# MANUAL
# of
# OPERATING PRACTICES
# for
# TRADE REMEDY
# INVESTIGATIONS

DIRECTORATE GENERAL OF TRADE REMEDIES
DEPARTMENT OF COMMERCE
GOVERNMENT OF INDIA


# MANUAL
# OF
# OPERATING PRACTICES
# FOR
# TRADE REMEDY INVESTIGATIONS

DIRECTORATE GENERAL OF TRADE REMEDIES
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE

DGTR Manual of Operating Practices for Trade Remedy Investigations.

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सुरेश प्रभु
SURESH PRABHU

सत्यमेव जयते

स्वच्छ भारत
एक कदम स्वच्छता की ओर

मंत्री
वाणिज्य एवं उद्योग;
एवं
नागर विमानन मंत्रालय
भारत सरकार, नई दिल्ली
MINISTER
COMMERCE & INDUSTRY
AND
CIVIL AVIATION
GOVERNMENT OF INDIA, NEW DELHI

## MESSAGE

The Globalization of trade, despite its several advantages, has also created threats to the domestic industry in the form of unfair trade practices which need to be addressed by timely and effective Trade Remedial Measures. India has been the largest user of trade remedial measures with 656 measures imposed so far, out of which 277 measures are still in force as on date in respect of 142 products. Hence it is imperative that simplified standard procedures for functioning transparently and uniformly are adopted in the Directorate General of Trade Remedies (DGTR). This will also strengthen our position and commitments in the WTO.

Uniformity in procedures will also bring in substantial reduction ir the time taken to provide timely and effective relief to the domestic industry. I am immensely pleased to note that the DGTR is bringing out its first Manual of Operating Practices since its inception.

This Manual would be of great help to the officers of the Directorate and will also prove to be an invaluable source of training guidance and reference for those who are working in the organization and also for future entrants. It will instill a greater sense of responsiveness and accountability which is in consonance with the larger aim of our Government to foster excellence in effective public service.

**(Suresh Prabhu)**

**Ministry of Commerce & Industry :** Udyog Bhavan, Rafi Marg, New Delhi-110011
Tel. No.: 91-11-23062223, 23061492, 23061008, Fax: 23062947, E-mail : cimoffice@nic.in
**Ministry of Civil Aviation :** Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110003
Tel. No.: 91-11-24610350, 24632991, Fax: 24610354, E-mail : hm.moca@nic.in

सी.आर. चौधरी, भा.प्र.से. (से.नि.)
राज्य मंत्री
वाणिज्य एवं उद्योग मंत्रालय
तथा
उपभोक्ता मामले, खाद्य एवं सार्वजनिक वितरण
भारत सरकार
नई दिल्ली–110 011

सत्यमेव जयते

C. R. CHAUDHARY, IAS (Retd.)
Minister of State
Commerce & Industry
And
Consumer Affairs, Food & Public Distribution
Government of India
New Delhi-110 011

## MESSAGE

I am happy to know that the Directorate General of Trade Remedies is bringing out, for the first time, a Manual containing detailed procedures to be followed in the discharge of various steps involved in trade remedial investigations. The manual incorporates relevant laws, regulations, trade notices and circulars issued, apart from key relevant decisions/ WTO jurisprudence/precedents as well. I believe that this Manual will bring in uniformity, transparency and accountability in the functioning of the Directorate and will act as a reference handbook for guidance during different investigations.

I understand that the proposed Manual will also compliment the recently updated Compendium of Laws & Regulations and will be of great help to the officers of the Directorate, particularly new entrants. This publication is a welcome initiative for demystifying procedures and systems related to Trade Remedies. I congratulate the Department for taking this important initiative.

**(C.R. Chaudhary)**



Office : 133, Udyog Bhawan, New Delhi-110 011Tel. : 011-23061265, 23061266 Fax : 011-23061267
Resi. : 2, Tughlak Lane, New Delhi-110011 Tel. : 011-23012344 Telefax : 011-23012343
E-mail : cr.mosci@gmail.com, moscafpd@gmail.com, cr.choudhary@sansad.nic.in @crchaudharymos

ANUP WADHAWAN

वाणिज्य सचिव
भारत सरकार
नई दिल्ली–110011
COMMERCE SECRETARY
GOVERNMENT OF INDIA
NEW DELHI-110011

## FOREWORD

The efficiency of any organization is shaped significantly by the adoption of prudent processes and procedures and the capacity of its employees to follow them. Since its inception in the year 1995, the Directorate General of Trade Remedies, including in its earlier avatar of Directorate General of Anti-Dumping and Allied Duties,has been consistently working with efficiency and responsiveness to the needs of the domestic industry in accordance with India's multilateral commitments as a WTO member. There is always an imperative for an organization to evolve with time to be able to handle its tasks transparently and efficiently in face of an evolving environment. It is a matter of satisfaction that guided by the belief, the DGTR has brought out its first Manual of Operating Practices for use by its Officers.

The uniform application of these procedures shall not only bring clarity to the interpretation of rules but will also usher in a new era of accountability and efficiency. The Manual also contains the compilation of all trade notices and circulars issued in the past by the Authority, along with National International/WTO Jurisprudence, which will help in compliance with WTO requirements and adoption of the best practices in this regard.

I am sure the Manual will serve as an invaluable guide for officers of the DGTR and enable them to undertake investigations in a fair, time-bound and effective manner.

My compliments and best wishes to the DGTR team.

**(Anup Wadhawan )**

Room No. 143, Udyog Bhawan. Tel.: 23063664 / Fax: 23061796 / E-mail : csoffice@nic.in

**SUNIL KUMAR**

सत्यमेव जयते

भारत सरकार
व्यापार उपचार महानिदेशालय
वाणिज्य एवं उद्योग मंत्रालय
वाणिज्य विभाग
जीवन तारा बिल्डिंग, नई दिल्ली–110001
Government of India
Directorate General of Trade Remedies
Ministry of Commerce & Industry
Department of Commerce
Jeevan Tara Building, New Delhi-110001

# PREFACE

The Directorate of Anti-Dumping and Allied Duties, now restructured as Directorate General of Trade Remedies (DGTR), is responsible for investigations to remedy unfair trade practices, if any, by producer(s) /exporter(s) and / or exporting countries. Since its formation in 1995, the Directorate has undertaken a large number of Anti-Dumping cases and a few CVD cases. Since May 2018, Safeguard investigations have also come under the purview of DGTR.

2. As a quasi-judicial body, it is imperative that DGTR works in the most transparent, objective and uniform manner since its findings can be challenged before the Appellate Tribunal, High Courts and Supreme Court of India. Even as it is a matter of satisfaction that the Findings of the Authority have successfully withstood judicial scrutiny in the past, there is always scope for improvement. This Manual has been prepared with a view to streamline the investigation processes and systems based on standard methods and best practices.

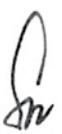
3. This Manual is a Practitioner's Guide to help officers of DGTR to carry out complex trade remedial investigations in a more diligent and uniform manner. This Manual reflects a paradigm shift in the working of the Directorate as it is intended to reduce incidence of divergent approaches on similar issues by Investigating Teams and achieve higher efficiency. Compilation of relevant provisions of Act and Rules, judicial pronouncements, Trade Notices, Circulars and WTO panel findings are likely to enable the Investigating Teams to make an objective assessment and interpretation of facts, data and situation in the course of trade remedial investigations.

4. Preparation of this Manual has been a herculean task running into several weeks and I would especially like to mention the contribution of Shri I. P. Singh (Principal Advisor), Ms. Shubhra (Additional Director General) apart from all other officers of the Directorate, who worked tirelessly to produce this Manual. I would also like to acknowledge the contribution and support of Shri Rakesh Kumar, Joint DG, Trade Policy Division in Department of Commerce and Prof. James J. Nedumpara, Head, Centre for Trade and Investment Law. I am also grateful for the valuable suggestions and inputs provided by Prof. Abhijit Das, Head, Centre for WTO Studies, Prof. Mukesh Bhatnagar, Centre for WTO Studies and Dr. Ram Upendra Das, Head, Centre for Regional Trade Centre for Research on International Trade. I congratulate the entire team of DGTR which has put in commendable effort in preparation of this Manual in a very short period of about six months.

5. In the DGTR, we have been fortunate to receive complete support and guidance of Ms. Rita Teotia, erstwhile Secretary of Department of Commerce as well as present Commerce Secretary, Shri Anup Wadhawan. Their commitment to seeing DGTR evolve into a premier Trade Remedy Agency in the world has motivated the DGTR team to work on this Manual.

6. I am sure the Manual will serve as an invaluable Guide for the Investigating Teams in undertaking systematic, uniform and efficient handling of trade remedial investigations and also be a source of guidance and reference to the future entrants.

7. As the procedures outlined in the chapters of this Manual are product of experience gathered over the years, we believe that these will continue to evolve as the Authority handles more cases particularly those relating to CVD, Anti Circumvention and Safeguards. Hence, it may be only a matter of time before further editions of this Manual are published as DGTR evolves into a mature, accountable and dynamic institution.



**(SUNIL KUMAR)**
**Additional Secretary & Director General**

## DISCLAIMER

This Manual is a step by step internal instructions to guide its officers in their day to day work to improve efficiency, transparency, and accountability. This is not intended to replace the Trade Notices/Circulars/ Instructions issued from time to time. Therefore, Trade Notices and Circulars will prevail over the Manual, in case of any differences or contradictions. Any information given herein cannot be cited in any dispute or litigation, nor is it a substitute for a legal interpretation/evidence.

This Manual is also not intended to restrict/limit or prescribe the powers, discretion or the jurisdiction of the Designated Authority/ Director General, as provided in law. Also, it is recognized that there could be case-specific variations in different investigations and the final decisions are to be made based on merits considering the unique facts and circumstances of each case.

