment. Also profitability (*** Bhat/MT) have been considered as an adjustment both on domestic and export sales. The Authority has considered adjustments. On ocean freight (*** Bhat/MT); Ocean insurance (*** Bhat/MT); Inland freight (*** Bhat/MT); Port (*** Bhat/MT); Credit cost (*** Bhat/MT); Bank charges (*** Bhat/MT); Export rebate (*** Bhat/MT); Commission (*** Bhat/MT).

The weighted average ex-factory export price, and landed value comes to *** Bhat/MT (*** $/MT) and *** $/MT respectively.

46. **Determination of Normal Value and Export Price**

M/s Vinythai Public Co. Ltd, Thailand

M/s Vinythai Public Co. Ltd, Thailand has sold three grades i.e 258, 261 and 266 in the domestic market as also exported to India during POI. The total quantity of domestic sales of these grades is *** MT. This quantity meets sufficient quantity test and further the OCT test was also conducted adopting the exfactory cost of subject goods as *** Bhat/Kg. (*** $/MT). More than ***% sales are noted to be profitable and hence the normal value is referenced on the basis of entire domestic sales of the above three grades. The adjustments (in $/MT) are considered on gross domestic price of *** $/MT for rebate, Inland freight, credit cost, port charge, to an extent of ***, ***, *** and *** $/MT respectively. The weighted average normal value for 3 grades is considered as *** $/MT.

Ex-factory export price

The producer/exporter has exported *** MT comprising of above 3 grades which includes *** MT (directly), *** MT (through ITOCHU), *** MT (through Marubeni) and *** MT (through DMCC). M/s Itochu and M/s DMCC have also filed response. For computing the exfactory

export price the Authority has considered adjustments (in $/MT) on Ocean freight, ocean inland, Inland freight, port, credit cost, port charge, bank charge and commission to an extent of ***, ***, ***, ***, ***, ***, *** and *** respectively on the weighted average CIF of *** $/MT which leads to exfactory export price of *** $/MT. The Authority has verified the exports by M/s Itochu to India and notes that the export sales made by them are profitable and also the export sales made by DMCC filed through the questionnaire response were reconciled with the exports volume reported by the producer. In this regard the export price by Marubeni (trader) has been referenced from DG-Systems data to evaluate the weighted average landed value for the responding producer. The weighted average LV for the four channels of producer's exports to India are as under:

Channel	**CIF ($/MT)**	**LV ($/MT)**
Direct	***	***
Itochu	***	***
DMCC	***	***
Marubeni	***	***

The Authority notes that Itochu has exported goods of both TPC and Vinythai. The Authority has considered the CIF price to India of Itochu for both the producers appropriately for evaluating the overall landed value to determine the injury margin. The profitability in respect of Vinythai's goods is *** % while for TPC is ***% at CIF of *** $/MT and *** $/MT respectively. The Authority has referenced DMCC's CIF price of *** $/MT appropriately for determination of landed value of goods exported by Vinythai during POI.

The Weighted average landed value comes to *** $/MT.

47. **Residual Category**

The highest dumping margin amongst the two cooperating producers/exporters is referenced.

F.3.4 Dumping Margin

48. Based on the above the dumping margin are as under:

Producer/exporter **China (Cooperative)**	**NV ($/MT)**	**EX-EP ($/MT)**	**DM ($/MT)**	**DM%**	**DM% range**
Yibin Haifeng Herui Co. ("Haifeng Herui") and Yibin Tianyuan Group Co., Ltd. ("Yibin Tianyuan")	***	***	***	***	15-20

CNSG Jilantai Salt Chemical (Group) Co. Ltd. and CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd.	***	***	***	***	25-30
Chiping Xinfa Pvc Co. Ltd. and Shandong Xinfa Import & Export Co. Ltd.	***	***	***	***	30-35
Tianneng Chemical Co., Ltd. and Xinjiang Tianye (Group) Co., Ltd.	***	***	***	***	20-25
Tianjin LG Bohai Chemical Co., Ltd.	***	***	***	***	5-10
Tianjin Dagu Chemical Co., Ltd. and Bohai Chemical HK Limited	***	***	***	***	10-15
Xinjiang Sengxiong Chlor-Alkali Co., Ltd. and Xinjiang Zhongtai Chemical Co., Ltd.	***	***	***	***	35-40
Non-Cooperative Residual (Highest)	***	***	***	***	35-40
USA (Cooperative)	***	***	***	***	
Oxy Vinyls LP and Oxy Vinyls Export Sales LLC	***	***	***	***	5-10
Westlake Vinyls Company LP, Axial LLC and Westlake Vinyls Inc.	***	***	***	***	10-15
Non-cooperative/Residual	***	***	***	***	10-15
Thailand (Highest)	***	***	***	***	
Vinythai Public Company Limited	***	***	***	***	5-10
Thai Plastic and Chemicals SCG Performance Chemical Co. Ltd. and SCG Plastic Co. Ltd.	***	***	***	***	5-10
Non Cooperative Residual			***		5-10

49. It is seen that the dumping margins are more than the de-minimis limits prescribed under the Rules.

G. DETERMINATION OF INJURY AND CAUSAL LINK

50. The views on injury, likelihood and causality are as under:

G.1 Views of the Domestic industry

i. Petitioners have not claimed deterioration in performance as a result of imports. Petitioners have not claimed continued injury either. Performance in respect of various economic parameters has improved as a result of ADD in force. Request for extension of ADD is based on likelihood of recurrence of injury in the event of cessation of present ADD.

ii. Demand has increased over the injury period. Volume of imports from the subject countries as a whole increased over the injury period except the decline in 2015-16. Share of subject imports declined over the injury period with some increase in POI.

iii. Price undercutting from all subject countries is significantly positive without ADD. ADD in place has prevented any price suppression or depression of the PUC. Considering significant price undercutting, it is evident that cessation of ADD will lead to significant price suppression/depression in the market. Even a small difference in prices becomes significant that a producer can lose an order because of the difference.

iv. Current level of profits earned by domestic industry is when ADD is in place. Should present ADD cease, profitability would steeply decline as is evident from the level of price undercutting in case of imports from China.

v. Authority is requested to consider ROI that was earned in the past. If last 15 years are considered, ROI is far below reasonable levels even when the Authority determines ROI on the net present value of the investments (barring last two years). Investments made for PUC are quite old. In case of DCM Shriram and DCW, original plants are largely depreciated. High level of ROI is only because of low level of investments.

vi. Significant and positive dumping margin implies that profits earned by foreign producers are higher. As far as US is concerned, cost of production is materially lower as compared to producers globally in view of availability of shale gas in US. Despite selling at low prices they earn significant profits.

vii. On the previous two occasions, the authority found that domestic industry suffered injury. It found material injury in the original investigation and continued injury in the previous sunset review. It is only in the present sunset review that the domestic industry has recovered from injury and has been able to post some profits in last two years.

viii. Import price from Thailand is lower than the selling price of domestic industry. The price undercutting in case of Thailand is positive. Imports from Thailand are also subjected to a lower BCD of 5% against MFN rate of 7.5% and thus, the impact of lower import price from Thailand is that much higher.

ix. Post POI data was not provided only because the authority has not called for such information. However, the same has been provided in written submissions.

x. Price suppression/depression did not exist over the injury period due to ADD in place. Continued injury has also not been claimed. Absence of suppression or depression over the injury period does not imply absence of likely suppression/depression in the event of cessation of ADD.

xi. Requirement under Para ii of Annexure II and Para vii of Annexure II with regard to suppressing and depressing effects are different. Para ii of Annexure II requires the authority to consider suppressing/depressing effect in the POI having regard to the past i.e. over the injury period; in likelihood of injury examination, the authority is required to consider the prices in the POI and determine whether imports are likely to have suppressing or depressing effects on the prices i.e. potential.

xii. When petitioners themselves have not claimed continued injury, any submissions with regard to absence of continued injury is of no relevance. The request for extension of ADD is based only on the grounds of likelihood of recurrence of injury.

xiii. Position with regard to comparison of NIP and NSR is well established. NIP is required to be determined only where the authority is fixing quantum of duty. Present investigation is not an original investigation and therefore quantum of duty is not required to be determined. Comparison of NIP with NSR is entirely immaterial in the present case.

xiv. Significant capacities are being made by the domestic industry only as a result of the duties imposed. It clearly shows the positive impact of the last two years performance of the product under consideration. The confidence gained by the domestic industry in just two years of reasonable performance shall be totally shattered if the present ADD is completely withdrawn.

G.2 <u>Views of other interested parties</u>

i. The reason for growth of subject goods from subject goods is the demand for the downstream industry.

ii. There is no correlation between the cost of sales and the selling price of the domestic industry. The landed price from the subject countries is relatively higher than the other subject countries.

iii. Price undercutting has no relevance in the present investigation as despite undercutting the domestic industry has improved its profits.

iv. Capacity, production, utilization as well as sales have increased.

v. As per the trade notice 10/2018, the petitioners have failed to provide sales value data.

vi. The profitability has also increased. Since RIL is operating at the highest margins, RIL should also be included in the examination. Injury being suffered is due to other factors as is evident from the annual reports. Even the ROCE is significantly higher than what is usually allowed for by the authority.

vii. Employment with the domestic industry has increased and the productivity has also shown an increase.

viii. NSR is more than NIP. All the economic parameters show rising trend. Inventory has increased and increase in inventory does not have any meaning if other economic parameters show improvement. In the present case, price undercutting is not relevant as in spite of positive price undercutting, DI performance has improved a lot.

ix. In the present case, price undercutting is not relevant as in spite of positive price undercutting, Domestic industry performance has improved a lot. Landed price with ADD from Thailand is higher than highest range of selling price.

x. No post POI data provided by the Petitioner and no verifiable post POI evidence relating to injury.

xi. There is no price suppression and depression claimed by Domestic industry.

xii. Petitioners have claimed to have suffered continued injury. It is the imports from the non-subject countries that have been feeding the increasing demand in the country. Thus the competition of the domestic products is with the subject goods imported from the non-subject countries and not with those being imported from the subject countries.

xiii. While the import prices declined, petitioners have not been compelled to decrease their prices despite their cost of sales also having reduced. The petitioners were able to increase their prices. This indicates that import prices were not dictating the prices of the petitioners and the increase in profit with average ROCE was 50-60% during POI. Subject countries' import prices have not had a price effect on the Domestic industry.

xiv. The petitioners have shown a significant increase in production with their capacity utilization also being significant. Sales as well as sales realization of the petitioners also increased. In fact the production of other domestic producers also increased.

xv. Inventories have increased but they are not the sole factors affecting the Domestic industry. They would have mattered if inventories would have increased with no increase in sales. Petitioners have also not suffered injury with respect to employment and productivity.

xvi. Imports from the subject countries have had no effect on the prices of the Domestic industry and the domestic industry has seen healthy growth in all parameters. Further, even the profits, cash flow and the ROI of the Domestic industry has increased significantly and it is earning significant profits.

G.3 Examination by the Authority

51. The injury analysis made by the Authority here under addresses the various relevant submissions made by the interested parties.

52. 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.

53. Article 3.1 of the WTO Agreement and Annexure-II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant

degree.

54. According to Section 9(A)(5) of the Customs Tariff Act, anti-dumping duty imposed shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition, provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension.

55. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II(iv) of the Rules supra.

56. In consideration of the various submissions made by the interested parties in this regard, the Authority proposes to examine the current injury, if any, to the domestic industry before undertaking to examine the likelihood aspects of dumping and injury on account of imports from the subject countries.

