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F. No.14/10/2014-DGAD

Government of India

Ministry of Commerce & Industry

Department of Commerce

(Directorate General of Anti Dumping & Allied Duties)

4<sup>th</sup> Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

**NOTIFICATION**

**Date: 20<sup>th</sup> October, 2015**

**(Final Findings)**

**Subject: Anti-dumping investigation concerning imports of Melamine Tableware and Kitchenware products from China PR, Thailand and Vietnam.**

**BACKGROUND**

1. F. No.14/10/2014-DGAD: Whereas, M/s Hamilton Housewares Pvt. Limited (herein referred as "petitioner" or "Applicant") filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Act and the Rules for initiation of anti-dumping investigations concerning imports of Melamine Tableware and Kitchenware products (hereinafter also referred to as the subject goods), originating in or exported from China PR, Thailand and Vietnam (herein referred as subject countries) and requested for imposition of anti-dumping duties on the imports of the subject goods, originating in or exported from the said countries.
2. The Authority, on the basis of sufficient evidence submitted by the applicant, issued a Notification No.14/10/2014-DGAD dated 28th October, 2014, published in the Gazette of India, initiating the subject investigations in accordance with the Rule 5 of the above Rule to determine the existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the said countries, and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

**A. PROCEDURE**

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
  - i. The Designated Authority, under the above Rules, received a written application from the Applicant on behalf of the domestic industries, alleging dumping of Melamine Tableware and Kitchenware products originating in or exported from China PR, Thailand and Vietnam.

- ii. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented.
- iii. The Authority notified the Embassies/Representatives of the subject countries in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.
- iv. The Authority issued a public notice dated 28th October, 2014 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
- v. The Authority sent a copy of the initiation notification to the Embassies of China PR, Thailand and Vietnam in India, known producers/exporters from China PR, known importers/users and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days of the initiation notification.
- vi. The Authority sent exporters' questionnaires to elicit relevant information to the following known producers/exporters in China PR, Thailand and Vietnam (whose details were made available by the applicant) and gave them opportunity to make their views known in writing in accordance with the Rule 6(2) of the AD Rules.
  1. M/s Fujian Nan'an Shi Hengsheng, China
  2. M/s Mecame Tableware Co., Ltd., China
  3. M/s Zicco Melamine Product Co. Ltd., China.
  4. M/s Union Source Co., Ltd., China
  5. M/s Foshan Shunde Melodic Kitchen Products Co., Ltd., China
  6. M/s Jieyang Xiong Ying, China
  7. M/s Guangzhou Nantian Sources Co. Ltd., China
  8. M/s Hansa International Co. Ltd., China
  9. M/s Dongguang ShunTa Melamine Products Co., Ltd., China
  10. M/s Huong Dang Artistic Handicrafts & Lacquewares Company Ltd.
  11. M/s Hanoi Trade Corporation, Vietnam
  12. M/s Vinh Co Ltd., Vietnam
  13. M/s Huong Dang Artistic Handicrafts & Lacquerwares Company Ltd., Vietnam
  14. M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam
  15. M/s Melamine Thai, Thailand
  16. M/s Srithai Superware Public Co. Ltd., Thailand
  17. M/s Somboonchoke Kitchenware Co. Ltd., Thailand
  18. M/s Bangkok Melamine Marketing and Holding Co. Ltd., Thailand
- vii. None of the exporter from China PR has filed questionnaire response. Following exporters from Vietnam and Thailand have filed response to the questionnaire:

1. M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam
2. M/s Srithai Superware Public Co. Ltd., Thailand

viii. The Authority sent Importers' Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:

1. M/s Agarwal Chemical
2. M/s. ATS India Pvt. Ltd.
3. M/s AVM Sales Corporation
4. M/s Bardiya Recon Export Pvt. Ltd.
5. M/s. UCB India Pvt. Ltd.
6. M/s Valeo Friction Materials India Ltd
7. M/s Viva Overseas
8. M/s Zuari Industries Ltd.
9. M/s Pashupati Industries
10. M/s Deepak Industries
11. M/s Singh Traders & Fabricators
12. M/s V.K. Enterprises
13. M/s Melomax India
14. M/s D & R Enterprises
15. M/s Sg Plast India
16. M/s Sr Enterprises
17. M/s Axis Enterprises
18. M/s Udai Plastic & Chemicals
19. M/s Shri Parshav Silver Ware
20. M/s Garden Glory
21. M/s Goldstar Glasswares Pvt. Ltd.
22. M/s Aadi Industries
23. M/s Siddarth Enterprises
24. M/s Chadha Exports
25. M/s Royal De Wajidsons
26. M/s Desmo Exports Ltd.
27. M/s Shree Paras Marketing
28. M/s Harish Crockery House
29. M/s KD Exports
30. M/s Udai Plastic & Chemicals
31. M/s Pavithra Impex
32. M/s Decent Plastic
33. M/s Aar Kay Enterprises
34. M/s Ab 1986
35. M/s Interasia India Pvt. Ltd.
36. M/s Shree Nath Packers
37. M/s U.P. Ceramics & Potteries Ltd
38. M/s Kumbhkaari
39. M/s Funkrafts

40. M/s Reliable India

41. M/s Home Shine

- ix. The following importers/users of the subject goods in India have filed the Importer questionnaire response:
  - 1. M/s K.P. International
  - 2. M/s Srithai Superware India Limited
- x. Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties. Submissions made by all interested parties have been taken into account in this Final Finding Notification.
- xi. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules.
- xii. Further information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the investigation. The data given by exporters was examined in detail.
- xiii. Non-injurious price has been determined based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- xiv. Investigation was carried out for the period starting from April, 2013 to March, 2014 (POI). The examination of trends, in the context of injury analysis, covered the period from April 2010-March 2011, April 2011 - March 2012, April 2012 - March 2013 and the Period of Investigation (POI).
- xv. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the POI. The authority has relied upon import data procured from DGCI&S in the present investigation. The examination of data received from DGCIS revealed that imports from Vietnam and China PR are in numbers and on net weight basis, therefore the data on weight basis has been taken as it is for analysis. Whereas, import data of DGCIS for Thailand is on gross weight basis. The partial data submitted by exporter from Thailand has data on gross

as well as net weight basis, and it indicates an approximate difference of 10%. Accordingly, the DGCIS data has adjusted.

- xvi. The Authority held an oral hearing on 2<sup>nd</sup> September, 2015 to provide an opportunity to the interested parties to present relevant information orally in accordance to Rule 6 (6), which was attended by the representatives of domestic industry, exporters from Vietnam and Thailand and one importer. The interested parties who presented their views orally at the time of oral hearing were advised to file written submissions of the views expressed orally. The interested parties were provided opportunity to offer rejoinder submissions to the views expressed by opposing interested parties. The Authority has considered submissions received from the interested parties appropriately.
- xvii. The submissions made by the interested parties, arguments raised and information provided by various interested parties during the course of the investigation and subsequent to the disclosure statement, to the extent the same are supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority in this disclosure document.
- xviii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded these findings on the basis of the facts available.
- xix. \*\*\*in this finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xx. The exchange rate adopted by the Authority for the subject investigation is 1US\$=Rs. 60.85.

## **B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **B.1. Views of the opposing interested parties**

#### **4. Views of M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam & M/s K.P. International have been summarised and are as below:**

- i. The exporter from Vietnam M/s Machi Enterprise Co. Ltd. has stated that there is difference between the product produced by the DI and the exporter as the manufacturing process adopted by the petitioner is different from that adopted by exporter. Exporter put more time in compression of the melamine molding compound which takes more time than normal process used.
- ii. The products manufactured by the exporter are of much better quality than the subject good produced by the domestic industry.

- iii. The petitioner in its petition has failed to point out the fact that there are several qualities of the material/subject goods manufactured. The material manufactured by exporter is of a higher quality and the same can be determined by simply looking at the goods manufactured by M/s Machi and those manufactured by DI.
- iv. It is stated that even though the compound used to manufacture the PUC is the same but the quality and durability of the same varies depending upon the production process. The difference in products manufactured from different process and the products manufactured by the petitioner and the exporter herein are distinguishable.
- v. Due to the above factor difference in the price of the subject goods sold by the DI in the market and those sold by the exporter is much higher and the said fact has again not been mentioned by the petitioner. The said data is available in the Indian market and can be verified very easily. The exporter has verified the price of the goods sold by Hamilton and the goods sold manufactured by M/s Machi and there is a contrasting price difference as the goods sold by M/s Machi are sold at higher price than the petitioner.
- vi. M/s Machi Enterprise Co., Ltd. also produces the urea based products though it is not for exports and is sold only in their domestic market.
- vii. Urea based products are different from the product under consideration as the Urea products are made from urea and are coated with glazing powder which gives them a look similar to melamine product. In business practise the said urea products with glazing are referred to as melamine coated. The compositions of the same are completely different from the product under consideration.
- viii. The importer, M/s K.P. International has stated that it deals in all type of products inclusive of melamine and urea based products.
- ix. M/s Machi Enterprise Co., Ltd has stated that the importer uses the brand name "HomeWare" of which the company sells products made from urea, steel flask and non-stick cookware. The said brand name is not used for product under consideration. For the sale of the product under consideration, M/s Machi Enterprise uses the manufacturer's name only i.e. Machi for the products exported from Vietnam.
- x. The petitioner has filed the present petition in an attempt to seek trade and manufacturing secrets of the other manufacturers who produce better quality products than the petitioner/ domestic industry. Domestic Industry sells the PUC at the cheapest rate and the most inferior quality products in market.

**5. Views of M/s Srithai Superware Public Co. Ltd., Thailand have been summarized and are as below:**

- i. M/s Srithai Superware Public Co. Ltd., Thailand has not offered any comment regarding the product under consideration.
- ii. M/S Srithai Superware India Ltd is the fully owned Indian subsidiary company of M/s Srithai Superware Public Company Limited, Thailand. It has stated that they are an importer of the product under consideration and after the products are imported by them, they further act as Trading Company to sell these products in Indian Market through their own authorized distributors network in various states in India. They are importing the products under the Brand name "Ektra" which is exclusively made for them by Thailand Company. The above said brand name is used for the product to sell under the "Made in Thailand" by Superware, imported and marketing by them.
- iii. M/S Srithai Superware India Ltd., has stated that it works only as a trader and does not manufacture the subject goods in India, but they do have plan to set up manufacturing in near future.
- iv. M/S Srithai Superware India Ltd. deals with a variety of products including the product under consideration, i.e. melamine tableware and kitchenware, and plastic made products like lunch box, storage and lid of various melamine products. Their product range is entirely different and of much superior quality which is made from 100% melamine molding compound in their own designs. The Company deals in a variety of products including but not limited to Melamine products.