# MANUAL OF OPERATING PRACTICES FOR TRADE REMEDY INVESTIGATIONS

## TABLE OF CONTENTS

# Manual of Operating Practices for Trade Remedy Investigations

## Abbreviations and Defined terms appearing in the text of the Manual

| S. No. | Abbreviation | Full form |
|---|---|---|
| 1. | Act | Customs Tariff Act, 1975 |
| 2. | ADD | Anti-Dumping Duty |
| 3. | ADA | Agreement on the Implementation of Article VI of GATT, 1994 |
| 4. | Anti-Dumping Rules or AD Rules or the Rules | Customs Tariff (Identification, Assessment And Collection of Antidumping Duty On Dumped Articles and For Determination of Injury) Rules, 1995. |
| 5. | CVD | Countervailing Duty |
| 6. | CNV | Constructed Normal Value |
| 7. | CV | Confidential Version |
| 8. | DA/DG | Designated Authority/Director General |
| 9. | DI | Domestic Industry |
| 10. | DGTR or Directorate | Directorate General of Trade Remedies |
| 11. | DGAD | Directorate General of Anti-Dumping and Allied Duties (earlier name) |
| 12. | DGCI &S | Directorate General of Commercial Intelligence & Statistics |
| 13. | DM | Dumping Margin |
| 14. | EQR | Exporter Questionnaire Response |
| 15. | HS Code | Harmonized System of Codes – Customs Classification |
| 16. | GATT | General Agreement on Tariffs and Trade |
| 17. | IIP | Injury Investigation Period |

| | | |
|---|---|---|
| 18. | IM | Injury Margin |
| 19. | IQR | Importer Questionnaire Response |
| 20. | Manual | This manual containing the operating practices for the conduct of trade remedial investigations |
| 21. | MTR | Mid-Term Review |
| 22. | NCV | Non Confidential Version |
| 23. | NIP | Non Injurious Price |
| 24. | NME | Non-Market Economy |
| 25. | NSR | New Shipper Review |
| 26. | NV | Normal Value |
| 27. | PCN | Product Control Number |
| 28. | POI | Period of Investigation |
| 29. | PUC | Product Under Consideration |
| 30. | QR | Questionnaire Response |
| 31. | SSR | SunSet Review |
| 32. | SCM | Subsidies and Countervailing Measures |
| 33. | Team | Investigation Team comprising of Investigating Officer(s) & Costing Officer(s) |
| 34. | TRU | Tax Research Unit |
| 35. | WTO | World Trade Organization |

# INTRODUCTION & PROCESS FLOW CHARTS

1.1 The General Agreement on Tariffs and Trade, 1947 ("GATT 1947") was signed on October 30, 1947 and was implemented from January 1, 1948 through the Protocol of Provisional Application ("PPA"). The basic objective underlying the GATT was the reduction of trade barriers among trading nations. While the core objectives of the GATT 1947 were to promote free trade through binding tariff commitments and implement the principle of non-discrimination, the agreement also envisaged situations where tariffs or other restrictions could be applied. One such exception is found in Article VI for addressing the unfair trade practice of dumping. Imposition of countervailing duties and safeguard measures also constitute such permissible exceptions under the GATT.

1.2 The purpose of Article VI of the GATT 1947 was to provide a legal regime to discipline and regulate the use of anti-dumping measures. However, the effect of this would be limited. This was because only Part I and III of the GATT 1947 were fully implemented through the Protocol of Provisional Application whereas part II was implemented only "to the fullest extent not inconsistent with existing legislation". Importantly, while Part I contained most-favored nation ("MFN") obligation and tariff concessions and Part III mainly contained procedural provisions, Part II contained the substantive obligations including those relating to customs procedures, quotas, subsidies, anti-dumping duties and national treatment. With respect to these substantive obligations, a GATT Contracting Party could 'grandfather rights' for any of the existing provisions in its domestic legislation(s) which was inconsistent with the GATT, 1947. Therefore, till 1967, in

terms of both content and applicability, Article VI remained a limited multilateral framework on anti-dumping.

1.3 Thereafter, during the Tokyo and Kennedy Rounds of negotiations, substantive improvements were attempted to this limited international framework on anti-dumping under Article VI of the GATT, 1947. The Kennedy Round (1962-1967) was intended for revitalizing GATT with new and further tariff reductions. One milestone reached in the Kennedy Round was the adoption of a new Anti-Dumping Code ("Kennedy Code") which in addition to reaffirming Article VI of GATT, 1947, formulated a series of substantive and procedural rules on anti-dumping. The definitions and standards relating to certain key concepts such as 'injury', 'dumping', 'causation' and 'industry' were brought in.

1.4 In Tokyo Round of Negotiations (1973-1979), the basic objective was the reduction and elimination of not only tariffs but other trade barriers also. During the conclusion of the Tokyo Round in 1979, the participation had increased to 102 countries and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (popularly known as the "Tokyo Round Anti-Dumping Code") was adopted which substituted the Kennedy Round Code. This new Code provided details on the manner of conducting investigation, when to terminate the investigation, the duration for which the duties would apply, etc. A significant feature of the Tokyo Round Anti-dumping Code was that anti-dumping investigations were required to be reported to the GATT Secretariat through a semi-annual report. However, the Code seemed to have left a considerable number of ambiguities and problems unresolved. Later, the Committee on Anti-dumping Practices focused on increasing the participation of developing countries.

1.5 In September 1986, the GATT round was for the first time launched in a developing country in Punta Del Este, Uruguay. Though the Ministerial Declaration at Punta Del Este did not make an express mention of anti-dumping, the GATT Contracting Parties recognized the need for developing new disciplines. During the Uruguay Round negotiations, anti-dumping was a dominant issue in the negotiating positions of various groups. After many attempts and series of negotiations, the final draft text (popularly known as the "Dunkel text") was produced in December, 1991.

1.6 The Uruguay Round resulted in fundamental reforms in the multilateral trading system after the conclusion of the GATT, 1947. The entire package of agreements resulting from the Uruguay Round was signed in Marrakesh, Morocco in 1994. Among others, this package included the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (ADA) and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement") and the Agreement on Safeguards (Safeguards Agreement) as part of the single undertaking. These agreements co-exist with the General Agreement on Tariffs and Trade, 1994 (GATT, 1994).

1.7 The WTO Agreement entered into force on 1 January 1995. As of 2017, the WTO has 164 Members and 27 Observer States. The highest decision making body is the Ministerial Conference, which is composed of representatives (Trade or Commerce Ministers) of all Members. The Ministerial Conference takes place at least once every two years. In the interim, the General Council oversees the day-to-day functioning of the WTO.

1.8 There is no obligation on WTO members to take anti-dumping actions in the case of injurious dumping. However, if the Members decide to adopt any anti-dumping measure[1], the Anti-dumping Agreement requires that such a measure be preceded by the required investigation and should be in compliance with the multilaterally agreed rules set out therein. It must also be pointed out that while the current WTO multilateral disciplines provide the framework covering substantive and procedural matters, it does not exhaustively cover all matters. Therefore, it remains the prerogative of the individual WTO Member to stipulate its own procedures for matters which are not covered by the ADA.

1.9 The legislative framework in India on Anti-dumping measures is contained in the Customs Tariff Act, 1975 as amended by the Customs Tariff Amendment Act, 1995 [Sec 9A, Sec 9 A, Sec 9B and Sec 9C] ("Act") and the Customs Tariff (Identification, Assessment and Collection of dumped articles and for determination of Injury) Rules, 1995 ("AD Rules"). The relevant legislative framework for countervailing duty on imports in India is contained in Section 9 of the Customs Tariff Act, 1975 and the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 ("CVD Rules").The legislative framework for Safeguard Measures is also contained in the

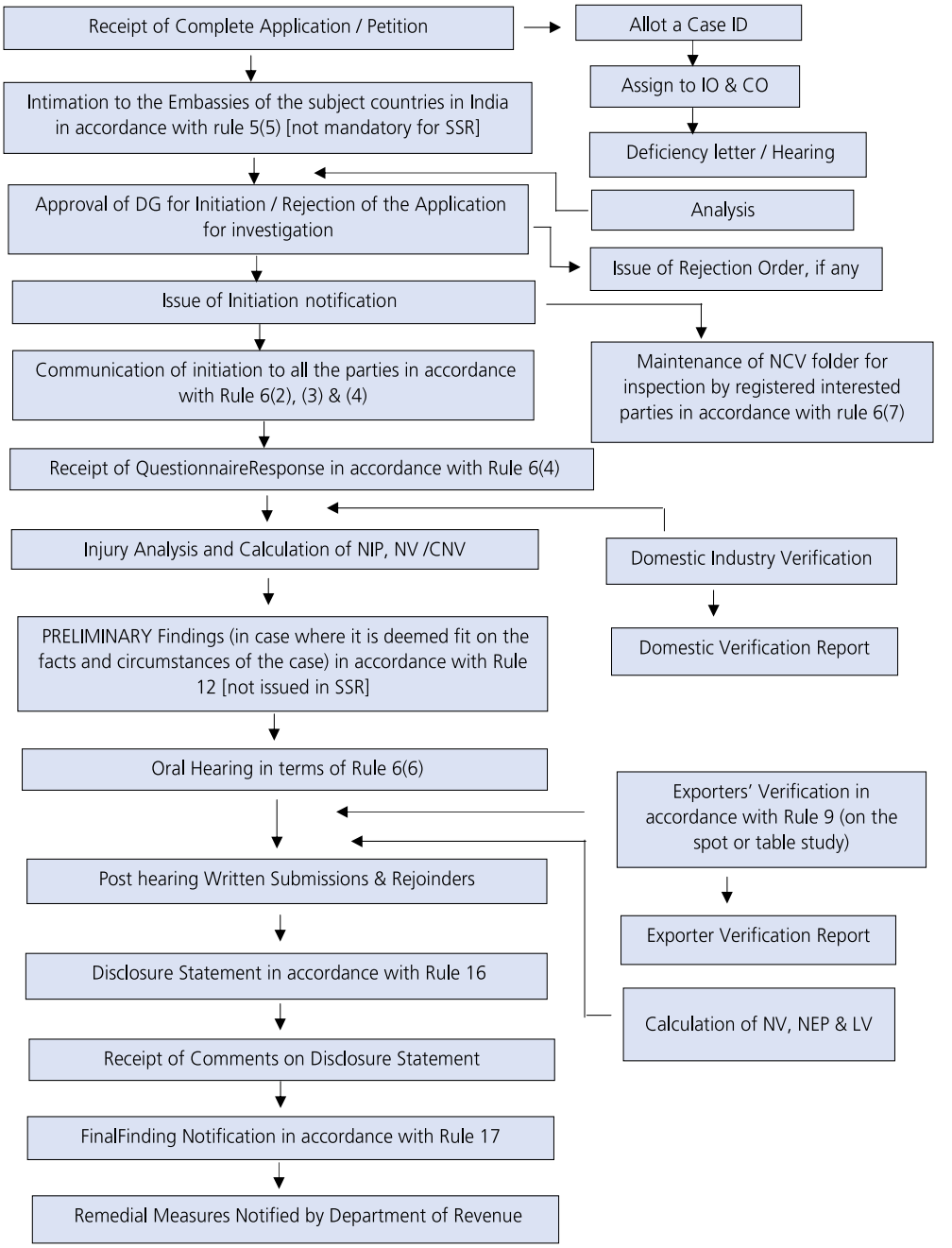
[1] Refer to para I of Chapter 24 for WTO Jurisprudence.