G.3.1 <u>Volume Effect of dumped imports and impact on domestic industry</u>

i. <u>Assessment of Demand/ Apparent Consumption</u>

57. The Authority proposes to consider, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian producers and imports from all sources as under:

SN	Particulars (in MT)	2014-15	2015-16	2016-17	POI	Post POI-A
1	Sales of Domestic Industry	3,84,878	3,99,740	4,14,871	4,24,166	3,96,004
2	Sales of Other Indian Producers	7,76,038	8,31,580	7,88,357	7,87,562	7,90,728
3	Imports from Subject Countries	3,40,890	2,01,402	3,29,366	3,51,297	2,45,054
4	Import from Other Countries	8,82,293	12,12,964	12,60,085	12,34,889	11,02,677
5	Total Demand	23,84,098	26,45,686	27,92,680	27,97,914	25,34,463

58. The demand has continued to be increasing and stable at a level of about 28 million MT.

ii. <u>Volume Effect of Dumped Imports and Impact on Domestic Industry</u>

Import volume and Market Share

SN	Particulars	2014-15	2015-16	2016-17	POI	Post POI-A
1	Subject Countries (in MT)					
2	China	2,90,122	1,69,114	2,47,949	2,07,289	1,22,724
3	Thailand	35,687	18,100	33,505	1,17,154	50,126
4	USA	15,082	14,188	47,912	26,853	72,204
5	Subtotal	3,40,890	2,01,402	3,29,366	3,51,297	2,45,054
6	Other Countries	8,82,293	12,12,964	12,60,085	12,34,889	11,02,677
7	Total	12,23,183	14,14,366	15,89,452	15,86,186	13,47,731
8	Subject Countries (in %)					
9	China	24%	12%	16%	13%	9%
10	Thailand	3%	1%	2%	7%	4%
11	USA	1%	1%	3%	2%	5%
12	Subtotal	28%	14%	21%	22%	18%
13	Other Countries (in %)	72%	86%	79%	78%	82%
14	Total	100%	100%	100%	100%	100%
15	Subject countries imports in relation to (in %)					
A	Indian Production	26.89%	14.68%	23.59%	25.17%	17.03%
B	Indian Demand	14.30%	7.61%	11.79%	12.56%	9.67%

59. The volume of import from subject countries have increased in absolute term while in relative terms compared with overall imports, production and demand have been slightly lowered. The share of non-subject countries in overall imports have increased.

G.3.2 <u>Price Effect of the Dumped Imports on the Domestic Industry</u>

a. Price Undercutting

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI	Post POI-A
1	**China**						
A	Landed Price	Rs/Kg	65.59	56.17	57.12	61.09	66.54
B	Net Selling Price	Rs/Kg	***	***	***	***	***
C	Price Undercutting	Rs/Kg	***	***	***	***	***
D	Price Undercutting	%	0-10%	10-20%	15-25%	10-20%	5-15%
2	**Thailand**						
A	Landed Price	Rs/Kg	69.52	58.36	63.05	63.49	69.61
B	Net Selling Price	Rs/Kg	***	***	***	***	***
C	Price Undercutting	Rs/Kg	***	***	***	***	***
D	Price Undercutting	%	(0-10)%	0-10%	5-15%	5-15%	0-10%
3	**USA**						
A	Landed Price	Rs/Kg	69.49	55.92	62.33	63.19	68.57
B	Net Selling Price	Rs/Kg	***	***	***	***	***
C	Price Undercutting	Rs/Kg	***	***	***	***	***

D	Price Undercutting	%	(0-10)%	10-20%	10-20%	5-15%	5-15%
4	**Subject countries as whole**						
A	Landed Price	Rs/Kg	66.17	56.35	58.48	62.05	67.77
B	Net Selling Price	Rs/Kg	***	***	***	***	***
C	Price Undercutting	Rs/Kg	***	***	***	***	***
D	Price Undercutting	%	0-10%	5-15%	15-25%	5-15%	5-15%

60. The price undercutting by imports from the Subject Country is positive without anti-dumping duty both in POI and post POI. The landed price of non-subject countries is higher than the subject countries.

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI
1	NSR	Rs/Kg	***	***	***	***
2	**Subject countries landed prices**					
A	China	Rs/Kg	65.59	56.17	57.12	61.09
B	Thailand	Rs/Kg	69.52	58.36	63.05	63.49
C	USA	Rs/Kg	69.49	55.92	62.33	63.19
3	**Other countries landed prices**					
A	Taiwan	Rs/Kg	69.00	62.09	65.75	67.42
B	Japan	Rs/Kg	66.14	56.61	61.09	65.64
A	European Union	Rs/Kg	70.59	64.15	66.66	78.86
B	Mexico	Rs/Kg	71.55	37.56	75.11	46.06
A	Indonesia	Rs/Kg	69.39	-	59.10	-
B	Malaysia	Rs/Kg	63.76	-	-	-
A	Korea RP	Rs/Kg	68.10	58.48	63.02	68.48

b. Price Suppression/ Depression

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI	Post POI
1	Cost of sales	Rs./Kg	***	***	***	***	***
2	*Trend*	*Indexed*	*100*	*89*	*92*	*89*	*99*
3	Selling price	Rs./Kg	***	***	***	***	***
4	*Trend*	*Indexed*	*100*	*92*	*101*	*101*	*108*
5	Landed Price	Rs./Kg	66.17	56.35	58.48	62.05	67.77
6	*Trend*	*Indexed*	*100*	*85*	*88*	*94*	*102*

The selling prices continue be above the cost of sales, in POI and part Post POI.

G.3.3 <u>Economic Parameters relating to the Domestic Industry</u>

61. Annexure II to the AD Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the AD 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.

62. Accordingly, various economic parameters of the Domestic Industry are analyzed herein below:

a. Production, Capacity, Capacity Utilization and Sales Volume

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI	Post POI
1	Capacity	MT	420,000	460,000	460,000	460,000	460,000
2	*Trend*	*Indexed*	*100*	*110*	*110*	*110*	*110*
3	Production	MT	383,738	403,147	425,679	420,567	416,120
4	*Trend*	*Indexed*	*100*	*105*	*111*	*110*	*108*
5	Capacity Utilization	%	91.37%	87.64%	92.54%	91.43%	90.46%
6	*Trend*	*Indexed*	*100*	*96*	*101*	*100*	*99*
7	Domestic Sales Volume	MT	384,878	399,740	414,871	424,166	396,004
8	*Trend*	*Indexed*	*100*	*104*	*108*	*110*	*103*

63. The domestic sales, capacity and CU show stable and rising to and domestic sales, production and CU are slightly lowered in post POI.

Market Share in Demand

64. The market share of the domestic industry moved as shown below:

SN	Market Share in Demand (in %)	2014-15	2015-16	2016-17	POI	Post POI
1	Domestic Industry	16.14%	15.11%	14.86%	15.16%	15.62%
2	Other Indian producers	32.55%	31.43%	28.23%	28.15%	31.20%
3	Subject countries	14.30%	7.61%	11.79%	12.56%	9.67%
4	Other Countries	37.01%	45.85%	45.12%	44.14%	43.51%
5	Total	100.00%	100.00%	100.00%	100.00%	100.00%

65. The domestic industry's market share in demand has remained by and large stable in POI and Post POI. The share of Indian Industry as a whole has lowered in POI being with subject countries share slightly lowered in POI.

Profitability, return on investment and cash profits

66. Performance of the domestic industry with regard to profits, return on investment and cash flow is as follows:

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI	Post POI-A
1	Cost of sales	Rs./Kg	***	***	***	***	***
2	*Trend*	*Indexed*	*100*	*89*	*92*	*89*	*99*
3	Selling price	Rs./Kg	***	***	***	***	***
4	*Trend*	*Indexed*	*100*	*92*	*101*	*101*	*108*
5	Profit/(Loss)	Rs./Kg	***	***	***	***	***
6	*Trend*	*Indexed*	*100*	*752*	*2,810*	*3,513*	*2,709*
7	Profit/(Loss)	Rs.Lacs	***	***	***	***	***
8	*Trend*	*Indexed*	*100*	*781*	*3,029*	*3,872*	*2,787*
9	PBIT	Rs.Lacs	***	***	***	***	***
10	*Trend*	*Indexed*	*100*	*167*	*368*	*439*	*310*
11	Cash Profits	Rs.Lacs	***	***	***	***	***
12	*Trend*	*Indexed*	*100*	*338*	*1,104*	*1,404*	*1,032*
13	ROCE	%	***	***	***	***	***
14	*Trend*	*Indexed*	*0-10%*	*5-15%*	*40-50%*	*50-60%*	*35-45%*

67. The profitability are quite stable and ROCE, upward looking, during the injury period.

Inventories

68. Inventories with the domestic industry is as follows:

Particulars (in MT)	2014-15	2015-16	2016-17	POI	Post POI
Opening	***	***	***	***	***
Closing	***	***	***	***	***
Average	5,970	4,770	9,022	9,216	9,591
Trend	*100*	*80*	*151*	*154*	*161*

Inventories are increased in POI and Post POI but as % of production are not high.

Employment and productivity

69. Performance of the domestic industry with regard to employment, productivity and wages is as follows:

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI	Post POI-A
1	Productivity per day	MT/Day	***	***	***	***	***
2	*Trend*	*Indexed*	*100*	*105*	*111*	*110*	*108*
3	Employment	Nos	***	***	***	***	***
4	*Trend*	*Indexed*	*100*	*106*	*109*	*108*	*108*

70. Productivity and employment show stable trend.

Magnitude of Dumping

71. The Authority has undertaken evaluation of dumping margin for cooperating producers/exporters during POI as stated in the earlier paras.

The dumping during POI from the subject countries both for cooperative and residual producer/exporters are above deminimis.

Ability to raise Capital Investment

72. Investments being made or planned by the domestic industry as well as other Indian producers as a result of the anti-dumping duties being in force, may be jeopardized if the present duties are allowed to cease.

Magnitude of Injury and injury margin

73. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the AD Rules has been compared with the landed value of the exports from the subject country for determination of injury margin during the POI and Post POI, and the injury margin are as under:

SN	Particulars	Unit	POI	Post POI
A	**China**			
1	Non Injurious Price	Rs/Kg	***	***
2	Landed Price	Rs/Kg	61.09	66.54
3	Injury Margin	Rs/Kg	***	***
4	Injury Margin	%	0-10%	0-10%
B	**Thailand**			
1	Non Injurious Price	Rs/Kg	***	***
2	Landed Price	Rs/Kg	63.49	69.61
3	Injury Margin	Rs/Kg	***	***
4	Injury Margin	%	(0-10)%	(0-10)%
C	**USA**			
1	Non Injurious Price	Rs/Kg	***	***
2	Landed Price	Rs/Kg	63.19	68.57
3	Injury Margin	Rs/Kg	***	***
4	Injury Margin	%	(0-10)%	(0-10)%

It is noted that injury margin is positive for China for POI and Post POI on overall basis but, negative for Thailand and USA, on overall basis.

