To be published in Part- I Section- 1 of the Gazette of India Extraordinary

F. No. 6/17/2021-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building,
5, Parliament Street, New Delhi -110001

Dated: 23rd January, 2023

NOTIFICATION
FINAL FINDINGS

(CASE No - AD (OI) - 16 /2021)

Subject: Anti-dumping investigation (Material-Retardation) concerning imports of "Vinyl Tiles other than in roll or sheet form" originating in or exported from China PR, Taiwan and Vietnam.

F. No. 6/17/2021-DGTR: - Having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred as the "Act") and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred as the "Anti-Dumping Rules" or "the Rules") thereof;

A. BACKGROUND OF THE CASE

1. The Designated Authority (hereinafter also referred to as the "Authority") received a petition from Welspun Flooring Limited ("WFL"), Welspun Global Brands Limited ("WGBL") and Welspun India Limited ("WIL") (hereinafter also referred to as the "petitioners" or "applicants") in accordance with the Act and the Anti-Dumping Rules for initiation of anti-dumping investigation and imposition of anti-dumping duty concerning imports of the Vinyl Tiles other than in roll or sheet form (hereinafter also referred to as the "product under consideration" or the "subject goods") from China PR, Taiwan and Vietnam (hereinafter also referred to as the "subject countries").

2. And whereas, in view of the duly substantiated petition filed by the petitioners and sufficient prima facie evidence submitted by the applicants, the Authority initiated the anti-dumping investigation vide Notification No. 6/17/2021-DGTR dated 24th January 2022, published in the Gazette of India, Extraordinary, to determine the existence, degree and effect of any alleged dumping of the subject goods and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry in accordance with Section 9A of the Act read with Rule 5.

B. PROCEDURE

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:

a. The Authority notified the Embassies of the subject countries in India about the receipt of the present anti-dumping petition before proceeding to initiate the investigation in accordance with Rule 5(5) of the Anti-Dumping Rules.

b. The Authority issued a public notice dated 24th January 2022, published in the Gazette of India, Extraordinary, initiating anti-dumping investigation concerning the import of subject goods from the subject countries.

c. The Authority sent a copy of the initiation notification to the Government of the subject countries, through Embassy in India, known producers and exporters from the subject countries, known importers / users and the domestic industry as well as other interested parties and requested them to make their views known in writing within the prescribed time limit.

d. The Authority provided a copy of the non-confidential version of the petition to the known producers/exporters and to the Governments of the subject countries, through these Embassies in India, in accordance with Rule 6(3) of the Anti-Dumping Rules. A copy of the non-confidential version of the petition was circulated to other interested parties, wherever requested, through e-mails.

e. The Authority sent Exporter's Questionnaire to the following known producers/exporters in the subject countries to elicit relevant information in accordance with Rule 6(4) of the Rules:

i. CFL Flooring (China) Company Limited
ii. Chin Yang Chemical Corporation
iii. Dare Jiangsu Flooring Products
iv. Florq Company Limited
v. Jae Young Chemical Company Limited
vi. Jinka Flooring Technology Company Limited
vii. LG Hausys Limited
viii. SS Floor Company Limited
ix. Vinyl Tech Enterprises Company Limited
x. VPP Chemical Company Limited
xi. Zhejiang Kingdom Plastics Industry

f. The Embassies of the subject countries in India were requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the known producers/exporters was also sent to the Embassies along with the list of the known producers/ exporters from the subject countries.

g. In response to the initiation notification of the subject investigation, none of the producers/exporters from the subject countries have responded by filing questionnaire response.

h. The Authority also sent the application proforma to the following known other Indian producers:
Thousand Oak Innovation LLP
Mingle Plast Private Limited
Responsive Industries Limited

i. In response to the initiation of the subject investigation, none of the known other Indian producer have responded by making any submission.

j. The Authority sent importer's / user's questionnaire to the following known importers / users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules.

i. Responsive Industries Limited
ii. Rosetta Products
iii. Square Foot Flooring
iv. Surface India Flooring Private Limited

k. The Authority sent the questionnaire to the following known Associations of the subject goods in India for circulation and calling necessary information in accordance with Rule 6(4) of the Rules:
i. Builders Association of India
ii. Confederation of Real Estate Developers' Association of India
iii. CREDAI-MCHI

l. In response to the initiation of the subject investigation, none of the known importers/users/associations have responded by filing questionnaire response.

m. In response to the initiation of the subject investigation, the following importers have made submissions:
i. Al Anwar Marketing Company
ii. ATM Enterprises
iii. Bhalla's Carpets
iv. Classic Floorings & Interiors Private Limited
v. Consolidated Carpet Industries Limited
vi. Designerz
vii. Excel Import Private Limited
viii. Floor Solutions
ix. Greenwood Inc
x. Indiana International Corporation Flooring Private Limited
xi. Raj Agencies
xii. RKP Trading Company Private Limited
xiii. S C Seth and Sons
xiv. Seth Enterprises
xv. ATA Enterprises

n. In response to the subject investigation, submissions have been made by RMG Polyvinyl India Limited, and China National Forest Products Industry Association.

o. Changzhou Dege Decorative Material Co., Ltd, Win Ton Plastics Industry Co., Ltd. and Taipei Economic and Cultural Centre in India registered themselves as interested parties.

p. Due to the worldwide outbreak of COVID-19 and consequent restrictions on physical movement imposed by different countries, including India, the Authority circulated the non-confidential version of the evidence presented by the domestic industry and the various interested parties to the other interested parties for inspection by the other interested parties.

q. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and DG System to provide the transaction-wise details of imports of subject goods for the injury period and the period of investigation. The Authority has relied upon the DG System data for computation of the volume of imports and required analysis after due examination of the transactions.

r. The non-injurious price (NIP) has been determined based on the optimum cost of production and cost to make & sell the subject goods in India as per information furnished by the domestic industry and in accordance with Generally Accepted

Accounting Principles (GAAP) and Annexure III to the Rules. Such non-injurious price has been considered to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

s. The period of investigation (POI) for the purpose of present investigation is 1st October 2020 to 30th September 2021 (12 months). The injury analysis period covers 1st April 2018 – 31st March 2019, 1st April 2019 – 31st March 2020, 1st April 2020 – 31st March 2021 and the period of investigation.

t. Information was sought from the petitioners 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 present investigation.

u. The Authority, in accordance with Rule 6(6) of the Rules and Trade Notice No. 01/2020 dated 10th April 2020, conducted an oral hearing through video conferencing on 18th July 2022 to provide an opportunity to the interested parties to present their views orally before the Authority.

v. All the parties who had attended the above-mentioned oral hearing were advised to file the written submissions of the views expressed orally, followed by the rejoinders, if any. The arguments made in such written submissions and the rejoinders received from the interested parties have been considered, to the extent deemed necessary, for the purpose of this investigation.

w. The submissions made by the interested parties during the course of this investigation, to the extent supported with evidence and considered relevant to the present investigation, have been appropriately considered by the Authority, in the final findings.

x. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

y. Wherever an interested party has refused access to or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the views/observations on the basis of the facts available.

z. A disclosure statement containing the essential facts in this investigation which forms the basis of the present final finding was issued to the interested parties on 06.01.2023. The post disclosure statement submissions received from the applicants and other interested parties have been considered, to the extent found relevant, in this final finding notification.

aa. The Authority has considered all the arguments raised and information provided by all the interested parties at this stage, to the extent the same are supported with evidence and considered relevant to the present investigation.

bb. '***' in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.

cc. The exchange rate adopted by the Authority for the subject investigation is 1 US$ = ₹ 74.53.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

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

> *"4. The product under consideration for the present investigation is "Vinyl Tiles, other than in roll or sheet form". In the market parlance, the product under consideration is known as luxury vinyl tiles, luxury vinyl flooring, stone plastic composite, SPC, PVC flooring tiles, PVC tiles or rigid vinyl tiles, rigid vinyl flooring and in the present petition, has been referred to as Luxury Vinyl Tiles or LVT. Luxury Vinyl Tiles may be with or without the click and lock mechanism. Luxury vinyl tiles is a commonly used industry term for a type of vinyl that realistically mimics the appearance of the natural materials with an added layer to improve the wear and the performance. The product under consideration is used for covering the floors in the residential and the commercial buildings.*
>
> *5. The product under consideration is classified under Chapter 39 of the Customs Tariff Act under the heading 3918. The product under consideration does not have a dedicated customs classification. While the product under consideration is classifiable under 39181090, the applicants have claimed that the product is also being imported under the Codes 39181010,39189010,39189020 and 39189090. The customs classification, however, is only indicative and not binding on the scope of the product under consideration in the present investigation."*

C.1. Views of the other interested parties

5. The submissions of the other interested parties with regard to product under consideration and like article are as follows:

a. The product under consideration is confusing and contradicting and clarification is required on whether both PVC and Calcium Carbonate are necessary for the product under consideration.

b. Newer attributes added to the product under consideration must be identified.

c. Clarification is required on whether vinyl tiles can be rolled, and the type of tiles produced and sold in roll form and if the petitioners is manufacturing the same. The nature of such product must be explained.

d. It should be clarified whether Calcium Carbonate CaCo3 above 10% is excluded or included in the scope of the product under consideration.

e. There were producers of the Vinyl Flooring in India in the past also. Further, Vinyl Flooring Tiles were also produced in India before the applicant Domestic Industry commenced their operations. The product that started recently is Stone Plastic Composite Tile (SPC) which is a superior variant of vinyl tiles. Therefore, it would neither be permissible nor appropriate to categorize complete Vinyl Flooring Tile as new product.

f. Since all tiles cannot be manufactured using the same manufacturing process, information relating to the same is required from the domestic industry.

g. There is a need to clarify whether Vinyl Tiles having thicknesses below 2.5mm and above 8mm, tiles which do not require cushioning at the back, tiles which require glue to install, tiles which do not require click and lock system while installation and PVC floor covering click vinyl plank 4.20 mm are included in the scope of the product under consideration.

h. The petitioners have not clarified whether vinyl tiles manufactured using both virgin and recycled PVC are included in the scope of the product under consideration.

i. Flexible vinyl tiles should be excluded from the product scope as the domestic industry is not producing the same. Such tiles do not require cushion and require adhesive while laying. The petitioners produce rigid tiles.

j. The meaning of soft flooring and whether it forms part of product under consideration is unclear.

k. Vinyl tiles having thickness below 4 mm should be excluded as they are not produced by the domestic industry, and do not require cushion while laying.

l. Vinyl tiles that require adhesive while laying should be excluded from product scope. They are not manufactured by the domestic industry since the domestic industry is producing only rigid Vinyl Tiles that require cushion while laying.

m. The website of the domestic industry clearly states that it is not producing any other form of Vinyl Tiles except the one with Click and Lock mechanism.

n. The domestic industry should provide invoices for all the products that for which exclusion from the product scope product under consideration has been requested. In accordance with the various decisions of Tribunal and past findings of the Authority in various cases, only products sold by the domestic industry can be included in product scope.

o. It is submitted that the thickness below 2.5 mm should be included in the scope of the product under consideration as the definition of the product under consideration does not restrict the scope in any manner whatsoever. Excluding range of thickness below 2.5mm will do nothing but facilitate a scope of circumvention of customs duties by way of misdeclaration and ultimately cause injury to Domestic Producers like us.