## **B.2. Views of the Domestic industry**

6. The views of the domestic industry are as follows:

- i. The product under consideration is Melamine Tableware and Kitchenware products (hereinafter referred to as subject goods) originating in or exported from China PR, Vietnam and Thailand.
- ii. Subject goods are classified under Chapter 39 of Customs Tariff Act, 1975 under the subheading 392410. The customs classification is indicative only and is in no way binding on the scope of the proposed investigations. Study of the import data shows that subject goods have been imported into India under the various Customs sub-headings such as 39092090, 39262039, 39249010, 39211900, 39264029, 39249090, 39229000, 39264039, 39261019, 39231090, 39264049, 39261099, 39233090, 39264099, 39262099, 39239090, 39269010, 39264019, 39241010, 39269099, 39264029, 39241090, 39092090, 39264039, 39249010, 39094090, 39264049, 39249090, 39231090, 39264099, 39261019, 39241010, 39269059, 39261099, 39241090, 39269099, 39262029.
- iii. The subject goods produced by the domestic industry are identical to the product under consideration being imported into India. The domestic industry claims that there is no known difference in applicant's product and product under consideration exported

from the subject countries and the two are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. There is no significant difference in the subject goods produced by the applicant and those exported from the subject countries and both are technically and commercially substitutable.

- iv. Urea based products are not the part of subject goods and can be clearly excluded from the present investigation.
- v. The claim of exporter regarding their quality being far superior is strongly refuted. There is no difference in the technology employed. Differences between the manufacturing processes, time taken in the same and product produced by the DI and the exporter is denied. There is no truth in the claims of quality issues. The petitioner is producing and selling to several consumers in India and internationally.
- vi. Relying on the statement made by the exporter, the cost of the product should be high enough. Whereas the cost of the product exported, found as per import data is low enough to prove dumping. The argument of the exporter implies higher dumping margin.

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

- 7. The Product under Consideration (PUC) in the present investigation is “Melamine Tableware and Kitchenware products” manufactured from Melamine Molding Compound (herein after referred as subject goods). The melamine molding compound is a composition of Formaldehyde & Melamine Resin (70%), Cellulose (30%), Titanium Dioxide and Zinc Stearate.
- 8. The product under consideration is not produced in various grades having significant difference in the associated cost. Various types of the product, such as spoons, bowls, plates, etc. are produced from Melamine Molding Compound. Production of different types merely implies forming Melamine Molding Compound into desired shape. Therefore, it is considered appropriate to classify all these items under a broad heading of “Melamine Tableware and Kitchenware products”. There has been a similar kind of case for the product called “Opal Glassware of all types”. It has been stated by the petitioner that the product is transacted in numbers at the consumer end level and is reported in different units such as pieces, sets, dozens, but at import end as well as factory to dealer end the transactions are mainly done in weight terms. Further, it has been seen that more than 75% of the cost of the product is on account of raw material and utilities. The cost of the raw material and utilities is in direct proportion to the weight of the product. It is because of this reason that even when the product varies significantly in terms of associated costs when expressed in unit of measurement other than weight, the cost of production is quite linear with weight of the



product. The Authority has, therefore, decided that it would be appropriate to express PUC in terms of weights. The DGCIS data is available in weight and numbers and all the analysis has been done on the basis of weight

9. They are used for the purpose of eating, drinking and serving food and beverages Melamine products exhibit following properties:
  - a. Hard, durable surface with superior luster
  - b. Unlimited color possibilities with stability
  - c. Excellent hot water durability.
  - d. Repeated boiling does not affect appearance
  - e. Excellent resistance to scratching and dry heat
  - f. Excellent resistance to acid, alkaline, detergent and organic solvent
  - g. Excellent electrical properties
10. The product under consideration is Melamine based and not urea based. Though the exporters have agreed that they have not exported urea based products in India, the Authority finds that the importer has sold both the melamine and the urea based products.
11. 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;*

12. The responding exporter has contended that the goods produced and supplied by his are of superior quality as compared to the goods produced and supplied by the domestic industry. The exporter has however not provided detailed manufacturing process and time taken, nor quantified how the domestic and imported products are different and what is the impact of the alleged difference. The authority noted the contention of the domestic industry at the time of hearing that in case the process takes more time, then the same should also result in higher cost of production and resultantly higher prices. The authority notes that a difference in quality cannot be recognized, unless the differences are quantified and their impact demonstrated. The authority also notes the decision of the CESTAT in the matter of *DSM Idemitsu Limited v. Designated Authority*", reported in 2000 (119) E.L.T. 308, where the Tribunal held as follows

*"As the plea of the appellants counsel is not convincing since he did not adduce any evidence/technical literature with reference to process of manufacture to show that product manufactured by the domestic manufacturers was different from that exported into India. .... Difference in quality will not make an article as different and Designated Authority was right in observing that the fact that qualities may be different, does not imply that the imported product and the domestic are not like articles."*

13. Subject goods do not have a dedicated classification and is classified under Chapter 39 of Customs Tariff Act, 1975. It is imported under various HS codes namely 39241010, 39241090, 39249090, 39264049, 39269099 etc. The authority has considered the HS codes as indicative only and has considered the product description for the purpose of present determination.
14. After considering the information on record, the Authority holds that there is no material difference in product under consideration exported from subject countries and the product produced by the Indian industry. Product under consideration produced by the domestic industry is comparable to the imported subject product in terms of physical & chemical characteristics, production technology & manufacturing process, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable.
15. Thus, the Authority holds that product under consideration produced by the applicant domestic industry is like article to the subject product under consideration imported from subject countries in accordance with the AD Rules.

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

#### **C.1. Views of the opposing interested parties**

##### **16. Views of M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam are as follows:**

- a. The statement made by the petitioner that it has not imported the PUC, is false and incorrect. The petitioner has imported the PUC from "Fujian Nanxan Shi Hengsheng, Melamine Tableware Co. Ltd., situated at Fumaoling Industrial Area, Narran, Quanzhou, Fujian- 362300, China.
- b. The petitioner had even approached the exporter M/s Machi Enterprises, Vietnam in the year 2011-12 and proposed to buy the product under consideration manufactured by them. However, due to some reasons, the said transaction could not materialize.
- c. Had the petitioner approached the authority with clean hands and complete information, the said fact would have been stated in the petition by the petitioner but the petitioner has concealed the same.
- d. The explanation given by the petitioner was completely baseless and concocted. The intention of the petitioner was to obtain the data of the exporter in order capture the market of the exporter as well as to get to know the manufacturing procedure of the exporter and other companies who manufacture products of a far superior quality than that of the petitioner.

- e. The exporter has given the details of the company where the petitioner has had business transactions. The exporter is not aware of the period of such transactions but the petitioner is aware that the transactions have taken place.

17. No other interested party has not submitted any specific comments in this regard

## **C.2. Views of the Domestic industry**

18. The views of the domestic industry are as follows:

- a. The petition has been filed by M/s Hamilton Housewares Pvt. Ltd (referred to as Petitioner/Applicant) for imposition of anti dumping duty on imports of Melamine Tableware and Kitchenware products (subject goods) from China PR, Vietnam and Thailand.
- b. Petitioner is a major producer of the subject goods in India holding 52% of the production share of India. There is only one more company in the organized sector, M/s Servewell India which produces the subject goods. Further, there are other small producers of the subject goods in India in the unorganized sector having 14% share altogether. There is no specific publicly available information about production of these small producers.
- c. Production of the subject goods by the petitioner, M/s Hamilton Housewares Pvt. Ltd., constitutes a major share in domestic production in proposed investigation period.
- d. During the oral hearing, the exporter, M/s Machi mentioned that M/s Servewell India has imported the subject goods from the exporter. The Authority may investigate the same. If such is the scenario, the standing of the DI will improve.
- e. Petitioner has not imported the subject goods. Petitioner is not related (either directly or indirectly) to any exporter or importer of product under consideration in the subject countries. Thus the petitioner is eligible domestic industry under Rules 2(b) and 5(3) of the AD Rules.
- f. The Domestic Industry clarified that discussions with the exporters for possible purchase did not go beyond discussions and these discussions did not imply that the company in fact intended to import the product. Domestic Industry clarified that such interactions were held for entirely different purposes and to ascertain the real price at which the goods were being sold by the exporters. They further clarified that prior to filing of the present petition and faced with low priced imports, the Petitioner made its own enquiries with regard to market situations and made attempts to ascertain the price at which the goods were being offered by the exporters. Petitioner further contended that mere exchange of business cards does not imply that the company has imported the product. Petitioner submitted that there was in fact no import made by them and this fact gets established by the own statement of exporters wherein they themselves have stated that the company has not imported the product under consideration. Possible efforts made to import the product under consideration are different

from import of the product. In any case, the exporter has referred to a period which is not the investigation period of the present case. The authority considers the issue of relationship and can hold a company ineligible only if the imports are in the investigation period. The CESTAT has also held that the imports in POI alone are relevant for the purpose. In view of the same, the authority holds that the petitioner is an eligible domestic industry for the present purposes.

- g. The DI never made any imports during the injury period. The meeting in some trade fair and exchanging business cards or inquiry regarding the sales does not actually mean that the DI imported the subject goods.
- h. In fact, if there were such imports made by the DI, the exporter could have provided some evidence. Why the exporter has not given evidence to the DA while contending the same? And, if there were no imports made, how all other stories are relevant to the present investigations?
- i. Even if the petitioner had approached the exporter in the year 2011-12 these negotiations are not relevant as the Petitioner has not imported the subject goods. Petitioner reiterates that it is not related (either directly or indirectly) to any exporter or importer of PUC in the subject countries.
- j. Rule 2(b) grants discretion to the Designated Authority in such situation. The fact that the rules grant discretion to the Designated Authority is well established by the Honøble High Court.

### **C.3. Examination of the Authority**

19. Rule 2 (b) of the AD rules defines domestic industry as under:

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

- 20. The application in the present case has been filed by M/s Hamilton Housewares Pvt. Ltd., a domestic producer of the product under consideration and who has provided detailed information for investigation in the matter of imposition of anti dumping duty on imports of subject goods from China PR, Vietnam and Thailand.
- 21. Petitioner is a major producer of the subject goods in India. There is only one more company in the organized sector, M/s Servewell India, which produces the subject goods. Further, there are other small producers of the subject goods in India. Petitioner contended that M/s Servewell India has imported the product under consideration from amongst responding exporters and

therefore the company should be treated as ineligible domestic industry. The questionnaire responses filed by the two responding exporters were examined and it is found that there were no exports reported by them wherein the goods were imported by M/s Servewell India. M/s Servewell India has not responded to the present investigations and has neither supported nor opposed the present investigations and proposed imposition of ADD.

22. The claim of exporters with regard to imports by the petitioner was examined in detail. The Petitioner has certified at the stage of petition that it has not imported the product under consideration from amongst subject countries. The examination of data has also indicated that petitioner has not made any imports.
23. As per information on record, production of the Petitioner constitutes a major proportion in Indian production. Authority concludes that the applicant satisfied standing requirements under the rules and the petitioner constitute domestic industry within the meaning of the Rule 2 (b). The petitioner satisfies the criteria of standing in terms of Rule 5 (3) of the Anti-dumping Rules.