G.3.4 <u>Injury margin for cooperative producer/exporter –</u>

74. The injury margin for cooperative producers/exporters are evaluated as under:

Producer/exporter (POI)/NIP = *** $/MT China (Cooperative)	LV ($/MT)	IM ($/MT)	IM% ($/MT)	IM% range
Yibin Haifeng Herui Co. ("Haifeng Herui") and Yibin Tianyuan Group Co., Ltd. ("Yibin Tianyuan")	***	***	***	(0 to 5)
CNSG Jilantai Salt Chemical (Group) Co. Ltd. and CNSG Jilantai Salt Chlori-Alkali Chemical Co. Ltd.	***	***	***	0-5
Chiping Xinfa Pvc Co. Ltd. and Shandong Xinfa Import & Export Co. Ltd.	***	***	***	5-10
Tianneng Chemical Co., Ltd. and Xinjiang Tianye (Group) Co., Ltd.	***	***	***	0-5
Tianjin LG Bohai Chemical Co., Ltd.	***	***	***	(0-5)
Tianjin Dagu Chemical Co., Ltd. and Bohai Chemical (HK) Limited	***	***	***	0-5
Xinjiang Shengxiong Chlor-Alkali Co., Ltd. and Xinjiang Zhongtai Chemical Co., Ltd.	***	***	***	0-5
Non-Cooperative/ (Highest) Residual	***	***	***	5-10
USA	***	***	***	
Oxy Vinyls LP and Oxy Vinyls Export Sales LLC	***	***	***	(0-5)
Westlake Vinyls Company LP, Axial LLC and Westlake Vinyls Inc.	***	***	***	(0-5)
Non-cooperative/ Residual (least CIF of 830 $/MT)	***	***	***	0-5
Thailand (Cooperative)	***	***	***	
Vinythai Public Company Limited	***	***	***	0-5
Thai Plastic and Chemicals SCG Performance Chemical Co. Ltd. and SCG Plastic Co. Ltd.	***	***	***	(0-5)

Residual / Non Cooperative (Highest – as per best available information) (least export price of 840$/MT)	***	***	***	5-10

Concluding remarks on Injury

75. It is seen that there has been an increase in the volume of dumped imports from subject countries at dumped prices. Imports are undercutting the prices of the domestic industry. The domestic industry has been able to improve its performance in terms of production, sales, profits, cash profit and ROCE. The Authority holds that the domestic industry is not suffering material injury.

G.3.5 LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING AND INJURY

76. The Authority observed that this is a sunset review investigation and the focus of this investigation is to examine the likely scenario of continued dumping and consequent injury if the anti-dumping duties were to be allowed to expire even if there is no current injury.

Views of the Domestic Industry:

77. Following are the submissions made by the Domestic Industry with regard to likelihood of continuation of dumping and consequent recurrence of injury –

i. PUC has a long history of dumping in various markets, including India and countries such as China, Australia, Turkey and Pakistan, where it is currently attracting duties from various countries. The petitioners are recovering from the adverse effects of dumping and are in a vulnerable state.

ii. There are significant capacities in China, much higher than their domestic demand. Average operating rate is in the range of 57% to 72% in the last 5 years which clearly indicates that there are significant unutilised capacities in China which can be easily diverted to India, in case of revocation of duties.

iii. There is a further plan for enhancing capacities by a number of producers in China and there are significant exports from China over the injury period. There are more than 150 producers of PVC Suspension Resin in China. Only seven Chinese producers have filed the questionnaire response of which four are attracting individual duty and three are attracting residual duty. Since the duty amount on residual category of producers/exporters from China is higher than others, a number of producers in China are not even exporting the product to India at present. However, after revocation of duties, there is a likelihood that these other producers will also start exporting.

iv. As per IHS Market (Vinyls) Report, 2017, Chinese producers will likely be forced to divert products into International market to ease pressure from their oversupplied domestic market. Along with the restriction of US market, China would divert its produce further to Indian market and it would keep coming at prices lower in

comparison to domestic price of the Indian Industry and the price of imports from other subject countries.

v. On comparison of imports from China to India in original case, 1st review investigation and present investigation PO show that the share of China in Indian demand has increased from 2% to 7%. Increase in imports from China is far higher than increase in demand. Imports from China have increased in spite of ADD in force for last 10 years and, so there is greater possibility that after revocation of duties, imports from China will increase at a higher rate.

vi. Exports from China are attracting ADD in various jurisdictions. Measures have been invoked by Pakistan Authorities also. Pakistan imposed duty on basis of exports of 33,097 MT whereas China is exporting much higher volumes to India.

vii. Price comparison of Indian prices with third countries reveal significant dumping and injury margin and price undercutting on third country basis which clearly shows that the low-priced exports to third countries can easily be diverted to India after revocation of ADD. India has been the top export destination for China in last 5 years.

viii. Petitioners compared export price to India and third country prices for each Chinese exporter. This has been done separately for producers/exporters who have filed questionnaire response and those who have not filed questionnaire response. Third country prices of responding Chinese exporters are lower than Indian prices. Exporters who account for more than 70% export volumes to India have filed questionnaire response.

ix. Current level of demand and future likely imports show that India is a major buyer of the subject goods. India commands top position in exports from China.

x. Prices prevailing in Indian market are attractive for producers in China, as established by (a) current export price to India, and (b) current export price to rest of the world. Every business enterprise is doing business to optimize its top and bottom line, it is evident that foreign producers would not hesitate to divert their third countries low priced sales to Indian market. In the event of cessation of ADD it is evident that Indian consumers would be motivated to switch over to imported product. In PVC suspension market, a price difference of Rs. 500/mt is sufficient for a consumer to switch sources.

xi. Behaviour of subject countries' month by month import prices from April 2008 till March, 2018 (i.e., 120 months) examined. The entire exercise was undertaken for 120 months from April 2008-March, 2018. It was seen that out of total 120 months, Chinese prices were lowest in 28 months.

xii. China is currently exporting majority of their exports to India at prices lower than the domestic prices of the Indian Industry. One of the significant exporters of the subject goods is selling at the lowest price in comparison to the prices offered by exporters from other subject countries.

xiii. Significant capacities are in USA, much higher than the domestic demand in the country. Average operating rate in range of 80% to 86% in last 5 years which clearly indicates there is significant thrust on exports and there are significant unutilised capacities.

xiv. Comparison of imports shows imports increased in the POI of 1st SSR as the original duty was low. When the duty was increased in the 1st SSR the imports came down in the POI of the present investigation which implies that the duty imposed acts as a

deterrent against unfair imports. Further, exports from USA are attracting ADD in various jurisdictions.

xv. Westlake having lowest duty exported highest quantity to India. Other producers having significant capacities are not exporting to India in significant volumes because of higher amount of ADD imposed on them. Landed price of the imports with highest amount of duty is much higher than the prevailing prices in India. There is a strong likelihood that the producers whose prices are uncompetitive in India because of ADD in force will become competitive after revocation of duties.

xvi. Out of 6 US producers, 4 producers have responded against 2 participating in the previous review investigation. It shows that producers have plans to export in future and so they have participated in the current investigation. Category of 19% non-responding exporters accounts for 1457 KT capacities which is almost half of Indian demand.

xvii. USA prices to other countries are higher than India, however, export volumes 59,409 MT are at the prices lower than India. There is significant dumping and injury margin and price undercutting on third country basis which clearly shows that low priced exports to third countries can easily be diverted to India after revocation of ADD.

xviii. Behaviour of subject countries' month by month import prices from April 2008 till March, 2018 (i.e., 120 months) examined. The entire exercise was undertaken for 120 months from April 2008-March, 2018. It was seen that out of total 120 months, prices were lowest among all countries in 49 months. Further, import price from USA were lower than import prices from China in 59 months. USA is exporting the product to India at a price lower than the domestic selling price.

xix. In a recent development both China and US have imposed additional custom tariffs on each other upto 25%. The same has implications on imports of PVC in both the markets i.e.; China's PVC exports to USA and USA's PVC exports to China. The problem is likely to be compounded for India for the reasons that there are significant exports from US to China (to the extent of about 10% of Indian demand) and export price from US to China is materially lower (by about 90 US$/MT) as compared to export price from US to rest of the world.

xx. As regards Thailand, there are significant capacities much higher than the domestic demand in the country.

xxi. Average operating rate is in range of 83% to 89% in the last 5 years which clearly indicates that there are significant unutilised capacities in Thailand which can be easily diverted to India, in case of cessation of duties. There are significant freely disposable capacities in Thailand.

xxii. Comparison of the imports from Thailand to India in original case, 1st review investigation and present investigation POI shows that the imports from Thailand increased by 1058% in the current investigation POI. It indicates behaviour of producers that they are continuously exporting even after duty in force for last 10 years. Reduction in duty by USD 6.93/MT in 1st review investigation resulted in increased imports by 1058%.

xxiii. Exports from Thailand were subject to ADD in various jurisdictions and at present are attracting ADD in Pakistan. Pakistan has imposed ADD on much lower volume of imports as compared to volume of exports to India.

xxiv. There are two producers who produce PVC suspension in Thailand. In spite of duties in force for last 10 years, export from Thailand has increased significantly because of the reduction in amount of antidumping duties in first review investigations. Further, since both the producers have responded it shows there are future plans for exporting to India.

xxv. Thailand prices to other countries are higher than India. Significant export volumes are at prices lower than India. There is a significant dumping and injury margin and price undercutting on third country basis which show that the low priced exports to third countries can easily be diverted to India.

xxvi. Behaviour of subject countries' month by month prices from April 2008 till March, 2018 (i.e., 120 months) show that out of total 120 months, prices were lowest in 17 months. Import price from Thailand was lower than that from China in 38 months. Further, they are also selling at prices below their domestic prices. India commands top position in exports from Thailand with 28% of global exports.

xxvii. Authority has issued several findings wherein it has considered existence of surplus capacities as one of the parameters showing likelihood. Even the practice adopted globally supports that the investigating authorities consider surplus capacities as one of the major evidences of likelihood of recurrence of injury. This is directly supported by legal provisions relating to threat of material injury.

xxviii. "Freely disposable production capacities" means much higher capacities than the unutilized capacities. Any capacity beyond domestic demand implies "freely disposable production capacities". Requirement thereafter is to consider the volume of exports being made to other countries.

xxix. It is evident that Chinese producers are operating at 72-79% capacity utilization and therefore are suffering from significantly under-utilized production capacities.

xxx. While demand in US has increased and resultantly exports from US have declined from 43% to 39%, US has still exported 27,89,397 MT PVC globally in 2017. Absolute volume of exports from USA is significantly high. USA has exported about 3 lac MT PVC to China. Proposed tariff measures by China is in region of 25% which will make these exports completely unviable. Under these circumstances, the producers in US will certainly face loss of market to the extent of 3 lac MT which constitutes about 10% of Indian demand.

xxxi. Cost of production of US producers is materially lower as compared to any other country globally because US producers use share gas for production of PVC. The cash cost of producers in US are in the region of 500-660USD. This does not include only the depreciation amount.

xxxii. Chinese Association has provided no supporting evidence for high utilization. It has not even stated how it represents all Chinese manufacturers of the PUC, whether the statement pertains only to select few companies, or only their members or entire Chinese PVC industry. This association does not represent all Chinese producers. No information on record to show that it is representative of entirety of PVC Suspension Resin producers in China.

xxxiii. Petitioners' information considers all Chinese producers of PVC Suspension Resin. The evidence shows unutilised production capacities. The interested parties have not been able to establish absence of unutilised capacities in China.

xxxiv. Petitioners have not been able to provide relevant information on inventories in view of absence of any public information. However, even the association has not established that the Chinese producers are not faced with significant inventories. Chinese plants are grossly underutilised which in itself is sufficient to show that they can increase their inventories at a short notice.

xxxv. Petitioners have claimed existence of likelihood on basis of quantified factors, including factors prescribed under the law, and additional factors duly supported with positive evidence in the form of verifiable information; the claim of absence of likelihood by interested parties is based on mere statements. Meaning of positive evidence should be taken in accordance with law and WTO appellate body report in the matter of United States – Anti-Dumping Measures On Certain Hot-Rolled Steel Products From Japan.