C.2. Views of the applicants

6. The submissions of the applicants with regard to product under consideration and like article are as follows:

a. The product under consideration is vinyl tiles, other than in roll or sheet form, having tile thickness of between 2.5 mm to 8 mm (without the cushion), with protective layer having thickness between 0.15 mm to 0.7 mm.

b. Since there may be a little variation during the production process in thickness of the tiles, there is a need to consider 5% tolerance.

c. Contrary to the submissions by the other interested parties, the petitioners have sold substantial quantity of tiles with thickness 2.5mm. Hence, there is no need for exclusion of tiles with less than 4 mm thickness.

d. The product under consideration may or may not have a cushion. Such cushion may be in form of IXPE foam, PU, Cork, EVA, non-woven, SBR etc.

e. The product under consideration includes vinyl tiles with or without click and lock mechanism. Vinyl tiles without click and lock mechanism may require glue or other adhesives for installation and thus, these are included within the scope of the product under consideration.

f. The product under consideration in market parlance is called rigid vinyl tiles due to its inability to be folded or rolled. However, rigid does not imply that the product is completely inflexible. Flexibility depends upon the thickness and length of the tiles. Both flexible and rigid tiles are part of product under consideration. Flexible and rigid are relative terms and cannot be used to define the scope of the product under consideration.

g. Contrary to the submissions of other interested parties, a bifurcation between use of recycled and virgin PVC for the purpose of PCN is not required. Use of recycled

PVC is not advisable as composition of PVC is necessary in order to achieve the desired quality. While the producers recycle their own scrap, they do not buy from market since the quality and composition of such material is not known.

h. The product under consideration is produced using PVC and calcium carbonate in any form such as dolomite, marble powder, stone powder, lime stone, calcite etc. The other interested parties have not identified any product which is imported into India and which does not have calcium carbonate or fly ash.

i. Contrary to the claims of the other interested parties, the petitioners have stated in the petition that the product under consideration may be produced with calcium carbonate or fly ash.

j. Since the product is at a nascent stage, newer attributes such as cushion, self-adhesive, sound absorption / noise reduction, hi-gloss, matte and fill matte surface, anti-microbial, anti-viral and anti-odour properties as well as use of material which make the subject goods easier to clean have been added based on consumer preferences. These attributes are not exhaustive and constant R&D is being undertaken. These are just to define the product and not binding on the scope of the product under consideration.

k. Subject goods manufactured using PVC in any form are included within the scope of the product under consideration. Use of virgin or recycled material does not render the final product different.

l. For the purpose of import segregation, the petitioners have excluded the transactions with CaCo3 content below 10% as the petitioners are not aware of such product. In case there are products falling under the scope of the product under consideration having CaCo3 less than 10%, the interested parties should identify the same in order for the petitioners to furnish relevant comments.

m. Production process is not relevant in order to decide the scope of the product under consideration. The Authority has held that the product produced using different production process may still be part of product under consideration if it has comparable properties. The other interested parties have not provided any information with regard to possible different process leading to the same product under consideration.

n. Soft flooring comprises of products such as carpet tiles, wall-to-wall, artificial grass. These are manufactured using yarn, woven and non-woven with latex backing and are not including within the scope of the product under consideration.

o. Vinyl planks are vinyl tiles in rectangular shape and thus, planks with thickness between 2.5 mm – 8 mm are included within the scope of the product under consideration.

p. The subject goods produced by the domestic industry and imported are the like article. There is no known difference in the product under consideration by the petitioners and those imported from the subject countries.

C.3. Examination by the Authority

7. The product under consideration is Vinyl Tiles, other than in roll or sheet form, having minimum tile thickness of 2.5 mm and a maximum tile thickness of 8 mm, with protective layer having thickness in range of 0.15 mm to 0.7 mm, originating in or exported from the subject countries. The thickness of the tile does not include thickness of cushion. The product under consideration is classified under the HS Codes 39181090. However, the product under consideration is also imported under 39181010, 39189010, 39189020 and

39189090. The custom classification is indicative only and is not binding on the scope of the product under consideration.

8. The Authority on the basis of submissions made by the applicants and various other interested parties, devised the following PCN methodology:

S. No	Parameters	Range	Code
1	Thickness of tile (Two digits)	2.5mm to 3mm	23
		Above 3mm to 4mm	34
		Above 4mm to 5mm	45
		Above 5mm to 6mm	56
		Above 6mm to 7mm	67
		Above 7mm to 8mm	78
2	Thickness of Protection / Wear Layer(Three Digits)	0.15mm to 0.2mm	152
		Above 0.2mm to 0.3mm	203
		Above 0.3mm to 0.5mm	305
		Above 0.5mm to 0.7	507
3	Style of print layer /digital printing (Two Digit)	Direct printing on tile	DP
		Print layer pasted on tile	PL
4	Type of Cushion (Two Digits)	With Cushion	WC
		No Cushion	NC
5	Type of Click & lock Mechanism (Two Digits)	Yes	CY
		No	CN
6	Virgin PVC used or recycled (One Digit)	Virgin PVC used	V
		Re-cycled PVC used	R

However, during investigation, it is noted that the transaction-wise data of DG System does not mention complete description of PCNs in all the transactions. The purpose of PCNs is to have apple to apple comparison of DI's production with the exports made by exporters. In this case, producer/exporter from the subject countries have not participated. Further, even though certain importers submitted some PCN-wise information, it does not constitute a sufficient share of the total imports. In view of above constraints, PCN-wise analysis has not been carried out.

9. The scope of the product under consideration in the present investigation includes vinyl tiles with or without click and lock mechanism and cushion. Some of the interested parties have sought clarification on whether vinyl tiles which require glue for installation are included within the scope of the product under consideration. The Authority notes that use of glue is not an attribute of the product but comes into play only at the stage of installation. As per the information on record, vinyl tiles without click and lock technology requires adhesive for installation. Vinyl tiles without click and lock technology are included within the scope of the product under consideration.

10. The Authority notes that the vinyl tiles other than in roll or sheet form are a new product in the Indian market. The product is at a nascent stage and the production for the subject goods have commenced in India only during the injury period. The demand for the

subject goods in India was met by imports of the product under consideration before the commencement of domestic production in India.

11. The product under consideration is manufactured using PVC and calcium carbonate in some form. Some of the interested parties have sought clarification on whether vinyl tiles manufactured using recycled PVC are included within the scope of the product under consideration. The Authority notes that while the domestic industry uses virgin PVC and recycled in PVC in the form of its own waste, it does not source recycled PVC from the market. In any case, it is noted that the use of different raw material does not render the product different and hence, in the present case, subject goods manufactured using recycled as well as virgin PVC are included within the scope of the product under consideration. Soft flooring is excluded from the scope of the product under consideration as it is not manufactured using PVC and calcium carbonate.

12. The interested parties have claimed that the petitioners should be asked to explain the newer attributes being added to the product. In response, the petitioners have explained that the product is still at a nascent stage, due to which its attributes are evolving over a period of time. For instance, while earlier the product was being sold without a cushion, now cushioned products are being supplied. The Authority notes that the interested parties have not claimed any specific product attribute based on which exclusion has been sought, and thus, the product scope does not require any modification on this account.

13. Some of the interested parties have sought clarification on whether vinyl planks are included within the scope of the product under consideration. The Authority notes that vinyl planks are tiles in rectangular shape and hence, are covered within the scope of the product under consideration.

14. Some of the interested parties have contended that flexible tiles should be excluded from the scope of the product under consideration. The Authority notes that no information has been filed by the other interested parties regarding the flexible tiles. The Authority notes that there is an element of flexibility in rigid tiles as well and the flexibility is an attribute that comes from thickness and length of vinyl tiles. Vinyl tiles of 2.5 mm thickness is more flexible than vinyl tiles of 8 mm thickness. The information on record shows that the subject goods are known as rigid vinyl tiles in market parlance only due to its inability of being folded or rolled. Thus, no exclusion is warranted based on flexibility of the tiles.

15. None of the interested parties has provided any evidence that the technical characteristics of the product requested for exclusion, cannot be produced by the Domestic Industry.

16. With regards to the contention on whether the petitioners are manufacturing products in roll form, the Authority notes that the product under consideration excludes vinyl tiles in roll or sheet form. The petitioners have submitted that the subject goods cannot be in rolled form as rolling or folding of product will lead to development of crack in the product. The Authority further notes that the petitioners produce only vinyl tiles other than in roll or sheet form and hence, these are excluded from the scope of the product under consideration.

17. On the basis of information on record, the Authority notes that there is no known difference in the subject goods produced by the domestic industry and the product under

consideration imported from the subject countries. The two are comparable in terms of physical characteristics, manufacturing process, functions and uses, product specifications, distribution and marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers have used and are using the two interchangeably. The Authority notes that the product manufactured by the petitioners constitutes like article to the product under consideration being imported into India from the subject countries in terms of Rule 2(d) of the Rules.

18. Therefore, the product under consideration for the present investigation is "Vinyl Tiles, other than in roll or sheet form" having minimum tile thickness of 2.5 mm and a maximum tile thickness of 8 mm, with protective layer having thickness in range of 0.15 mm to 0.7 mm, originating in or exported from the subject countries. The thickness of the tile does not include thickness of cushion. In the market parlance, the product under consideration is known as luxury vinyl tiles, luxury vinyl flooring, stone plastic composite, SPC, PVC flooring tiles, PVC tiles or rigid vinyl tiles, rigid vinyl flooring and in the present findings, has been referred to as Luxury Vinyl Tiles or LVT. Luxury Vinyl Tiles may be with or without the click and lock mechanism. Luxury vinyl tiles is a commonly used industry term for a type of vinyl that realistically mimics the appearance of the natural materials with an added layer to improve the wear and the performance. The product under consideration is used for covering the floors in the residential and the commercial buildings. The product under consideration is classified under Chapter 39 of the Customs Tariff Act under the heading 3918. The product under consideration does not have a dedicated customs classification. While the product under consideration is classifiable under 39181090, the applicants have claimed that the product is also being imported under the Codes 39181010, 39189010, 39189020 and 39189090. The customs classification, however, is only indicative and not binding on the scope of the product under consideration in the present investigation.

D. SCOPE OF THE DOMESTIC INDUSTRY & STANDING

D.1. Views of the other interested parties

19. The following submissions were made by the other interested parties with regards to domestic industry and standing.

a. It is not clear how WGBL as a trader can be included in the scope of domestic industry under Rule 2(b). In this regard, the details of business operations of WGBL, whether it has exclusive rights to sell the product of the WFL, and whether it sells other products must be considered.

b. It is reiterated that as per Rule 2(b) of the AD Rules, only a producer is entitled to become part of the domestic industry. Since Rule 2(b) does not envisage a "trader" as a part of domestic industry, any attempt of the applicant industry (WFL) to consider the trading arm (WGBL) of their parent company (WIL) as a part of the Domestic Industry is frivolous, ill-conceived and without the support of law and, therefore, it ought to be outrightly rejected.

c. In relation to case cited by the Domestic Industry, it is submitted that the cited case has no bearing on the case, as Rule 2(b) deals with the scope of Domestic Industry, wherein, the cited case deals with the situation of complete response from an exporter under Single Economic entity. Therefore, the cited case has no bearing on the case. On the contrary, Domestic Industry failed to provide a single incidence, where the Authority has considered a trader as part of the Domestic Industry or

included its expenses for injury analysis or injury margin. In view of the aforesaid, it is humbly submitted that WFL and WGBL cannot be considered as single economic entity in the instant investigation. Respondents humbly request the Hon'ble Authority to kindly reject the submission of the Domestic Industry.

d. Without prejudice to the above and the legally unsustainable submission of the Domestic Industry, it is submitted that the claim of the applicant industry that the trading company should be considered as Domestic Industry, is also without any merit on facts also. In this context, kind attention of the Authority is invited to their Annual Report wherein it has been categorically mentioned that all their transactions with related parties are priced on arm's length basis. That being the case, there is absolutely no ground for the applicant, legally or conceptually, to request the Authority to consider any data relating to WGBL either for non-injurious price computation or for injury analysis.

e. It is submitted that since the WFL is selling the subject goods to its related entity at arms-length (as mentioned in their annual report), the Authority ought to consider the prices at which WFL has sold the subject goods to WGBL.

f. It is further submitted that the applicant industry has incorrectly equated the scope of Rule 2(b), which is meant solely to decide the scope of the Domestic Industry, with the concept of "Single Economic entity" which is relevant only in the context of an exporter.

g. While the petition can be filed by a third party on behalf of the domestic industry, the third party cannot become a part of the domestic industry.

h. Mingle Plast Private Limited, Responsive Industries Limited and RMG Polyvinyl have been producing the subject goods since 2015.

i. The annual report of WFL shows that the company is undertook only trading sales during 2019-20.