Customs Tariff Act, 1975 as amended by the Customs Tariff Amendment Act, 1995 [Sec 8B] and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997. The legislative framework for Safeguard Measures by way of Quantitative Restrictions is contained in the Foreign Trade (Development and Regulation) Act, 1992, amended in 2010, and the Safeguard Measures (Quantitative Restrictions) Rules, 2012.

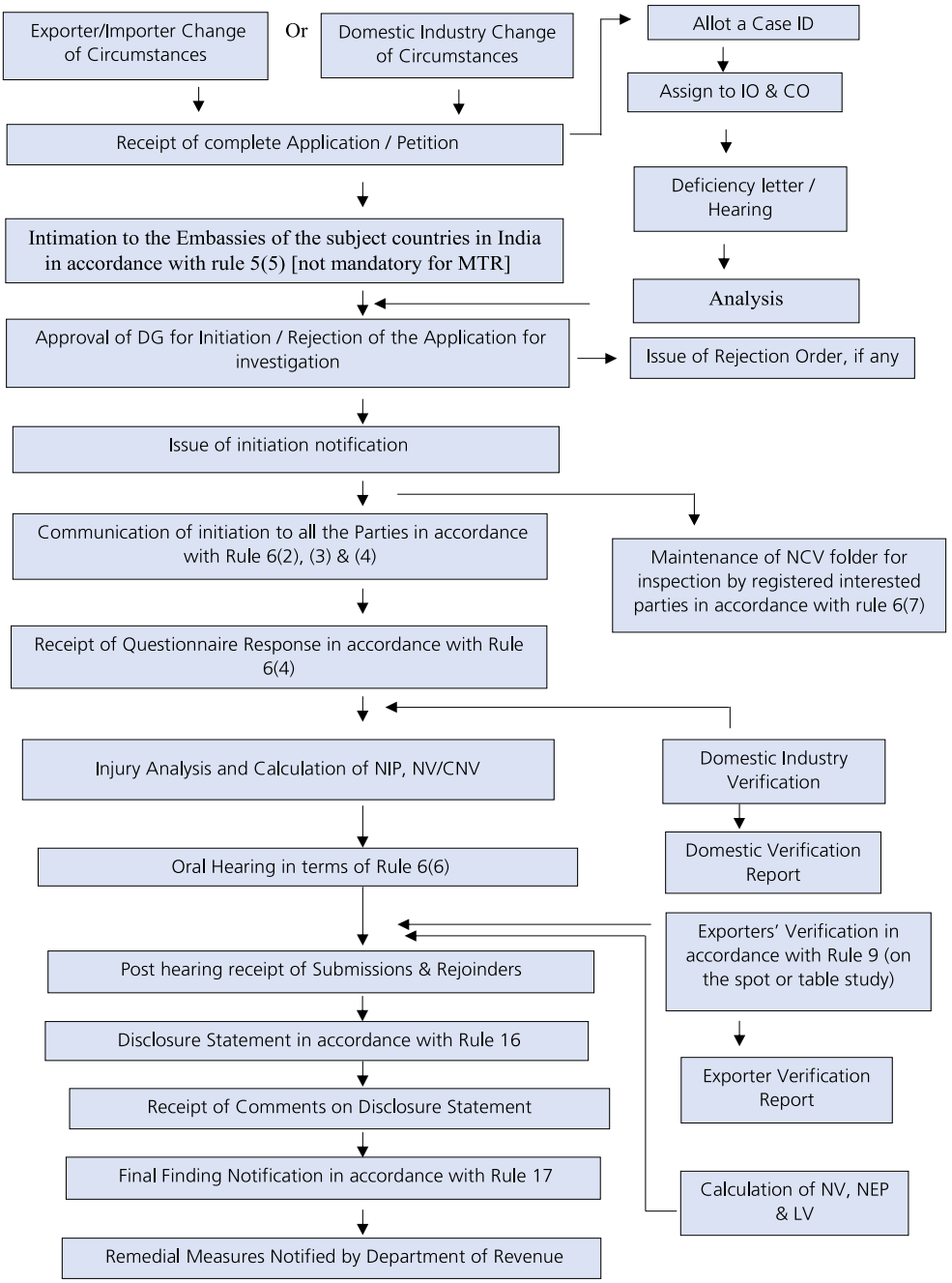
1.10 This Manual on Operating Practices has been created as a step by step guide to provide practical assistance to government investigators, entrusted by the Authority in conducting trade remedial investigations. The purpose of this Manual is to foster a comprehensive understanding of the processes relating to trade remedy measures. However, this Manual is not intended to construct or replace any legal provisions provided under the relevant Acts and Rules. While the focus of this Manual is on anti-dumping investigations, a brief and condensed overview of the process of investigations under Countervailing Measures, Safeguard Measures and Quantitative Restrictions has also been provided herein.

1.11 Trade remedy investigations are multi-stage processes that follow an established sequence. Every step in this process has to be taken in a fair and transparent manner, by giving the stakeholders an opportunity to participate in the investigation. The process flow-charts for investigations are provided herewith and time-lines for each stage are provided in the attached OM dated 12.04.2018. The process flow-charts aim to explain the legal process in a sequential manner for easy understanding of the investigators and other officials. Since trade remedy investigations and procedures are very detailed and complex, there is a possibility that some of the intricate processes or detailed methodologies might not have been captured adequately. The Directorate has embarked on its mission to promote digitalization by enabling online submission of application/responses by all the stakeholders, this is likely to revolutionize the investigation process and may affect the different stages of investigation with respect to processing and timelines.

## PROCESS FLOW CHART FOR ORIGINAL & SUNSET REVIEW INVESTIGATION



## PROCESS FLOW CHART FOR MID-TERM REVIEW INVESTIGATION



Appendix-1

(FOR INTERNAL CIRCULATION ONLY)

No. 4/07/2018-DGAD
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara Building,
5, Parliament Street, New Delhi-110001

Dated 12th April, 2018

**Office Memorandum**

**Subject: Milestones for Anti-Dumping and CVD Investigations initiated during this calendar year i.e., initiated on or after 1st January 2018.**

Attention is drawn to the Circular No. 2 Dated 27th February 2018 indicating time lines for various stages of anti-dumping and CVD investigations. A more detailed description of processes with timelines is given below.

| S. No. | Description of Process | Max. days from receipt of application/ initiation | Action completion DATE |
|---|---|---|---|
| 1 | Submission of Files to AS&DA relating to:<br>(i) Non-acceptance of Exporter's Questionnaire response, if any due to pending deficiencies (part or in full) within the prescribed time.<br>(ii) Proposal of NIP Workings<br>(iii) Note on Provisional Dumping Margin, injury Margin, Parameters and Performance of DI. | 82 days from the date of initiation | |
| 2 | 1St Presentation by the investigation team –<br>(i) NIP, prov, CNV, exporter wise provisional Normal Value, Net Export Price and Landed Value.<br>(ii) Rejection of Exporter's Questionnaire response, if any along with detailed reasons/ deficiencies.<br>(iii) Imports/DGCIS data Analysis.<br>(iv) Provisional Dumping Margin, Injury Margin. Parameters and Performance of DI.<br>(v) Whether need for Provisional Duty? If yes, why? | 85 days from the date of initiation | |

| | | | |
|---|---|---|---|
| 3 | Preliminary Findings by the investigation team (in case where it is deemed fit on the facts and circumstances of the case) in accordance with Rule 12. | 90 days from the date of initiation | |
| 4 | Oral Hearing in terms of Rule 6(6) | 120 days from the date of initiation | |
| 5 | Submission of files to AS&DA relating to:<br>(i) Non-acceptance of Exporter's Questionnaire response, if any.<br>(ii) Proposal for COP or CNV Working, Exporter wise Normal Value, Net Export Price and Landed Value. | Within 197 days if foreign visit involved and within 147, if no foreign visit. | |
| 6 | Final Presentation by the investigation team –<br>(i) Finalisation of PUC along with exclusions.<br>(ii) NIP, CNV, exporter wise Normal Value, Net Export Price and Landed Value.<br>(iii) Rejection of Exporter's Questionnaire response, if any along with detailed reasons / deficiencies.<br>(iv) Dumping Margin Injury Margin. Performance of DI and Injury Parameters.<br>(v) Post POI and Likelihood analyses-sunset reviews. | Within 200 days from initiation in case of foreign visit and within 150 days of initiation, if no foreign visit is required. | |
| 7 | Disclosure Statement by the investigation Team in accordance with Rule 16. | Within 210 days if foreign visit involved, otherwise within 160 days. | |
| 8 | Final Finding Notification in accordance with Rule 17. | Within 240 days if foreign visit involved, otherwise within 180 days. | |

2. The above timelines apply to all investigations initiated on or after 1st January, 2018 and accordingly product wise timelines / target completion dates as per the above mentioned format is being circulate to respective IOs and Cos for compliance. In cases where the suggested timelines have completed, the concerned officers are requested to take immediate action.

3. The issues with the approval of the AS&DA.

-sd/-
(Arti Bangia)
Deputy Director

To
IOs/COs

Appendix-2

THE GAZETTE OF INDIA: EXTRAORDINARY (PART I-Sec.2)

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Commerce)

**Notification**

Dated 17th May, 2018

**No.I-34(7)/2018-O&M –** Consequent upon notification of Government of India (Allocation of Business) 340th Amendment Rules, 2018 regarding inclusion of 'Directorate General of Trade Remedies' under ministry of commerce and Industry, Department of Commerce, it is hereby notified that Shri Sunil Kumar, Additional Secretary to the Government of India in the Ministry of commerce and Industry, Department of commerce is appointed as Director General Remedies who shall exercise the power of the following authorities with immediate effect:-

(i) Designated Authority under customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995.

(ii) Director General (Safeguard) under Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 and Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002.

(iii) Authorised Officer under safeguard Measures (Quantitative Restrictions) Rules, 2012.

2 Accordingly, all the functions of Directorate General of Anti-Dumping and Allied Duties (DGAD), the functions related to Safeguard Measures (Quantitative Restrictions) of Directorate General of Foreign Trade (DGFT) under Ministry of Commerce and Industry and the functions of Directorate General of Safeguards under Ministry of Finance are transferred to 'Directorate General of Trade Remedies' under Ministry of Commerce and Industry, Department of Commerce with immediate effect.

[F.No. I-34(7)/2018-O&M]
RAJNEESH, Jt, Secy.

# APPLICATION FOR INITIATION OF ANTI-DUMPING INVESTIGATIONS – PRE-INITIATION SCRUTINY

## LEGAL PROVISIONS

2.1. The applicable provisions for initiation of an investigation under the domestic law are contained in Rule 5 of the AD Rules which corresponds to the provision in Article 5 of the ADA.