Views of the Other Interested Parties

78. Following are the submissions made by the other interested parties with regard to likelihood of continuation of dumping and consequent recurrence of injury –

i. The Petitioners themselves have admitted that there is no price suppression or depression. The Petitioners have also admitted that 99% of USA exports to other markets are at a price above the claimed NIP. In other words, even if it is assumed (without conceding) that the removal of duties could lead to USA redirecting its third country exports towards India, it appears likely that those imports would be priced non-injuriously.

ii. The concept of surplus capacities as claimed by the domestic industry is wrong. The Indian market is not treated as a favorable destination for exports. Indian market is huge and the domestic capacity alone is not sufficient for meeting such a demand. The population of India is similar to that of China but the demand for polymer is only one-fifth.

iii. The authority in the past has also declined initiation or terminated the sunset review investigations because of absence of injury/ likelihood of injury. Further, the continuation of the ADD will also not be in public interest.

iv. The reasons for the continuation of the duty in the previous SSR are no longer applicable in the present scenario.

v. The data presented by the petitioner on the likelihood of recurrence of injury and dumping is flawed and inappropriate.

vi. The export orientation of China has been wrongly assessed by the petitioner and there is no basis to their claims. The data is unsourced and thus not reliable. The same is also contradictory to the data of members of the Chlor-alkali industry association.

vii. The claims on price attractiveness are also flawed. Prices to India and other countries are at par. Declining imports from China indicates their disinterest in the Indian market. Thai and US exporters have higher volumes to third countries at prices higher than what they are being sold at in the Indian Market.

viii. The claim of India being an export destination is also flawed and false. Again the data provided is unreliable. Further, with the duties being in force for more than 11 years, the trade channels have been realigned and there is no reason to presume that the same would be revised upon cessation of duties.

ix. In view of the profitability reported by the Petitioners, their extremely high ROCE, the lack of any underselling (based on data provided by the Petitioners), and various other positive economic parameters, there is no case made out for continued or likelihood of recurrence of injury to the domestic industry. In this regard, it is also relevant to note that the import volume from China PR shows a declining trend in absolute as well as relative terms and that the imports from none of the subject countries indicates any price pressure on the domestic producers.

x. No data pertaining to post-POI period has been brought out even though the 6-month post-POI data was easily available. It is suspected that the Petitioners have procured post-POI data but the same does not support their claims.

xi. Petitioners compared volume of imports from China with imports from China PR 10 years ago. The methodology fails to consider the overall increase in demand in the last 10 years, which the imports from China have matched. Imports from China PR have shown a declining trend over the period of injury and in the POI and have continued to decline in the post-POI period, based on data of China Customs.

xii. There are no excess capacities in China and the information of the producers is already on record with the authority. Authority must note relevance of data of the participating members of the Association. The same is representative of Chinese capacities and utilization relevant for the purpose of the present investigation.

xiii. On basis of the data of participating members of the Association – Substantial sales (about 95%) of most members participating are made in the Chinese domestic market or to third country export markets, rather than to Indian market; In the POI, more than 90% of the capacity of most of the members who are participating in the present review investigation was fully utilized with only a minor part remaining unused; There is no "idle" or excess capacity held by the Members of the China Chlor Alkali Industry Association participating in the investigation

xiv. It is not appropriate to presume that small scale producers in China have been waiting, for 11 years, for duties to be revoked in India so that they can utilize their small-scale operations fully.

xv. Pricing trends of subject countries run parallel to cost trends of the petitioners, showing that the price variation during the injury investigation period for the subject countries is based on the trends of cost rather than any other factor.

xvi. China PR is itself the largest consumer of PVC. More than 90% of PVC is consumed domestically by China PR and applied in various fields. China has restricted its supply side capacities and there are restrictions in place against expansion of Chinese PVC capacities, therefore, the growing local demand in China would require it to be more domestic market oriented than export market oriented.

xvii. Production capacity in China has not increased much over the period of injury. It will be not expanded in the future owing to a recent government policy of "energy conservation and emission reduction". Reference laid on the Government of China notice dated July 23, 2016 by the General Office of the State Council of the PRC Public No (2016) 57, Guidelines on the Restructuring, Promoting Transformation and Increasing Profits of the Petrochemical Industry in support of the same.

xviii. According to IHS Markit Forecast, the PVC production capacity in the USA will not be growing fast in the coming years, and this year's operating rate is expected to be above 90%. US producers do not have excess capacity to export significantly additional volumes to India for the time being.

xix. As regards USA, Petitioners have relied on unreliable sources. "significantly excessive capacities" is not part of the analysis of likelihood under the AD rules and therefore untenable.

xx. As per Petitioners submission, exporters and producers subject to higher duties would export lesser to India and vice versa. However, this does not stand true in the current factual matrix as Formosa Plastic Corporation has a much lower duty than the residual rate and has not increased its exports to India throughout the injury period and in fact has not exported during the POI at all.

xxi. The Petitioners have admitted that nearly 80% of USA's third country export markets command a price higher than the price at which USA exports to India. The revocation of duties would have no effect in the prices in India nor would it lead to diversion of imports.

xxii. The Exporters submit that the duties imposed by the sovereign third country is retaliatory in nature and each of the nations have also imposed duties of their own.

xxiii. Domestic Industry conceded that it is not suffering injury and has recovered from past effects of dumping. The claim that likelihood of dumping and injury exists if ADD is removed is based on rhetorical statements and not backed by supporting evidence.

xxiv. Reliance on previous investigation does not indicate that injury will continue as the facts and data in the present case have undergone significant changes compared to earlier period. Domestic producers increased capacities continuously during the past 15 years and are in the process of further increasing them.

xxv. DI claimed that surplus capacities exist in Thailand which outweigh its domestic demand. Firstly, such data being based on IHS Publication, the same is not admissible evidence. Secondly, the data provided therein also includes non-PUC. Thirdly, presence of excess capacities does not indicate that the same would be diverted to India.

xxvi. Though, DI contended that imports from Thailand increased continuously in last 10 years, the said increase cannot be seen in a vacuum but in the context of proportionate increase in demand which the domestic producers were not capable of fulfilling and secondly, since ADD was in force on such imports, the increase happened notwithstanding the fact that landed value was above NIP of DI.

xxvii. The allegation that imports from Thailand increased due to reduction in ADD is incorrect as the same is benchmarked against the NIP of the DI. Therefore, imports prices from Thailand would either be equivalent to or above NIP of Domestic industry during the subsistence of the levy in India.

xxviii. Domestic industry claimed exports to other countries from Thailand were made at higher prices and at lower volumes compared to India with data showing calculations of export price, dumping margin at Annexure 19. Such calculations cannot be relied upon as the source and basis of arriving at such calculations has not been provided and Domestic industry has claimed excessive adjustments without any basis or supporting documents while determining export price.

xxix. Domestic industry claimed that imports prices from Thailand were lower than China for 38 months in the past 120 months. However, such analysis based on Chinese prices is irrelevant as firstly, it should be based on current injury analysis period and secondly, comparison should be with that of prices prevailing in India.

xxx. Although Domestic Industry submitted that likelihood of continuation/recurrence of injury entails counter-factual analysis of future events, it failed to provide any information in support such as post-POI information or future projections based on current or planned capacity additions in subject countries, change in pattern of trade etc.

xxxi. There is no excess capacity in USA. As per World Analysis IHS Markit Report for the year 2018, the producers/exporters in USA are operating at more than 85% of the capacity utilization. The report further states that the capacity of USA producers,

specifically SHINTECH, will not increase in coming five years. Thus, there is no excess capacity in USA.

xxxii. Domestic Industry failed to substantiate likelihood of recurrence of dumping and injury as (i) no significant rate of increase (only 3% over injury analysis period) in dumped imports as required under Annexure II Para (vii). Rather, increase in imports of PUC is from non-subject countries viz. Japan despite price being higher than subject countries which establishes that increase/decrease in imports is not dependent on price as a factor; (ii) Domestic industry claimed that capacity in China PR, Thailand, USA increased by 13%, 0% and 9% compared to 2013 which is outside the injury analysis period and therefore, untenable. Rather, rate of increase in capacity over actual injury analysis period is only 2%, 0% and 6% respectively; (iii) increase in capacities and availability of unutilized capacities in no way indicates a likelihood of increased exports to India as data in Domestic Industry's own petition shows that capacities remained the same for countries whose exports to India had increased significantly viz. Japan, Thailand, whereas exports from China and USA went down despite an increase in their capacity; (v) range of surplus capacities is too wide to be meaningfully commented upon and furthermore, no correlation between surplus capacities allegedly held in subject said countries and exports to India in view of data provided in Petition by Domestic Industry; (vii) the Domestic Industry has not substantiated how it is still vulnerable despite earning huge profits (vii) price attractiveness of Indian market as claimed by Domestic Industry is not correct as 81% exports from remaining subject countries to third countries are at prices higher than that to Indian market and neither has source been provided for data furnished by Domestic Industry in their Petition.

xxxiii. Likelihood analysis also entails an objective consideration of current data and whether such data demonstrates that imports are entering India at suppressing/depressing prices. In this regard, even without inclusion of ADD to landed value, imports are entering India above NIP of Domestic Industry (which is around 943 USD) and therefore, no likelihood of recurrence of injury.

xxxiv. Claim of freely disposable capacities in subject countries is baseless for being based on IHS publication which is inadmissible evidence for the reasons stated in the written submissions. Capacities in subject countries have mostly remained constant with only a negligible increase. Nothing on record to suggest that export orientation of exporters and existence of excess capacity would automatically lead to diversion of exports to India

G.3.6 <u>Examination by Authority</u>

79. The Authority notes that the present investigation is a sunset review of antidumping duty imposed on the imports of subject goods and the Authority has to examine likelihood of dumping and injury in the event of cessation of anti-dumping duty. The Authority examined the likelihood of continuation or recurrence of injury considering the parameters relating to the threat of material injury in terms of Annexure II (vii) of the Rules. Clause (vii) of Annexure II to the rules provides for the following factors:

The injury margin is slightly positive for China for POI and Post POI while negative for

USA and Thailand on an overall basis.

Significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation

80. The trend of imports is as follows-

SN	Particulars	Unit	2014-15	2015-16	2016-17	POI	Post POI (A)
1	Subject countries						
a	China	MT	2,90,122	1,69,114	2,47,949	2,07,289	1,22,724
b	Thailand	MT	35,687	18,100	33,505	1,17,154	50,126
c	USA	MT	15,082	14,188	47,912	26,853	72,204
2	Subtotal	MT	3,40,890	2,01,402	3,29,366	3,51,297	2,45,054
3	Other Countries	MT	8,82,293	12,12,964	12,60,085	12,34,889	11,02,677
4	Total	MT	12,23,183	14,14,366	15,89,452	15,86,186	13,47,731

81. The Authority notes the imports from the subject countries declined in 2015-16 and increased thereafter in the POI. Imports from China and Thailand declined in the post POI. However, imports from China remain significant. Imports from USA have increased significantly and have more than doubled in the post POI. The Authority finds that there is no consistent pattern in the imports, but level of imports continued to be significant.

sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports

82. This parameter for ascertaining the threat of material injury requires evaluation of freely disposable capacities and capacity addition, if any, to explore the possibility of diversion of disposable quantity to Indian market. Domestic industry has claimed that the producers in subject countries are already faced with significant surplus capacities as tabulated below and that these producers are exporting the product to a large number of countries, a very significant proportion of which is being exported at a price below the prices in respect of India, thus showing likelihood of diversion of these exports to India in the event of withdrawal of anti-dumping duty

(Particulars) UNIT: KT/Y	Unit	2012	2013	2014	2015	2016
China						
Capacity	KT/Y	23,410	24,760	23,890	23,480	23,260
Production	KT/Y	13,416	15,295	16,296	16,092	16,691
Capacity Utilization	KT/Y	57%	62%	68%	69%	72%
Import	KT/Y	1,060	915	808	820	752
Export	KT/Y	395	662	1,111	780	1,117

Demand	KT/Y	14,081	15,548	15,993	16,132	16,326
Growth Rate	%	3%	10%	3%	0.90%	1.20%
Freely disposable capacity	KT/Y	8,934	8,550	6,786	6,568	5,817
USA						
Capacity	KT/Y	7,779	7,794	7,884	7,884	8,184
Production	KT/Y	6,719	6,716	6,574	6,622	6,949
Export	KT/Y	3,015	2,903	2,641	2,618	2,776
Demand	KT/Y	3,960	4,071	4,174	4,229	4,373
Growth Rate	%	8.30%	2.80%	2.50%	1.30%	3.40%
Freely disposable capacity	KT/Y	804	820	1,069	1,037	1,035
Exports as % of production	%	45%	43%	40%	40%	40%
Thailand						
Capacity	KT/Y	890	890	890	890	890
Production	KT/Y	783	774	792	739	792
Domestic demand	KT/Y	284	289	281	228	177
Exports to World	KT/Y	344	302	339	333	494
Exports to India	KT/Y	47	45	25	45	137
Freely disposable capacity	KT/Y	262	299	270	329	219
Exports as % of production	%	44%	39%	43%	45%	62%

83. The Authority notes that response in respect of Thailand has been filed by both the producers who account for entire production of Subject Goods in Thailand. It is noted that since there is no surplus capacity, for disposal, likelihood has been examined with respect of trade diversion only.

whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports

84. The Authority notes that at the current landed price in India, there is positive price undercutting during POI without considering ADD in place. It is also observed that because of the existence of the present ADD the imports are not resulting in price suppression/depression of the prices of the domestic industry.