D.2. Views of the applicants

20. The following submissions have been made by the petitioners with regard to the domestic industry and standing:

a. The petition has been filed by the Welspun Group which includes manufacturing entity, WFL, and selling entity, WGBL. WIL is the holding entity of both WFL and WGBL.

b. WFL is the manufacturer of subject goods and has entered into an agreement whereby only WGBL will sell its products. As the transfer price between the two companies is based on cost plus formula, there is a need to consider data of WGBL, in order to ascertain actual information on domestic sales, market share, selling price, profit, cash profits and return on investment.

c. WIL, WFL and WGBL act as a single economic entity. WIL is the holding company, WFL is engaged in production and WGBL acts as an extended arm of WFL by undertaking marketing and selling functions of WFL.

d. WGBL performs functions incidental and necessary for production such as [***].

e. WGBL incurs substantial expense towards [***]

f. The activities performed by WFL include [***].

g. Since the selling price of WFL to WGBL is based on transfer pricing, it does not reflect the actual selling price in the market.

h. The selling price of WGBL and expenses incurred by WGBL have to be considered in order to evaluate the actual selling price / market price.

i. The transfer price of WFL to WGBL is determined according to the agreement between them and is not impacted by the market forces. The import price has impacted the price of WGBL, and no impact has been faced by WFL.

j. Further, there is no impact of transfer price of WFL and WGBL in the consolidated accounts of WIL, the holding company. The concept of single legal entity is observed by the Companies Act and Listing Agreement and accordingly, the transaction between WFL and WGBL is not reflected in the consolidated books of accounts.

k. Transfer price at arm's length basis does not mean that the price is determined as per market forces. Under the Income Tax Act, arm's length prices can be determined according to various methodologies. While existence of competition is pre-requisite for a price in anti-dumping investigations, transfer price can exist even in absence of competition.

l. Considering only WFL as domestic industry will not be appropriate as significant expenses with regards to production and sales are also incurred by WGBL.

m. Price considered as arm's length under Companies Act need not be accepted by the Authority. Even when procurement of raw material at arm's length is declared by a producer, the Authority conducts its own examination in this regard. The valuation under different laws has been considered irrelevant by the Authority as well as by CESTAT in GFL vs. Designated Authority.

n. Since Authority considers that the price between related parties cannot form basis for determination of dumping, the same cannot form basis of determination of injury and injury margin.

o. Since both net export price and non-injurious price are determined at ex-factory level, treatment of related parties for the purpose of dumping margin and constitution of domestic industry cannot differ.

p. The Authority considers price to independent buyer, despite price paid by a related importer being subject to Income Tax Act, Companies Act, SEBI Regulations, Customs Act and transfer pricing laws of exporting country. The same practice should be applicable for domestic industry.

q. The Manual of SOP states that in case of single economic entities, indirect SGA expenses of related trading entity shall be added to COP for OCT Test because COP would be compared with the SP of the related trading entity.

r. Fixed selling expenses are considered for determination of non-injurious price as per Annexure III and past practice of the Authority. The cost to make and sell can also be determined only by considering the data of WGBL.

s. Selling expenses incurred by the exporter are not reduced in the determination of export price or normal value although they are determined at ex-factory level. The same should also be included while determining the non-injurious price.

t. Since the Authority is not reducing the selling expenses incurred by the exporters in order to determine the landed price, for a fair comparison the selling expenses of the domestic industry also cannot be reduced from non-injurious price.

u. In case the Authority decides to remove selling expenses from the non-injurious price of the domestic industry, the same should also be reduced from the landed price.

v. In case transfer price between related entities is considered as the final selling price, it would lead to abuse of law in future wherein domestic producers may artificially depress prices of the product through sales to related parties in order to claim injury.

w. In anti-dumping investigations, in India and globally, related parties are considered as single economic entity. Two or more entities may form a single entity for the purposes of competition laws as well.

x. In the case of Glass Fibre, the Authority applied the concept of single economic entity, and two related domestic producers were considered as constituting a single economic entity. The same principle should be followed in this case.

y. The Authority considers a foreign producer and related importer as a single economic entity and disregards the price of transaction between them, in order to determine net export price.

z. Even related producers and exporters are considered as a single economic entity in anti-dumping investigation and single duty is conferred.

aa. The doctrine of single economic entity is also implicit in the definition of the domestic industry wherein despite being a separate legal entity, it is considered that a domestic producer has vested interest in the business of a related importer or exporter, and thus, such a domestic producer may be excluded from domestic industry.

bb. While the imports have impacted the prices of WGBL, WFL is insulated from market price. Fixation of margin for WFL demonstrates that the transaction is not that between independent parties.

cc. The term producer cannot be construed as necessarily referring to a standalone legal entity. The law must be read in a manner that does not defeat the intention of the law. In case WGBL is excluded from the scope of the domestic industry, it would defeat the objective of law to protect WGBL from injury suffered due to imports.

dd. In case WGBL is not considered within the scope of domestic industry, the injury analysis would be flawed as the same should be based on production and sales. Price undercutting, sales and market share can be evaluated only based on the data of WGBL. In order to evaluate price suppression / depression, profits, return on investment, cash flow, inventories, employment, wages, growth and ability to raise capital employed, the data of both WGBL and WFL have to be considered.

ee. Since only WGBL is competing with imports, causal link between injury and dumped imports can be evaluated only based on the data for WGBL.

ff. The definition of domestic industry cannot be read to mean only an entity engaged in production of goods, without considering sales, as held in case of Low Ash Metallurgical Coke.

gg. WFL and WGBL have incurred comparable expenses (barring procurement) in relation to the process of production and sale, and thus, have contributed to the process.

hh. Contrary to the submissions of the other interested parties, there is a typographical error in the annual reports of WFL. WFL is not engaged in trading but production of subject goods.

ii. It is necessary to include WGBL under in the scope of the domestic industry as related entities are treated as a single economic entity for trade remedies.

jj. Apart from the petitioners, there are two other producers of subject goods in India, Mingle Plast Private Limited (Polyleaf) and Thousand Oak Innovation LLP (Glatt Floor). All producers started production during the injury period.

kk. While Responsive Industries Limited was identified as a domestic producer of the subject goods, it does not manufacture subject goods but is a manufacturer of like articles.

ll. RMG Polyvinyl India Limited participated in the oral hearing and stated that it is not engaged in production of like article.

mm. The petitioners have imported the product under consideration from the subject countries during the injury period which were necessary as the petitioners did not commence commercial production. However, no imports have been made during the period of investigation.

nn. The petitioners account for a major proportion of the domestic production in India and are not related to any exporter of the subject goods in the subject countries or any importers in India and thus, constitute domestic industry under Rule 2(b) of the Anti-Dumping Rules.

oo. The Petitioner claimed that the meeting held on 1st December 2022 was the first opportunity provided to the petitioners to clarify the claims made in the petition with regard to the need for the three legal entities to constitute petitioners.

D.3. Examination by the Authority

21. Some of the interested parties have contended that Responsive Industries Limited, Mingle Plast Private Limited and RMG Polyvinyl India Limited have been producing the subject goods since 2015. However, no reliable evidence was produced by any interested party in this regard. The parties have provided screenshots of the annual reports of the above companies to demonstrate that production of PUC was taking place since 2015, however these screenshots do not show PUC's description in the products' list contained in the annual reports.

22. The Authority sent the application proforma to Thousand Oak Innovation LLP, Mingle Plast Private Limited and Responsive Industries Limited, the other known Indian producers to elicit relevant information. None of the other known Indian producers responded by making any submission.

23. The Authority notes that the RMG Polyvinyl India Limited did not contest the standing of the domestic industry. In fact, it has supported the petition and requested that the thickness below 2.5 mm should also be included in the scope of the product under consideration.

24. The Authority notes that the petitioners have imported the subject goods from the subject countries during the injury period. However, the petitioners have not imported the subject goods after commencing commercial production. It is further noted that the petitioners are not related to any exporter of subject goods in the subject countries or any importer in India. The petitioners account for a major proportion of domestic production in India.

25. With regards to the issue of inclusion or exclusion of WGBL as part of the domestic industry, the contention of the applicants that the meeting granted on December 1, 2022, was the first opportunity to clarify the claims made in the petition is incorrect as this issue was raised in the oral hearing and subsequent written submissions and rejoinder submissions.

26. The petitioners have submitted that for the purpose of the present investigation, both WFL and WBGL must be treated as the domestic industry, and it has been claimed that all injury parameters as well as the injury margin must be assessed for both WFL and WBGL. In support of this claim, the petitioners have *inter alia* made the following arguments: (a) WBGL is not merely a "marketing entity", but is an entity that is

undertaking a range of activities that constitute production activities; and (b) WFL and WGBL collectively constitute a "single economic entity".

27. The Authority notes that the present investigation pertains to material retardation to the establishment of an industry and not material injury. The applicants have claimed that the subject imports are resulting in material retardation to the establishment of the industry in India. In investigations concerning material retardation, a comparison of the actual and projected performances of the domestic industry gets a higher degree of importance as the industry is considered to be nascent and developing apposite developed and therefore the Authority has based the determination of injury by comparing the actual and projected performance of the domestic producer. Some of the factors the Authority must assess in material retardation investigations is whether the domestic industry has achieved its target price, target capacity, target sales, etc. The actual performance of WFL and WGBL may not be as relevant in the present investigation, since the focus is on its projected performance. It is further noted that WFL has started manufacturing the product under consideration recently and is at a nascent stage of production. However, WGBL is an established player in the market and has been operating in the market for a considerable period of time. No claim of material retardation can be made in respect of WGBL since WGBL is not a nascent or unestablished industry. Hence, the data/information pertaining to WFL alone is taken into consideration to examine the claim of material retardation. Therefore, for the present investigation, the Authority does not find it necessary to address the legal issue as to whether or not a related-non-producing company can be included in the definition of the domestic industry.

28. The applicants have submitted that producer/exporter, with their traders or related importers are considered as "single economic entity" for calculation of export price or landed value and therefore, WGBL and WFL should be considered as "single economic entity" for NIP and injury analysis purpose considering the same principle. The applicants have contended that anti-dumping law has several instances of application of "single economic entity". The Applicants have claimed that in the case of: (a) two related foreign producers; (b) foreign producer and related exporter; (c) foreign producer and related importer – adjustments are made to the export price on account of the related nature of the parties. Further, the applicants have cited the example of providing a single duty rate for related entities as another example of single economic entity. The applicants also gave the example of Section 9A(1)(b) as "single economic entity" treatment under the anti-dumping law.

29. In this relation, it is noted that unless otherwise proved by the foreign producer/exporter the export price is held to be unreliable because of associations or compensatory arrangement price between producer / exporter and importer or third party, Section 9A (1) (b) specifically allows consideration of adjustment in export price. Section 9A (1) (b) is placed as under:

"export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6).

30. The Authority notes that the adjustments under para 6 to Annexure-I and under Section 9A(1)(b) are done solely for the purpose of ensuring a fair comparison between normal value and export price. Further, to grant a single rate of duty to the related parties in order to prevent instances of circumvention of duties imposed, the Authority carries out such an exercise as stated by the applicants. The purpose of Section 9A(1)(b) and para 6 of Annexure-I is very different from Annexure-III of the anti-dumping Rules and therefore both of them cannot be equated on the same footing. Even if, for the purpose of argument, the contention of the applicants is accepted under the claim of single economic entity, the said averment looses its merit on the ground that the claim made by the applicants is that of material retardation to the establishment of an industry and not of material injury to an established industry. In the facts of the present investigation WFL is at nascent stage and is a developing industry for the product under consideration whereas WGBL has been operating in the market for a considerable period of time and hence cannot be considered to be unestablished or nascent or developing industry for the purpose of determining material retardation. Therefore, the argument of single economic entity can't be taken into account in view of the facts and circumstances of the subject investigation.

31. In Glass Fibre case quoted by the applicants, it was the case where two producers were considered which is quite different from the facts of the subject investigation. Therefore, this case does not advance the arguments of the applicants. In relation to referred cases relating to responses of producer / importer / trader, all the cases referred by the applicants, fails to substantiate their claim as to how "single economic entity" principle is applicable in light of definition of domestic industry in rule 2(b) for the present case. It is noted that the Section 9A (1) (b) of Customs Tariff Act and subsequent rules envisage adjustment in export price in cases where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or third party.

32. WIL is the holding company of WFL and WGBL. WIL and WGBL are not engaged in the production or manufacture of the product under consideration. Moreover, it is noted that the subject investigation pertains to the claim of material retardation to the establishment of an industry and not the material injury. In the facts and circumstances of the present investigation, it is WFL, which has started the production of the PUC recently, and is at nascent or developing stage whereas WGBL is already established as it has been operating in the market for a considerable period of time and therefore WFL alone is considered as a nascent industry for the purpose of determination of material retardation in the facts and circumstances of the subject investigation. Since WGBL cannot be considered as a nascent or unestablished industry, WGBL cannot be considered as a part of the 'domestic industry' for the purpose of the present material retardation investigation. In view of the above facts and circumstances of the subject investigation, the Authority holds that domestic industry for the subject material retardation investigation is WFL. In view of the above, the Authority does not consider it necessary to address the legal issue of inclusion of non-producing related company under the definition of the domestic industry. Since the Authority has determined that WFL is the domestic industry, the non-injurious price has accordingly been calculated considering the information of WFL, in accordance with the principles laid down in Annexure III of AD Rules.