#### **D. Issues relating to Excess Confidentiality**

##### **D.1. Views of the opposing interested parties**

24. Views of M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam are as follows:

- i. The data has been filed by the exporter in terms of the questionnaire format. All the appendices and enclosures with complete data have been filed with the authority. There is no excessive confidentiality claimed but the information that is confidential in nature has been claimed to be confidential.
- ii. The detail of the manufacturing process along with other data has been duly provided. The patents as stated are confidential information and have been thus claimed confidential.
- iii. The product under consideration is not sold in the domestic market of the exporter as the same does not have much demand in Vietnam and hence no such data is either available or can be provided.
- iv. The price lists pertain to products made from Urea and those are the only products which are sold in Vietnam. The other enclosure and annexure contain confidential information and have only been filed for the benefit of the authority and proper determination of facts in the present investigation proceedings.
- v. The petitioner has concealed various material facts which are detrimental to the present matter. The petitioner had approached the exporter for the supply of material. The said transaction could not materialize but the intention of the petitioner was well clear since the petitioner wants to get the data of the exporter with respect to the production process

of the PUC as well as the various markets where the exporter supplies/exports its product.

- vi. The product of the exporter is of a better quality than that of the petitioner and due to the said fact, the exporter has a wider/larger market to cater to and the petitioner is trying to get a share in the said international market of the exporter by getting the confidential data revealed
- vii. The cases cited by the petitioner it is stated that where the information involves technical processes and personal data of a party, the same has to be treated as confidential. In the present case the patents as well as the manufacturing process is technical and has to be treated as confidential.
- viii. The client list of the exporter and the data pertaining to the same is also confidential information as the exporter could suffer losses if the same is revealed to a third party especially when the said party is also a competitor of the exporter.

25. No other interested party has not submitted any specific comments in this regard

## **D.2. Views of the Domestic industry**

26. The views of the domestic industry are as follows:

- i. The responses were submitted by two exporters; M/s Machi Enterprise (Vietnam) Co. Ltd. and M/s Srithai Superware Public Company Limited from Thailand and one importer M/s K. P. International. Further the responses filed by the exporters are partial, incomplete as well as inadequate. After eight months since the initiation of the investigation the importer questionnaire was filed by M/s Srithai India, the related party of the M/s Srithai Superware Public Company Limited, Thailand.
- ii. Non-confidential version of the questionnaire response is grossly inadequate. The interested parties have not disclosed all such information that they are obliged to disclose under the Rules and practice being followed by the Designated Authority in this regard. Such excessive confidentiality will hamper the the domestic industry to defend their interest. The exporters have claimed most of the information as confidential and no proper summarization is provided by them.
- iii. Some of illustrative examples of information claimed confidential by the M/s Machi Enterprise (Vietnam) Co. Ltd. are as under:
  - a. Not provided detailed manufacturing process neither the time taken in same has been mentioned.
  - b. No data annexed by the exporters in the exporter's questionnaire response to cross verify the figures.

- c. The information to be furnished under Appendices 1-9 are not annexed when strict adherence to the proforma has been specifically sought.
  - d. Enclosure A to I have not been enclosed with the exporter questionnaire.
- iv. The responding exporter from Thailand, Srithai Superware Public Company Limited has also resorted to excessive confidentiality in the questionnaire response filed by them. Some of illustrative examples of information claimed confidential by them are as under:
  - a) The information to be furnished under Appendices 1-9 are not annexed when strict adherence to the proforma has been specifically sought.
  - b) Catalogue of Srithai Superware and Shritthai Superware India are not enclosed.
  - c) Complete set of documents generated/received in case of sales in the home market and exports to India
  - d) Price lists for sales in the home market and exports to India
  - e) Information and evidence of differences in terms of in physical/ technical/chemical characteristics between the goods sold or produced in their domestic market or sold to countries other than India from those exported to India and their effect on production costs.
  - f) Audited accounts including balance sheet, profit and loss accounts
  - g) Production flow chart with production cycle time at each stage
- v. Not only Rules with regards to confidentiality are well clear, but also these have been extensively interpreted by the WTO and Indian Courts. Further the domestic industry has the right to get access to the information filed by the interested parties and defend its interests.
- vi. The exporter has not given detailed manufacturing process; neither the time taken has been mentioned in the same. Secondly if the process consumes more time then it will cost more. How the product consuming more time can be of lower price. This issue has not been addressed by the exporter.
- vii. The exporter has mentioned in the oral hearing that there are four linked importers of the subject goods in India inclusive of M/s Sarvewell India. Only importer which has filed the response is M/s K.P. International. Rest of the importers has not responded to the questionnaire response. Thus the response filed by the exporter should be considered incomplete.
- viii. The response filed by the exporter does not contain relevant data/information. Either no evidence is provided in support of the statements made by the exporter.

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

27. The Authority has examined the confidentiality claims of the interested parties. The Authority made available to all interested parties the public file containing nonconfidential version of evidences submitted by various interested parties for inspection, upon request as per Rule 6(7).

28. With regard to confidentiality of information Rule 7 of Anti-dumping Rules provides as follows:-

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

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

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

29. The WTO Agreement on Anti Dumping provides as follows with regard to confidentiality of information-

*“Article-6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause 28 shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.*

*Article-6.5.1 The authorities shall require interested parties providing confidential information to furnish non confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.*

*Article-6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.*



*Footnote to Article 6.5.2 (footnote 18 of the WTO Agreement on Anti Dumping) provides as follows :- Members agree that requests for confidentiality should not be arbitrarily rejected."*

30. It is thus evident that the public notices issued by the authorities are directly subjected to confidentiality provisions and should protect confidentiality of information provided by an interested party. Further, a conclusion drawn by the Authority based on confidential information also becomes confidential, if disclosure of such conclusion can in any way effectively lead to disclosure of information provided on confidential basis.
31. The provision for disclosure of essential facts before giving final findings has been laid down at Rule 16 of the Anti-dumping Rules. Even under Rule 16, the confidential facts are required to be disclosed to "respective interested parties", while non-confidential facts are required to be disclosed to all interested parties. At no stage the Designated Authority is empowered to disclose the confidential information to the parties with competing and conflicting interests.
32. Disclosure of the commercially sensitive and confidential information, provided by the interested parties to the Designated Authority, by reposing trust and confidence, to facilitate the investigation, will completely vitiate the market atmosphere both in the domestic as well as international fronts. The disclosure of confidential information relating to the cost of production, non-injurious price etc. of the domestic industry will provide undue advantage to its domestic as well as overseas competitors and place them in a disadvantageous position before the consumers.
33. In view of the above Authority notes that confidential information can not be disclosed to the interested parties with competing and conflicting interests. However the non confidential information has been disclosed to the interested parties.

## **E. Miscellaneous Issues**

### **E.1 Views of the opposing interested parties**

34. Views of M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam are as follows:

- i. The submission made by the petitioner is completely impractical although the answering exporter does not have any objection if the investigation is done qua all the HS codes as stated by the petitioner.
- ii. The exporter has already provided the details of exports made by the exporter. The exports made for the PUC is under a specific HS Code i.e. 39249090 and the other HS codes are not relevant for the investigation of the PUC.

- iii. The proposed period of investigation by the petitioner has been proposed keeping in mind the transactions of the petitioner qua the PUC as the petitioner has itself imported the said goods previously and has concealed the said data. It is requested that the DGAD look into the same and direct the petitioner to provide the said information.

35. No other interested party has not submitted any specific comments in this regard

## **E.2 Views of the Domestic industry**

36. The views of the domestic industry are summarized as follows:

- i. Petitioner is a new enterprise dealing in the subject goods is unable to cope up with the losses suffered due to the dumping of the PUC in the Indian market.
- ii. The Designated Authority has carefully scrutinized the adequacy and accuracy of the application to justify initiation of investigation. It is pointed out in this regard that the petition contains the evidences regarding the increase in unfair trade practice and dumping by the subject countries. It is thus not a case that the petitioner merely made allegation and provide no evidence to establish the injury. Thus it no were shows the malafide intention of the petitioner.
- iii. The petitioner has no intentions to get trade and manufacturing secrets of the other manufacturers, nor does petitioner believe that these other producers of the subject goods produce better quality products than the petitioner/DI. In fact, Petitioner was well aware that any confidential information cannot become available to the Petitioner and therefore could not have sought present investigations to get any such secrets. Nor Petitioner has got any such information as a result of present investigations.
- iv. The petitioner has no intentions to get information on other producer's data, nor does petitioner believe that these other producers are selling at higher prices. In fact, Petitioner was well aware that any confidential information cannot become available to the Petitioner and therefore could not have sought present investigations to get any such secrets. Nor Petitioner has got any such information as a result of present investigations.
- v. For M/s Srithai, Thailand, there is one related enterprise, M/s Sri Thai India Limited in India, through which the exporter manages the sales in India. The importer has filed response after eight months of initiation of the investigation. Petitioner requests the Authority to reject the entire response submitted by the exporters and the related importer. On this account alone, entire participation and submission by the exporter should be rejected. Any other approach shall be not only highly unfair to the DI and shall prejudice valuable rights of the DI, but also would be highly unfair to other participating interested parties and above all would be abuse of the law and the procedure. If interested parties can walk into an investigation at any stage of the proceedings like this, there is no purpose of prescribing time limits under the statutes.

**E.3. Examination of the Authority**

37. The authority notes that the product is being imported in various HS codes namely 39241010, 39241090, 39249090, 39264049 and 39269099. It is clarified that the HS codes are only indicative and the product description shall prevail in all circumstances. There is no known difference in product produced by the petitioner and exported from the subject countries. Both products have comparable characteristics in terms of parameters such as physical & chemical characteristics, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc. Comparison of essential product properties in respect of domestic product and imported product would show that the goods produced by the domestic industry are identical to the imported goods in terms of essential product properties. Therefore, it is concluded that subject goods produced by the petitioner and the subject goods imported from the subject country are like articles.
38. The exporters were allowed opportunity to supplement their responses. The opportunity was availed by both the exporters from Thailand and Vietnam, however, the information in the response is still incomplete.

**F. Market Economy Treatment, Normal Value, Export Price and Determination of Dumping Margin****F.1 Normal Value**

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

*(i) the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*

*(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either-*

*(a) comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

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

*Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the*

*country of export, the normal value shall be determined with reference to its price in the country of origin.*

## **F.2 Normal Value for China PR**

### **Provisions relating to Non- Market Economy countries**

40. Annexure-I to AD rules states as under:

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

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

*(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a nonmarket economy country*

*Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3)*

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

*(a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant*

*State interference in this regard, and whether costs of major inputs substantially reflect market values;*

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

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

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

*Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph”*

### **F.3 Views of the Domestic industry**

41. The following are the submissions made by the Petitioner:

- a. China should be considered a non-market economy, in line with the position taken by the Authority in previous cases, and by investigating authorities in other countries. Chinese producers' cost and price cannot be relied upon for determination of normal value.
- b. Market economy status cannot be granted unless following conditions are fulfilled:
  - i. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity
  - ii. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values
  - iii. Market economy status cannot be given unless the responding exporter establish that their books are audited in line with international accounting standards
  - iv. Market economy status cannot be granted even if one of the parameters is not satisfied
  - v. The onus/obligations to establish market economy status is onto responding Chinese exporters and not onto the Designated Authority.
  - vi. Market economy status cannot be granted unless the responding company and its group as a whole make the claim.
  - vii. In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence.
- c. According to these Rules, the normal value in China can be determined on any of the following basis:

- *the price in a market economy third country,*
  - *constructed value in a market economy third country,*
  - *the price from such a third country to other country, including India.*
  - *the price actually paid in India, adjusted to include a reasonable profit margin.*
  - *the price actually payable in India, adjusted to include a reasonable profit margin.*
- d. Since no questionnaire response has been filed by any of the Chinese companies, the subject country should be treated as non-market economy.