> *Rule 5. Initiation of investigation. - (1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.*
>
> *(2) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by evidence of -*
>
> a. *dumping*
> b. *injury, where applicable, and*
> c. *where applicable, a causal link between such dumped imports and alleged injury.*
>
> *(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -*
>
> *it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:*
>
> *Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and*

*it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding*

*i. dumping,*
ii. *injury, where applicable; and*
*iii. where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.*

*Explanation - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.*

*(4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3).*

*(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.*

**SIGNIFICANCE**

2.2. The pre-initiation scrutiny of an application/petition received is very important as it helps in obtaining a complete application, which is necessary for the legality of the investigation and avoiding subsequent delays in processing the application for initiation of investigations.

**OPERATING PRACTICES**

2.3. An anti-dumping case normally starts with the formal receipt of an application in the DGTR from the Indian Domestic Industry (hereinafter referred to as "DI") in the prescribed format stating that the injurious dumping is taking place. This complaint is called the application in the ADA and the petition as per Indian terminology. Article 5.2 of the ADA contains the requirements for the contents of this application. It must include evidence on dumping, injury and the causal link between the two.

2.4. The requirements for filing an application for initiation of investigation prescribes that an application shall be in the form as maybe specified by the designated authority. Accordingly, the format prescribed by the Authority becomes an integral part of the requirements of Rule 5(2).

2.5. The application for sunset review must be filed by the DI at least 240 days prior to the date of the expiry of existing anti-dumping measures. In the case of Mid-Term Review, the application must be filed between 12 months to 42 months from the date of imposition of the duty.

2.6. Generally, the Designated Authority initiates the investigations for anti-dumping on the basis of an application filed by the domestic industry.[1] However, Rule 5(4) of the AD Rules provides for suo-motu initiation of anti-dumping proceedings also by the Designated Authority on the basis of information received from the Collector of Customs appointed under the Customs Act, 1962 or from any other source. In such circumstances, the Authority initiates the anti-dumping investigations on its own without any application filed in this regard, provided the Authority is satisfied that sufficient evidence exists as to the existence of dumping, injury and causal link between the dumped imports and the alleged injury. It is further clarified that after initiation, the suo-motu investigation follows the same procedure as the one based on an application as mentioned in the AD Rules[2].

2.7. As per Rule 5(2), it is indispensable that the application is supported by evidence of dumping, injury and the causal link between dumping and injury, as may be applicable. The ADA also has this requirement under Article 5.2[3], to the extent the information is reasonably available. The underlying purpose of such a provision is to ensure that a mere assertion of dumping, unsubstantiated by relevant evidence, is not considered sufficient for initiating the anti-dumping investigation.

2.8. The application should be accompanied with following documents in addition to the prescribed formats notified vide Trade Notice 02/2018 dated 1.2.2018:

[1] *Union of India v Meghmani Organics Ltd.*, (2016) 10 SCC 28 (Supreme Court of India)- wherein it was held that "the initiation has to be generally upon a written application by or on behalf of the DI. In special circumstances, the DA may initiate an investigation even without a written application provided it has sufficient evidence of dumping"

[2] Some of the examples of *suo motu* investigations were earlier initiated during the years 2001-02 are : Initiation of Anti-Dumping investigation concerning imports of Sports Shoes (both branded and un-branded) originating in or exported from People's Republic of China imports, F.N. 56/1/2000-DGAD dated November 20, 2000; Initiation of anti dumping investigation concerning imports of Dry Batteries originating in or exported from PR China, F.N. 53/1/2000-DGAD dated e November 11,2000; Initiation of Anti Dumping investigation concerning imports of toys originating in or exported from People's Republic of China, F.N. 54/1/2000-DGAD dated November 20, 2000.

[3] Refer to para II of Chapter 24 for WTO Jurisprudence.

| S. N. | Documents / Information |
|---|---|
| 1. | Write up about the industry and the product under consideration against which dumping is alleged |
| 2. | HS Codes for the alleged dumped products in the application |
| 3. | A background on any previous trade remedy investigations |
| 4. | Total Indian production of the product |
| 5. | Letters of Support with required information in Annex-I, Annex-II and Annex-III as prescribed vide Trade Notice No. 13/2018 dated 27th September 2018. |
| 6. | Installed capacity of PUC with supporting documents like the Pollution Control Board Certificate |
| 7. | Total Demand in India along with sales details of PUC by the applicant(s) |
| 8. | Transaction wise Import data (import volume and value) obtained from DGCI&S after due authorization from DGTR in terms of Trade Notice 7/2018 dated 15.3.2018 and the summary of the same for each of the subject country |
| 9. | The calculation and methodology for NEP |
| 10. | Direct evidence of domestic selling price in the exporting country, if available |
| 11. | In case direct evidence is not available, reasonable other evidence of the prevailing selling price in the exporting country |
| 12. | In case of non-availability of the domestic selling price in the country of export, then Constructed Normal Value be provided along with the methodology for the calculations |
| 13. | The detailed reasons in case of his claim that any of the exporting country is alleged to be operating in non-market conditions |
| 14. | Soft copy of the application along with excel working sheets (As detailed in paragraph 2.19) |
| 15. | The costing formats – NIP/ Capital Employed Calculations along with soft copy of excel sheets as detailed below in para 2.19. |
| 16. | Audited financial statements and cost audit reports of the injury period including POI |
| 17. | In case of new units not having completed four years since the commencement of commercial production – The project report or any other similar document submitted to the Government agency |
| 18. | In case of SSR - Additional information regarding likelihood and recurrence as prescribed vide Trade Notice No. 02/2017 dated 12th December 2017. |
| 19. | In case of NSR – Application in the format prescribed vide Trade Notice No. 08/2018 dated 25.4.2018 |
| 20. | In the case of MTR - Additional information to be submitted in terms of Rule 23(1A) |
| 21. | Confirmation from the applicants/consultants that the complete cost data for all the units of the DI manufacturing or selling PUC has been furnished in the application. In other words, no unit manufacturing or selling PUC has been left out. |
| 22. | Confirmation from the company/consultants that no amount of expense disallowed under Annexure-III has been considered in the cost computations. |

2.9. The application submitted has to be verified by the nominated officers with respect to the conformity of documents as per checklist notified vide Trade Notice No. 15/2018 dated 22.11.2018. This helps in expeditious processing and examination of application leading to a decision regarding initiation/ rejection of the application.

2.10. Once the nominated officers approve the submission of the application, the same is accepted and a file number/case number is generated in the system.

2.11. The application is put up to the DG for the nomination of the investigation team for the case and specific allocation order is issued which is sent to the team along with the original case file[4].

2.12. The investigation team may call for any further information upon examination, if deemed fit, which could be in addition to the documents mentioned in the check-list, the Investigation team should always call for such additional information in writing, through an email (instructions attached) and no oral requests should be made. A copy of all these letters may also be marked to dgad.india@gov.in.

2.13. The team can also obtain information pertaining to DI, PUC, imports and other details from the sources as mentioned below for examination and/or verification.

Source of data information at the disposal of the Authority (available on request)

| S.N. | Source & Description |
|---|---|
| 1. | DGCI&S - Transaction wise import data based on HSN Codes containing importers' names and product details. |
| 2. | DG Systems- Transaction wise import data based on HSN Codes/description containing importers and exporters name along with product details |
| 3. | Ministry of Corporate Affairs – Financial data, related party details regarding companies/entities registered with MCA. Cost Audit details are also available, where applicable. |
| 4. | GSTN – HSN Code wise (2 digit / 4 digits) details of existing producers in India and sales clearances (including exports and imports) by registered entities |

2.14. The application/ petition has to be considered "Confidential" till it is decided to initiate an investigation as is provided in Article 5.5 of the ADA. The relevant provision of Article 5.5 reads as below:

[4] This system is being followed as on date, which may be modified once the applications are received on line.

*"The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned."*

2.15. Even though the Indian anti-dumping law has no similar provision, it is clear that the information with respect to receipt of all the applications are to be treated as confidential and should not be publicized.

2.16. Many a time information is required to be sought from other producers in India regarding their support or opposition or confirmation of their production/sale. This is for arriving at the correct standing of the applicant for being an eligible DI.

2.17. The Embassy of the subject country under investigation must be informed regarding receipt of the application, before actual initiation. A template for intimation to Embassies is enclosed with this chapter.

2.18. After initiation, the non-confidential version of the application is put in an inspection folder.

**DETAILS OF WORKING SHEETS (as referred in the table above)**

2.19. The costing details in excel files must be submitted by the applicant(s) for the POI as detailed below:

| S. N. | Document |
|---|---|
| 1 | The costing formats – NIP/ Capital Employed Calculations |
| 2 | Calculation of CNV, if estimated NV is based on CNV |
| 3 | Details of Job work done during POI, if any |
| 4 | Details of Administration Overheads |
| 5 | Details of Selling & Distribution Overheads |
| 6 | Details of Other/Miscellaneous Overheads |
| 7 | Details of Misc. Income |
| 8 | Details of HO Expenses and their allocation |
| 9 | Details of by-product/wastage/rework generated |
| 10 | The basis of major utility allocation done for PUC & other Products |
| 11 | Details of revaluation/impairment of assets details, if any during POI & previous years, if included in the books |
| 12 | Explanation for the methodology adopted in segregating the import data into PUC and NPUC. |

Appendix-3

NO. 4/59/2009-DGAD
MINISTRY OF COMMERCE & INDUSTRY
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

Dated 3rd November, 2009

**Trade Notice No. 2/2009**

Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended from time to time and to Rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereunder.

2. The Proforma prescribed for making application for anti-dumping investigation, inter alia, require the petitioner to submit two copies of the petition along with one non-confidential version thereof.

3. Trade and Industry is advised to follow the following procedure while making applications for anti-dumping investigations:

(i) At the first stage only non-confidential version of the petition may be submitted along with a certificate to the effect that confidential copy of the petition has been kept ready and the same shall be submitted to the investigation team of DGAD soon after that is called for by the investigation team.

(ii) As and when the confidential versions of the petition are called for, the same should immediately be submitted directly to the concerned investigation team.

-sd/-
(Neeraj Kumar Gupta)
Joint Secretary
For Designated Authority

To
All concerned
(As per list)

Appendix-4

No. 4/7/2012-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate of Anti-dumping & Allied duties (Anti-dumping section)

Dated 30th March, 2012

**Trade Notice No. 02/2012**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury ) Rules, 1995 framed thereafter.

2. In this connection, all interested parties to anti-dumping investigations are informed that hard copy of petition for anti-dumping investigations in the prescribed proforma along with the enclosures should be submitted alongwith its softcopy to the Directorate General of Anti Dumping.