E. CONFIDENTIALITY

E.1. Views of the other interested parties

33. The submission of other interested parties with regard to confidentiality are as follows:
    a. The Supreme Court has held that trade notices, once issued, are binding on Customs authorities. However, the petitioners have not adhered to the trade notices.
    b. The petitioners have not adhered to Trade Notice 10/2018 by claiming excessive confidentiality regarding economic parameters. This is inconsistent with WTO Dispute Settlement Board and Indian Courts. Actual figures for installed capacity, production, sales quantity and value, number of employees, productivity, inventory, R&D expenses, funds raised, profitability, interest/finance cost and depreciation have not been provided.
    c. The petitioners have violated the provisions of Trade Notice 01/2013 as nothing has been submitted in the non-confidential version of Section VI of the petition.
    d. The justification table provided by the petitioners is not as per the prescribed format.
    e. The petitioners have not provided a good cause statement for claiming the project report confidential. Meaningful non-confidential summary of the same has not been provided.

E.2. Views of the applicants

34. The following submissions have been made by the applicants with regards to confidentiality:
    a. Contrary to the claims of the other interested parties, petitioners have adhered to the requirements laid down under Trade Notices.
    b. Actual figures in the injury data cannot be shared as such data pertains to only one company.
    c. Information contained in Section VI relates to business proprietary information, it cannot be disclosed to the other interested parties.
    d. Justification table has been provided by the petitioners as per the prescribed format.
    e. Good cause statement and non-confidential summary of the information has been provided along with the petition.

E.3. Examination by the Authority

35. With regard to confidentiality of information, Rule 7 of the 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 rule12,sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*
>
> *(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible*

of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

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

36. The Authority considers that 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 the parties to an investigation shall, upon good cause shown, should be treated as such by the Authority. Such information cannot be disclosed without specific permission of the party submitting it.

37. The Authority has considered the claims of confidentiality made by the petitioners and the opposing interested parties and on being satisfied about the same, the Authority has allowed the claims on confidentiality. The Authority made available to all the interested parties the non-confidential version of the evidence submitted by the various interested parties for inspection.

38. The interested parties have contended that the domestic industry has not shared the costing information. However, the Authority notes that such information is confidential in nature, and therefore, disclosure thereof would be prejudicial to the competitive interests of the domestic industry.

39. Some of the interested parties have claimed that the justification table is not in the prescribed format. The Authority notes that justification table indicating reasons of confidentiality provided by the domestic industry is as per the requirements of Trade Notice 10/2018 dated 7th September 2018.

40. With respect to the project report and the non-confidential summary of the same, the Authority holds that the project report is a confidential business proprietary information of the petitioners and cannot be disclosed to the other interested parties. However, the domestic industry has shared a meaning non-confidential summary and a good cause statement regarding the same. The Authority accepts the claim of confidentiality in this regard.

41. Some of the interested parties have contended that actual figures have not been provided by the petitioners. The Authority notes that Trade Notice 10/2018 lays down the general guidelines for confidentiality. In the present case, as the data submitted pertains to a single entity, the guidelines which will apply to the domestic industry will be that of a petition by a single entity. Accordingly, the Authority holds that disclosure of actual figures will lead to disclosure of business proprietary information of the petitioners. Hence, the Authority accepts the claim of confidentiality by the petitioners.

F. MISCELLANEOUS ISSUES

F.1. Views of the other interested parties

42. The submissions of other interested parties with regards to other issues are as follows:
    a. The investigation should not have been initiated under the provision of Rule 5 as the petition does not pass accuracy and adequacy and sufficiency test.
    b. The petitioners have not stated whether the project report has been prepared internally or in consultation with an outside agency.
    c. The petitioners should be asked to provide the soft copy of import data to the interested parties.

F.2. Views of the applicants

43. The submissions of the applicants with regards to other issues are as following:
    a. The other interested parties have not stated how the petition does not fulfil the requirement of adequacy and accuracy.
    b. The project report has been prepared by an independent agency and has been vetted by the banks.
    c. Contrary to the claim of the other interested parties, the petitioners provided import data in PDF format as per Trade Notice 07/2018. No prejudice has been caused to the interest of any party as the Authority authorizes all parties to collect data from DGCI&S.

F.3. Examination by the Authority

44. The present investigation was initiated based on the data/information provided by the applicants and by prima facie satisfying itself of the adequacy and accuracy of the petition filed. The Authority after prima facie concluding that there is sufficient evidence of dumping, injury and causal link initiated the present investigation. It is noted that, the Authority, only after satisfaction that petition contained sufficient evidence to justify initiation of the investigation decided to initiate the present investigation. Further, subsequent to initiation, information has been sought from the petitioners to the extent deemed necessary and the same has been provided by the petitioners.

45. With regard to the project report, the Authority notes that the petitioners have provided a detailed project report of Welspun Flooring Limited. The other interested parties questioned the authenticity of the project report, whereas, the applicant claimed that the project report has been prepared by an independent agency and has been vetted by the banks. However, the other interested parties did not provide any evidence to substantiate their claim. Accordingly, the Authority has undertaken injury analysis based on the projected performance of the domestic industry as per the project report and the potential performance of the domestic industry at current prices.

46. With regard to the DGCI&S data, the Authority notes that Trade Notice 07/2018 dated 15th March 2018, prescribes the procedure for collecting DGCI&S data for the domestic industry as well as other interested parties. The interested parties, thus, had access to procure DGCI&S data by following the procedure prescribed as per the Trade Notice. The Authority, thus, notes that the procedure now being applied is consistent, uniform across parties and investigations, equitable and provides adequate opportunity to the

interested parties to defend their interests. Further, the petitioners have provided a complete list of transaction-wise import data.

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

G.1. Views of the other interested parties

47. The submissions made by the other interested parties with regard to determination of normal value, export price or dumping margin are as follows:
    a. For the purpose of normal value, the FOB value of raw materials and components imported by the domestic industry should be considered. Impact of duties and cess should be eliminated.
    b. The exporters have not participated in view of the low volume of their exports.
    c. The fixed costs and finance cost of the domestic industry should be appropriately adjusted for determination of constructed normal value.

G.2. Views of the applicants

48. Following submissions have been made by the applicants with regard to the normal value, export price and dumping margin are as follows:
    a. Since no producer has filed information with regard to determination of normal value and export price, normal value should be determined on the basis of facts available.
    b. Contrary to the submissions of the other interested parties, the volume of exports by the producers in subject countries cannot be considered low as such volume has materially retarded the establishment of the domestic industry in India. Non-cooperation of the exporters should not be excused and highest possible duties should be levied against imports by non-cooperative exporters.
    c. China PR should be treated as a non-market economy in accordance with Article 15(a)(i) of China's Accession Protocol and the normal value should be determined in terms of Annexure I, Rule 7 of the Anti-Dumping Rules.
    d. Since significant imports have been made into India from Korea RP and there is no evidence of dumping from Korea RP, the price of such imports should be used to determine the normal value from China PR. This is consistent with the view of the Tribunal in Kuitun Jinjiang Chemical Industry Co. Ltd. V. Union of India.
    e. Since normal value can be determined based on price of exports from an appropriate third country to India, no reference can be made to any other reasonable basis as Para 7 of the Annexure I provides clear hierarchy. This is also consistent with the view of the Supreme Court in Shenyang Mastsushita S. Battery Co. Ltd. V. Exide Industries Limited.
    f. The producers from Taiwan and Vietnam have not cooperated in the present investigation. The normal value should be determined based on the facts available. The petitioners have constructed the normal value based on its own cost of production. Since adoption of optimized cost of production rewards, the exporter for their non-cooperation, the petitioners request the Authority to kindly consider the actual cost.
    g. The petitioners have constructed the normal value at ***% capacity utilization.

h. The importers have failed to circulate the PCN-wise information filed by them. Importers must be required to provide necessary documentation to establish the accuracy of the PCN identified by them.

G.3. Examination by the Authority

49. The Authority notes that the volume of imports from Vietnam is *de minimis*. Therefore, in terms of Rule 14(d) of the Anti-Dumping Rules, Vietnam is excluded from the subject countries.

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

> *"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:*
> *(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*
> *(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
> *(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*
>
> *(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.*
>
> *(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.*
>
> *(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market*

economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the nonmarket economy provisions of subparagraph (a) shall no longer apply to that industry or sector."

51. It is noted that while the provision contained in Article 15 (a)(ii) have expired on 11th December 2016, the provision under Article 2.2.1.1 of WTO read with obligation under 15(a)(i) of the Accession protocol require the criterion stipulated in para 8 of the Annexure I of the Rules to be satisfied through information/data to be provided in the supplementary questionnaire on claiming the market economy status. It is noted that since the responding producers/ exporters from China PR have not submitted a response to the questionnaire in the form and manner prescribed, the normal value computation is required to be done as per provisions of para 7 of Annexure I of the Rules.

Determination of normal value for China PR

52. As none of the producers from China PR have cooperated in the present investigation and have filed the supplementary questionnaire response to rebut the presumptions as mentioned in para 8 of Annexure – I of the Rules. Under these circumstances, the Authority has to proceed in accordance with para 7 of Annexure – I of the Rules which reads 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."

53. The Authority notes that neither the applicants nor the other interested parties have provided any information and evidence to enable determination of the normal value on the basis of price or constructed value in market economy third country. The Authority accordingly examined whether the normal value can be determined based on the price of the exports from such a third country to other countries, including India.

54. The Authority notes that whereas the applicants have claimed that the normal value for China PR should be based on exports from Korea RP to India which are substantial, the domestic industry could not provide the verifiable information to the Authority. The

export price for China PR, therefore, has been determined on the basis of fact available in terms of Rule 6(8) of the Anti-Dumping Rules.

55. In view of the above, the normal value for the product under consideration imported from China PR into India is determined based on the cost of production, as optimized for the domestic industry, with reasonable additions for selling, general & administrative expenses and profit margin. Accordingly, the normal value has been constructed for the producers and exporters in China PR for the product under consideration during the period of investigation as given in the dumping margin table below.

Determination of normal value for Taiwan

56. The Authority notes that none of the producers/exporters have cooperated in the present investigation. Accordingly, the normal value and export price for Taiwan has been determined on the basis of fact available in terms of Rule 6(8) of the Anti-Dumping Rules.

57. In view of the above, the normal value for the product under consideration imported from Taiwan into India is determined based on the cost of production, as optimized for the domestic industry, with reasonable additions for selling, general & administrative expenses and profit margin. Accordingly, the normal value has been constructed for the producers and exporters in Taiwan for the product under consideration during the period of investigation as given in the dumping margin table below.

Determination of export price for China PR and Taiwan

58. Since none of the producers/exporters from China PR and Taiwan have submitted exporter's questionnaire response, all have been treated as non-cooperative. The export price for all of them has been determined as per facts available. The same has been mentioned in the dumping margin table.

Dumping Margin

59. The normal value, export price and dumping margin determined in the present investigation are as follows: -

SN	Name of Producer	Normal Value (USD/ Sq. Mtrs))	Net Export Price (USD/ Sq. Mtrs))	Dumping Margin (USD/ Sq. Mtrs))	Dumping Margin (%)	Dumping Margin (Range)
China PR						
1	All exporters	***	***	***	***%	50-60
Taiwan						

1	All exporters	***	***	***	***%	40-50

H. EXAMINATION OF INJURY AND CAUSAL LINK

H.1. Views of the other interested parties

60. The submissions made by other interested parties with regard to injury and causal link are as follows:

a. The domestic industry is fairly established and cannot invoke the provisions of material retardation. The annual report of 2015-16 of Mingle Plast Private Limited, Responsive Industries Limited and RMG Polyvinyl India Limited shows that they have been producing product under consideration since 2015. Accordingly, as held by the Authority in previous investigations, material retardation cannot be claimed as the industry already existed in India.

b. A situation of retardation signifies the performance being held back or delayed whereas in the present case exuberant performance is evident and all the injury parameters have shown exponential growth over the injury period and within the POI.

c. In order to check if the industry is established, there is a need to examine the time of commencement of production, the nature of production, if the product is merely a new product line in an existing industry, size of production versus size of domestic market and stability of production. Based on these parameters, the domestic industry having been in operation for 2 years and having a share of 50% is not an establishing industry.

d. Sufficient data for material retardation has not been submitted. The Authority must examine whether the petitioners are yet to find a way in the market or are already established.

e. The case of the domestic industry does not fall in the category where the domestic industry has not commenced commercial production or is in the nascent stage. As per the Draft Consolidated Chair Texts of the Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures, a producer may be materially retarded only where no production has begun, or the producer has not achieved commercial volumes.

f. The petitioners have not given any legal authority or logic in support of their claim regarding the meaning of retardation.

g. There is no mechanism to determine material retardation, the investigation should be initiated only when such mechanism is devised by the Authority.

h. The project report submitted to DGTR is fabricated in order to prove material retardation.

i. The project report cannot be compared to the actual parameters as the same were impacted due to COVID-19 pandemic. The project report was prepared based on different market situation and cannot be relied upon.

j. The imports have declined as compared to 2019-20, and thus could not have caused injury.

k. All the key economic parameters of the company including capacity, production, capacity utilization, sales quantity, productivity and profitability have shown exuberant performance from base year as well as preceding year.

l. The petitioners cannot expect immediate achievement of sales and market share right after its establishment.

m. The performance of the petitioners was impacted due to start-up cost and price of raw material.

n. The petitioners may have suffered as they are yet to establish quality standards and brand reputation.

o. The domestic industry has not shown how their operations are not impacted by Covid-19.

p. The injury suffered by the domestic industry is on account of their own mismanagement and inefficiencies, as evident from the fact that it has set up capacities in excess of domestic demand.

q. It must be considered to what extent the expenses of a trading company, which is a separate legal entity, can be considered for dumping margin, injury margin and injury analysis.

r. It is pertinent to note that in the instant case, the distributor/trader has attempted to usurp the role of the Domestic Industry itself by claiming itself to be Domestic Industry, which is not envisaged in law.

s. Finance expenses, employee benefit expenses and other expenses which are apportioned from Group level should be examined carefully.

t. Non-operational expenses and expenses not attributable to the subject goods should be excluded in calculation of non-injurious price.

u. Expenses of WGBL cannot be considered for the purpose of determination of non-injurious price.