Antidumping measures imposed on subject goods and trade restrictive measures being invoked by China and USA

85. Domestic industry has submitted that exports from USA are attracting ADD in China and Turkey. The anti-dumping duties have been in force for more than 15 years. The duties have been extended on the grounds of likelihood of dumping and injury. Further, Pakistan

has also imposed anti-dumping duties on Thailand. China and US have imposed additional custom tariffs on each other upto 25% which has implications on imports of PVC in both the markets. The Authority has examined attractiveness of Indian market and diversion of third country exports in event of cessation of the Anti-dumping duty as under, considering the comments filed in response to the disclosure.

86. The Authority notes that not with standing existing surplus capacities and capacity addition, if any, by the exporters of the subject goods, to determine possibility of diversion of third Country exports being diverted to India, analysis of attractiveness of Indian market and thereby its injurious impact on the Domestic Industry has been carried out as per the methodology stated in the disclosure statement.

H. <u>Price attractiveness of Indian Market- A Likelihood analysis</u>

87. The Authority notes that the dumping margin for all co-operative producers/exporters during POI are above deminimis as stated in foregoing para. The Authority notes that the injury margin in respect of cooperative producers/exporters from USA during POI and post POI are negative, while for Thailand, the injury margin is negative for TPC/SCG group and positive for Vinythai in POI and post POI. In case of China, on an overall basis the injury margin is slightly positive both for POI and Post POI. Therefore Authority has examined likelihood of injury only after taking into account comments of other Interested parties on aspects of dumping and likelihood of injury including the post disclosure comments.

88. The Authority notes that the petitioner had provided global export data from trade map for the POI and post POI for the three subject countries. The other interested parties have submitted that the data provided by the petitioners is an aggregate data and not transaction wise. Therefore this data is not realistic and cannot be adopted for likelihood analysis.

89. The Authority notes that the petitioners have submitted that the third country transaction wise data for POI and post POI provided by cooperating producers/exporters in a non-confidential version is not meaningful and that all is kept confidential and they can not react to the same. Petitioners have further provided monthly aggregate data for POI and post POI for all the subject countries and producer wise data in case of China, vide letter dated 14-06-19. The Authority notes that this data is correlated on gross basis with the trade map data provided by them as was stated in the disclosure. However the data of cooperating producers/exporters and trade map has only been adopted. As regards contention of one of the interested party as to why WTA's data has not been adopted the Authority clarified that WTA is not transaction wise data and Authority has correlated the trade map data on a gross basis with the WTA data to validate the trade map data.

90. The Authority notes that the trade map data provided by the petitioner is monthly data of global export to various destinations has validated the trade map data provided by Domestic industry with the WTA data available with DGTR on an aggregate basis POI and post POI to justify adopting the trade map data.

91. To validate if the monthly aggregated data of trade map adopted by the petitioners is credible and representative, the Authority undertook the analysis of third country transaction wise data for cooperating producers/exporters during POI and post POI. Since the cooperating producers/exporters represent about 50% of exported volume to India from China, 80% from USA and 100% from Thailand during POI, their analysis is considered as representative even for the non-cooperating producers/exporters from respective subject countries as well.

92. Keeping in view the above and observation of various interested parties that the trade map data adopted by the domestic industry is at monthly aggregate level, the Authority has undertaken the analysis on the third country transaction wise export data provided by the cooperating producers/exporters, both during POI and post POI.

93. The Analysis is undertaken firstly to evaluate extent of attractiveness of the Indian market in event of cessation of existing anti-dumping duty and thereafter which all transactions would be injurious to the domestic industry in India. For this purpose, the Authority has considered the following as was stated in the disclosure statement.

    a. Exports by cooperating producers/exporters to countries other than India during POI and their likely diversion to India on cessation of existing measures and thereby adverse impact on the DI. For analyzing the extent of diversion, the export prices to countries other than India which are lower than export prices to India would find Indian market attractive for diversion and if the landed values of such diverted exports are lower than the NIP they have been considered injurious.

    b. The aforesaid methodology is also applied on the third country exports by cooperating producers/exporters during the post POI in addition to the analysis undertaken for POI.

94. The analysis of likelihood is undertaken only for 'likelihood of injury' since existence of dumping has been established during POI for the cooperative producers/exporters as stated above. The residual/non cooperative producers/exporters by application of best available information are also evaluated as dumped. The attractiveness and diverted exports which may be injurious is evaluated at the country level though the same has also been considered individually at the cooperating producer/exporter level. The extent of attractiveness and likely to be diverted exports which are injurious evaluated for a subject country for the cooperating producer/exporter is applied to the global exports (excluding India) of the subject country as per the trade map data. The trade map data has been appropriately correlated on an overall basis with the WTA data as stated above. However since in Thailand there are only 2 producers both of whom have cooperated, the consolidated data of these 2 cooperating producers/exporters have only been referenced without recourse to trade map or WTA data.

95. To evaluate market attractiveness for India the following has been considered as stated in the disclosure statement.

    A.

    1. Transaction wise FoB export price of a cooperating producer/exporter to countries other than India.
    2. The available FoB price is adopted or else FoB is computed from the CIF price with the freight as claimed or else by considering average freight of all third country transaction of the cooperating producer/exporter.

3. Further the aforesaid average freight is compared with average freight to India from that subject country and the lower of the two is adopted. This is to ensure that extent of attractiveness of diversion is not inflated and only conservative estimates are applied to evaluate attractiveness.
4. The FoB price of a cooperating producer/exporter so referenced above is compared with FoB price to India for that particular month.

B. In the second stage of analysis, to evaluate injurious exports from the likely to be diverted exports from the third country, the 'landed value' of such third country's FoB export price of a producer/exporter is computed by adding ocean freight as reported by the cooperating producer/exporter and thereafter adding 0.05 % ocean insurance to India and also the BCD and cess on the assessable value.

96. The landed value has been then compared with NIP of POI and also during post POI. The proportion of injurious exports as evaluated for cooperating producer/exporter has then been applied at the global level as done for evaluating attractiveness at global level as stated in paras above.

97. On the basis of the above, the likely injurious imports evaluated as the proportion of total demand of subject goods in India during POI and post POI are; 10-20%, 30-40% and 0-10% respectively for China, USA and Thailand. For Post POI these proportions are 5-15%, 70-80% and 0-10% respectively.

98. On the basis of the domestic industry's data, the likely injurious imports evaluated as the proportion of total demand of subject goods in India during POI and post POI are; 10-20%, 5-15% and 0-10% respectively for China, USA and Thailand during POI. For Post POI these proportions are 5-15%, 10-20% and 0-10% respectively.

I. Post Disclosure Comments

99. **M/s Westlake Vinyls Company LP (Producer and Exporter); M/s Axial, LLC(Related Producer); M/s Westlake Vinyls Inc. (Related Producer) represented by M/s Seetharaman & Associates**

i. DA has wrongly rejected the domestic sales made by the Respondents to their affiliated buyers for the purpose of the OCT test. There is no prescription in law which either mandates or allows for rejection of sales to affiliated buyers simply on the basis of price variation. In the previous SSR-I, domestic sales to both affiliated and unaffiliated customers were considered together for calculating the normal value. The variation in selling price between affiliated and unaffiliated buyers is in the range of ***% which is nominal and under no circumstances can it be considered as high or abnormal leading to rejection of the same.
ii. The cost of VCM, SGA has been increased 'suo moto' by the authority without assigning any reasons whatsoever and also without disclosing the basis for the revisions made. There is no universal principle that SGA costs shall be allocated based on 'sales turnover'.

iii. The costs presented by an exporter or producer shall be accepted so long as they are based on the records maintained by the exporter and such records are in accordance with the GAAPP. A number of working sheets and statements including extracts from accounting records resented earlier shows that the cost presented our reasonable.

iv. Ethylene and Chlorine in their Chlor-Alkali division and when the said items are transferred to 'PVC division', it is recorded at transfer price. The profit is notional and thus needed to be adjusted however the same have been rejected.

v. Authority has divided total cost of sales of M/s Westlake Vinyls Company and Axiall LLC by total production instead of total sales quantity to arrive at per unit cost. Production quantity is lesser than sales quantity due to which per unit cost arrived by the Authority is higher.

vi. Authority has stated the weighted average ex-factory cost of production to be USD *** per MT which seems to be a typographical error. It seems the DA has actually adopted weighted average ex-factory cost of production as USD *** per MT. This has resulted in ***% of domestic sales to unaffiliated traders being considered as profitable. Secondly, the figure of USD *** per MT is incorrect as the correct figure should be USD *** per MT, which will result in approximately *** profitable domestic sales to unaffiliated traders.

vii. For trade diversion of low priced subject goods from their existing markets to India, the price capable of being fetched in India must be substantially higher that the price fetched in third countries which has no relationship with NIP. Further, the market size should be large enough and must also have potential for further growth. in so far as the producers and exporters from USA are concerned, the possibility of trade diversion in case of revocation of anti-dumping duty does not arise as they have other important, larger and established markets for export in which demand is still growing whereas India, which accounts for only a very small portion of its exports, is stagnating.

viii. The propensity for trade diversion does not depend upon prices being lower than the NIP rather, it depends on factors such as quality of the product and delivery times. Otherwise, imports from countries not subject to the investigation would not have entered the domestic market in such significant volumes.

ix. The production quantity of Reliance and Finolex assumed by the DA based upon which it has determined that the Petitioners qualify as Domestic Industry have to be proved by Reliance and Finolex themselves or on the basis of some other public documents.

x. Several earlier observations of the Authority held that in view of the upturn in trend of profitability and other parameters, the ability of the Domestic Industry to raise capital investments was not marred. However the Authority has observed the contrary in this case.

xi. Considering the fact that freely disposable capacities determined for USA are not much higher than that of Thailand, the DA is requested to observe that no surplus capacity exists with producers in USA as it has held for Thailand.

xii. Through letter dated 5/7/2019 M/s Seetharaman Associates have stated that Since as per the union Budget 2019-20, the pre-budget effective rate of BCD on PUC (3904 and further 8 digit classification thereunder) has been increased to 10 % from 7.5%, DA should revise the landed value w.r.t increased BCD of 2.5% while determining injury margin and possibilities of likelihood.