3. Trade Notice No. 02/2009 is amended to the extent that Soft copy of both the confidential version as well as non-confidential version will be required to be submitted alongwith the hardcopy as per the procedure laid down in the said Trade Notice.

4. Any application received on or after 2nd April, 2012 without its soft copy shall not be accepted.

-sd/-
(Santosh Kumar)
Deputy Secretary to Govt. of India For Designated Authority

To
All concerned

Sr. Tech. Director, NIC, Deptt.of Commerce with a request to upload this trade notice in the department's website under Anti-Dumping->Trade Notice Section

Appendix-5

No. 16/AS&DGAD/2017
Government of India
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties
Jeevan Tara Building

Dated 12th July, 2017.

**Note**

It is seen that despite repeated instructions, in many cases DGS data is not being sought and analysed simultaneously while using DGCI&S data. DGS data becomes important considering that it contains exporter wise details while DGCI&S data does not.

2. Hence, all the investigating teams should ensure that while seeking DGCI&S data, simultaneously DGS data is also sought in all cases (including the existing original cases if not sought already) and both data sets should be processed for comparison purposes.

-sd/-
(Inder Jit Singh).
AS & DGAD

All IOs & COs
CC: Principal Adviser (Cost)

Appendix-6

No. 4/5/2017-DGAD
Ministry of Commerce & Industry
Department of commerce
Directorate General of Anti-Dumping and Allied Duties
4th Floor, Jeevan Tara Building, 5th Parliament Street, New Delhi – 110001

Dated 12th December, 2017

**Trade Notice No. 02/2017**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereunder as amended.

2. Vide Trade Notice No. 1/2008 dated 10th March, 2008 and Trade Notice No. 2/2011 dated 6th June, 2011, Directorate General of Anti-Dumping & Allied Duties (DGAD) had prescribed procedure and timelines for initiating a Sunset Review investigations (SSR) under the aforesaid Rules. However, it has been observed that while sometime these timelines are not adhered to by the Domestic industry or else on account of petition being deficient requiring additional data/clarification, the decision on ignition of the requested SSR is delayed. The delay in initiation adversely impacts timely completion of SSR and thereby invariably requiring extension of existing Anti-Dumping Duties on the product under consideration for complete one year beyond five years as permitted under Rules.

3. Keeping in view the above situations and to ensure timely examination of SSR, the Authority hereby prescribes the following procedure for initiating a SSR:-

(i) The Domestic Industry must file the petition seeking extension to continue the Anti-Dumping measures in the questionnaire available on DGTR's website i.e. www.dgtr.gov.in, at least 270 days prior to the date of expiry of Anti-Dumping measures.

(ii) The petition can also be filed 240 days prior to the date of expiry of Anti-Dumping measures with justification of delay and with payment of a late fee as prescribed by the Authority.

(iii) Petitions filed with less than 240 days remaining for Anti-Dumping Duty to expire shall not be entertained.

(iv) DGAD after receipt of petition filed as per (i) and (ii) above would in fifteen (15) working days point out deficiencies in the petition to the petitioner.

(v) The Domestic Industry must rectify the deficiencies pointed out by DGAD as mentioned in (iv) above within five (5) working days from the date of receipt of letter.

(vi) The Authority may also provide a personal hearing to the petitioner at stipulated date and time before considering to initiate the requested SSR investigation.

(vii) Order of initiation or rejection will be issued within 45 days from the date of receipt of the petition by and large in all cases except in cases of unavoidable circumstances arising out of administrative exigencies or policy/technical scrutiny.

(viii) Final findings will invariably be issued after following due procedure at least 45 days prior to the expiry of existing Anti-Dumping Duty.

4. (i) The Petitioner may file the petition for SSR as per the prescribed normal application format and provide the following information regarding likelihood and recurrence under appropriate sections of Dumping and Injury respectively.

(a) Total and surplus capacities of product under consideration in the subject countries during the proposed PoI and 3 years prior to the proposed POI.

(b) Quantities and prices of exports by producers/exporters in the subject countries to countries other than India. In case individual data for producers/exporters especially for whom individual assessment has been done is not available, aggregated information for the subject country may be provided.

(c) Export orientation of producers/exporters in subject countries. In case data for producers/exporters for which individual assessment has been done is not available aggregated information for the subject country may be given.

(d) Justification as to why Indian market would be chosen as a destination for exports notwithstanding (a) to (c) above after withdrawal of Anti-Dumping Duties. The attractiveness of Indian market be justified.

(ii) The petitioner for the purpose of SSR should consider and adopt period of investigation (PoI) of at least one year including preferably the last completed financial quarter or else the quarter prior to that. The PoI should essentially be an aggregation of financial year quarters only for sake of convenience in analysis.

(iii) The Authority may also seek post POI data subsequent to initiation if warranted.

5. The above timelines will not apply to Anti-Dumping measures expiring before 31st December, 2017.

6. However as regards Anti-Dumping measures which the expiring till 31st December, 2018, the following timelines will apply.

| S.No. | Expiry date of duties | Last date to file SSR Petition |
|---|---|---|
| 1. | Till 31st March, 2018 | 31st December, 2017 |
| 2. | 1st April, 2018 – 30th September, 2018 | 31st January, 2018 |
| 3. | 1st October, 2018 – 31st December, 2018 | 31st March, 2018 |

7. The application fee, as notified by Designated Authority, will be levied.

8. The above procedure will supersede all previous instructions or Trade Notices issued by the Directorate with regard to SSR investigations.

-sd/-
(Sunil Kumar)
Additional Secretary & Designated Authority

To all concerned

| List of cases in which duty is expiring before 31-12-2018 along with the last date to file petition to initiate SSR | | | | |
|---|---|---|---|---|
| S. No. | Product/ | Country (ies) involved | Expiry date of duties | Last date by which Petition should be filed |
| 1 | Meta phenlene Diamine (MPDA) | China PR | 21-03-2018 | 31-12-2017 |
| 2 | Steel Wheels | China PR | 25-03-2018 | 31-12-2017 |
| 3 | Soda Ash | Russia and Turkey | 17-04-2018 | 31-01-2018 |
| 4 | Peroxosulphates (persulphates) | China PR & Japan | 15-05-2018 | 31-01-2018 |
| 5 | Zinc Oxide – 1 | China PR | 05-09-2018 | 31-01-2018 |
| 6 | Sodium Perchlorate | China PR | 05-09-2018 | 31-01-2018 |
| 7 | Ductile Iron Pipe | China PR | 09-10-2018 | 31-03-2018 |
| 8 | Cefadroxil Monohydrate | European Union | 09-10-2018 | 31-03-2018 |
| 9 | Methylene Chloride | EU, USA and Korea RP | 20-10-2018 | 31-03-2018 |
| 10 | Paracetamol | China PR & Chinese Taipei | 27-10-2018 | 31-03-2018 |
| 11 | Vitamin-A Palmitate – I | China PR & Switzerland | 12-11-2018 | 31-03-2018 |
| 12 | Phosphoric Acid – Technical Grade & Food grade (Guangxi Quinzhou) | China PR | 30-12-2018 | 31-03-2018 |

Appendix-7

No. 4/2/2018-DGTR
Ministry of Commerce &_Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building,
5 Parliament Street, New Delhi -110001

Dated the 22nd November, 2018.

**Trade Notice: 15/2018**

**Subject: Streamlining of the Anti-Dumping Investigations Process-Prima-facie scrutiny of applications for completeness of documents as per the checklist, regarding.**

This Trade Notice is in supersession of earlier trade notice no. 03/2018 dated 1st February 2018 on the aforesaid subject and attached herewith is the revised checklist for submission of anti-dumping duty and countervailing duty applications to DGTR for initiation of investigations.

2. All applications shall be submitted to the Authorised Officer – Helpdesk.The application should be complete in all respects with documents as mentioned in the attached checklist. The Authorised Officer will do prima-facie scrutiny of the application with respect to completeness of documents as per the checklist. Only the complete applications shall be accepted and incomplete applications shall be returned for compliance of deficiencies.

Encl: As above

-sd/-
(Sunil Kumar)
Additional Secretary & Director General

**List of documents to be provided by the Applicant at the time of submitting the application for initiation of anti-dumping/anti-subsidy investigation:**

1. Type of Investigation:Anti-Dumping ( ) Countervailing ( )
2. If Anti-dumping: Original ( ) SSR ( ) MTR ( )
   NSR ( ) Anti Circumvention ( )
3. Timelines for submission of review investigations:
   A. In case of SSR: the application has been filed as per timeline prescribed with proper justifications: Y ( ) N ( )
   B. In case of MTR: the application has been filed as per timeline prescribed with proper justifications: Y ( ) N ( )
4. POI: As on date of application, whether the proposed Period of Investigation is recent i.e. not older than 5 months as on date of submission of application: Y ( ) N ( )
5. The write up about the industry and the PUC is provided:Y ( ) N ( )
6. The HS Codes for the alleged dumped products in the application provided: Y ( ) N ( )
7. A background on any previous trade remedy investigations related to PUC and the entities constituting DI provided: Y ( ) N ( )
8. The letters of Support with information in TN 13/2018 dated 27.9.2018 provided: Y ( ) N ( )
9. The details of total Indian production of the PUC for the injury period including POI provided: Y ( ) N ( )
10. The details of installed capacity of PUC of DI for the entire injury period including POI with supporting documents provided: Y ( ) N ( )
11. The details of total Demand in India along with sales details of PUC by the applicant(s)for the injury period including POI provided: Y ( ) N ( )

12. The transaction wise Import data (import volume and value) from DGCI&S and the summary of the same for each of the subject country provided:

    Y ◯ N ◯

13. The explanation for the methodology adopted for segregating the import data into PUC and NPUC provided: Y ◯ N ◯

14. Normal Value:

    (a) Whether direct evidence of domestic selling price in the exporting country, if available, provided: Y ◯ N ◯

    (b) In case direct evidence is not available, whether reasonable other evidence of the prevailing selling price in the exporting country provided: Y ◯ N ◯

    (c) In case of non-availability of (a) and (b) above whether CNV provided along with the methodology for the calculations: Y ◯ N ◯

15. Whether it is alleged that any of the producer/exporter in any of the exporting country is alleged to be operating in non-market conditions,If Yes, reasons provided: Y ◯ N ◯

16. Whether all prescribed formats including the costing formats 'A' to 'L' along with its soft copy provided in case of ADD/CVD by DI along with linked formulae: Y ◯ N ◯

17. If applicable,Whether audited financial statements and cost audit reports, for the injury period including POI provided: Y ◯ N ◯

18. In case of new units, not having completed four years since the commencement of commercial production, the project report or any other similar document submitted to the Government agency/Financial Institution provided: Y ◯ N ◯

19. In case of SSR – Additional information regarding likelihood and recurrence as prescribed vide Trade Notice No. 02/2017 provided: Y ◯ N ◯

20. In case of NSR – Application in the format prescribed vide Trade Notice No. 08/2018 dated 25.4.2018 provided: Y ◯ N ◯

21. Whether the details of confirmed order(s)/contract for NSR applications provided: Y ◯ N ◯

22. In case of MTR – Additional information in terms of Rule 23(1A) like changed circumstances etc. with supporting documents provided: Y ◯ N ◯

23. The declaration from the applicants/legal consultants enclosed regarding submission of the complete cost data for all the units of the DI manufacturing and selling PUC, without leaving any unit manufacturing and selling PUC: Y ◯ N ◯

24. Declaration that application is as per the procedure laid down under Annexure III for cost/NIP computations: Y ◯ N ◯

25. Declaration that the details of revaluation/impairment of assets, if any, during injury period including POI, provided: Y ◯ N ◯

26. Declaration that the detailed break-up of Head Office Expenses/Misc. Expenses/Other Expenses/Admin. Overheads/Selling & Distribution Overheads is provided: Y ◯ N ◯

27. 2 copies of application provided along with soft copy of the whole application in "searchable formats" along with its excel working sheets: Y ◯ N ◯

**RECEIPT**

(a) Application received for further processing

(b) Application Returned for the deficiencies noticed at sl. no.