H.2. <u>Views of the applicants</u>

61. The submissions made by the applicants with regard to the injury and causal link are as follows:

a. Project report is a reliable document as it has been submitted to the Board of Directors, as well as bankers and lenders. Banks have financed the project set up by the petitioners based on such report.

b. Contrary to the contention of the other interested parties, project report is not merely prepared to seek relief as the document was prepared by an independent agency much before the increase in imports and decline in prices of product under consideration.

c. As opposed to the submissions of the other interested parties, period of investigation was not impacted by COVID-19 pandemic and hence, the project report may be compared with the actual performance.

d. Contrary to the submissions of other interested parties, the industry for the product under consideration did not exist in India since a long time as RMG Polyvinyl India Limited has itself submitted that it is not a producer of subject goods, Mingle Plast started production in 2018-19, Thousand Oak Innovation LLP did not start production till December 2019 and as per the market information, Responsive Industries Limited is not a producer of the subject goods.

e. The claim of material retardation is sustainable as the product is not merely a new product line but the petitioners have set up a new plant to produce the subject goods. The production of domestic industry as compared to domestic demand and the capacity utilization are high as the petitioners are undertaking significant exports.

f. As opposed to the contention of the other interested parties, the Anti-Dumping Rules authorize the Authority to examine whether subject imports have materially retarded the establishment of the domestic industry. The Authority has in the past examined material retardation to the domestic industry.

g. Contrary to the submissions by the other interested parties, the Panel in Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey held that Article 3 of the Anti-Dumping Agreement does not prescribe any particular methodology for assessing whether a domestic industry is established.

h. Prior to setting up of capacities in India, the total demand was catered to by the imports. However, even after commencing production, the volume of subject imports increased in period of investigation.

i. The volume of imports increased in 2018-19 and 2019-20 and declined in 2020-21 due to the pandemic and entrance of new domestic producers in the market.

j. Imports in relation to consumption and total imports have increased during the period of investigation.

k. Despite domestic industry having significant capacities, the subject imports hold majority of demand in India.

l. Contrary to the contentions of the other interested parties, if fair undistorted prices in the market are restored, the petitioners will achieve higher sales and market share.

m. Despite increase in demand in the period of investigation, the prices of subject imports declined.

n. The domestic industry had projected a price of ₹ *** per SQM for a product without cushion backing. However, the landed price of the product with cushion backing was ***% below the projected prices of the domestic industry. The domestic industry was forced to reduce prices and sell at losses in order to gain foothold in the market.

o. Subject imports are priced below the current cost of sales as well as potential cost of sales at ***% capacity utilization of the domestic industry.

p. 85% of subject imports were priced below the variable cost of the domestic industry during the period of investigation.

q. Subject imports are undercutting the prices of the domestic industry.

r. While the capacity of the domestic industry is enough to cater to the entire demand in India, it held a minority share in demand due to presence of dumped imports in India.

s. The size of production versus the size of domestic market may be higher, due to significant exports made by the petitioners. However, their share in the market is significantly lower, of only ***%. Similarly, the petitioners have achieved a higher degree of capacity utilization only because of its exports. If the exports are excluded, the remaining production of the petitioners would be sufficient only to allow a utilization of 8% of capacities.

t. Even after undertaking significant exports, the inventories of the domestic industry stood at ***% of its domestic sales.

u. At current prices, the domestic industry will incur losses, cash losses and record a negative return on capital employed at ***% capacity utilization.

v. At current prices, the domestic industry will not be able to break-even. In order to break-even it will have to supply a volume much more than its capacity and demand in India.

w. Since the domestic industry has been newly set up in India, the volume parameters have shown a growth. However, such growth has been slow which implies that the subject imports have retarded the establishment of the domestic industry in India.

x. Therefore, the term material "retardation" in itself implies that the industry has witnessed some growth or development, but the growth or development is slower than it would have otherwise been. The term "retardation" does not and cannot be construed as implying that there is no or negative growth. Therefore, the argument of the respondent is completely irrelevant.

y. The injury to the domestic industry is not due to excessive capacities as if this had been the case, the domestic industry should have catered to a substantial part of supply.

z. The injury to the domestic industry is due to subject imports and not due to any other known factors.

aa. The period of investigation was not impacted by COVID-19 as the demand in India, subject imports, imports from other countries and domestic sales of domestic industry increased.

bb. Contrary to the contentions of the other interested parties, the cost of production is not impacted by the start-up cost as such cost is capitalized and not considered a part of cost of production.

cc. The other interested parties have not substantiated their submissions with regard to injury due to raw material. While the domestic industry is able to export, it is unable to gain foothold in the domestic market, although it uses the same raw material.

dd. The injury to the domestic industry is not due to quality standards which is evident from the fact that it is able to export but not able to sell in the domestic market. Further, it has received certifications for quality including OEKO-TEX Standard 100, ISO 9001:2015, ISO 14001:2004, ISO 45001 etc.

ee. Contrary to the submissions of the other interested parties, since WFL and WGBL are related entities, all administrative and finance expenses must be considered as done in case of a single entity. The administrative, finance and fixed selling expenses were partly incurred in WFL and partly in WGBL.

ff. Fixed selling expenses are not post factory expenses and should be considered while determining the cost of production and non-injurious price. Annexure – III of the Anti-Dumping Rules and Manual of Operating Procedures stated that fixed selling expenses must be considered for determination of non-injurious price.

H.3. Examination by the Authority

62. The Authority has examined the arguments and counterarguments of the interested parties with regard to injury to the domestic industry. The Authority notes that the present case is one for material retardation of the establishment of an industry and not of material injury. There is a need to address certain legal aspects regarding the concept of 'material retardation' to the establishment of an industry prior to proceeding with the injury analysis.

H.3.1 Material retardation to the establishment of domestic industry

63. Article 3 of the WTO Agreement on the implementation of Article VI of the GATT provides no definition for 'material retardation'. The footnote 9 to Article 3 merely states as follows:

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

64. Similar is the case with the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, wherein Annexure II merely clubs 'material injury', 'threat to material injury' and 'material retardation' under the definition of 'injury'. There is no further explanation as to what constitutes material retardation to the establishment of an industry.

65. However, it is clear that 'material retardation' applies only to unestablished industries and not industries that are fully established. This is true because it is not logical for the Authority to find that a domestic industry was being injured by the dumped imports (which presupposed that such an industry was already established) and at the same time that the establishment of a domestic industry was materially retarded by those imports. The meaning of 'unestablished industries' has also not been provided in the Anti-Dumping Agreement, or the Act and the Rules. However, there has been a proposal at the WTO for amendment of the Anti-Dumping Agreement which provides some clarity as to the meaning of material retardation and establishment of the industry. The relevant portion of the draft proposal is as under:

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

66. Although the above extract is merely a proposal and not binding on the Authority, it would serve as a guidance in conducting an examination of material retardation.

67. The practice mentioned in the US Handbook on procedure is:

"Petitioners may allege that the establishment of an industry in the United States is materially retarded by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. The statute does not define "material retardation;" however, in considering this issue in past cases, the Commission has begun by examining the question of whether the U.S. industry is "established." If U.S. producers have commenced production of the product, the industry is considered to be established if U.S. producers have "stabilized" their operations. In making this assessment, the Commission has examined the following factors: (1) when the U.S. industry began production; (2) whether the production has been steady or start-and-stop; (3) the size of domestic production compared to the size of the domestic market as a whole; (4) whether the U.S. industry has reached a reasonable "break- even point;" and (5) whether the activities are truly a new industry or merely a new product

line of an established firm. If the industry is not established, the Commission considers whether the performance of the industry reflects normal start-up difficulties or whether the imports of the subject merchandise have materially retarded the establishment of the industry."

68. In Morocco – Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey, the WTO Panel has given some guidance on determining whether there is establishment of an industry. The Panel observed that Article 3.1 does not prescribe a specific methodology for determining whether an industry has been established. The Authority is allowed to use any reasonable methodology which is based on assumptions and inferences. However, these inferences must be based on facts and positive evidence.

69. The issue before the Panel was regarding the "establishment" of an industry for the purpose of determination of "material retardation". The Panel observed that the Authority has the discretion in deciding which parameters are relevant to determine whether a new industry has been established. One of the parameters considered to be relevant by the Panel was whether the production constitutes a new 'product line' of an existing company. If an existing industry/company merely introduces a new product line, this may not be considered as an "unestablished industry". To examine this factor, the Authority would have to look into the degree of overlap in the use of overall infrastructure of the producer (including customer contacts, distribution channels, existing productive, commercial, research, and administrative assets etc.). A greater degree of overlap with the old infrastructure would mean that it is less likely that a new industry has been established. The relevant portion of the Panel's observation is as under:

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

70. Therefore, one of the aspects that has to be seen in determining whether or not the industry is in existence is whether the product constitutes merely a new product line

within an existing industry. If this is the case, the Authority must analyse the level of overlap with the overall use of the existing infrastructure in the new product line.

71. With regard to the injury assessment, the WTO Panel has given the following guidance:

"7.233. Further, we consider that the obligation in Article 3.4 to evaluate each of the listed 15 injury factors applies as much to an investigation of injury in the form of material retardation as it does to that of material injury or threat of material injury. This is so for the following reason: Article 3.1, read in light of footnote 9 of the Anti-Dumping Agreement, requires that a determination of material retardation be based on positive evidence and objective examination of inter alia "the consequent impact of [dumped] imports on domestic producers". As explained above, the examination of the impact of dumped imports on domestic industry, in turn, must, in accordance with the terms of Article 3.4, include an evaluation of all relevant factors including the 15 injury factors listed in that provision. It follows that a determination of material retardation must be based on an examination of the impact of dumped imports on domestic producers, and that examination must include an evaluation of the 15 injury factors listed in Article 3.4. Our approach is consistent with the finding by the panel in Egypt – Steel Rebar that "the Article 3.4 factors must be examined in every investigation, no matter which particular manifestation or form of injury is at issue in a given investigation". Nothing in the text of Article 3 supports Morocco's argument that an investigating authority is not required to address the Article 3.4 factors "with the same rigor" in a material retardation analysis as in a material injury analysis."

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

72. The Authority notes that prior to the commencement of production in India, the entire demand for the subject good in India was being satisfied by the imports. The Indian industry started production during the injury period. The domestic industry started commercial production in September 2019. Apart from the domestic industry there are two other domestic producers of the subject goods in India. In order to ascertain whether the domestic industry is an unestablished industry or an existing industry, the Authority has examined the following factors:

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

73. The domestic industry (i.e. WFL) and the other known Indian producers started commercial production during the injury period. Although the production of the subject goods has commenced in India, yet their performances are much below the projected figure. The production of the domestic industry during the year 2020-21 was ***% of the projected production as given in the project report for the year 2021. The domestic industry has not even achieved the projected figure of production of 2020-21 in POI. Similarly, domestic sales were ***% in 2020-21 and ***% in POI of the projected domestic sales for the year 2020-21 and 2021-22 respectively.

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

74. The WTO Panel has observed that if the production of the industry is merely a new product line in an existing industry, it may not be a case of material retardation. However, the Panel stressed that what is important is the degree to which the existing infrastructure is utilized for the production of the product under consideration. The domestic industry had set up a new manufacturing plant for the subject goods and started commercial production in September, 2019.