#### **F.4 Views of the opposing interested parties**

42. None of the importers, consumers, exporters and other interested parties from China PR has filed any comment or submissions with regard to MET status of dumping margin.

#### **F.5 Examination of the Authority**

43. At the stage of initiation, the Authority 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 their market economy status. The Authority sent copies of the MET questionnaire to all the known producers/ exporters for rebutting presumption of nonmarket economy in accordance with criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested Government of China to advise the producers/exporters in their country to provide the relevant information. However, none of the Chinese producers/exporters have filed any response.
44. As per Paragraph 8, Annexure I to the Anti Dumping Rules as amended, the presumption of a non-market economy can be rebutted if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) in Paragraph 8 and establish to the contrary. The exporter/ producer of the subject goods from China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Designated Authority to consider the following criteria as to whether:-
- i. The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labor, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
  - ii. The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in

relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

- iii. Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- iv. The exchange rate conversions are carried out at the market rate.

45. The Authority notes that none of the producers and exporters of the subject goods from the subject country has submitted the exporter's questionnaire response and market economy questionnaire response, consequent upon the initiation notice issued by the Authority and rebutted the non-market economy presumption. In view of the above position, the Authority considers it appropriate to proceed with para-7 of Annexure I to the Rules for determination of normal value in case of China PR. As none of the producers/exporters from China PR has submitted MET questionnaire response, the Authority is unable to grant market economy status to Chinese producers for the purpose of proposed determination.

46. In view of the fact that none of the producers/exporters has filed any exporter's questionnaire including MET questionnaire, MET status has not been accorded to Chinese producers. Further, none of the interested parties, including the domestic industry, has made available any material fact to the Authority to select an appropriate market economy third country. The Authority has, therefore, determined the normal value in respect of China PR on other reasonable basis, in terms of second proviso of Para 7 of Annexure 1 to the Rules.

47. Para 7 of Annexure I of the Anti-dumping Rules provides as under:

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

48. In view of the above, the normal value for the subject products imported from China PR into India has been determined on the "any other basis" by considering best available information with regard to cost of production and after reasonable additions for selling,

general & administrative expenses and reasonable profit margin. The normal value has been constructed considering consumption of major raw materials as per information provided by the domestic industry, international prices for major raw materials, conversion cost, interest, SGA, etc. at the levels allowed for the domestic industry. 5% of cost of sales excluding interest has been added towards reasonable profit.

49. The constructed normal value determined for China PR is shown in the dumping margin table below.

**F.6 Normal value in case of market economy countries (Vietnam & Thailand)**

**F.7 Views of opposing interested parties**

50. Views of M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam are as follows:

- i. The data given by the petitioner in its petition is baseless and completely concocted as the manufacturing costs of the exporter are much higher than portrayed and represented by the petitioner.
- ii. The exporter has to incur much higher costs for raw material as well as labour and other expenses such as electricity and machinery and plant and other fixed costs.
- iii. The data provided by the petitioner is misrepresented and inadequate as it does not take into account the costs incurred by the exporter for the manufacturing of the PUC.
- iv. PUC is not sold in the home country by the exporter since there is hardly any demand for the same. Therefore, there is no data available as there is no domestic sale of the PUC. The product sold in the domestic market by the exporter is only Urea products and not melamine products as the same is expensive and there is no market for the same in Vietnam.
- v. The calculations and estimates as filed by the petitioner are incorrect and not even close to the actual costs incurred by the exporter for the production. The fixed costs in Vietnam are higher than in India including labour therefore, the production costs cannot be as what is stated in the petition. The exporter has already filed the detailed documents qua the production costs of the exporter including all expenses.
- vi. The calculation with respect to dumping margin is completely incorrect in view of the miscalculation/wrong calculation of the manufacturing costs. It has already been stated that the manufacturing costs of the exporter are higher than that of the domestic industry and hence the landed price of the product is also much higher than that of the domestic industry. The petitioner has also not taken into account the various other amounts payable with respect to the taxes, costs and other expenses payable by the exporter in Vietnam as the laws are completely different.



- vii. The products exported by Machi are in no way affecting the DI in any manner as the price of the products of the exporter are much higher in the market than that of the DI and therefore, the demand of the product of the exporter is only limited vis-a-vis the products of the domestic industry since the DI provides for a more economical option to the customers.

51. No other interested party has submitted any specific comments in this regard

## **F.8 Views of the Domestic industry**

52. The following are the submissions made by the applicants:

- i. Petitioner has made efforts to get evidence of price of product concerned in the domestic markets of Vietnam and Thailand. Efforts were also made to get any evidence of price from published sources. There is no publication which provides prices of the product under consideration in Vietnam and Thailand. The product prices are not publicly available.
- ii. The prices are transacted between the producers and consumers and therefore the same are not in public domain. The petitioner has not been able to get any evidence of price in the domestic markets of Vietnam and Thailand.
- iii. Even though the product is sold at retail levels, the price at which the product is sold at the retail level is highly misleading and would in fact show significantly higher normal value and dumping margin. The Petitioner submitted that this would however be highly prejudicial to the other interested parties and the Petitioner is well aware that these retail prices are unreliable in establishing the normal value in these countries.
- iv. As per exporter there is no sale of PUC by the exporter in the subject country. Only the urea based product is sold in the home market which is out of the scope of the PUC. Thus the normal value cannot be based on the prices of the domestic market in the subject country. In any case, the argument of the exporter implies higher dumping margin than what has been assessed at present.
- v. In view of the same, the normal value has been constructed for all exporters/producers from Vietnam and Thailand. Petitioner has determined normal value on the basis of estimates of cost of production based on best available information, with addition of selling, general and administrative expenses.

## **F.9 Examination by the Authority**

53. The petition contained relevant information sufficient to determine normal value, export price and dumping margin to justify an initiation of anti dumping investigation against Vietnam and Thailand. Also, the basis of determination of normal value, export price and dumping margin for the purpose of

this disclosure statement as per the AD Rule and relevant annexure is elaborated at appropriate places in this disclosure statement.

54. The Authority sent questionnaires to the known exporters/producers from the subject countries, advising them to provide information in the form and manner prescribed. The following producers/exporters from subject countries have filed exporters' questionnaire response. The Authority has, therefore, considered individual dumping margin determination in respect of these producers-exporters only:

1. M/s Machi Enterprise (Vietnam) Co. Ltd, Vietnam
2. M/s Srithai Superware Public Company Limited, Thailand

55. The Authority notes that M/s Machi Enterprise (Vietnam) Co. Ltd (producer and exporter in Vietnam) has filed questionnaire response. The detailed examination of questionnaire response of M/s Machi Enterprise (Vietnam) Co. Ltd., revealed that the data/information has been provided for the calendar year i.e. January 2013-December 2013 and that too in numbers. The POI in the instant case is April 2013-March 2014. In the Initiation Notification it was clearly specified that the units for PUC will be in weight terms. The exporter supplemented its questionnaire response subsequent to the hearing and has given information financial year wise but the data is still in numbers. Therefore the data is insufficient for analysis and determination of Normal Value and Export Price.

56. The Authority notes that M/s Srithai Superware Public Company Limited (producer and exporter in Thailand) and its related importer in India M/s Srithai Superware India Limited have filed questionnaire response. The detailed examination of questionnaire response of M/s Srithai Superware Public Company Limited, revealed that the data/information by producer-exporter has been provided for calendar year i.e. January 2013-December 2013 and that too in numbers. The POI in the instant case is April 2013-March 2014. In the Initiation Notification it was clearly specified that the units for PUC will be in weight terms. The exporter supplemented its questionnaire response after the public hearing, wherein the exporter provided data on weight basis. However, this supplementary information continued to be for the period Jan-Dec., 2013. Information was not provided for the POI of the present case. The authority notes that the information is mandatorily required for the investigation period. Therefore the data is insufficient for analysis and determination of Normal Value and Export Price.

57. The product under consideration is not produced in various grades having significant difference in the associated cost. Various types of the product, such as spoons, bowls, plates, etc. are produced from Melamine Molding Compound. Production of different types merely implies forming Melamine Molding Compound into desired shape. It has been seen that more than 75% of the cost of the product is on account of raw material and utilities. The cost of the raw material and utilities is in direct proportion to the weight of the product. It has been stated by petitioner that the products are transacted in numbers at the consumer end level and is reported in different units such as pieces, sets, dozens, but at import end as well as factory to dealer end the transactions are mainly done in weight terms. It is because of this reason that even when the product varies significantly in terms of associated costs when expressed in unit of measurement other than weight, the cost of production is quite linear with weight of the product. And thus,

the Authority has decided that it would be appropriate to express PUC in terms of weights. The DGCIS data is available in weight and numbers and all the analysis has been done on the basis of weight.

58. The Authority, therefore, as per its practice, has decided not to determine the individual dumping margin in respect of M/s Machi Enterprise (Vietnam) Co. Ltd, Vietnam and M/s Srithai Superware Public Company Limited, Thailand. This is not only consistent practice of the authority, but also the decision of the Hon'ble Tribunal in the matter of Thai Acrylic Fibre Co. Ltd. Vs Designated Authority 2001 (128) E.L.T. 537 (Tri. - Del.). The notice of initiation also clearly stated that the Period of Investigation (POI) for the case is April, 2013 to March, 2014 (12 Months) and injury investigation period covers the periods April 01-Mar 01, April 01-Mar 02, April 02-Mar 03 and the period of investigation.
59. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding companies have made any claim with regard to an appropriate market economy third country. In view of the same, the Authority proceeds to construct the normal value based on any other reasonable basis.
60. The Authority proceeds to determine the Normal value on available facts basis, considering India as the surrogate country. Accordingly, the Authority has constructed the Normal value for the producers on the following basis :-
  - a) International prices of raw materials
  - b) Consumption of raw materials and conversion costs have been adopted on the basis of information/ data of the domestic industry.
  - c) Power tariff as per Subject country rates
  - d) Selling, general & administrative costs have been taken on the basis of information/data of the domestic industry.
  - e) Profit has been taken @ 5% of ex-factory cost excluding interest.

The normal value so determined is as mentioned in the dumping margin table below.

#### **F.10 Export price for exporters from China PR, Vietnam and Thailand**

61. None of the exporters have furnished sufficient information to the authority in the form and manner prescribed which could be used for determination of the export price and individual dumping margin. Therefore, the Authority has determined the export price for producers/exporters on the basis of the DGCI&S transaction wise data.
62. The export price has been adjusted on account of handling charges, overseas transportation, international insurance, bank charges and VAT adjustment (only for China) to arrive at the net export price at ex-factory level. Accordingly, the net export price at ex-factory level for producers has been determined, which is indicated in the Dumping Margin Table below.

**F.11 Determination of Dumping Margin**

63. Based on the methodology explained above, the normal value, export price and dumping margin in respect of all producers/exporters of the subject countries is determined as follows.