Authorised Officer

Appendix-8

No. 4/08/2018-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara building.
5, Parliament Street, New Delhi -1 10001

Dated 15th March, 2018

**Trade Notice: 07/ 2018**

**Subject: Streamlining of Anti-Dumping / Counter Vailing Duty Investigation process —Obtaining and sharing of import data pertaining to investigation with interested parties regarding**

Representations have been received from trade and industry, especially from exporters and importers, requesting for sorted I processed Directorate General of Commercial Intelligence and Statistics (DGCI&S) transaction wise import data as relied by the domestic industry in its petition requesting for initiation of anti-dumping / counter veiling duty proceedings as well as different reviews viz Mid - Term Review (MTR)/ Sunset review (SSR)/ New Shipper Review (NSR).

2. The matter has been examined in detail. With a view to bring transparency and create a Level playing field amongst all interested parties to enable them to file application regarding levy of AD/CVD and for enable them to give a meaningful response in ongoing investigations, the Following guidelines shall be followed for obtaining transaction wise import data from DGCI&S and for sharing the information:

i. The request for procurement of transaction wise import data from DGCI&S for the specified years / periods is to be made in writing by an applicant along with the declaration attached at **Annex-I.** The subsequent requests, during the course of investigation, by any other registered interested parties to the investigation will also be made in writing to the Authorized Officer along with the declaration attached at **Annex-I.**

ii. The DGAD will issue an authorization letter to the applicant, which will inter-alia specify the exact period for which data is required. This will also contain a unique identification/ reference number along with mobile number, which can be used to confirm the identity of petitioner by DGCI&S.

iii. This authorization letter shall be valid for 30 days from the date of its issue within which the applicant has to approach DGCI&S for obtaining

transaction wise import data against that authorization after completion of all due process as laid down by DGCI&S in this regard.

iv. The applicant shall inform DGAD within 90 days of authorization from DGAD, if it decides not to file a petition for the concerned product.

v. DGCI&S shall forward a copy of the same data by email, as is provided to the petitioner by DGCI&S against each authorization, to the authorized officer of DGAD. The same will be made available to the concerned I.O./C.O. by the Authorized Officer once petition is filed and investigation initiated by the Authority.

vi. The hard copy of the import data (processed / transformed data) submitted by the applicant / petitioner industry to DGAD at the time of filing of the application can be accessed by the interested parties only after providing a declaration I undertaking to the Investigating Officer (I.O.) as per Annex-I attached.

vii. The DGCI&S follows dynamic data dissemination policy wherein data keeps getting updated based on incoming information from various sources. Hence, it is possible that there may be some variation in the data provided by DGCI&S for the same product and same specified period at different points of time.

viii. Nothing in this Trade Notice prevents the Designated Authority from relying on the most updated DGCI&S data for the relevant period as made available after the initiation of investigation.

3. The above procedure will be applicable from the date of issue of this Trade Notice and will supersede the earlier Trade Notice No. 01/2017 dated 8.12.2017, Trade Notice No. 01/2018 dated 02.01.2018 and any other instructions issued by the Directorate in this regard.

-sd/-
(Sunil Kumar)
Additional Secretary and Designated Authority

To,
All concerned

**ANNEX-I**

**Subject: Declaration for procurement of transaction wise Import Data.**

To,
DGAD, New Delhi

The Applicant/interested party requests for transaction wise import data for the product .....

(HS Code. .. .. ...) for the period .....

I/We ..... hereby undertake that:

i) The information obtained from DGCI&S by the applicant shall be used only for the purpose of anti-dumping / CVD investigation.

ii) The information obtained shall not be used for any other purposes- commercial or otherwise.

iii) The data will not be shared by the applicant with any other 3rd party nor placed I published in public domain.

iv) The applicant will inform DGAD and DGCI&S about the actual use of data.

(Signature)
(Name in full)
Designation
Contact Address and Phone No.
Mobile Phone No.
E-mail id.

Date: .....

Note: This request is to be submitted to the Authorized Officer of DGAD:

Ms. Arti Bangia, Deputy Director
Tel No. 23408709
Email Id: arti.bangia@nic.in

Appendix-9

F.No. ……
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building, Parliament Street
New Delhi - 110001

Dated:……..

**To,**

1. Embassy of the ……,
2. High Commission of ……..
3. Embassy of the ……

**Subject: Intimation regarding receipt of petition for anti-dumping duty investigation against import of …… (HS Code ……..)**

Sir,

The Designated Authority in the Directorate General of Trade Remedies, Department of Commerce, Government of India, constituted to investigate into the anti-dumping matters, has received a petition from the domestic industry in India, seeking initiation of anti-dumping investigation pertaining to imports of …….. from XXXXX, YYYY and ZZZZZ under the Customs Tariff Act, 1975, as amended from time to time read with Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

2. The Designated Authority hereby notifies the Embassy about the same in accordance with the Customs Tariff Act read with Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

Thanking You.

Designation: ……..
Directorate General of Trade Remedies
Department of Commerce
Website: www.dgtr.gov.in

# PRODUCT UNDER CONSIDERATION & LIKE ARTICLES

## PRODUCT UNDER CONSIDERATION

### LEGAL PROVISION

3.1. In the ADA there is no specific definition of 'Product'. However, Article 2.1 of the ADA provides as follows:

> *"For the purpose of this Agreement, a product is to be considered as being dumped, i.e., introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country[1]".*

3.2. In addition, Article VI of the ADA refers to the word "Product" whereas the Customs Tariff Act, 1975 and the Rules use the word "Article" to indicate the "Product under Consideration" which is the matter of investigation. There is no specific definition or description of 'Product Under Consideration' (PUC) under the Rules, however, this is the single most important starting point of an investigation. The law only defines the "like article", as "*a product which is a like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation ...*" (Discussed later in this chapter).

3.3. The anti-dumping investigation concerns the dumping of 'a *product*', and the margins of dumping to which Article 2.4.2 of the ADA refers to are the margins of dumping for *a produc*t. In addition, a product that is compared to the 'like product' is the PUC in an anti-dumping investigation[2].

[1] Refer to Para III of Chapter 24 for WTO Jurisprudence

[2] Refer to Para III of Chapter 24 for WTO Jurisprudence.

**SIGNIFICANCE**

3.4. The very first stage of an investigation is the identification of the PUC and its scope. The standing of the DI for the application, determination of "injury" and "causal link" are all contingent on the PUC. Once the PUC is precisely and properly identified, the "like article" produced by the DI is decided in terms of Rule 2(d) of the Rules before proceeding for the test of DI standing[3].

3.5. The PUC cannot be changed during the course of the investigation, therefore it is imperative that the PUC is carefully, categorically and clearly finalized before the initiation of the investigation.

**OPERATING PRACTICES**

3.6. At the time of filing application, the applicant is required to include a detailed description of the product that will be covered under the investigation. This detailed description should include the scope of the product under investigation, the technical characteristics, uses of the PUC, and its HS Code number.

3.7. It should be the effort of the investigation team to ensure that the proposed 'scope of the product' is an accurate reflection of the product, for which the DI is seeking relief[4].

3.8. The team should undertake consultations, with the applicant industry or their representative legal counsel as soon as the complete application is received, for understanding the alleged dumped product which should be done before describing the PUC in the initiation notification.

3.9. A single investigation should normally involve a single article and its like product. However, in certain circumstances, there could be situations where multiple like products are considered in an investigation to avoid subsequent circumvention or to make the ADD measure more effective. This situation arises when products are generally manufactured together[5] or traded together[6] in normal commercial

[3] Refer to Para III of Chapter 24 for WTO Jurisprudence

[4] Refer to Para III of Chapter 24 for WTO Jurisprudence

[5] Final Findings in Sunset Review in Anti- dumping investigation on imports of Glass Fiber and articles thereof originating in or exported from China PR, F. No. 15/10/2015 dated 6.7.2016, wherein PUC comprised of glass roving, direct rovings, glass chopped strands and glass chopped strand mats.

[6] Final Findings in Anti-dumping investigation on imports of Veneered Engineered Wooden Flooring originating in or exported from China PR, Malaysia, Indonesia and the European Union, F. No.14/34/2016-DGAD, dated 13.2.2018, wherein PUC comprised of laminated, wooden/non-wooden, single/multi layered flooring.

parlance or the value addition between these products is nominal[7] or the product is traded in assembled/semi-assembled/unassembled form[8].

3.10. The PUC is defined to include those items only, which are manufactured by the DI. Mere competence without any production or merchant sales may not be sufficient to include an item in the definition of the PUC. Similarly, if an item is produced and consumed only captively (in-house) without any outside sales the DI's request for an investigation against this product may be considered with caution. The PUC should preferably include those items, which are produced and commercially sold in the domestic market by the respective DI. An exception could be the cases where the applicant is a new industry, who has set up facility for a new product or could be an upstream product of an existing industry and the new industry is facing difficulty in capturing market on account of dumped imports of the product[9].

3.11. The team should also examine the fact whether the same product was ever investigated for any trade remedy measure at any point of time in the past.

3.12. The definition of the PUC is very important in any anti-dumping investigation. If the definition is not specific and is vague or generic, then there is a possibility that it may cover product types which the DI may not be producing or may not be capable of producing leading to overprotection of the DI. Whereas if the description of the PUC is too narrow, it may fail to give relief or protection to the DI. It may also result in 'circumvention of the duties levied'.