75. As noted above, the WTO Panel has observed that what is important is not the introduction of a new product line itself, but rather the degree of overlap with the existing infrastructure of the industry. The Authority also notes that since a new plant/production line is being set up to manufacture the subject goods, there is no overlap between the existing infrastructure of the industry and new plant that has been setup.

c. Size of production compared to size of domestic market as a whole

76. The domestic industry set up capacities during the injury period. The market share of the domestic industry is ***% while the market share of the Indian industry is ***%. However, as against a production of *** lakh square meters, the domestic industry has been able to sell only *** lakh square meters in the domestic market. The production of the domestic industry was sufficient to cater to a much larger share of the market. Further, the domestic industry is holding inventories of *** lakh square meters. The inventories held by the domestic industry at the end of the POI were alone sufficient to cater to an additional ***% of the market. This shows that the imports have prevented the domestic industry from supplying its production in the market. The subject imports command majority of market in India and the market share held by the subject imports is 42%.

d. Stability of production

77. The Authority notes that the production of the domestic industry started during the injury period. The analysis of the production and sales of the domestic industry shows that it has failed to achieve the projected market share and production. Further, the domestic industry had not even set up full capacities during the POI. As against the capacity of *** lakh square meters projected, the domestic industry had set up capacity of only *** lakh square meters during the POI.

78. It is further noted that the capacity utilization of the domestic industry has remained low. Even after setting up partial capacity, the domestic industry has not been able to utilize the same capacity fully.

79. As regards the contention that the production, capacity utilization, market share and sales of the domestic industry have increased in the POI as compared to the previous year, the Authority notes that the performance of the domestic industry is expected to improve considering that it had recently commenced production of the subject goods. Any producer is expected to take steps to improve its performance as regards its production and sales over the period. As a result, thereof, the capacity utilization gradually improves. Thus, the increase in production and sales over the injury period is clearly reflective of the efforts made by the domestic industry to establish itself in the market. However, the capacity utilization has been significantly below the projected levels.

80. The Authority further notes that the phrase retardation means the process of making something happen or develop slower than it should be. Thus, in order to examine whether the imports have materially retarded the establishment of industry, the relevant aspect is not whether the industry showed some progress or made profits but the relevant aspect is its performance as against the projections made in project report. For this purpose, the Authority has compared the actual performance of the domestic industry with its projected performance.

H.3.3 Assessment of demand / apparent consumption

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

Particulars	Unit	2018-19	2019-20	2020-21	POI
Domestic industry	SQM	-	***	***	***
Trend	Indexed	-	100	1415	1806
Sales of other producers	SQM	***	***	***	***
Trend	Indexed	100	167	1840	1840
Subject imports	SQM	2,04,123	4,92,221	2,18,861	3,49,237
Other imports	SQM	80,467	76,464	56,169	66,806
Demand	SQM	***	***	***	***
Trend	Indexed	100	207	211	289

H.3.4 Volume effect of the dumped imports

82. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. The year wise import data from the subject countries and other countries are given in the tables below:

Particulars	Unit	2018-19	2019-20	2020-21	POI
Subject imports	SQM	2,04,123	4,92,221	2,18,861	3,49,237
China	SQM	1,71,333	4,47,893	2,07,875	3,24,617
Taiwan	SQM	32,790	44,328	10,986	24,620
Other imports	SQM	80,467	76,464	56,169	66,806
Total	SQM	2,84,590	5,68,685	2,75,030	4,16,043
Subject imports in relation to					
Domestic production	%	***%	***%	***%	***%
Trend	Indexed	100	2.50	0.13	0.11
Consumption	%	***%	***%	***%	***%
Trend	Indexed	100	117	51	59

83. It is noted that:

a. The subject imports decreased in 2020-21 as compared to 2019-20. However, the subject imports have increased once again in the period of investigation.
b. The subject imports in relation to consumption have remained high even after the domestic industry started commercial production in September 2019 in India.
c. The subject imports account for majority of imports into India.

H.3.5 Price effect of the dumped imports

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

a) Price undercutting

85. The price undercutting has been assessed by comparing the landed price of imports with the price at which the product has been sold by the domestic industry or offered for sale in India. Details of price undercutting are given in table below:

Particulars	Unit	Amount
China PR		
Net Sales Realization	₹/SQM	***
Landed Price	₹/SQM	640
Price undercutting	₹/SQN	***
Price undercutting	%	***%
Price undercutting	Range	20-30
Taiwan		
Net Sales Realization	₹/SQM	***
Landed Price	₹/SQM	685
Price undercutting	₹/SQN	***
Price undercutting	%	***%
Price undercutting	Range	20-30
Subject countries		
Net Sales Realization	₹/SQM	***
Landed Price	₹/SQM	643
Price undercutting	₹/SQN	***
Price undercutting	%	***%
Price undercutting	Range	20-30

The Authority notes that the price undercutting is positive and substantial.

86. Since the domestic industry is at a nascent stage, the price undercutting has also been assessed based on the target prices as per project report of the domestic industry.

Particulars	Unit	Amount
Target Price as per project report	₹/Kg	***

Landed Price (during the POI)	₹/Kg	643
Price undercutting	₹/Kg	***
Price undercutting	%	***%
Price undercutting	Range	40-50

87. It is noted that the landed price of imports is much below the target selling price of the domestic industry. The price undercutting is positive and significant when compared to the actual selling price of the domestic industry as well as the target price of the domestic industry.

b) Decline in import prices

88. The Authority notes the trend of landed prices of imports as below.

Particulars	Unit	2018-19	2019-20	2020-21	POI
Subject imports	₹/SQM	680	711	634	643
Other imports	₹/SQM	883	1,109	1,102	1,042
Subject import prices as % of third country prices	%	77	64	58	62

89. The prices of imports from subject countries have declined during POI as compared to base year, whereas, the prices of imports from other countries have increased. It is further noted that prices of subject imports are significantly lower as compared to third country's import prices. The Authority also notes that the prices of imports from third countries are higher than the cost of sales and target prices of the domestic industry. The prices of subject imports are much lower, which creates a strain on the prices of the domestic industry.

c) Price suppression / depression

90. Since the domestic industry is at a nascent stage, in order to determine whether the dumped imports are depressing the domestic prices and whether the effect of such imports is to suppress the prices to a significant degree or prevent the price increase which otherwise would have occurred in the normal course. The table below shows the cost of sale, selling price and landed price of PUC during POI:

Particulars	Unit	Amount
Cost of sales	₹/SQM	***
Landed Price	₹/SQM	643
Selling price	₹/SQM	***
Target selling price as per project report	₹/SQM	***

It is noted that landed price of imports during the period of investigation was below the cost of sale and selling price of PUC. The selling price of domestic industry is below the target price of the domestic industry. The landed price is causing a strain on the prices of the domestic industry and the domestic industry will not be able to fetch its target price.

H.3.6 Economic parameters of the domestic industry

91. Annexure II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on the domestic producers of such products. With regard to consequent impact of dumped imports on the domestic industry, 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 capital employed 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 hereinbelow.

a) <u>Production, capacity, capacity utilization and sales volumes</u>

92. The performance of the domestic industry with regard to production, capacity, capacity utilization and sales are as follows.

Particulars	Unit	2018-19	2019-20	2020-21	POI	Projected (2021-22)
Capacity	SQM	-	***	***	***	***
Trend	Indexed	-	100	450	675	1,191
Production	SQM	-	***	***	***	***
Trend	Indexed	-	100	1571	3046	7,292
Capacity utilization	SQM	-	***%	***%	***%	***%
Trend	Indexed	-	100	363	472	612
DI						
Domestic Sales	SQM	-	***	***	***	***
Trend	Indexed	-	100	1415	1806	24,579

93. It is noted that:
    a. Since the domestic industry has commenced production during the injury period, the capacity, production, capacity utilization and sales have increased over the period of investigation.
    b. During the period of investigation, the production of the domestic industry is 7 times the domestic sales of the domestic industry. The domestic industry has relied upon exports to dispose of its production. The domestic industry is unable to sell its products in the domestic market.
    c. The domestic industry has not been able to achieve the projected capacity utilization of ***% during the POI. The capacity utilization of the domestic industry has remained low. This is despite the fact that the domestic industry had not set up the full capacities that it had projected.
    d. Domestic industry's production during the year 2020-21 is much below the projected production of *** SQM as given in the project report. This is ***% of the projected production. Even in POI, domestic industry has not been able to achieve the projected figure of production for the year 2020-21.

b) <u>Market share</u>

94. The market share of the domestic industry of the subject imports in the period of investigation was as shown in table below.

Particulars	Unit	2018-19	2019-20	2020-21	POI
Subject imports	%	71%	83%	36%	42%
Trend	Indexed	100	116	51	59
Other imports	%	28%	13%	9%	8%
Trend	Indexed	100	46	33	29
Sales of domestic industry	%	-	***%	***%	***%
Trend	Indexed		100	1390	1294
Sales of other producers	%	***%	***%	***%	***%
Trend	Indexed	100	80	954	572

95. It is noted that the subject imports are holding a significant share of market in India throughout the injury period. Since there was no production in the past, the imports from subject countries and other sources were catering to the entirety of the demand. Even after the domestic industry has started production, the subject imports have commanded a significant share of the Indian market.

c) Inventories

96. The inventory position of domestic industry during the period of investigation is given in the table below.

Particulars	Unit	2018-19	2019-20	2020-21	POI
Opening inventory	SQM	-	***	***	***
Closing inventory	SQM	-	***	***	***
Average inventory	SQM	-	***	***	***
Trend	Indexed	-	100	211	118

97. It is noted that the average inventories of the domestic industry have increased in 2020-21 and decreased in POI. The inventory data indicates stock piling of inventories, with the average inventories being about 6 months of domestic sales.

d) Profitability, cash profits and return on capital employed

98. Since the domestic industry is at a nascent stage, in order to analyse the profitability, cash profits and return on capital employed of the domestic industry, the Authority has compared projected profitability with the performance of the domestic industry in the POI.

Particulars	Unit	POI	As per project report at (2021-22)	Performance in POI as compared to Project Report

Quantity sold (Domestic)	SQM	***	***	-93%
Cost of Sales	₹/SQM	***	***	14%
Selling price	₹/SQM	***	***	-12%
Profit / (loss)	₹/SQM	***	***	-87%
Profits/ (loss)	₹ Lacs	***	***	-99%
Cash profits	₹ Lacs	***	***	-99%
Return on capital employed	%	***	***	-89%

99. It is noted that:
    a. The profitability of the domestic industry has considerably suffered as it has made only a meagre return on capital employed ***% as against the project figure of ***% for the year 2021-22.
    b. The domestic industry has earned only 1% of projected profits and cash profits during POI.

e) Employment, wages and productivity

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

Particulars	Unit	2018-19	2019-20	2020-21	POI
No of employees	No.	-	***	***	***
Trend	Indexed	-	100	123	119
Productivity per day	SQM/Day	-	***	***	***
Trend	Indexed	-	100	827	1,603
Wages	₹ lakhs	-	***	***	***
Trend	Indexed	-	100	738	831

101. It is noted that the domestic industry has commenced production in the injury period and accordingly, the number of employees, wages and productivity per day has increased.

f) Growth

Particulars	Unit	2018-19	2019-20 (A)	2020-21	POI
Capacity	%	-	-	144	50
Production	%	-	-	751	94
Domestic Sales	%	-	-	1240	28
Profit/loss per unit	%	-	-	100	859
Cash profits	%	-	-	101	48
Return on capital employed	%	-	-	124	64

102. (a) While the year-on-year growth parameters are positive, the domestic industry has incurred losses, cash losses and recorded a negative return on capital employed during the year 2019-20.
(b) The profitability of the domestic industry is much below the projection as it has made only meagre return on capital employed ***% as against the project figure of ***% for the year 2021-22.
(c)The domestic industry has earned only 1% of projected profits and cash profits during POI.

g) Ability to raise capital investment

103. The profitability is low, so is return on capital employed and market share. This indicates that the ability of the domestic industry to raise fresh capital investments has been adversely impacted due to the subject imports.

h) Factors Affecting Prices

104. The domestic industry is unable to fetch target prices despite having sufficient capacity. The subject imports have adversely impacted the prices of the domestic industry.

i) Magnitude of dumping

105. The Authority notes that the subject goods are being dumped into India and the dumping margin is positive and significant.