**Dumping Margin**

Particular	Units	China PR	Thailand	Vietnam
Normal Value	US\$/MT	***	***	***
Net Export Price	US\$/MT	***	***	***
Dumping Margin	US\$/MT	***	***	***
Dumping Margin	%	***	***	***
Dumping Margin	% range	45-55	20-30	60-70

**METHODOLOGY FOR INJURY DETERMINATION AND EXAMINATION OF INJURY AND CAUSAL LINK****G. Injury Determination and Examination of Injury and Causal Link****G.1 Views of Domestic Industry**

64. The domestic industry has submitted that:
- There has been significant increase in demand over the injury period.
  - The import of the subject good has increased from the subject countries throughout the injury period.
  - The import volume of China PR has increased throughout the present injury period from the base year to year 2012-13 except POI
  - There is a huge increase in the imports from Thailand throughout the injury period.
  - Imports from Vietnam has declined in the year 2011-12 from the base year but further showed a significant increase in imports till the POI.
  - Subject country imports have remained significant in relation to Indian production and consumption in the POI.
  - Subject imports constitute more than 97% of the total imports into the domestic market in the POI.

- viii. Market share of imports from the subject countries has increased significantly throughout the injury period.
- ix. Subject imports capture more than 97% of the Indian market.
- x. Though the demand of the subject good has increased throughout the injury period the market share of the domestic increased in the year 2011-12 and 2012-13 from the base year but declined in POI.
- xi. The subject imports are collectively and individually undercutting the domestic prices except Thailand in the year 2010-11 and Vietnam in the year 2010-11 and 2011-12.
- xii. The landed price of imports has remained significantly below the level of cost of sales and selling price of the domestic industry throughout the injury period. Low priced dumped imports forced the domestic industry to maintain its selling price below the levels of cost of sales. Thus the imports are suppressing the prices of the domestic industry throughout the injury period. The cost of sales of the domestic industry increased by 15%; whereas selling price increased by only 5%.
- xiii. The cumulative assessment of the effects of imports is appropriate. The Authority is requested to assess injury to the domestic industry cumulatively from the subject countries.
- xiv. The sales of the product under consideration can be broadly divided into two categories i.e. sales through distributors and retail sales. Sales through distributors are made to whole-sellers/retailers who in turn sell to retailers/end- customers. Retail sales are made to large customers such as Super Stores and Corporate. The imported products also follow similar sales channel.
- xv. While submitting the various injury parameters such as market share, sales, demand and cost to make & sell, Petitioner has only taken the actual domestic sales made by the Petitioner.
- xvi. The domestic industry has enhanced its capacity throughout the injury period in view of the increase in demand. Despite increase in capacity, the production of the domestic industry has remained much below optimum levels. Domestic industry has been regulating production considering the demand for the product in the market. The domestic sales of the domestic industry showed the same trend as that of production and have remained much below the optimum levels, despite almost triple fold increase in domestic demand for the product during the injury period. With dumped imports entering the Indian market, the domestic industry is not able to utilize its capacity to optimum level.
- xvii. Profitability with respect to domestic sales of the product concerned deteriorated over the injury period. Profitability of domestic industry became negative in 2011-12

and the losses have further intensified in the POI. The domestic industry is continuously running into financial losses with respect to domestic sales in view of continued dumping of the product in the Indian market. The losses increased significantly after 2011. With dumped imports entering the Indian market, the domestic industry, in order to sustain in the market, is left with no option but to sell the goods at sub-optimal prices. The domestic industry is prevented from raising its prices in proportion to the costs. Return on investment and cash profits have followed a trend almost the same as that of profits. Thus, return on investment and cash profits have also deteriorated during this period.

- xviii. Market share in demand of the domestic industry increased in 2011-12 and 2012-13 but further declined in the proposed POI. It would therefore be seen that even after enhancing the capacity the domestic industry could not even attain the market share. Market share of dumped imports from subject countries increased throughout the injury period. The subject imports still capture around 40% of the Indian market.
- xix. The level of employment with the domestic industry has increased throughout the injury period except in the year 2011-12. Wages paid by the domestic industry per employee have also increased over the injury period.
- xx. The inventories of the domestic industry have been piling up over the entire injury period despite efforts of the domestic industry to sell even at loss.
- xxi. The growth of the Domestic Industry in terms of market share is positive, however much below the optimum levels. Capacity utilization shows a negative growth. Further, domestic industry has registered negative growth in terms of production, sales, profits, return on investment, cash profits, etc. Thus, overall growth of the domestic industry is adverse.
- xxii. It is refuted that the landed price recorded is wrong and exporter sells the subject goods at much higher price. The price of raw material is too high. Petitioner submits that the both the exporter and the petitioner purchase the raw material from the same source. Going by the statement made by the exporter the Normal value of the product is too high, whereas the landed price reported are too low. Thus the exporter itself establishes the dumping of the product.
- xxiii. The persistent price difference between domestic and imported product led to increase in imports during the injury period, even when sales of the DI increased only marginally. Thus, market share of DI and domestic producers as a whole declined significantly over the injury period.
- xxiv. Regarding petitioner giving false information and doctored the figures regarding export's market share, landed price the arguments are denied as the exporter has not provided any documents or enclosed any annexure to cross verify the figures. The claims cannot be made without evidences.

- xxv. The claim made by the exporter that the market share of the exporter is negligible and is nothing compared to that of the DI. The petitioner has already enclosed the import statement as well as the market share of the DI in comparison to the share of exporters. Market share of imports from the subject countries has increased significantly throughout the injury period whereas the market share of the DI has declined in the POI.
- xxvi. If the process consumes more time then it will cost more. How the product consuming more time can be of lower price. This issue has not been addressed by the exporter.

## **G.2 Views of other interested parties**

65. None of the producer/exporters from China PR have responded to the questionnaire.

66. Views of M/s Machi Enterprise (Vietnam) Co., Ltd., Vietnam are as follows:

- i. M/s Machi is the only exporter of the PUC from Vietnam and no other company exports to India.
- ii. PUC manufactured by them are of a much better quality than what is manufactured by the domestic industry and is also sold at a higher price than the products sold by the domestic industry.
- iii. The domestic industry has presented incorrect information and doctored the figures regarding exports, market share, landed price of the PUC in the non-confidential version of its petition.
- iv. The market share of the exporter is negligible when it comes to the PUC and is nothing compared to that of the domestic industry.
- v. There is a contrasting difference between the quality of the products manufactured by the exporter and those manufactured by the domestic industry; there is no possibility that the exporter can in any way threaten the market share of the domestic industry.
- vi. The petitioner has filed the present petition to reveal trade and manufacturing secrets of the other manufacturers who produce better quality products than the petitioner/ domestic industry. The petitioner is trying to get sensitive data revealed through the present petition which is completely malafide.
- vii. Domestic Industry sells the PUC the cheapest and the most inferior quality products in market. By filing the present petition the petitioner wants to know the prices at which other manufacturers sell their products and also to get the client details of other manufacturers so that the petitioner can approach them and grab into the market share of other manufacturers exporting in other countries.

- viii. The products sold by exporters are sold as per normal business practice and norms and there is no price undercutting or price suppression adopted by them. The said fact can be clearly established by the fact that the price at which our product is sold is much higher than the price at which the domestic industry sells the same product.
- ix. The injury cannot be assessed cumulative form all the countries under investigation especially in view of the incorrect data given by the petitioner with respect to the exporter. The exporter is not aware of the correctness of the data for other countries but there is no dumping on behalf of the exporter and all the transactions (exports) are made under strict business practices and the keeping in mind the brand and value of the product manufactured by the exporter which is one of the better quality goods in the world.
- x. Due to the high cost of the goods manufactured by the exporter they do not have any domestic sales of the product under consideration and the goods sold by the exporter in the domestic market are only urea products.
- xi. Vietnam even otherwise is still a developing economy and the demand for the PUC is very limited and there are several other manufacturer who cater to this limited domestic demand only.
- xii. The exporter has neither caused any injury nor is likely to cause any injury to the DI since there is no dumping of the PUC from the exporter. The exporter exports the products under normal business practices of the company and there is no price reduction of the product under consideration or for that matter any other product manufactured by the exporter. Any submission to that effect is completely misleading and false. It is further stated that there is no price undercutting on account of the product exporter by Machi as the said products are already sold at a much higher price than that of the domestic industry and the quality of the products are also very different. The said difference can be determined easily.
- xiii. The market share of the exporter is negligible when it comes to the total market of the PUC. It is stated that as per the data provided, by the petitioner the total exports from Vietnam as stated are not correct since as per the knowledge of the exporter (Machi), it is the only company exporting the PUC to India from Vietnam and the data given by the petitioner is highly inflated an exaggerated.
- xiv. The production/manufacturing costs of the PUC is much higher in Vietnam as the labour and other fixed costs in Vietnam is much higher than that in India hence, increasing the manufacturing costs of the PUC. The sale price of the product as stated in the petition is completely incorrect and inflated and the sale price is much higher as already provided in the data submitted before the authority.
- xv. The price variation of the goods can be seen by any products of similar nature manufactured by the exporter and the domestic industry. The approximate price



difference between the products is about 20% to 40% depending upon the kind of product involved. That is to say that the products of the exporter are 20% to 40% more expensive than the products sold by the domestic industry.

- xvi. The volume of the goods export is solely dependent upon the orders received by the exporter from the various clients. The volume effect as stated by the domestic industry is completely incorrect and inaccurate. It is submitted that the prices of the exporter are in no way connected with the prices of the domestic industry and the exporter was not even aware about the prices of the products manufactured by the domestic industry as the exporter charges the price in tune with its own business practices and norms. The exporter manufactures and exports the material to various countries including India. The main consideration for price determination is the manufacturing costs of the product manufactured and any discount or rebate depends upon the order placed by the concerned importer.
- xvii. The exporter has neither intended to hamper the domestic industry nor in the present facts and circumstances, has the exporter in any way affected the domestic industry. The product under consideration varies in quality as well as the price at which it is manufactured and sold and therefore, it is not possible for the exporter to dump the PUC.
- xviii. The dumping margin as stated and assessed by the domestic industry is based on incorrect and false data and the price construction/assessment done by the domestic industry is also incorrect and the exporter has already given the data regarding the same to the DGAD.
- xix. The market share as well as the price effect as stated by the domestic industry is incorrect. The prices of the goods sold by the domestic industry already much lower than that of the exporter. There is a significant difference of nearly 20% to 40% depending upon the kind of product sold in the market. Such a difference cannot be to compete in the market but is based upon the cost of manufacturing, other costs as well as the profit margin. It is once again stated that the quality of the products manufactured by the petitioner and the answering exporter is also different.
- xx. As per the knowledge of the exporter it is the only exporter exporting the product under consideration to India and in such circumstances, the quantities as stated by the exporter cannot be accurate/correct and are misconstrued thus making a significant difference in the market share as portrayed and what it actually is.
- xxi. The data provided by the petitioner pertaining to the exports done by Vietnam are incorrect and are highly inflated. The answering exporter has already provided the data in terms of the questionnaire and the correct facts and data highly varies from the data provided by the petitioner, which is admittedly constructed data by the petitioner without any source or information.