100. **M/s Oxy Vinyl/Oxyde Chemicals/Tricon/ICC Chemical Corporation represented by ELP**

i. The Petitioners should have filed updated import data specifically for the post Period of Investigation either at the time of the initiation or within 40 days post initiation and not at such a belated stage of the investigation. Non-provision of said post-POI information by Petitioners in initial stages of the investigation has impacted the rights of the interested parties under Rule 6.

ii. As regards the inclusion of the complete Chapter 3904 to be considered, the same would be irrational as validly of the duty remains payable on the product and not based on classification and further there are other products which are not within the scope of the present review) which fall under the classification.

iii. it is unfair that the Authority expects participating producers and exporters to represent 70-80% of their sales to India for determining the dumping margin but does not require the maximum participation of the Domestic Producers in India to determine the Domestic Industry. This is considering the observation made by the Supreme Court in *Designated Authority vs. Haldor Topsoe*, wherein it has been noted that Designated Authority can draw an adverse inference if the information sought is not filed by an interested party.

iv. Further, even in case of an assessment of likelihood, there are various factors where the cost, price and performance of the domestic industry is relevant thus the standing and scope of domestic industry becomes relevant even in likelihood of recurrence of injury.

v. If the domestic industry is constituted after excluding parties whose inclusion would otherwise reflect a lower NIP and cost, the assessment of likelihood is bound to be distorted.

vi. The lack of interest by RIL and FIL likewise supports the conclusion that such imports are not likely in the future to threaten injury to the domestic industry.

vii. It is unfair to levy duties on imports from USA when POI imports from the USA account for less than two percent of total imports and various other sources of imports are coming in at substantially higher volumes and comparable or lower prices.

viii. Inclusion of USA and the exclusion of the other countries while in the context of similar market and economic facts is untenable.

ix. Authority has stated that all the involved companies have filed "their relevant questionnaire responses, and also filed post-POI sales data to India and other countries." In this behalf, it may be noted that the Exporters also filed data pertaining to sales to third countries for the period of investigation.

x. The post-POI injury data of the Petitioners clearly indicates that even though imports from USA have increased, there has been no adverse impact on the Petitioners' performance.

xi. The injury margin is negative for USA in the POI and post-POI period. Therefore, even though there is an increase in import volumes, these imports are non-injurious to the Petitioners.

xii. The decline in the market share of the Petitioners is the result of an increase in imports from "other" countries not subject to this investigation.

xiii. Even if duties on USA as a whole are continued, the Exporters should be accorded an individual rate of duty based on the dumping or injury margins (whichever is lower). Since the present case is a sunset review, the *mutatis mutandis* incorporation of Rule 17 of AD Rules under Rule 23(3) of AD Rules must also be borne in mind. In the alternative, even if the duties are extended based on recurrence of dumping or injury, the duties for the Exporters should be zero as per the injury margin.

xiv. the product under consideration is a chemical product, and it is well understood that a capacity utilization rate of 85-90% is considered well above optimal. Thus there is no capacity kept idle to be utilised for exports to India.

xv. It is not clear why the Hon'ble Designated Authority did not use the World Trade Atlas data itself.

xvi. The source of the data filed by petitioners on 14-06-2019 has not been provided so as to conclude the authenticity of the same. The Incoterms of these exports (whether CIF, FOB or any others) are not indicated anywhere in the said filing. the data provided appears to be selected based on broad HS Code headings at the 6-digit levels, whereby it is not clear how the data has been sorted to exclude non-PUC details. Thus for lack of clarity such data should be rejected.

xvii. The price attractiveness analysis forms an "essential fact" in the present review investigation, whereby the same should be disclosed at least in a non-confidential format. Non disclosure of this is in violation of Rule 16 and principles of natural justice.

xviii. Authority has concluded that 30-40% of the demand in India can be met by injurious imports from USA producers as per the period of investigation data and for the post-POI period, the range increases to 70-80%. However, the price at which USA producers / exporters are selling to India are clearly well above the Petitioners' non-injurious price for the POI as well as the post-POI period.

xix. Price attractiveness is merely one of the parameters to be considered for likelihood. A holistic view of the parameters of likelihood needs to be taken. USA diverted the trade to India in post POI however increased its price which is non injurious thus even if export is diverted to India it will be at non injurious price. The increase in exports to India came as a result of decreasing exports to other countries where prices were lower than price to India.

xx. The Exporters would only benefit from switching their market if they could sell the product to India at a higher price.

xxi. The long-standing duties from USA and China does not have any impact on the factors of likelihood.

xxii. Annexure referred by petitioners also states "Impact Seen Limited for PVC" and that "the impact of China's tariffs would be limited for PVC, even though the US is a key PVC exporter to China." Thus, the USA-China tariffs have not had a major impact on PVC trade.

xxiii. M/s ELP through letter dated 9/7/2019 have stated that Since as per the union Budget 2019-20, the pre-budget effective rate of BCD on PUC (3904 and further 8 digit classification thereunder) has been increased to 10 % from 7.5 , DA should revise the landed value w.r.t increased BCD of 2.5% while determining injury margin and

possibilities of likelihood. The impact on likelihood and injury margin may be undertaken accordingly.

101. **M/s Vinythai Public Co Ltd, Thailand represented by M/s Seetharaman & Associates**

i. There is a typo at first line of para 46 (in relation to normal value), wherein one of the grades is mentioned as grade 201, instead of 261 which may be corrected.

ii. Relevant data in respect of calculations relating to 'market attractiveness' analysis, details of 'Insufficient justification' found by the authority to not initiate the investigation in respect of EU, Mexico, Indonesia, Taiwan, Japan and Malaysia, data supporting the observation that subject countries possess 'free disposable capacities', details supporting the observation that China and USA have imposed additional tariffs of upto 25% on each other, have not been disclosed.

iii. The Authority is not just supposed to disclose methodology but is also required to provide price attractive calculations (in a confidential manner to the respective parties concerned in respect of their data and in a non-confidential manner in respect of data of other parties). Not disclosing the detailed calculations for 'market attractiveness' analysis, is against the provisions of Rule 16 of AD Rules.

iv. Imports from Thailand during POI was only 7% of the total demand and during post-POI, it was 4% of total demand. The observation of the authority that injurious imports from Thailand account for 0-10% of total demand (both POI and post POI) would indicate that almost all imports from Thailand are injurious. This appears to be erroneous as the injury margin is negative for the major exporter from Thailand as well as for the country as a whole.

v. The Authority has not examined whether all the exports at lower prices would be diverted to India. There is no reason why a country would shift volumes from one low-priced country to another low-priced country. The propensity for diversion of volumes from other countries to India would not depend on just the price.

vi. It is not appropriate to assume that all volumes of exports to other countries that are below NIP would be diverted from those countries to India.

vii. Trade diversion analysis or market attractiveness analysis should take into account, at the least, the factors such as -

   a. Capacity, including excess capacity in the export market(s) from where the possibility of diversion is being considered.
   b. Demand, including likely growth in demand for the product in the market(s).
   c. Low priced imports as a percentage of total imports of the product in the market(s) concerned.
   d. why Indian market is more attractive compared to the existing third country market or vice versa given that the prices are low in both markets.

viii. The Authority cannot merely state that there was insufficient justification, without providing the actual reasons for not initiating cases against certain countries which are similarly placed to Thailand.

ix. It is not known whether imposition of additional customs tariffs by US and China covers subject product or not.

x. It appears that petitioner's lowest possible net sales realization (derived based on disclosure made), i.e., Rs. 66.7/kg, was also higher by 5% as compared to the highest possible NIP (Rs. 63.5/kg) during the POI. Thus, petitioners were earning much more than their own cost to make and sell and hence were not suffering any injury.

xi. The situation gets better during post-POI as petitioner's lowest possible net sales realization (Rs. 69.4/kg) was higher almost by around 10% as compared to the highest possible NIP (Rs. 62.5/kg) during the post-POI period.

xii. The price underselling or injury margin for Thailand was negative during POI as well as post-POI.

xiii. There is no support from the 70% of the total Indian industry who were participating in the original investigations.

xiv. In Seamless Tubes and Pipes from China PR is applicable in the present case, domestic industry held only 27% of total Indian production, in absence of any information received from the supporters, the injury and causal link analysis could not be carried out by the Authority.

xv. It is not clear whether the 62MT stated in the disclosure statement relates to POI or entire injury period. Further, assuming the volume to be negligible it may be considered that since the applicants were aware of the fact that they would be filing a petition for continuation of anti-dumping duty, it is possible that Axiall Shriram stopped or restricted imports during the POI. It is not discernible from the disclosure statement whether DA examined the post-POI trend of imports made by Axiall Shriram or not.

xvi. Authority has not explained as to what is meant by the term 'technical nature' in relationship. It appears that the Authority has not undertaken any further examination in respect of the fact whether the relationship between two entities did cause the producers to behave differently from non-related producers.

xvii. All imports made by Shriram Axiall should be removed while considering the volume and price effect as well as market share of imports for a fair analysis.

xviii. Sunset review was not initiated by the Authority on suo moto basis rather has been initiated on the basis of application submitted by domestic producers who claim to be Domestic Industry within the meaning of Rule 2(b) and on the Authority determining the jurisdictional fact that applicants constituted major proportion at the stage of initiation. Thus, while issuing final findings, it must be ascertained whether the applicants actually constitute a major proportion.

xix. Respondents differ with the determination that in examining the likelihood of recurrence of injury, the information of exporters is more pertinent. in order to examine likelihood of recurrence of injury to the domestic industry, it is pertinent to examine the existing and forecasted performance of the entire domestic industry of PVC in India.

xx. The volumes from other countries, which are causing adverse volume effect to the petitioners, if any.

xxi. There has been a steep decline in exports to India by Vynthai between POI and post-POI period. Exports to India have almost stopped during the post-POI period. Ex-factory export price to India during the post-POI period is higher than the price in POI, there is no likelihood of dumping.

xxii. Vynthai have a significant established market in other countries, while India is a very small market. The small Indian market further shrunk even more post-POI as

exports to India reduced by almost 91% as compared to POI, thus Indian market is not attractive.

xxiii. DA has undertaken extensive analysis of exports made by the exporters from subject countries, however, no similar exercise has been undertaken in respect of determining whether petitioners are in themselves likely to suffer any injury or not however have not examined the projections and further developments in the Indian industry. When trade diversion from subject countries is not only limited to participating producers and exporters, then the same standard should be applicable in case of Indian industry as well.

xxiv. Authority has sufficient powers to request requisite excise/GST Commissionerate/MCA to provide information about each of the Indian domestic producers in terms of their production, sales as well as annual accounts. Further, companies after crossing a certain threshold limit as provided in Section 148 of Companies Act 2013 read with relevant rules are required to file cost audit reports with Ministry of Corporate Affairs. Since the filing is made to a statutory authority, the DA has enough powers to request for the said data and examine the same.

xxv. DCM Shriram has had a profitable post POI period insofar as Chlor-vinyl segment is concerned as not only their profits increased on year-to-year basis, but also on quarterly basis.

xxvi. Chemplast Sanmar, recently (post-POI) began trial production at its new plant in Cuddalore, which has a 170,000-tonne capacity PVC project.

xxvii. RIL achieved the highest ever quarterly production of PVC, that too, around 190Kton in one quarter, which is almost 45% of total production achieved by all petitioner companies put together for the entire year.

xxviii. Production achieved by RIL in one quarter is more than total imports from Thailand during the POI as well as post-POI put together. With such gigantic producer existing in India itself, which is also making profits, it is surprising to note that the DA wishes to undertake elaborate examination in respect of relatively paltry percentage of exports from subject countries to determine trade diversion and resultant likely injury to the petitioners.

102. **M/s Itochu (Thailand) Ltd. and M/s Itochu Plastics Pte. Ltd represented by M/s WTC Consultants**

i. Authority has not granted separate rate of dumping margin and injury margin to participating co-operating exporters. though the questionnaire response is required to be filed by both the exporters and producers for calculating the Net Export Price (NEP). The interest of the exporters is not taken into consideration which avert them to file the questionnaire response. The producer specific practice needs to be modified/changed keeping in view the interest of the exporters.