H.3.7 Magnitude of injury margin

106. The Authority has determined the non-injurious price for the domestic industry on the basis of principles laid down in the Rules read with Annexure III, as amended. The non-injurious price of the subject goods has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The non-injurious price has been considered for comparing the landed price from the subject countries for calculating injury margin. For determining the non-injurious price, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been carried out with the utilities. The best utilisation of production capacity over the injury period has been considered. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e., average net fixed assets plus average working capital) for the product under consideration was allowed as pre-tax profit to arrive at the non-injurious price as prescribed in Annexure III of the Rules and being followed.

107. Based on the landed price and non-injurious price determined as above, the injury margin for producers/exporters has been determined by the Authority and the same is provided in the table below.

SN	Name of Producer	Non-injurious price	Landed Price	Injury Margin	Injury Margin	Injury Margin
		(US$/Sq. Mtrs)	(US$/Sq. Mtrs)	(US$/Sq. Mtrs)	(%)	(Range%)
China PR						
1	All exporters	***	***	***	***%	20-30
Taiwan%						

1	All exporters	***	***	***	***%	10-20

H 3.8 Overall assessment of injury

108. The examination of the imports of the product under consideration and performance of domestic industry clearly shows that:
   i. The imports have remained high over the injury period and increased in POI compared to 2020-21.
   ii. The imports have remained high in relation to consumption in India.
   iii. Despite commencement of commercial production by the domestic industry, the volume of subject imports has increased in the period of investigation.
   iv. The price undercutting is positive when compared to the actual and target price of the domestic industry.
   v. The price of imports from subject countries has declined over the period, while the price of imports from other countries has increased.
   vi. Since landed price is below the actual cost of sale, the import price is causing a strain on the prices of domestic industry.
   vii. Since the domestic industry has recently commenced production, the capacity, capacity utilization, production and sales have increased over the period of investigation.
   viii. The subject imports are holding substantial share of Indian market.
   ix. The inventories of the domestic industry have increased in 2020-21 and decreased in period of investigation. However, inventory holding period is very high.
   x. As compared to projected profits, cash profits and positive return on capital employed, the current performance of domestic industry during the POI is significantly on lower side.
   xi. The subject imports are being dumped in India and the dumping margin is positive and significant.
   xii. The imports have adversely impacted the domestic industry ability to raise capital investment.
   xiii. At current prices, the domestic industry will not be able to achieve its target performance.

I. NON-ATTRIBUTION ANALYSIS AND CASUAL LINK

109. Having examined the existence of injury, volume and price effects of dumped imports on the prices of the domestic industry, the Authority has examined whether injury to the domestic industry can be attributed to any factor, other than the dumped imports, as listed under the Rules.

a) Volume and value of imports from third countries

110. It is noted that the other than the subject imports, the major imports are from Korea RP. However, such imports are priced much more than the prices of subject imports and the selling price of the domestic industry. Other than imports from the subject countries and Korea RP, the imports from other countries are negligible in volume. Thus, it cannot be said that the imports from other countries are causing injury.

b) Contraction in demand

111. The Authority notes that there is no contraction in demand as the demand of the subject goods in the country has increased over the injury period and POI.

c) Pattern of consumption

112. It is noted that there has been favorable change in the consumption pattern leading to significant increase in the consumption of the subject goods.

d) Conditions of competition and trade restrictive practices

113. The Authority notes that the investigation has not shown that conditions of competition or the trade restrictive practices have changed.

e) Developments in technology

114. The Authority notes that there was no significant change in technology.

f) Productivity

115. The Authority notes that the productivity of the domestic industry has increased over the injury period.

g) Export performance of the domestic industry

116. The Authority notes that the injury analysis is only limited to domestic performance and the effect of the export performance is excluded from the same.

h) Performance of other products

117. The Authority has only considered the data relating to the performance of the subject goods.

i) COVID-19

118. Some of the interested parties have claimed that the injury to the domestic industry may be due to COVID-19 and the project report of the domestic industry cannot be compared to the actual performance of the domestic industry. The demand, subject imports, and domestic sales of the domestic industry have increased in the period of investigation which makes it evident that the Indian market was not impacted by the COVID-19.

j) Start-up cost and price of raw material

119. Some of the interested parties have submitted that the injury to the domestic industry is due to start-up cost and price of raw material. The Authority notes the start-up cost is capitalized and not included in the cost of production.

Conclusions on causal link

120. While other known factors listed under the Rules have not caused injury to the domestic industry, the Authority notes that the following parameters show that injury to the domestic industry is caused by the dumped imports.
    a. There is significant dumping of the subject goods in India.
    b. The volume of dumped imports has increased even though the domestic industry commenced commercial production. The volume of subject imports has remained high in relation to consumption in India.
    c. The subject imports hold substantial market share in India.
    d. The price undercutting is positive when compared to the actual and target price of the domestic industry.
    e. The landed price is below the actual cost of sales of the domestic industry.

f. The inventories of the domestic industry have increased in 2020-21 and decreased in period of investigation. However, inventory holding period is very high.
g. The profitability of the domestic industry has considerably suffered as it has made only meagre return on capital employed ***% as against the project figure of ***%. for the year 2021-22.
h. The imports have adversely impacted the domestic industry ability to raise capital investment.
i. At current prices, the domestic industry will not be able to achieve its target performance.

J. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

J.1. Views of the other interested parties

121. The submissions made by the other interested parties with regards to Indian industry's interest are as follows:
a. Imports have taken place in order to meet the demand-supply gap in the country.

J.2. Views of the applicants

122. The submissions made by the applicants with regards to Indian industry's interest are as follows:
a. Public interest must be examined from the perspective of interests of different set of parties including domestic producers of subject goods, domestic consumers, upstream and downstream industry and the general public.
b. Since the Indian industry is at a nascent stage it needs to develop its customer base. If it is not able to compete in the market, it would have to close down.
c. The domestic industry has invested Rs. *** crores to set up a new plant, in case such investments become unremunerative, it will discourage further investment in the product. This will make India completely dependent upon imports.
d. The imposition of anti-dumping duty will not impact the supply of subject goods in India as the domestic producers have capacity and production sufficient to cater to entire demand in the country.
e. In the past material retardation cases, the domestic industry was able to establish once the anti-dumping duty were levied.
f. In case of closure of the Indian industry, the consumers will be left at mercy of the exporters which are likely to increase prices. This is evident from the fact that the import price was much higher before commencement of production in India.
g. The domestic industry faces unfair competition from the producers who are receiving significant subsidies from the Government of China PR. Such support has had a detrimental effect on the conditions of competition in India

J.3. Examination by the Authority

123. As per the data available on record, the domestic industry has enough capacity to cater to entire demand in India. Further, the production of the domestic industry is higher than the demand in India, however, it is unable to sell its goods in the domestic market. Thus, there is no demand-supply gap in India.

124. The Authority recognizes that the imposition of the anti-dumping duties might affect the price levels of the product in India. However, the fair competition in the Indian market will not be reduced by the imposition of the anti-dumping measures. On the contrary, the imposition of the anti-dumping measures would remove the unfair advantages gained by the dumping practices, improve the performance of the domestic industry and help maintain the availability of a wider choice to the consumers of the subject goods. The purpose of the anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The imposition of the anti-dumping duties, therefore, would not affect the availability of the product to the consumers. The Authority notes that the imposition of the anti-dumping measures would not restrict the imports from the subject country in any way and, therefore, would not affect the availability of the product under consideration to the consumers.

K. Post-Disclosure Comments

K.1. Submissions made by the other interested parties

i. There is no difference between net sales realization price (NSR) of the domestic industry and non-injurious price (NIP), as both undercutting and injury margin are in the same range. This shows that domestic industry is able to sell the subject goods at the non-injurious price of subject goods.

ii. The Authority is consistently not recommending any duty, wherein the Domestic Industry is recovering more than the computed NIP (i.e., where NSR is more than NIP). Since the Domestic Industry in recovering more than NIP, there is no question of any adverse price impact on Domestic Industry. The Domestic Industry is earning more than the price which according to the Authority is sufficient to remove injury.

iii. The financial performance of the applicant industry is very robust post normalization of the market post COVID.

iv. The proposal of consideration of a non-producing company i.e., WGBL in the scope of the Domestic Industry and subsequently for injury analysis, is neither allowed as per the Rules nor as per the practice of the Hon'ble Authority.

v. The issue that the holistic injury analysis cannot be made without WGBL, it is noted that the issue has been examined in details in the 'injury & causal link' section of the final findings of case of Coated / Plated Tin Mill Flat Rolled Steel Products originating in or exported from the European Union, Japan, USA and Korea RP [F. No. 6/9/2019-DGTR dated 17.06.2020. The interested parties have made submissions concerning the requirement of a closer examination of the transfer pricing of hot rolled steel products between TCIL and Tata Steel. In this regard, the Authority has duly examined the transfer pricing of hot-rolled steel products for both JSW Vallabh and TCIL in detail. The authority notes that the pricing of hot-rolled steel products between Tata Steel and TCIL and also between JSW Steel and JSW Vallabh has been done appropriately and at arm's length pricing.

vi. Reference of adjustment in export price given by the applicants for consideration of trading entity as part of applicants is incorrect and contrary to the provisions of the Law.

vii. Product not manufactured by the applicant should be excluded. The applicants are not producing luxury vinyl tiles, but are producing stone plate casting. Therefore, LVT must be excluded from the scope of the product under consideration.

viii. Normal value and NIP must be calculated based on the PCN-wise and bifurcation of the imports into India based on the price range of the PCN-wise data filed by importers or product under consideration sold by the Domestic Industry must be done.

ix. It is to be noted that all the key parameters of injury have been on an upward trajectory or depicted a strong level and such trends cannot be termed as situation of material retardation in any manner.

x. It is emphasized here that the domestic industry has not provided any meaningful non-confidential summary of the project report to allow the interested parties to provide any effective rebuttal or comments to the same.

xi. Project report is an internal document for taking loans from the bank and the same cannot be treated as a parameter for making assessment of the applicant's actual performance.

xii. The material retardation shall be examined where there is newly established industry not the company. In the present investigation, the industry is already in existence since 2015.

xiii. Mingle Plast Pvt. Ltd., Responsive Industries Limited and RMG Polyvinyl India Limited have been producing the PUC since 2015.

xiv. In a material retardation case, the Designated Authority should examine whether the petitioner was yet to find its way in the market or was already established. No sufficient data is submitted to justify the claim of material retardation.

xv. In the present investigation, there is a high likelihood that it would dominate the market and would create barriers for market entry, which is harmful to the competitive environment and healthy development of the industry of India.

xvi. In the determination of the NIP, the Authority is giving undue protection to the domestic industry by applying 22% Return on Capital Employed which was designed in 1987.

K.2. Submissions by the applicants

i. The volume of imports had already increased by 60% in the period of investigation as compared to the previous year. However, between October 2021 to March 2022, the imports increased further by 236%.

ii. The amount of dumping margin and current import price are comparable to the target selling price of the domestic industry. It would be noted that the domestic industry is not able to achieve its target selling price only on account of dumping.

iii. Since the present case is that of material retardation and not material injury, the domestic industry has been denied the target price which it would have achieved in case there was no dumping in India.

iv. The poor performance of the domestic industry is only on account of dumping. In case there was no dumping in India, it would have allowed the domestic industry to earn significantly higher sales, production, capacity utilisation, profits and return.

v. The ratio of price of subject imports to price of other imports has reduced, which implies that dumped import prices have reduced in relation to price of imports from undumped sources.

vi. The current import prices have made it impossible for the domestic industry to break-even.

vii. If the data for both WFL and WGBL is considered, it would show that the domestic industry is facing negative returns on its investment.

viii. The product scope may kindly be defined with reference to tolerance, to avoid circumvention. Further, it may be clarified that the thickness of the product is calculated after excluding IXPE or any other type of foam.

ix. While the petitioners had explained why the marketing company should be included in the scope of domestic industry, it was not aware that the Authority intended to exclude.

x. The present approach would imply that the determination of injury margin and price undercutting does not require a fair comparison. In any case, the Authority considers disregards the price of sale to related importer, for the determination of landed price as well, which is not governed by the provisions of Section 9A(1)(b) or fair comparison

xi. When goods are transferred by WFL to WGBL, there is no physical movement that takes place. The goods remain in the warehouse within the factory gate. It is only when the goods are sold by WGBL to independent customer, that the goods move out of the factory gate. WGBL pays rent to WFL for keeping the goods within its premises.

xii. The nature of activities actually carried out by WGBL makes it evident that it cannot be treated as merely a marketing entity. Significant portion of the expenses have been incurred by WGBL and provides the more skilled expertise to the production and sale process.