- xxii. Under such circumstances, the data provided by the petitioner qua the answering exporter cannot be relied upon and the actual data given by the exporter has to be taken into account while investigating the claims of the domestic industry which are highly exaggerated in term of the loss and damage claimed by the petitioner.
- xxiii. There is no link whatsoever between the exports from the answering exporter and any damage or loss suffered by the petitioner. It is further stated that the answering exporter has not dumped any goods and the exports are done in terms of the regular business practices and not harm or hamper the domestic industry.
- xxiv. The manufacturing process is slightly different than that of the petitioner and therefore, the quality of the goods of the answering exporter is also better than that of the petitioner.
- xxv. Exporter has not dumped any goods in India nor caused any injury to the domestic industry. However, the answering exporter is not aware about the practices and data regarding other countries.

67. No other interested party has not submitted any specific comments in this regard

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

- 68. In consideration of the various submissions made by the interested parties in this regard, the Authority proceeds to examine the current injury, if any, to the domestic industry on account of imports from the subject countries.
- 69. 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 term 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.

### **Cumulative assessment of injury**

- 70. As per annexure-II (iii) of the Rules, in case, imports of a product from more than one country are being simultaneously subjected to Anti-dumping Investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that:

- a. The margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article, and,
  - b. Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.
71. The Authority has found that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%.
72. With a view to assess the conditions of competition between imported products and the like domestic product, the Authority notes that
- a. The subject goods supplied by Foreign Producers and by the domestic industry are inter-se like articles.
  - b. The Authority has found that the imported subject goods are commercial substitutes of the domestically produced products.
  - c. The information furnished to the Authority gives a reasonable indication that the exports made from the subject countries compete in the same market, as these are like products.
73. Therefore, the Authority notes that it is appropriate to, cumulatively assess the effect of imports of the subject goods on the domestically produced like article, in the light of conditions of competition between the imported products and the like domestic product.
74. Annexure II of the AD Rules requires that determination of injury shall involve 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. Consequent impact of these imports on domestic producers of such products.
75. The Authority while examining the volume of dumped imports is required to examine whether there has been a significant increase in the dumped imports, either in absolute term 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 prices to a significant degree, or prevent price increase which otherwise would have occurred to a significant degree.
76. For the purpose of injury analysis the Authority has examined cumulative effect of dumped imports of the subject goods on the domestic industry and its effect on all relevant economic factors and indices having a bearing on the state of industry to evaluate the existence of injury and causal links between the dumping and injury, if any. Since significant dumping margins have been established for the exports from the subject countries, entire exports

from the subject countries have been treated as dumped imports for the purpose of injury analysis and causal link examination.

### **Impact of dumped imports on domestic Industry**

77. As regards the impact of the dumped imports on the domestic industry Para (iv) of Annexure-II of the Anti-dumping Rules states as follows.

*“The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.”*

78. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the rules supra.
79. 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 states as under: -

*The effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.*

80. The Authority has examined the injury parameters objectively taking into account the facts and submissions made by various interested parties.

### **Assessment of Demand**

81. The demand/apparent consumption of subject goods has been determined by adding domestic sales of domestic like product and imports of subject goods from all countries. The Authority notes that demand of subject goods increased significantly over the injury period as can be seen in the table below:

Particulars	Unit	2010-11	2011-12	2012-13	POI
Sales of Domestic Industry	MT	***	***	***	***
Index		100	170	227	269
Sales of Other Indian Producer	MT	***	***	***	***
Index		100	134	160	177
Imports in to India	MT	536	522	764	1,083
China	MT	236	260	345	324
Thailand	MT	81	180	313	372
Vietnam	MT	44	36	70	354
Total Subject Countries	MT	361	476	728	1,050
Other Country	MT	175	46	36	33
Demand in India	MT	1,308	1,671	2,219	2,746

82. The Authority notes that the demand for the product under consideration has shown a positive trend, showing an overall increase over the injury period.

**i. Import volumes in absolute terms**

83. Imports volume from subject countries were as under:-

Imports Volume	Unit	2010-11	2011-12	2012-13	POI
China	MT	236	260	345	324
Thailand	MT	81	180	313	372
Vietnam	MT	44	36	70	354
Total Subject Countries	MT	361	476	728	1,050
Other Country	MT	175	46	36	33
Total Imports	MT	536	522	764	1,083

It is seen that imports have increased significantly in absolute terms over the injury period. Imports from the China PR have shown gradual increase throughout the injury period; whereas, from Vietnam and Thailand, imports increased significantly over the injury period. Whereas the demand for the product under consideration increased by 110% from base year, imports from China increased by 37% over the same period, whereas imports from Vietnam and Thailand showed 703% and 358% increase respectively.

**ii. Imports in relation to production-**

84. Authority observes that the imports from subject countries have increased in relation to production in India as shown below:

Particulars	Unit	2010-11	2011-12	2012-13	POI
Imports from subject countries	MT	361	476	728	1,050
Total imports	MT	536	522	764	1,083
Production of domestic industry	MT	***	***	***	***
Indian production	MT	1072	1435	1679	1854
Share of subject country imports in relation to					
Domestic industry production	%	80.53	69.54	85.79	108.35
Indian production	%	33.68	33.18	43.34	56.63

85. It is, thus, seen that imports of the product under consideration from subject countries have increased in relation to production in India.

**iii. Imports in relation to total imports**

86. Imports of the product under consideration from subject countries have increased in relation to total imports into India.

Particulars	Unit	2010-11	2011-12	2012-13	POI
<b>Market Share in Import Volume</b>					
China	MT	236	260	345	324
Thailand	MT	81	180	313	372
Vietnam	MT	44	36	70	354
Subject countries	MT	361	476	728	1,050
Other countries	MT	175	46	36	33
Total imports	MT	536	522	764	1,083
<b>Share in total Imports-</b>					
China	%	43.96	49.77	45.14	29.92
Thailand	%	15.18	34.54	41.04	34.37
Vietnam	%	8.21	6.96	9.12	32.64
Total Subject Countries	%	67.34	91.27	95.31	96.93
Other Country	%	32.66	8.73	4.69	3.07

**iv. Imports in relation to consumption**

87. Imports of the product under consideration have increased significantly in relation to consumption of the product under consideration in India.

Particulars	Unit	2010-11	2011-12	2012-13	POI
Imports from subject countries	MT	361	476	728	1,050
Sales of domestic industry	MT	***	***	***	***
Index		100	170	227	269
Consumption in India	MT	***	***	***	***
Index		100	128	170	210

Particulars	Unit	2010-11	2011-12	2012-13	POI
<b>Market Share in Demand</b>					
Domestic Industry	%	24.67	32.81	33.14	31.65
Other Indian Producer	%	34.32	35.97	32.46	28.91
Total Imports	%	41.01	31.22	34.41	39.44
China	%	18.03	15.54	15.53	11.80
Thailand	%	6.22	10.78	14.12	13.56
Vietnam	%	3.37	2.17	3.14	12.87
Total Subject Countries	%	27.62	28.49	32.79	38.23
Other Country	%	13.39	2.73	1.62	1.21

88. It is thus seen that share of imports from subject countries in Indian demand increased from below 28% to above 38% over the injury period. This increase in imports in relation to consumption is despite the increase in capacity by the domestic industry. The domestic industry doubled capacities during this period, despite which the share of the subject countries imports in consumption increased by an absolute 10% over the injury period.

89. It is, thus, concluded that imports from subject countries have increased both in absolute terms and in relation to production and consumption in India.

**v. Price Effect of the Dumped imports on the Domestic Industry**

90. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules lays down as follows:

*"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."*

91. It has been examined whether there has been a significant price undercutting by the dumped imports compared with the price of the like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. The impact of dumped imports on the prices of the domestic industry has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any.

**vi. Price Undercutting**

92. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports with net sales

realization of the domestic industry. In this regard, a comparison has been made between the landed value of the product and the average selling price of the domestic industry net of all rebates and taxes, at the same level of trade. The prices of the domestic industry were determined at the ex factory level. This comparison showed that during the period of investigation, the subject goods originating in the subject countries were imported into the Indian market at prices which were lower than the selling prices of the domestic industry. It is thus noted that imports of subject goods were undercutting the domestic prices and margin of undercutting is shown in the table below:

Particular	Unit	2010-11	2011-12	2012-13	2013-14
Net Sales Realisation of Domestic Industry	Rs./MT	***	***	***	***
<b>China PR</b>					
Landed Value	Rs./MT	244,518	254,368	212,549	244,364
Price undercutting	Rs./MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting Range	%	15-25	10-20	40-50	25-35
<b>Thailand</b>					
Landed Value	Rs./MT	298,528	260,663	221,248	287,039
Price undercutting	Rs./MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting Range	%	Negative	05-15	40-50	5-15
<b>Vietnam</b>					
Landed Value	Rs./MT	361,905	399,722	262,407	217,106
Price undercutting	Rs./MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting Range	%	Negative	Negative	15-25	40-50
<b>Subject Countries</b>					
Landed Value	Rs./MT	271,001	267,839	221,265	250,321
Price undercutting	Rs./MT	***	***	***	***
Price undercutting	%	***	***	***	***
Price undercutting Range	%	05-15	05-15	35-45	20-30

93. It is seen that the landed price of imports from each of the subject countries were lower than the selling price of the domestic industry, thus resulting in significant price undercutting.

94. The interested parties have contended that the selling price of the domestic industry is below the landed price of imports and the imports were of superior quality. The verified information however shows that the landed price of imports were below the selling price of the domestic industry. The authority also notes that the price undercutting is required to be determined on the basis of weighted average of imports from the country concerned. The contention of the interested parties therefore that the imports are occurring at higher prices is found factually incorrect. The Authority concludes that price undercutting with respect to imports from subject country have been positive during the POI.



**vii. Price suppression/depression**

95. In order to determine whether the effect of imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, the Authority examined the changes in the costs and prices over the injury period. The position is shown as per the Table below:

Particulars	Units	2010-11	2011-12	2012-13	2013-14 (POI)
Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>98</i>	<i>106</i>	<i>106</i>
Cost of Sales	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>111</i>	<i>114</i>
Landed Value of imports from subject countries	Rs./MT	271,001	267,839	221,065	250,321
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>99</i>	<i>82</i>	<i>92</i>

96. It is seen that landed value of imports have remained significantly below the level of cost of sales and selling price of the domestic industry throughout the injury period. Low priced dumped imports forced the domestic industry to sell its goods at a price below the cost of sales. Thus the imports are suppressing the prices of the domestic industry throughout the injury period.

**viii. Price Underselling**

97. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been determined considering the cost of production of the domestic industry for the product under consideration during the POI, in accordance with Annexure III of the Anti-dumping Rules. The analysis shows that the landed value of subject imports was below the non-injurious price as can be seen from the table below.

Particular	Units	China PR	Thailand	Vietnam
Non-Injurious Price	Rs/MT	***	***	***
Landed Value	Rs/MT	271,001	267,839	221,065
Price Underselling	Rs/MT	***	***	***
Price Underselling	%	***	***	***
Price Underselling	range	20-30	5-15	40-50

It is noted from the above table that imports from the subject countries are having an underselling effect on the prices of domestic industry.