3.13. The PUC should be defined accurately, and in a manner that it is discernible in terms of technical and measurable parameters distinguishable to the Customs Authorities at the time of importation. The product in all its forms, like liquid or solid, and in all different strengths/concentrations are to be covered in the PUC to avoid circumvention. All nomenclature/descriptions/ known names of the product should be included in the scope of the PUC. The PUC should be defined in terms of:

[7] Final Finding in Anti-dumping investigation on imports of Jute Products originating in or exported from Bangladesh and Nepal, F. No. 14/19/2015-DGAD dated 21.10.15 wherein PUC comprised of Jute Yarn/twine, Hessian Fabrics and Jute Sacking bags.

[8] Initiation Notification in Anti-dumping investigation on imports of Solar Cells, originating in or exported from China PR, Malaysia and Taiwan, F.No.6/30/2017-DGAD dated 21.7.17, wherein PUC comprised of assembled/unassembled partially or fully in Modules or Panels or on glass or some other suitable substrates.

[9] Final Finding in Anti-dumping investigation on imports of O- Acid originating in or exported from China, F No. 14/31/2016 –DGAD dated 19.12.17.

3.13.1. physical, technical and other properties and characteristics;

3.13.2. different models / grades / types;

3.13.3. technical information which would facilitate the exact identification of the products at the time of collection of anti-dumping duties;

3.13.4. tariff classification (even though the customs headings are for indicative purposes only). The PUC has to be frozen at the stage of initiation. Product scope can only be restricted during the course of the investigation but cannot be enhanced after the initiation. If there are any suggested changes by the interested parties regarding exclusions of some part, then this should be finalized within 3 months from the date of initiation. The changes could be made at the stage of the oral hearing, after receipt of written submissions and rejoinders with the specific approval of DG. No change should be done after this stage.

3.14. The details regarding the manufacturing process of the PUC and value addition by the DI must be obtained and examined for deciding the PUC at the time of initiation. It may not be justified to initiate any ADD investigation if it is an imported input which is sold in the domestic market without any material value addition.

3.15. The different grades/form/types/strengths/sizes of product may not mean different products. They are subsets of one product that is proposed to be investigated and hence is alike as far as their essential physical & technical characteristics are concerned, at best they can constitute PCNs (discussed in paragraphs below).

3.16. The levy and collection of anti-dumping duty are largely dependent on the HS Code of the PUC. Therefore, customs classification in each investigation must be clearly stated. The customs classification should be specified under which the subject goods are mainly imported, even if it is not dedicated. The entire customs heading need not necessarily be the PUC. It is allowed to initiate investigations against products, on a part or subset of any customs heading, or which run across different headings. However, the customs classification is only indicative and is in no way binding on the scope of the investigation.

3.17. A reference may be made to Tax Research Unit (TRU), Department of Revenue, immediately after initiation to seek their comments on the appropriateness of HS Codes along with the copy of initiation notification.

3.18. The scope of the PUC can be modified based on the information received by the Authority. However, the amended PUC should be the basis for determining the standing of the DI, dumping margin, injury margin etc.

3.19. Import data analysis is generally based on the data obtained from the Directorate General of Commercial Intelligence & Statistics ("DGCI &S")[10].

3.20. The Rules require the Authority to have authentic Import data for the purpose of issue of the Final Findings. Therefore DGCI&S and DG Systems, DOR, must be asked to provide data for the PUC by sending them Customs Classification Code (HS code), which could be under one heading (dedicated), or more than one headings.

**DIFFERENTIATION OF PUC IN PRODUCT CODE NUMBERS (PCN)**

3.21. The team should be conscious of the need to further dissect the PUC into various product types called Product Code Numbers (PCN). This is especially required in cases where the PUC is produced and traded in different specifications (e.g. grades, GSM, deniers, purity, strength denoted by chemical percentage, contents/ compositions, width, length, etc.).

3.22. PCNs should be defined taking into account the relevance and economic significance of respective PCNs. This is done with a view to have specific information on product types and to enable the Authority to do a fair comparison (apple to apple comparison).

3.23. The PCNs can be notified along with the identification of PUC at the time of initiation or at the post-initiation stage after receiving inputs from interested parties namely: the DI, other producers, exporters or importers. The notification of PCN, wherever required, should be done within 60 days from the date of initiation. In any case, it should be brought to the notice of the DG by submission of a file with the proposal that there is a need to notify PCN or that there is no need to notify PCN.

3.24. The team should attempt to ensure that all the product types are captured within a reasonable number of PCNs/Groups[11].

[10] The Directorate generally relies on DGCI&S data. However, in exceptional cases in past, where DGCIS data was not able to capture the complete product import details, data from secondary sources e.g., International Business Information System (IBIS); Infodrive; Export Genious, Impex Statistics Services etc., has been submitted with due justification at the time of Initiation of the investigation.

[11] Final Findings in Second Sunset Review in Anti-Dumping investigations on the import of Nylon Filament Yarn originating in or exported from China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea RP, F. No. 15/17/2016-DGAD dated 5.1.18), wherein more than 100 PCNs were identified. This is not a practical situation as it makes determination of those many NIP/NV/CNV/LV unmanageable.

3.25. The details of cases where PCN was notified and helped the Authority in finalizing the case are: *(1) Hot*-rolled *flat products of alloy or non-alloy steel in coils of a width up to 2100mm and thickness upto 25mm, (2) Geogrid/Geostrips/ Geostraps made of Polyester or Glass Fiber in all its forms,* etc. The cases where product types were not identified at the time of initiation, but differentiation of PUC was claimed by exporters, and Authority decided to notify PCNs after examination of such claims are (1) *Elastomeric yarn, (2) Flax Yarn, (3) Aluminium Foil, etc.* In a case of wooden flooring, it became imperative to identify PCNs to enable fair and just comparison.

**TREATMENT OF PUC IN DIFFERENT TYPES OF INVESTIGATIONS**

**Original Investigation**

3.26. The complete process of defining and describing the PUC as mentioned above is carried out during the fresh/original investigation. It is the responsibility of the Investigating team (with the approval of the DG) to clearly and accurately define and describe the scope of the PUC concerned during the fresh/original investigation at the stage of consideration of initiation.

**Mid-Term Review**

3.27. The scope of PUC, which is defined during the fresh/original investigation, cannot be revised during MTR. However, in cases where it is petitioned that the DI has stopped production of some product types, one can consider narrowing down or exclusion of some product types from the scope of the original PUC. Mid-Term Review in terms of Rule 23(1A) of the Rules is to address the enhancement, reduction or removal of the prevalent antidumping duties.

**Sunset Review**

3.28. The application of sunset review, in terms of Rule 23(1B) of the Rules can only be brought against the defined scope of PUC in the original investigation. Neither the applicant nor the Authority on its own can alter the scope of the PUC during the sunset review. However, there may be a case for narrowing down the scope of existing Anti-dumping Duty.

**New Shipper Review**

3.29. The application of the new shipper review, in terms of Rule 22 of the Rules can only be brought against the defined scope of the PUC in the original

investigation. Neither the applicant nor the Authority on its own can alter the scope of the PUC during the new shipper review.

**Anti-Circumvention**

3.30. The PUC remains the same. However, for identification of the product alleged to be circumventing the PUC attracting ADD, the alleged goods are termed as "Product Under Investigation ("PUI")". The Authority extends the duty on the PUI in terms of Rule 25 of the AD Rules, this does not alter or amend the scope of the PUC in the original investigation. As a result of positive findings, the duties applicable to PUC get extended to cover the PUI.

**Countervailing Investigation**

3.31. The complete process of defining and describing the PUC as mentioned above is carried out during the investigation. It is the responsibility of the Investigating team (with the approval of DA) to clearly and accurately define and describe the scope of the PUC concerned during the investigation at the stage of consideration of initiation.

**Safeguard Investigation**

3.32. The product involved in the investigation is identified from the application filed for the imposition of safeguard duty. It is the responsibility of the Investigating team (with the approval of DA) to clearly and accurately define and describe the scope of the PUC concerned during the investigation at the stage of consideration of initiation.

**Quantitative Restriction**

3.33. The goods involved in the investigation are as per the application filed for seeking quantitative restriction. It is the responsibility of the Investigating team (with the approval of DA) to clearly and accurately define and describe the scope of the PUC concerned during the investigation at the stage of consideration of initiation.

## LIKE ARTICLES

**LEGAL PROVISION**

3.34. 'Like Articles or Goods' are generally meant to be "alike" in all respects to the PUC, or if not alike in all respects, having "characteristics closely resembling".

This is necessary to ensure that the subject goods produced by the DI and imports from subject countries are comparable, and technically & commercially substitutable in terms of physical, technical specifications, functions or end-uses.[12] [13].

3.35. Certain other factors which have been considered relevant by different tribunals are as follows:

(i) Commercial substitutability and manufacturing process[14];

(ii) Uses, raw materials, and properties of the products[15];

(iii) The resemblance in terms of properties even though there were substantial impurities in the domestically produced 'like product'[16];

(iv) If the product is easily convertible and such a fact is also recognized by exporters[17]; and

(v) The difference in raw materials has not been considered decisive if the products are commercially / technically substitutable[18].

3.36. Article 2.6 of the ADA provides for a definition of 'Like Product' and Rule 2(d) of the Rules defines the like article as:

> ***"like article"*** means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation[19];

**SIGNIFICANCE**

3.37. Determination of the PUC and the 'like article' in an anti-dumping investigation holds the key to establishing dumping and injury, and any fallacies

[12] Refer to Para III of Chapter 24 for WTO Jurisprudence.

[13] *Oxo-Alcohol Industries v Designated Authority*, 2006 (201) ELT 480 (CEGAT, New Delhi).

[14] Final Finding in Anti-Dumping investigations on imports of Acrylonitrile Butadiene Rubber originating in or exported from Japan, F No. 25/ADD/94 October 19, 1995.

[15] Final Finding in Anti-Dumping investigations on imports of Bisphenol-A originating in or exported from Brazil and Russia, F No. 9/11/94-AA, November 20, 1995.

[16] Final Finding in Anti-Dumping investigations on imports of Dead Burnt Magnesite originating in or exported from China PR, F No. 7/2/94-AA,November 12, 1996.

[17] *Oswal Woollen Mills Limited v Designated Authority*, 2000 (118) ELT 275 (CEGAT, New Delhi).

[18] Final Finding in Anti-Dumping investigations on imports of catalysts originating in or exported from Denmark, F. No. AA/IW/39/95-96, May 7, 1997.