xiii. The petitioners have relied on two investigations undertaken by the European Commission (Council Regulation (EC) No. 1683/2004, dated 24th September 2004 and Preliminary Findings vide Commission Implementing Regulation (EU) 2015/1559, dated 18th September 2015). Such preliminary findings were affirmed by the EC in its Final Findings issued vide Commission Implementing Regulation (EU) 2016/388, dated 17th March 2016 whereby it is claimed that the related parties of the domestic producers were treated as a part of the domestic industry.

xiv. If the domestic industry is able to sell the subject goods at a price equivalent to the price of imports from other countries, or the undumped landed price of the subject countries, its performance would be much higher.

xv. Target price of the product should be the basis for determination of injury margin.

xvi. The price of imports declined post commencement of production by WFL.

xvii. The Authority also evaluates the eligibility of domestic producers with reference to related exporters, which implies consideration of such entities as a single economic entity, exercising control over the business of the other.

xviii. A producer cannot be limited to an entity engaged in conversion of raw material into finished product. Production is much wider concept and is not limited to merely processing to convert a raw material into a finished product. The definition of domestic industry cannot be restricted to a producer engaged in manufacture, but includes a producer engaged in any activity connected therewith.

xix. Even if WGBL is not considered as a manufacturer in the present case, it is well connected to the activities related to production and should be a part of the domestic industry for the present investigation.

xx. It was also emphasized that transfer by WFL to WGBL is similar to captive consumption by a producer.

xxi. The concept of single economic entity is not a new concept developed by the petitioners for the present investigation, but is a part of various statutes in India wherein it is necessary that the related parties are considered as one entity due to the peculiar nature of their relationship.

xxii. It is necessary to take into account the treatment of transfer price in the books of accounts of the group company. WIL is also a petitioner in the present case. While analysis of the consolidated books of accounts provides, a broad and more realistic view.

xxiii. Landed price is not always determined at ex-customs level. In case of import by a related importer of the exporter, the landed price is construed on the basis of the resale price of the importer, or adjusted for the loss of the related importer.

xxiv. The Generally Accepted Accounting Principles in India needs to be considered which require that even when a party transfers goods to its related party, it must book the same as revenue. However, such revenue is ultimately nullified when the accounts of all related parties are consolidated.

xxv. Further, the Disclosure Statement is self-contradictory, inasmuch as elsewhere, the Authority has itself considered the petitioners to constitute a single entity.

xxvi. The petitioners request disclosure of the adjustments made to export price.

xxvii. As noted by the Authority in the Disclosure Statement, the imports had increased during the period of investigation itself. However, in the subsequent period, the volume of imports has increased substantially.

xxviii. The petitioners submit that as of now, it is being construed as if Rule 2(b) defines domestic industry in the context of domestic producers, being individual legal entities. However, the language of the law does not refer to the status or nature of the entity constituting producer at all. Further, even the past practice of the Designated Authority does not indicate a domestic producer must be an individual legal entity. In the past, the Authority has considered partnership firms as domestic producers forming part of domestic industry. However, a partnership firm is not a legal entity at all, though it is an economic entity.

xxix. DI has also stated that vide notification dated 23rd November 1995 and that dated 25th October 1995, Venezuela and Hong Kong respectively sought clarification with regard to meaning and reason for inclusion of "and any activity connected therewith" in addition to the definition mentioned in WTO AD agreement. In response, India has stated that "*The intention is to cover domestic producers as a whole of like products whether engaged in manufacture* ***or*** *any activity connected therewith*. Thus, both such entities would constitute domestic industry, for the purposes of Rule 2(b) and Annexure – III to the Rules.

xxx. The view expressed by the High Court that the activity in question constituted "production" has been affirmed by this Court in Sesa Goa's case saying that the High Court's opinion was unimpeachable. It was held by this Court that the word "production" is wider in ambit and it has a wider connotation than the word "manufacture". It was held that while every manufacture can constitute production, every production did not amount to manufacture."

xxxi. Further the Disclosure Statement indicates that the status of foreign producers, exporters and importers is different on account of their status under Section 9A(1)(b). However, the same is not true. Provisions of Section 9A(1)(b) refer to only the transaction between an exporter and a related importer. However, the petitioners have provided evidence with regard to the following.

a. Two related foreign producers
b. Foreign producer and related exporter
c. Foreign producer and related importer
d. Award of one dumping margin to a group of companies

xxxii. Determination of price undercutting based on transfer price of WFL is not appropriate in the present investigation. This is due to the fact that the transfer price

of WFL to WGBL is not influenced by market competition. In such a case, determining price undercutting based on transfer price of WFL would not show effect of dumping on the prices.

xxxiii. In respect of NIP, it has been stated that the actual capacity utilization, actual raw material consumption and actual utilities consumption should be adopted for determining non-injurious price. Expenditure like salary & wages, other manufacturing overhead, other administration overhead fixed qua the company, and not qua the product, these expenses should not be treated as fixed qua the product. Expenses incurred by WGBL should be considered. certain income has been wrongly deducted from cost by DI in its claim. At present, the non-injurious price is grossly understated there is a need for re-determination of non-injurious price.

xxxiv. Production of the domestic industry is not low due to start-up operations. Production of the domestic industry is low due to dumping.

K.3. Examination by the Authority

125. The Authority has examined the post disclosure submissions made by the other interested parties and applicants, and notes that some of the comments are reiterations which have already been examined suitably and addressed adequately in the relevant paras of the final findings.

126. The issues raised for the first time in the post disclosure comments/submissions by the interested parties and considered relevant by the Authority are examined below;

127. With respect to the claim that the authority does not recommend any duty, wherein the Domestic Industry is recovering more than the computed NIP, the Authority notes that present case is of material retardation to the establishment of the domestic industry. There is positive and significant price undercutting that may force the domestic industry to lower its prices, subsequently, threatening the establishment of the domestic industry. The presence or absence of material injury is not decided only on the basis of fact whether net sales realization is lower or higher than non-injurious price but also other factors. In fact, as per lesser duty rule, the Authority recommends imposition of 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. In this instance case, as mentioned in the analysis above, it is noted that dumping margin and injury margin is positive. The domestic industry has been prevented from selling the product at its target price. With regard to price effect on account of such dumped imports and its impact on the domestic industry, the analysis as mentioned above indicates that the imports have materially retarded the establishment of domestic industry in India.

128. As regards the methodology adopted for computation of normal value, the same has been examined suitably and addressed adequately in the relevant paras of the final findings.

129. With regard to non-computation of normal value and NIP based on the PCNs, the same was examined suitably and addressed adequately in the relevant paras of the final findings.

130. With respect to the request that the product scope may kindly be defined with reference to tolerance, the Authority notes that the product scope cannot be enlarged at this stage.

Further it is clarified that the thickness of the product is calculated after excluding IXPE or any other type of foam.

131. With respect to the claim of the applicants that the disclosure statement is self-contradictory as Authority has itself considered the petitioners to constitute a single entity in the confidentiality section, the authority notes that the term 'single entity' is used for WFL only.

132. With respect to the request by the applicants for disclosure of adjustments to export price, it is noted that none of the exporters/producers cooperated during the investigation. The adjustments have been made on account of ocean freight, bank charges, inland freight and commission based on facts available.

133. With regard to the applicants' argument that as per past practice of the Authority a partnership firm is treated as a domestic industry even though certain members of the partnership firm may not be producing the subject goods, it is noted that the present investigation does not pertain to partnership firm and question of individual legal entities. Since, the issue pertains to non-consideration of a marketing company as DI in light of Rule 2(b), the contention of the petitioner is irrelevant.

134. As regard the contention of the applicants that the goods remain within the factory premises of WFL, when sold to WGBL. It is noted by the Authority that WFL is issuing sales invoice when goods are sold to WGBL. Payment of rent by WGBL to WFL for warehouse owned by WFL does not mean that the goods are not transferred and ownership does not gets transferred.

135. With respect to the argument of the applicants that the adjustments made by the Authority for transactions between foreign producers, related exporters and related imports is not covered under Section 9A(1)(b), the authority has addressed the said arguments in the relevant portion of this final findings. Further, in relation to awarding a common dumping margin to a group of related companies, the Authority notes that this issue has also been addressed in the relevant portion of the final findings.

136. With regard to comments on NIP, the Authority had calculated NIP on the basis of data/information and other submissions of DI on the basis of principles laid down in Annexure-III of the Rules.

137. With regard to the contention that the Authority is giving undue protection to the domestic industry by applying 22% Return on Capital Employed it is noted that it has been the consistent practice of the Authority in the anti-dumping investigations.

138. As regards the two investigations of European Union referred by applicants, it is noted that DGTR is not bound to follow the decisions made by foreign authorities. Even if the related rules and practices are same, it may have some persuasive value but is not at all binding. It is further noted that the two investigations cited by the applicants pertain to investigations of material injury to an already established industry whereas the subject investigation has been carried out to determine the claim of material retardation. Therefore, these two cases being case of material injury can't be equated on the same footing as regards the subject investigation which is a case of material retardation.

139. As regards consolidated accounts prepared by WIL, it is the requirement of law that the holding company should prepare consolidated accounts. Preparation of consolidated accounts does not mean that the companies within the group are not a separate legal entity.

L. CONCLUSION & RECOMMENDATIONS

140. Having regard to the contentions raised, the information provided, the submissions made and the facts available before the Authority as recorded in the above findings, the Authority concludes that:

a. The product under consideration has been exported to India at a price below the normal value. The dumping margin is positive and significant.
b. The dumping of the subject goods has materially retarded the establishment of domestic industry in India.
c. The volume of the subject imports has increased even after commencement of the commercial production in India.
d. The price of imports declined over the period and is undercutting the prices of the domestic industry.
e. The imports are priced below the target prices of the domestic industry and have prevented the domestic industry from achieving its target price.
f. At current prices, the domestic industry will not be able to achieve its target performance.
g. The capacity of the domestic industry is underutilized.
h. Despite underutilized capacities, the domestic industry has not been able to sell even to the limited extent it has produced. The domestic industry is faced with significant inventories, even after undertaking significant exports.
i. The performance of the domestic industry with regard to its profits, cash profits and return on investment is significantly lower than that projected by it.
j. The dumped imports are adversely affecting the prices of the domestic industry.
k. The material retardation to the establishment of the domestic industry in India is caused by the dumped imports.
l. There is no evidence to show that the imposition of anti-dumping duty would materially impact the consumers or the downstream industry or the public at large.
m. On the basis of the information provided by the interested parties and the investigation conducted, the Authority is of the view that imposition of the anti-dumping duty will not be against the public interest.

141. The Authority notes that the investigation was initiated and notified to all the interested parties and adequate opportunity was given to the domestic industry, the exporters, the importers and the other interested parties to provide positive information on the aspect of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the Authority is of the view that imposition of the anti-dumping duty is required to offset the dumping and consequent injury. The Authority considers it necessary to recommend imposition of the anti-dumping duty on the imports of the subject goods originating in or exported from the subject countries.

142. Having regards to the lesser duty rule followed, the Authority recommends imposition of anti-dumping duty equal to the lesser of the margin of dumping and the margin of

injury so as to remove the injury to the domestic industry. Accordingly, the Authority recommends imposition of the anti-dumping duty on the imports of subject goods originating in or exported from the subject countries, for a period of 5 years, from the date of notification to be issued in this regard by the Central Government, equal to the amount mentioned in Col. 7 of the duty table appended below.

Duty Table

Sl. No.	Heading	Description	Country of Origin	Country of Export	Producer	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	3918	Luxury Vinyl Tiles*	China PR	Any country, including China PR	Any	2.05	Square Meter	USD
2	-do-	-do-	Any country other than China PR or Taiwan	China PR	Any	2.05	Square Meter	USD
3	-do-	-do-	Taiwan	Any country, including Taiwan	Any	1.44	Square Meter	USD
4	-do-	-do-	Any country other than China PR or Taiwan	Taiwan	Any	1.44	Square Meter	USD

*"Vinyl Tiles other than in roll or sheet form" having minimum tile thickness of 2.5 mm and a maximum tile thickness of 8 mm (without considering the cushion), with protective layer having thickness in range of 0.15 mm to 0.7 mm; also known in market parlance as luxury vinyl tiles, luxury vinyl flooring, stone plastic composite, SPC, PVC flooring tiles, PVC tiles, rigid vinyl tiles or rigid vinyl flooring.

143. The landed value of the imports for this purpose shall be the assessable value as determined by the Customs under Customs Act, 1962 and applicable level of the customs duties except duties levied under Section 3, 3A, 8B, 9, 9A of the Customs Tariff Act, 1975.

M. FURTHER PROCEDURE

144. An appeal against the order of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the relevant provisions of the Act.

(Anant Swarup)
Joint Secretary &Designated Authority