**ix. Economic parameters of the domestic industry**

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

x. **Production, Capacity, Capacity Utilization & Sale Volume**

99. The performance of the domestic industry with regard to production, domestic sales, capacity & capacity utilization was examined and shown in the table below:-

Particulars	Units	2010-11	2011-12	2012-13	2013-14 (POI)
Capacity	MT	889	1309	2001	2001
<i>Trend</i>	<i>Indexed</i>	100	147	225	225
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	153	189	216
Capacity Utilization	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	104	84	96
Total Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	193	257	302
Domestic Sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	170	228	269

It is noted that:

- Domestic industry has enhanced its capacity throughout the injury period in view of the increase in demand. Demand for the product under consideration doubled over the injury period. The capacity with the domestic industry also doubled over the injury period. It is thus seen that the enhancement in capacities by the domestic industry was commensurate with the increase in demand for the product in the Country.
- Production and sales of the domestic industry increased over the injury period. The rate of increase in production and sales was however lower than the rate of increase in demand for the product. Further, the petitioner is suffering significant unutilized capacities. It was seen at the time of plant visit that the production process of the product under consideration is such that the producers can regulate the production by stopping the machines and the petitioner had in fact

not deployed all the machines on three shift basis. Thus, capacity utilization of the domestic industry has suffered as a result of the inability of the domestic industry to increase its market share. It is also seen that since the petitioner does not have very old history of production of the product under consideration in the Country, it was legitimate expectation of the petitioner to improve its market share over the period.

**xi. Profit/Loss, Return of Investment**

100. The profitability of the domestic industry is given in the following table:

Particulars	Unit	2010-11	2011-12	2012-13	2013-14 (POI)
Cost of Sales	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>106</i>	<i>111</i>	<i>114</i>
Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>98</i>	<i>106</i>	<i>106</i>
Profit/Loss	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>(9,110)</i>	<i>(5,989)</i>	<i>(9,784)</i>
Profit/Loss	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>(15,478)</i>	<i>(13,648)</i>	<i>(26,362)</i>
PBIT	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>(190)</i>	<i>(126)</i>	<i>(617)</i>
Cash Profit	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>(54)</i>	<i>58</i>	<i>(92)</i>
Return of investment	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>(182)</i>	<i>(113)</i>	<i>(359)</i>

101. It is seen from the above information that:

- The profitability of the domestic industry with respect to domestic sales of the product concerned deteriorated during POI as compared to base year. The decline in profits of the domestic industry is very significant.
- The cost of production and selling price both increased over the period, but the increase in selling price was lower than the increase in cost of production. Thus, the price suppression caused by the dumped imports resulted in deterioration in the performance of the domestic industry with regard to profits. The domestic industry was forced to sell the product at a price below the cost of production.
- The production and sales increased over the injury period but the profitability declined.
- The returns on investment and cash flow have followed the same trend as that of profitability.

**xii. Inventories**

102. Inventories with the domestic industry were as follows:

Particulars	Unit	2010-11	2011-12	2012-13	2013-14
Average Inventory	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>241</i>	<i>287</i>	<i>273</i>

It is seen that inventories with the domestic industry have increased significantly over the period. The rate of increase in inventories was more than the rate of increase in production.

xiii. **Employment and Wages**

103. The employment and wages are below:

Parameters	Unit	2010-11	2011-12	2012-13	POI
No of Employees	Nos.	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>136</i>	<i>159</i>	<i>164</i>
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>203</i>	<i>291</i>	<i>359</i>

It is seen that the employment and wages has increased in the injury period

xiv. **Growth**

104. The Authority notes from the table below that growth of the domestic industry was positive in terms of sales and production on year to year basis. However, growth of the domestic industry was however negative in respect of inventories, profits, cash profit and return on investment on year to year basis.

Parameters	Unit	2010-11	2011-12	2012-13	POI
Production	%	-	53	24	14
Domestic Sales	%	-	70	34	18
Average Inventory	%	-	141	19	(5)
Cash Profit	%	-	(154)	(208)	(259)
PBIT	%	-	(290)	34	(391)
ROCE	%	-	(4)	1	(3)

xv. **Ability to raise capital investment**

105. Domestic industry enhanced capacities over the period and made fresh investments. The domestic industry contended that even when they have made fresh investments, the same were a result of overall operations of the company and strength that the company enjoys because of other products. The domestic industry further contended that the investments were made in the hope that the market for the product under consideration would become fair. However, dumping of the product is leading to negative growth in terms of number of economic parameters and the dumping is leading to financial losses.

xvi. **Factors Affecting Domestic Prices**

106. The examination of the import prices from the subject countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc shows that the landed value of imported material from the subject countries is below the selling price and the non-injurious price of the domestic industry, causing significant price undercutting as well as price underselling in the Indian market. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the dumped imports of subject goods from subject countries.

**xvii. Magnitude and Margin of Dumping**

107. The imports from the subject countries are far above the de minimis level of dumping margin. The dumping margin for each of the subject countries is quite significant. With such high magnitude of dumping margin, dumped imports are causing material injury to the domestic industry.

**xviii. Conclusion on injury**

108. Based on the above, the Authority proposes to conclude that the dumped imports of the subject goods from the subject countries have increased in absolute terms as well as in relation to production and consumption of the subject goods in India. Imports of the product are undercutting the prices of the domestic industry in the market. Further, while both the cost of production and selling price increased over the injury period, the increase in selling price was lower than the increase in cost of production. The imports were thus preventing the price increases that would have otherwise occurred in the absence of dumped imports. It is observed that the demand for the product increased significantly and consequently production and sales of the domestic industry also increased, however, performance of the domestic industry deteriorated in respect of market share, capacity utilization, inventories, profits, cash flows and return on investments.

109. The Authority noted that the domestic industry has suffered injury on account of volume as well as price effect of dumped imports, as a result of which the profitability of the domestic industry has declined. Domestic industry is suffering financial losses. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits turned negative in POI. Growth of the domestic industry in respect of most of the parameters such as profits, cash profits, returns on capital employed, market share & inventory, etc. was negative. Thus, Authority concluded that the domestic industry has suffered material injury.

**Causal Link**

110. The Authority has examined whether other factors listed under the Anti-dumping Rules could have contributed to injury to the domestic industry. The examination of causal link between dumping and material injury to the domestic industry has been done as follows:

**Injury due to other listed known factors:**

111. Authority examined whether listed known factors have caused injury to the domestic industry.

- (1) *Changes in the patterns of consumption*: The pattern of consumption with regard to the product under consideration has not undergone any change. Changes in the pattern of consumption could not have, therefore, contributed to the injury to the domestic industry.
- (2) *Trade restrictive practices of and competition between the foreign and domestic producers*: There is no trade restrictive practice, which could have contributed to the injury to the domestic industry.
- (3) *Developments in technology*: Technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury.
- (4) *Export performance*: Petitioner has exported the product under consideration during the injury period. However, the claimed injury to the domestic industry is on account of domestic operations. Petitioner has provided costing and injury information for domestic sales separately. Hence, injury to domestic sales cannot be attributed to exports.
- (5) *Performance of other products being produced and sold by the domestic industry*: Claimed injury to the domestic industry is on account of product under consideration.

112. Authority proposes to conclude that listed known other factors have not caused injury to the domestic industry.

**Factors establishing causal link: -**

113. The Authority notes that while listed known other factors do not show injury to the domestic industry, the following parameters show that injury to the domestic industry has been caused by dumped imports:

- a) There is significant difference between the prices offered by the domestic industry and foreign producers. Resultantly, domestic industry suffered volume injury as domestic industry could not increase its production and sales. In fact, capacity utilization of the domestic industry declined.
- b) Imported product was undercutting the prices of the domestic industry. Resultantly, the domestic industry has been prevented from increasing the prices to the extent of increase in cost of production.
- c) Deterioration in profits, return on capital employed and cash profits are directly a result of dumped imports;
- d) Significant increase in imports has led to significant stock piling with the domestic industry;

- e) Market share of the imports from subject countries remained significantly high. Market share of the domestic industry has declined despite additions of capacities by the domestic industry.
- f) Growth of the domestic industry was negative in respect of a number of parameters as a result of dumped imports.

## **H. MAGNITUDE OF INJURY AND INJURY MARGIN**

114. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject country. The injury margin so determined is significant.

Particular	China PR		Thailand		Vietnam		Subject Countries	
	US\$/MT	Rs./Mt	US\$/MT	Rs./Mt	US\$/MT	Rs./Mt	US\$/MT	Rs./Mt
Non-Injurious Price	***	***	***	***	***	***	***	***
Landed Value	4,015.80	2,44,364	4,717.11	2,87,039	3,567.84	2,17,106	4,113.68	2,50,321`
Injury Margin	***	***	***	***	***	***	***	***
Injury Margin	***	***	***	***	***	***	***	***
Injury Margin Range	25-35%		10-20%		45-55%		20-30%	

### **Post disclosure Statements/Submissions**

#### **Post Disclosure Statement by the Exporters**

115. M/s Machi Enterprises made submissions but the comments do not have any substantive new facts. The summation of submissions by M/s Srithai Superware Public Company Limited Thailand, is as below:
- a. There can be several grades of subject goods resulting in higher production cost and subsequent higher sale price of the product.
  - b. Their product is different in production technology, manufacturing process, distribution and marketing as compare to DI. The products of DI are not like articles.
  - c. M/s Servewell is holding the major proportion of production in Indian market and the petitioner is not the major producer.
  - d. All the documents and detailed information have been submitted by them in their various submissions during the course of investigation. The data was given for Thailand fiscal year which is January-December 2013 which has at least nine months of the POI.
  - e. The source of international prices of raw material should be declared as the pricing data of the domestic country should not be adopted for comparison.

#### **Post Disclosure Statement submissions by the Domestic Industry**

116. The summation of submissions by DI is as below:

- a. The product under consideration is not produced in various grades having significant difference in the associated cost.
- b. There is no known difference in product under consideration produced by the domestic industry and exported from subject countries. The two are technically and commercially substitutable. The goods produced by the domestic industry and imported from the subject countries are like articles in terms of the Rules.
- c. The production of petitioners is 52% of the total production of Indian industry and is qualified to be treated as domestic industry.
- d. The Authority should not determine dumping margin and injury margin on the basis of weighted average of the import price in the POI in a situation where the Authority has not accepted questionnaire response filed by the foreign producers. In this context the following case is referred:

*Kothari Sugars & Chemicals Limited Versus Designated Authority, 2005(187) E.L.T. 185 (Tri. – Del): In this, the Tribunal has clearly held that it is not necessary that the dumping and injury margin are based solely on weighted average of import price. The decision clearly establishes that in case there is a significant difference in the import price in different import transactions, the weighted average would at the least be misleading.*

In the present case it is evident from the comparison of import data and the questionnaire response filed by the responding exporters that the exports made by one particular exporter are at a higher price. The mere fact that the Authority has not granted individual dumping margin to the exporter does not mean that the Authority shall adopt weighted average import price on the basis of Indian Customs data.