103. **M/s Thai Plastic and Chemicals PLC (Producer); M/s SCG Plastic Co. Ltd. (Related Exporter) and M/s SCG Performance Chemical Co. Ltd (Related Exporter), Thailand**

i. There is an unintentional typographical error and that the normal value ex-factory should read (xxx) and not in Thai Baht per MT for TPC.
ii. Rejection of allownaces is disagreed upon. There is no training expense involved. On the issue of foreign exchange gains (commercially sensitive and it reveals the marketing strategy of SCG Plastics Co., Ltd. & SCG Performance Co., Ltd.). Export rebate represents a duty draw back system and it is reimbursed on exports. As such, the rebate should be added on to export price to ensure a fair comparison and not deducted.
iii. TPC is unable to reconcile the export ex -factory prices in that if we based on the spread sheets sent in the confidential disclosure.
iv. The policy of TPC is to remain present on our core markets which precludes moving their exports from another market to India as can be seen from the volume of sales from 2014 to present which shows that their exports to third markets has remained stable over the years with relatively minor increases in the period 2018 onwards. They will not sacrifice customers in other countries simply to export more to India.
v. Post POI exports have declined with negative injury margin. ADD must be terminated against Thailand as none of the parameters indicate that there exists likelihood of dumping and injury by Thailand exports.

104. **M/s Tianjin LG Bohai Chemical Co. Ltd.(Producer), M/s Tianneng Chemical Co., Ltd (Producer), M/s Xinjiang Tianye (Group) Co., Ltd (Related Trader), M/s Tianjin Dagu Chemical Co., Ltd (Producer), M/s Bohai Chemical (HK) Limited (Related Trader), M/s Xinjiang Shengxiong Chlor-Alkali Co., Ltd (Producer) and M/s Xinjiang Zhongtai Chemical Co. Ltd (Related Trader) represented by LKS**

i. Authority has noted the names of Bohai Chemical (HK) Limited and Xinjiang Shengxiong Chlor-Alkali Co. Ltd. have been noted incorrectly.
ii. If the Authority recommends for continuation of duties, then the Authority must follow the lesser duty rule and recommend continuation of duties based on the lesser of the dumping or injury margin as determined in the present sunset review investigation.
iii. In the First SSR duties were modified upwards based on the determinations made. Thus, the Authority in the present investigation cannot simply continue the same duties.
iv. The participating producers in the present review investigation and those in the previous sunset review are different and individual margins must be assigned to those parties which have participated in the present investigation.
v. The parties named at serial number 15 and 16 in the previous SSR investigation notification have undergone change in name and have participated in the present investigation as well. Continuation of the previous customs notification would bind the participants to residual rates of duty, despite active participation in the previous sunset review investigation as well as the present one.
vi. Despite DCM Shriram having a related importer who is importing from Thailand and other countries as well as a related producer who is a significant exporter from USA and in collaboration with whom it owns the related importer, the DA has disregarded all imports and exports by related parties and held the petitioner as an “eligible” constituent of domestic industry.

vii. In case DCM Shriram Limited is discarded as an eligible domestic producer, the remaining producers would not be able to establish 25% standing because of which DCM Shriram have been included in the scope of DI.

viii. The identification of a holistic domestic industry is a critical starting point for assessing injury- whether continued or likely to recur.

ix. In the original investigation, the Authority had noted that RIL is a major producer and had insisted on the inclusion of its data for the purposes of injury assessment, which it had to file later on. It also participated in subsequent review investigations, thus this sudden lack of investment in the ongoing investigation merits consideration by the Authority.

x. RIL is the most efficient of the domestic producers, and inclusion of RIL's data would significantly impact NIP. Thus its participation is critical.

xi. Even in SSR cases Domestic industry participation becomes relevant at SSR stage as NIP determined is being used for likelihood analysis which is based on inefficient domestic producers.

xii. it is possible that the reasons for which investigation was not initiated *qua* other countries may be equally applicable to the subject countries also, but such assessment is not possible in view of non-disclosure of the reasons by the Authority for non-inclusion of other countries who are attracting ADD and have higher share of volume of imports.

xiii. Authority has stated with regard to cumulation that separate information for the three countries is on record with likelihood analysis separately undertaken for each country but completely failed to address it in the context of assessment of continued injury.

xiv. Authority has considered prices from Korea to be a "feasible option" for the purposes of normal value from China PR, without any request for information from Korean producers, without any request for comments from Respondent pertaining to the acceptance of Korea as a surrogate country and without any opportunity to consider the normal value at all and despite all this it has actually constructed normal value on the basis the cost of production of domestic industry.

xv. Authority to break down the construction of the Normal Value- prejudicial to the Respondent- and explain which element of cost pertains to Petitioners and which ones are taken from international sources.

xvi. The continuation of an anti-dumping duty is an "exception" to the otherwise mandated expiry of the duty after five years as noted by WTO AB Report in *US Carbon Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from* Germany.

xvii. The Authority should either rely on the post-POI data or should completely leave the data aside. This picking and choosing of the data is unacceptable. Usage of words such as "slightly lowered" shows bias and should be refrained.

xviii. The Authority must compare the import prices after addition of anti-dumping duties for undercutting and injury margin. Once ADD is added to the landed value of the subject countries, it becomes evident that the price levels of the subject goods are comparable with the price levels of imports from all other sources, and even comparable /higher than the NIP of the Petitioners.

xix. Injury margin with respect to USA and Thailand is negative, at price levels of Rs.63.19 in the POI. Therefore, it is clear that imports from China at the price level of Rs. 61.09 have an injury margin of about 1%. There is no current injury or likelihood of injury on account of imports from China.

xx. Authority should disclose the methodology of calculation of Non-Injurious Price and also, reconsider the same.

xxi. China's share in total demand amounted to 12.17% in 2014-15 and which declined to 7.41% in POI and further to 4.84% in the post-POI. It cannot be considered as "significant" by the Authority, particularly when the share of non-subject countries in Indian demand amounts to 43.15% in post-POI.

xxii. the data based on IHS Reports is incorrect- as the producers accounting for entire production of subject goods in Thailand have participated and established that there is no surplus capacity. Thus the same is likely to be incorrect for other countries.

xxiii. Authority has not disclosed the basis of adoption of a new methodology for consideration of "price attractiveness" of Indian market.

xxiv. The statement that "*the Authority notes that the trade map data provided by the Petitioner is monthly data of global export to various destinations has validated the trade map data provided by the domestic industry with the WTA data available with the DGTR on an aggregate basis POI and Post POI to consider adopting the DI s data appropriately* is not clear at all.

xxv. Individual transactions, picked and chosen for their "low" values, may represent specific contractual reasons such as being part of a long term contract, subject to shorter credit periods, related company transaction, part of a specific arrangement between producers/exporters and third party importer. In such a case, the discarding of average prices in favour of specific transactional prices appears to be without justification.

xxvi. Imposition of these additional tariffs by USA against imports by China did not lead to any increased imports from China to India.

xxvii. While there is a proposal to conduct various methodologies for price attractiveness- no data or facts pertaining to the same have been provided. Provision of methodology is one essential fact, but the data and trends before the Authority in this regard are also essential facts.

J. Brief of Domestic Industry Comments

105. i. Imports in relative terms declined till 2015-16 and increased thereafter in the POI. Imports have shown some decline in post POI as imports from other sources increased, however, the same remains significant. Further, imports in relative terms declined till 2015-16 and increased thereafter in the POI.

ii. The ADD in place has prevented price suppression or depression in the domestic market. However, considering significant price undercutting in the product under consideration, it is evident that cessation of existing ADD will lead to significant price suppression / depression in the market.

iii. Even a small difference of Rs. 500 PMT in product under consideration become so significant that a producer can lose an order if the price difference is found by consumer in the range of Rs. 500 PMT.

iv. Profitability, cash profits and ROI have shown increase in the injury period. The current level of profits earned by domestic industry are in a situation where ADD is in place on product under consideration.

v. If last 15 years is considered, it would be seen that the ROI of domestic industry is far below reasonable levels considered by the Authority even in a situation where the Authority determines ROI on the net present value of the investments (barring last two years).

vi. The investigation has shown that the percentage of injurious exports that is likely to be diverted to India from USA is much higher than what was claimed by the domestic industry. Further, the Authority has stated that the price attractive analysis is not inflated and only conservative estimates are applied to evaluate attractiveness. This indicates that actual volume of must be significantly high posing threat of injury in the event of cessation of duties.

vii. Exports from USA are attracting ADD in China and Turkey. The anti-dumping duties have been in force for more than 15 years. The duties have been extended on the grounds of likelihood of dumping and injury.

viii. Pakistan has imposed anti-dumping duties on Thailand. Pakistan has imposed antidumping duty on much lower volume of imports as compared to volume of exports to India.

ix. China and US have imposed additional customs tariffs on each other upto 25% which has implications on imports of PVC in both the markets.

x. Behaviour of subject countries' prices considering month by month import prices from April 2008 till March, 2018 (i.e., 120 months) shows that out of total 120 months, Chinese prices were lowest in 28 months, while import price from USA were lower in 59 months and import price from Thailand were lower in 38 months.

xi. Subject countries are currently exporting majority of their exports to India at prices lower than the domestic prices of the Indian Industry.

xii. Since injury to the domestic industry is based on the likelihood of recurrence of injury to the domestic industry, any modification to the quantum of duty would not be appropriate. There can be injury margin only when there is an injury. If there is no injury, there can be no injury margin. Extension of existing anti-dumping duty is also fully permissible within the meaning of Section 9A(5).

xiii. Anti-dumping duty may be imposed only as fixed quantum of anti-dumping duty (fixed form of duty), expressed as duty in US$/MT.

K. Examination by Authority

106. (A) The Authority after examining the submissions on imports by M/s Shriram Axial reiterates that the imports made by them are extremely insignificant which may warrant exclusion of M/s DCM Shriram Ltd. from the scope of the Domestic Industry. None of the other Indian producers have opposed the petition. The Authority holds that the petitioning companies meet the standing threshold. The non-participation by M/s RIL and M/s Finolex can not be considered as a constraining factor for evaluating injury to the petitioning companies both in POI for material injury or post POI for a likelihood analysis, since the injury evaluation has to capture both volume effect and price effect. The evaluation of likelihood of diversion of third country exports to India as a volume effect is not impacted by the non-participation of M/s RIL and M/s Finolex. The Authority notes the submissions regarding petitioner domestic industry not having filed post POI data along with the

application initially but later i.e. on 25/2/2019. The Authority notes that producers/exporters also filed the same data later after the oral hearing. The Authority has also considered and addressed the submissions made by certain parties in July 2019 after the last date to file the comments to the disclosure to factor in the recent increase in basic customs duty on subject goods while undertaking likelihood of injury analysis.

(B)

i. The Authority notes the submissions of M/s Itochu (Thailand) Ltd. and M/s Itochu Plastics Pte Ltd., Singapore and holds that the data filed by both the above entities has been considered while evaluating the dumping margin for the producer. In this regard, the Authority underscores its recent practice to accord producer specific dumping margin which has been adopted in this case as well.

ii. The Authority notes that M/s Westlake Vinyls Company LP (Producer and Exporter) has claimed that its sales to affiliated buyers has been wrongly rejected. In the earlier SSR 1, the domestic sales to both affiliated and non-affiliated were considered for evaluating dumping margin for them. The Authority notes that the prices to affiliated and non-affiliated vary quite a lot in the current investigation and therefore the facts in the present case are not same as the facts in SSR 1. As no appropriate justification have been provided by the exporter as to why prices to affiliated buyers are lower, the Authority has referenced the prices to non-affiliated parties only, to evaluate the dumping margin since these transactions are considered to be at arm's length. As regards M/s Westlake Vinyls Company LP submission on transfer price aspect, the Authority has adjusted the transfer price based on overall profit percentage of the company.

iii. The Authority notes the submissions by M/s TPC/SCG regarding an error in the ex-factory export price computation. The Authority has re-examined and corrected the same by considering export rebate as an addition and not as a deduction and has recomputed the ex-factory export price as *** Bhat/MT (*** $/MT) after appropriately considering all admitted adjustments. The dumping margin accordingly is re-computed as *** %. As regards non admissibility of certain adjustments on normal value and ex-factory export price submitted by M/s TPC/SCG, the Authority holds that as enumerated in the confidential disclosure, only those adjustments whose evidence and justification was provided during onsite verification were considered for evaluating normal value and ex-factory export price appropriately.

iv. The Authority notes the submission regarding according individual dumping margin to cooperative producers/exporters who have participated now and did not participate earlier. The dumping margins of the participative producers/exporters have been evaluated for POI to establish the fact of dumping which is one of the essential parameters to consider continuance of the existing measure. The Authority holds that for cooperating producers/exporters likelihood has been examined on the basis of the aggregated transaction wise data as available from the cooperating

producers/exporters and the continuance of existing AD duties has been considered appropriately.