- e. A statement showing the prices at which M/s Srithai has exported the product and the price at which other producers from Thailand have exported the product has been submitted to DA. Given significant difference in the prices, a dumping and injury margin determined on the basis of weighted average would tantamount to rewarding other exporters/producers by granting them benefit of higher prices at which Srithai has exported the product. At the same time, this shall also imply penalizing Srithai despite admitted higher export price of the company. Above all, the domestic industry would be significantly unprotected by the resultant dumping duty, as the companies resorting to significant dumping would continue to dump the product and company such as Srithai would be faced with higher duty, which would be of no legitimate advantage to the exporter (M/s Srithai) and the domestic industry.
- f. Authority is requested to determine individual dumping margin and injury margin. Since M/s Srithai has failed to fully cooperate with the Authority, there is no bar on the DA in



determining individual dumping and injury margin on the basis of Indian Customs import data. In fact, the DA has determined individual dumping and injury margin on the basis of available information in the case of (i) Dead burnt magnesite; (ii) Low carbon ferro chrome; (iii) 8-Hydroxyquinolinone; and (iv) Sodium Ferrocyanides, in the beginning of application of present law. Prior to 01-01-1995, the rule did not require determination of producer specific dumping and injury margin. The relevant legal provisions were created through WTO Agreement on Anti Dumping (which came into force on 01-01-1995). In 1996, while considering the new law, the DA determined individual dumping and injury margin even in a situation where exporters did not fully cooperate with the Authority. Such individual dumping and injury margins were determined based on information available on record of the investigations (Indian customs data).

- g. The sole determining criterion on the issue is whether there is sufficient information available with the Authority which shows a price which is reasonable, appropriate and sufficient for determination of export price. If the export price so determined is unreasonable high or low, it follows that the Authority may not determine individual dumping and injury margin without a questionnaire response from the party concerned. But, however, in a situation where available information shows an export price which is reasonable and adequately & accurately represents the import price, the DA can determine dumping and injury margin even from other information available to the Authority, including customs data.
- h. The petitioner requests the authority to correctly fix NIP as per the Rules and laws laid down. The indirect salary and wages in the ratio of machine hour reported by the petitioner should be considered. The authority could consider either actual machine hour or standard machine hour as deemed appropriate by the authority. The cost of production reported by the petitioner and certified by a practicing cost accountant has been modified in the disclosure statement either by altering the allocation/apportionment methods or by ignoring expenses which are clearly permissible under the law. The rules provide for consideration of reasonable and scientific methodology and list a number of options such as machine hours, vessel occupancy hours, direct labour hours, production quantity, sales value, etc. Thus, machine hours is one of the most scientific methodologies provided under not only cost accounting text books but also specifically provided under Annexure-III to the Rules. Given significant difference in number of machine hours spent in production of melamine ware and thermo ware, it would be grossly inappropriate to apportion common salaries & wages in the ratio of production. 54 machines produced PUC i.e. melamine ware during POI wherein 233600 machine hours (on standard basis) were spent by the company; while 113880 machine hours were spent on 13 machines for producing thermo wares. Evidently, the products significantly differ in production efforts involved and therefore production ratio is grossly inappropriate methodology.
- i. There are two modifications to the deprecation expenditure reported by the petitioner.

- i. **Depreciation on common facilities** ó Depreciation on common facilities which include items such as factory buildings have not been included in the cost of production determined. Significant investment has been done by petitioner in common assets. This investment is required to be apportioned between the two products. The petitioner had apportioned the same in the ratio of direct net fixed assets of the two plants. Petitioner requests consideration of the same.
- ii. **Direct depreciation amount reduced** ó It is noted that whereas the petitioner had reported direct depreciation amount of Rs. 181.29 lacs, the NIP is not based on this amount. We have been informed that whereas petitioner has deployed 54 machines, since petitioner has used only 40 machines, depreciation amount has been restricted only to 40 machines. Petitioner submits that such adjustment is grossly inappropriate. It is not a case that 40 machines remained completely idle during the period. This is a clear presumption without any basis. In fact, the petitioner has been using all the machines. Merely because petitioner has not used some machine or the other at some point in time or the other, the same does not justify exclusion of depreciation amount. In fact, Generally Accepted Accounting Principles require the company to charge depreciation on the assets used and the same does not imply that the assets should have been used 24 hours basis for 365 days in a year. In fact, in a production process like the present, it would not be possible to have continuity of production in a manner as a company having petrochemical plant or a furnace operating round the clock. Above all, it is not an inefficient utilization of production facilities.
- j. The amount reported by the petitioner on account of repairs & maintenance has also been modified, possibly for the reasons similar to the reasons adopted for modifying expenditure on account of depreciation in Melamine plant. Petitioner requests the Authority to kindly consider the expenditure reported by the petitioner for the same reasons as given for depreciation.
- k. The net fixed assets reported by the Petitioner have been reduced for the reasons similar to the reasons adopted for depreciation. The petitioner therefore requests the Authority to kindly accept the figures reported by the petitioner for the reasons similar to mentioned above in respect of depreciation.
- l. The Authority has disregarded expenditure incurred by the petitioner on account of advertisement relating to the product. It is not understood why the expenditure on account of depreciation should be excluded. In fact, the DA has allowed expenditure on account of advertisements in the past. Please refer to illustrative cases listed below where the expenditure on account of advertisements was allowed. Annexure-III also does not provide that expenditure on account of advertisement should be excluded. Such being the case, petitioner submits that expenditure on account of advertisement should be allowed for determination of NIP.

- a. MDF sunset review case
  - b. Diclofanec sodium
  - c. Measuring tapes
  - d. Vitamin-E
  - e. Carbon black
  - f. CFL
- m. It would thus be seen that the NIP has been reduced significantly for the reasons mentioned above. The petitioner therefore requests the DA to kindly consider the submissions above and determine NIP for the final findings.
- n. In view of the above submissions, domestic industry submits that
- a. There is significant dumping of the product under consideration from the subject countries;
  - b. The domestic industry is suffering price suppression;
  - c. Price suppression led to a situation where in the domestic industry suffered significant deterioration in its performance in respect of profits, return on investment and cash flow. Even the sales volumes declined.
  - d. Product under consideration is exported to India below its normal value resulting in continued dumping from the subject countries.
  - e. Both dumping margin and injury margin in the Period of Investigation are significant and positive for the subject countries.
- o. Therefore, petitioner requests the DA to kindly recommend fixed quantum of duty in the present case.

#### **Examination by the Authority**

117. The various issues raised by the exporter and contested by DI have been addressed in above paragraphs but are being again addressed herein for the sake of clarity:
- a. The exporter has contended that the subject goods are produced in various grades and different prices. The goods supplied by them are of superior quality as compared to the goods produced and supplied by the domestic industry and that they follow a different distribution and marketing formula. The exporter has however not quantified how the domestic and imported products are different and what is the impact of the alleged difference. The authority notes that a difference in quality cannot be recognized, unless the differences are quantified and their impact demonstrated. After considering the information on record, the Authority holds that there is no material difference in product under consideration exported from subject countries and the product produced by the Indian industry. Product under consideration produced by the domestic industry is comparable to the imported subject product in terms of physical & chemical characteristics, production technology & manufacturing process, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. Thus, the Authority holds that product under consideration produced by the applicant domestic industry is like article

to the subject product under consideration imported from subject countries in accordance with the AD Rules.

- b. Petitioner is a major producer of the subject goods in India. It is responsible for manufacturing 52% of the Indian Production. There is only one more company in the organized sector, M/s Servewell India, which produces the subject goods. Further, there are other small producers of the subject goods in India. M/s Servewell India has not responded to the present investigations and has neither supported nor opposed the present investigations and proposed imposition of ADD. The Authority concludes that the petitioner constitutes domestic industry within the meaning of the Rule 2 (b). The petitioner satisfies the criteria of standing in terms of Rule 5 (3) of the Anti-dumping Rules.
- c. The exporter was given several opportunities and sufficient time to submit completed information. The information was furnished but it has been given for January 6 December 2013. The Authority had asked for information for April 2013-March 2014 which was the notified Period of Investigation. In view of incomplete information it is not possible to analyze the information and the exporter could not be given an individual dumping margin as per the consistent practice of the Authority.
- d. The DI is asking the Authority to analyse the available data as per the Indian Customs and give M/s Srithai an individual margin even when they have not submitted complete data though they were given extra time as well as opportunity to submit the information. Their related importer had also submitted response subsequent to the hearing to which DI had taken objection. They have quoted a case of 1995 and also mentioned that this was prevalent before the current modifications. It is noted that perusal of the available data in detail indicates that the import data of Thailand cannot be segregated exporter wise and it is not possible to give the breakup of export price for each and every exporter from Thailand. Therefore, the Authority has taken the data of import from Thailand as a whole and decided to determine one dumping and injury margin for all the exporters from Thailand. This is as per the consistent practice of the Authority for several years.
- e. The issue on determination of Non Injurious Price on account of a) treatment of salary and wages of common staff, b) reduction in the amount of depreciation, repairs & maintenance and return on capital employed and c) treatment of advertisement expenses, etc. was examined by the Authority. All these issues were handled at the time of determination of NIP. On review of NIP workings it was observed that one of the items of salary and wages was missed out while linking the allowed expenditure under this head. Therefore NIP has been modified to that extent. Accordingly, as normal value has also been constructed on the basis of cost of sales of domestic industry the constructed normal value stands modified to that extent.

## **CONCLUSION**

118. The Authority has, after considering the foregoing, come to the conclusion that:
- a. The subject goods have been exported to India from the subject countries below its normal value;
  - b. The domestic industry has suffered material injury;
  - c. The material injury has been caused by the dumped imports of the subject goods from subject countries.
  - d. The injury has been caused cumulatively by the imports from the subject countries.

## **INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES**

119. The Authority recognizes that imposition of antidumping duties might affect the price level of product in India. However, fair competition in Indian market will not be reduced by the anti-dumping measures. On the contrary, imposition of anti-dumping measures would remove the unfair advantage gained by dumping practices, would arrest the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. Consumers could still maintain two or more sources of supply.
120. The Authority notes that the purpose of antidumping duties, in general, is to eliminate injury caused to the Domestic Industry by unfair trade practices of dumping so as to re-establish a situation of open and fair competition in Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the products to the consumers.

## **RECOMMENDATIONS**

121. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the AD Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of antidumping duty is required to offset dumping and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.
122. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the amount indicated in Col No.9 of the table below is recommended to be imposed on all imports of the subject goods originating in or exported from the subject countries/territory.

Duty Table									
Sl. No	Tariff Item	Description of Goods	Specification	Country of Origin	Country of Export	Producer	Exporter	Amount (in USD)	Unit of Measurement
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specification	China PR	China PR	Any	Any	1284.16	MT
2	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specification	Any	China PR	Any	Any	1284.16	MT
3.	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specification	China PR	Any	Any	Any	1284.16	MT
4	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specification	Thailand	Thailand	Any	Any	582.85	MT
5	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specification	Any	Thailand	Any	Any	582.85	MT
6	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specification	Thailand	Any	Any	Any	582.85	MT
7	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specification	Vietnam	Vietnam	Any	Any	1732.11	MT

8	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specific ation	Any	Vietnam	Any	Any	1732.11	MT
9	39241010 39241090 39249090 39264049 39269099	Melamine Tableware and Kitchenware products	Any specific ation	Vietnam	Any	Any	Any	1732.11	MT

123. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.
124. An appeal against the order of the Central Government arising out of this final finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

(A.K.Bhalla)  
Designated Authority