C.

i. The Authority notes the contentions of various interested parties on the likelihood analysis and holds that it has referenced the transaction wise data provided by the cooperating producers/exporters to evaluate the extent of diversion of exports to countries other than India by considering attractiveness of Indian Market and extent transactions being injurious, in event of anti-dumping duty being withdrawn. The methodology was demonstrated in the disclosure statement as also stated above in foregoing paras. The Authority holds that submission as to domestic industry is not suffering any injury and that they are profitable is infact also admitted by domestic industry and so stated by the Authority in the disclosure statement. The Authority has evaluated the likelihood of injury to domestic industry in event of withdrawal of anti-dumping duty.

ii. Various Interested parties have stated that it is unlikely that post cessation of ADD all 3rd country exports which are at lower prices than to India may get diverted. Further the terms of trade are also an important parameter to determine the price. It has also been submitted that when post POI injury margins are negative, it is quite unlikely that the diverted exports may become injurious. The Authority has undertaken the likelihood analysis of diversion of exports to India considering the export prices from a subject country which are lower than export price to India, and which may be injurious in event of its landed value being lower than the indicative NIP, in post POI. Further as stated in later para, the recent hike in basic custom duty has also been factored in examining the likelihood.

iii. The Authority notes the post disclosure submission by M/s Vinythai Public Company Limited (Producer) and M/s TPC/SCG on the aspect of their exports to India and likelihood of such exports causing injury to the domestic industry. The Authority notes that on the basis of both cooperative exporters data and the trade map data provided by the petitioner, it is seen that during Post POI, the likelihood of diverted exports of Thailand from countries other than India to India in the event of cessation of AD duty is less than ***% of the demand of PUC in India. This magnitude of injurious diversion does not indicate recurrence of injury to the domestic industry. Therefore it does not warrant extension of ADD on imports of Subject Goods from Thailand.

iv. However the extent of third country exports by China and USA is quite high and with such a high export propensity, likelihood of diversion of exports and such diversion being injurious when considered even in a conservative scenario would be a significant proportion of demand in India. The Authority notes that submissions have been made by M/s LKS and M/s ELP representing producers/exporters from subject countries as stated earlier that the recent increase of BCD on PVC be considered for likelihood of injury analysis. By undertaking such an analysis the

results still indicate that extent of injurious exports are quite significant. By factoring in the submission on increase in BCD for landed value computation in likelihood analysis, it is noted that the extent of share of injurious exports in demand is lowered. The percentage of diverted injurious exports as per cooperative producers/exporters data in POI and post POI for China becomes *** and *** respectively and USA becomes *** and *** respectively. As per domestic industry's data these shares become *** and *** respectively for China and *** and *** respectively for USA. Therefore the quantum of injurious exports on diversion is noted to be reduced. However still the likely share of China and USA in total imports in India as per the most pessimistic scenario would be in the range of 10% and 20% respectively. In any case the likelihood of volume injury would still remain quite significant. The tables H3 and H4 below depicts this scenario.

The attractiveness and the injurious exports amongst such diverted exports to India evaluated for POI and post POI are as under:

Table H1 - Cooperative producers/exporters

		POI							
SN	Country	Volume of export to India by responding exporters	Volume of export to third countries by responding exporters	% of attractive volumes to third country exports	% of injurious volumes to attractive volumes	Country volume attractive *	Country volume injurious **	Volumes attractive as % of Indian demand	Volumes injurious as % of Indian demand
		MT	MT	%	%			%	%
1	China	***	***	55-65%	85-95%	***	***	14.20%	12.71%
2	Thailand	***	***	50-60%	45-55%	***	***	5.34%	2.49%
3	USA	***	***	50-60%	65-75%	***	***	51.25%	35.79%
		Post POI							
1	China	***	***	75-85%	50-60%	***	***	13.35%	7.48%
2	Thailand	***	***	45-55%	15-25%	***	***	4.31%	0.87%
3	USA	***	***	70-80%	85-95%	***	***	90.59%	79.29%

Table H2 - Trade map data of petitioner

		POI							
SN	Country	Volume of export to India as per Trade Map data	Volume of export to third countries as per Trade Map data	% of attractive volumes to third country exports	% of injurious volumes to attractive volumes	Country volume attractive	Country volume injurious	Volumes attractive as % of Indian demand	Volumes injurious as % of Indian demand
		MT	MT	%	%			%	%
1	China	***	***	80%	69%	***	***	19.66%	13.51%

2	Thailand	***	***	60%	68%	***	***	7.53%	5.16%
3	USA	***	***	12%	79%	***	***	12.37%	9.74%
		Post POI							
1	China	***	***	57%	67%	***	***	9.37%	6.26%
2	Thailand	***	***	61%	10%	***	***	6.86%	0.67%
3	USA	***	***	43%	30%	***	***	51.41%	15.36%

The Diversion with recent hike in BCD from 7.5% to 10% is evaluated on injury likelihood as under:

Table H3 - Cooperative producers/exporters

		POI							
SN	Country	Volume of export to India by responding exporters	Volume of export to third countries by responding exporters	% of attractive volumes to third country exports	% of injurious volumes to attractive volumes	Country volume attractive *	Country volume injurious **	Volumes attractive as % of Indian demand	Volumes injurious as % of Indian demand
		MT	MT	%	%			%	%
1	China	***	***	58%	73%	***	***	14.20%	10.41%
2	Thailand	***	***	58%	47%	***	***	5.34%	2.49%
3	USA	***	***	52%	59%	***	***	51.25%	30.18%
		Post POI							
1	China	***	***	80%	30%	***	***	13.35%	4.06%
2	Thailand	***	***	45%	20%	***	***	4.31%	0.87%
3	USA	***	***	76%	78%	***	***	90.59%	70.84%

Table H4 – Trade map data of Petitioner

		POI							
SN	Country	Volume of export to India as per Trade Map data	Volume of export to third countries as per Trade Map data	% of attractive volumes to third country exports	% of injurious volumes to attractive volumes	Country volume attractive	Country volume injurious	Volumes attractive as % of Indian demand	Volumes injurious as % of Indian demand
		MT	MT	%	%			%	%
1	China	***	***	80%	55%	***	***	19.66%	10.79%
2	Thailand	***	***	60%	68%	***	***	7.53%	5.16%
3	USA	***	***	12%	31%	***	***	12.37%	3.81%
		Post POI							
1	China	***	***	57%	41%	***	***	9.37%	3.81%

2	Thailand	***	***	61%	10%	***	***	6.86%	0.67%
3	USA	***	***	43%	16%	***	***	51.41%	8.13%

L. CONCLUSIONS

107. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority concludes that:

i. The product under consideration has been exported to India from the subject countries during POI at dumped prices.

ii. The Domestic Industry has not suffered material injury during the POI in terms of either price or volume effect with Anti-dumping duty measure being in force. There exists likelihood of injury due to imports from USA and China on cessation of AD duty. The likelihood of injury of imports from Thailand is quite low and insignificant.

iii. The likelihood analysis indicates that in event of cessation of Anti-dumping duty, the exports by USA and China to countries other than India are likely to get diverted to India. The landed value of significant volume of such diverted exports would cause injury to the domestic industry when compared with the NIP during post POI.

M. RECOMMENDATIONS

108. i. The Authority notes that all cooperating producers/exporters except M/s Westlake would fall under either non sampled/or residual category in original or the 1st SSR finding. Out of the 7 cooperating producers/exporters from China, the injury margin in the POI for 5 cooperating producers/exporters is positive. The injury margin for remaining 2 producers/exporters of China and 2 cooperating producers/exporters of USA ranges from low to moderate. The Anti-dumping duty was by and large higher in the 1st SSR as compared to the original finding on account of enhanced margins of dumping and/or injury.

ii. The Authority however notes that in the instant case the likelihood of injury has been claimed by the domestic industry which has so been assessed and evaluated by the Authority. The likelihood of injury is established only on imports from China and USA. The extent of injury may however decrease to some extent due to recent increase in BCD to 10% as stated in earlier paras. In view of this, the injury margins in POI in this case would not be relevant and the earlier imposed AD measure as applicable may warrant continuance. However keeping in view the fact though there is likelihood of injury which shows some decrease after enhanced Basic Customs Duty, the quantum of measure imposed in the original finding rather than the 1st SSR would be adequate for all cooperating producers/exporters except for M/s Westlake for whom an individual margin has been accorded in 1st SSR on account of cooperation.

iii. Further keeping in view that it is the 2nd SSR, tenure of 30 months of continued measure from the date of imposition of the measure as recommended below would be reasonable.

iv. In view of the aforesaid, the Authority recommends imposition of definitive Anti-Dumping Duties on the import of the Subject Goods, originating in or exported from People's Republic of China and United States of America as indicated in Col (7) of the duty

table below for a period of 30 months from the date of Notification to be issued in this regard by the central government substituting existing custom Notification No. 23/2019-Customs (ADD) dated 11th June, 2019.

Duty Table

Sl. No	Heading	Description	Country of origin	Country of export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	People's Republic of China	People's Republic of China	i. M/s Tianjin LG Bohai Chemical Co., Ltd. ii. M/s Tianneng Chemical Co., Ltd iii. M/s Tianjin Dagu Chemical Co., Ltd iv. M/s Xinjiang Shengxiong Chlor-Alkali Co., Ltd v. M/s Chiping Xinfa PVC Co., Ltd. vi. M/s CNSG Jilantai Salt Chlori - Alkali Chemical Co., Ltd. vii. M/s Yibin Haifeng Herui Co., Ltd.	61.14	MT	US Dollar
2.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	People's Republic of China	People's Republic of China	Any other producer except i to vii mentioned above in column no. (6)	147.96	MT	US Dollar
3.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	People's Republic of China	Any country other than People's Republic of China	Any	147.96	MT	US Dollar
4.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	United States of America	United States of America	M/s Westlake Vinyls Company LP	29.99	MT	US Dollar
5.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	United States of America	United States of America	M/s Oxy Vinyls LP	49.10	MT	US Dollar

6.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	United States of America	United States of America	Any other producer except M/s Westlake Vinyls Company LP, M/s Oxy Vinyls LP	115.54	MT	US Dollar
7.	3904	Homopolymer of vinyl chloride monomer (suspension grade)	United States of America	Any country other than United States of America	Any	115.54	MT	US Dollar

Note: The product under consideration is Homopolymer of vinyl chloride monomer (PVC) (suspension grade) where various polymer chains are not linked to each other, which however, excludes the specialty poly vinyl chloride suspension resins such as cross-linked poly vinyl chloride, chlorinated poly vinyl chloride (CPVC), vinyl chloride – vinyl acetate copolymer (VC-Vac), poly vinyl chloride paste resin and poly vinyl chloride blending resin.

N. FURTHER PROCEDURE

109. An appeal against this notification shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975.

(Sunil Kumar)
Additional Secretary & Designated Authority