[19] Refer to Para III of Chapter 24 for WTO Jurisprudence.

in the same could make the entire investigation void. Complexities arise when the PUC involves multiple types/grades/varieties, multiple technologies, multiple processes, different raw materials, etc. These aspects make the determination of the PUC and the like article highly technical; rendering the investigation itself very complex. The important characteristics required to be examined while determining "like article" are similarity of physical characteristics, end use of the product, consumer preference and tariff classification etc. Two products may look different in terms of technology of production, design, style, quality, etc., yet they could be considered alike for the purpose of investigation as long as they are functionally substitutable and replaceable in the market, due to similar end use, and consumer preference[20].

3.38. In an investigation, while the anti-dumping duties are imposed on the PUC on the basis of the analysis of the PUC itself, the impact is to be analyzed in the context of the like articles produced by the DI. It is possible that the PUC itself may have to be revisited after analyzing the like articles produced by the DI. This requires a comparison of all product categories potentially considered as "like article".

3.39. There are at least three categories of like article in an investigation:

(i) the product produced and sold by the DI;

(ii) the product sold by exporter/producer in his home market or third country, the data of which is used for determination of normal value; and

(iii) the product being imported from non-subject countries.

3.40. It may so happen that all like articles mentioned above are the same. But in a complex product, it may be different. It should be understood that like article is not the same for all these purposes but have been determined alike for the purpose of the investigation.

3.41. An illustration can be found in the investigation pertaining to import of Solar Cells initiated in 2013 and again in 2017, the PUC was identified as "Solar Cells whether or not assembled partially or fully in Modules or Panels or on glass or some other suitable substrates". The justification for identifying this PUC and like article under one investigation was on account of the fact that they were considered as one product. It was further clarified that there is no major value addition or major

[20] Refer to Para III of Chapter 24 for WTO Jurisprudence.

manufacturing process involved in placing cells on a module/panel[21]. However, to have a fair comparison the PUC and like articles were segregated into various PCNs namely Cells, Modules & Thin Films and interested parties were asked to submit information accordingly.

**OPERATING PRACTICES**

3.42. The rationale in the definition of 'like article' within the Rules has to be applied categorically as soon as the process of the PUC identification is completed at the stage of initiation itself.

3.43. It should be ascertained whether the applicant DI is producing the like articles or not. The production of any other producer making a like article will have to be included to arrive at the total production of the PUC in India.

3.44. The "like article" is relevant in the context of the Goods produced by the Indian industry, and also for the producer exporter who is alleged to be dumping into India to determine dumping margin more precisely.

3.45. To define the 'like article', the first step is to look for identical articles. In the absence of such identical features, the goods with characteristics closely resembling those of the PUC should be seen. Only if the goods produced by the DI are found to be not identical, then other factors such as channels of distribution, market segmentation, the process of manufacturing, etc., should be considered in determining the 'like articles'.

3.46. Like Article can be recognized on the basis of substitutability by consumers or producers or both. The following parameters can be relevant in the determination of like articles in the context of the goods produced by the DI. It may be added here that an article is not required to qualify on all the parameters as they have to be examined independently and the final decision is to be taken on the merits of each case under investigation:

[21] *"the Authority notes that to make practical use, solar cells are placed on devices like panels/module etc. and are not separate product per se. Solar cells are manufactured to be used in Modules. A solar module/panel is nothing but a packaged, connected assembly of solar cells which would render generation of electricity through photovoltaic technique. It is also noted that there is no major value addition or major manufacturing process involved in placing cells on a module/panel. Submissions on record of the Authority show that a lot of module manufactures are importing cells from subject countries and are assembling them into modules. Authority holds that Cells and Modules are not different products as modules or panels are nothing but an array of cells to make the practical use of cells".*

**Physical Similarity**

3.46.1. Similarity of physical characteristics like size, shape, content, weight, appearance, taste, grade, standards, age, strength, purity and chemical composition.

3.46.2. Verify whether the goods are classified under the same or matching tariff classification.

**Technical Substitutability:**

3.46.3. Technical specifications/standards

3.46.4. Grades, purity, etc.

**Commercial Substitutability**

3.46.5. Commercial substitutability refers to attributes identifiable from following market behavior:

(i) Are the goods directly competitive in the market? Do the goods compete in the same market sector? Within this sector, how are the goods positioned? e.g. Within a market sector, are the goods similarly positioned?;

(ii) What is the extent to which the end-user may (or can) switch between the goods for reasons other than price? What is the extent to which participants in the supply chain are willing to switch between the goods? e.g. willingness of participants to switch between sources may suggest commercial interchangeability;

(iii) How does price competition influence consumption? e.g. close price competition may indicate product differentiation is not recognized by the market;

(iv) Are the distribution channels same or similar?; and

(v) Is the packaging same or similar? What is the extent of the differences? Does the packaging reveal a significant difference in the goods? Does the packaging highlight a different sector of the market?

**Functional Substitutability**

3.46.6. Functional substitutability refers to attributes identifiable from end-use. They may not by themselves establish 'like goods', but may provide support to the assessment of physical & commercial substitutability. The DI will have a tendency to make claims in this respect, and hence, these attributes must be examined objectively:

(i) Do the goods have the same or similar end use? What is the extent to which the two goods are capable of performing the same function? e.g. both a shovel and an earth moving machine can move earth;

(ii) Do the goods have differential value? (Since quality claims are subjective, objective evidence like official standards, or verifiable end-user surveys, hold higher probative value); and

(iii) Is end-user preference likely to change in the future, based on end-user trends and behaviour in other markets and countries?

**Production Likeness**

3.46.7. Different production processes may produce identical goods or may create different product characteristics. A comparison of the production process will not itself establish like goods but may highlight differences or provide support to the assessment of other considerations.

(i) To what extent are the goods constructed of the same or similar materials?

(ii) Have the goods undergone a similar manufacturing process? If different, what is the impact of those differences?

(iii) Are the costs of manufacture similar? A similarity in the cost of manufacture may be an indicator of likeness but is not determinative.

(iv) Are there any patented processes or inputs involved?

3.47. Production substitutability may also be examined. It would mean that producers/manufacturers can interchangeably produce the products within the same facility then they should be considered like article, as was held in the case of aluminum radiators[22] wherein the product variants as such were nor substitutable by the end user/consumer but they were being produced by all the producers interchangeably.

3.48. The quality of the PUC cannot be claimed to be a valid ground for claiming product differentiation as there could be a substantial element of subjectivity in such assessment. However, if the issue of quality is such that it can be demonstrated to lead to technical implications, it should be appropriately examined.

[22] Final Finding in Anti-dumping duty investigation concerning imports of Aluminium Radiators, Aluminium Radiator Sub- Assemblies and Aluminium Radiator Core, including in CKD or SKD conditions, for use in used/on road vehicles and generator sets, excluding aluminium radiators meant for use in new Automobiles originating in or exported from China PR, F No. 14/24/2015-DGAD, March 20, 2017.

3.49. The process of manufacture is of no consequence in a trade remedy investigation as the same goods may be produced with different production and technology processes. However, if it is claimed that the production process results in different physical characteristics, then these differences must be taken into account while determining whether the goods are like articles or not.

3.50. The 'like articles' have to be determined in the context of the applicant DI only. It is pertinent that if a product is considered as 'like article' then the industry producing that particular like article must necessarily be a part of the applicant DI whose data is being considered for various factors including injury and causal link. The claim of the DI that some of the 'like articles' are being produced by other producers (non-applicants) in the Indian industry will put to question DI standing.

3.51. The applicant is not permitted to add other producers as a part of the DI to give validity to the scope of 'like articles'. This means that the composition of the applicant DI cannot be altered after the initiation of the investigation. In circumstances with due justification, if it becomes necessary to do so, all parties to the investigation must be given fresh notice of the proposed action.

# DOMESTIC INDUSTRY STANDING

## LEGAL PROVISIONS

4.1 The term 'Domestic Industry' has been defined in the Article 4 of ADA. The same definition has also been adopted in Rule 2 (b) of the Rules which is as below:

> *"domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term "domestic industry" may be construed as referring the rest of the producers*[1].
>
> *Explanation. - For the purposes of this clause:*
>
> *(i) producers shall be deemed to be related to exporters or importers only if,*
>
> *(a) one of them directly or indirectly controls the other;or*
>
> *(b) both of them are directly or indirectly controlled by a third person; or*
>
> *(c) together they directly or indirectly control a third person subject to the condition that are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.*

[1] Refer to Para IV of Chapter 24 for Dispute Settlement.

*(ii) a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter."*

4.2 Rule 5(3)(a) of the Anti-Dumping Rules further provides:

*"The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless –*

*it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry[2].*

*Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like article by the domestic industry."*

4.3 Further, the explanation to Rule 5(3) of Anti-Dumping the Rules further provides:

*"Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application."*

4.4 An exception has been provided in Rule 11(3) for localised industry.

*"Provided that in exceptional circumstances referred to in sub-rule (3) of Rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry, if -*

*(i) the producers within such a market sell all or almost all of their production of the article in question in that market; and*

*(ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;"*

[2] Refer to Para IV of Chapter 24 for Dispute Settlement

## SIGNIFICANCE

4.5 As per the provisions, an application for the imposition of anti-dumping duty may be initiated either upon an application filed by or on behalf of the DI of the relevant product or suo-motu by the Directorate.

4.6 Generally, investigations are initiated on receipt of the complete written application by or on behalf of the DI in the prescribed format. Therefore, it is important to confirm that the petitioner complies with all the requirements/ conditions of the Rules for being considered an eligible DI.

4.7 The standing test of the DI is important for a valid investigation. The standing has to be established prior to the initiation of the investigation. An incorrect standing may render the initiation invalid, leading to termination of the investigation. The team should take a ruling from the DG on the issue especially where standing is at borderline (as it is in the exercise of powers of the DG on the case to case basis).

4.8 There may be a situation, where one of the constituents of the applicant DI or any of the supporter to an application withdraws from the application of the investigation subsequent to initiation of an investigation which may or may not be affecting the standing of the DI,in such cases, decision may be taken with the approval of DG based on the merit of the case[3].

## OPERATING PRACTICES

4.9 The important issues to determine are: (i) total production of PUC in India; (ii) identification of all the producers[4]; (iii) the share of production represented by the applicant/s;(iv) supporters of the application; and (v) share of producers in opposition to the application[5]. A brief discussion on each of these issues is as below:

### Total Production

4.9.1. The total quantity of production of the PUC including the like article, in India, should be ascertained. This becomes the universe for the said PUC which will be important while applying standing tests[6].

[3] Final Finding in Anti-Dumping investigations on the import of caustic soda exported from or originating in Japan and Qatar, F. No. 14/31/2015-DGAD dated January 10, 2018.

[4] Final Findings in Sunset Review of Anti-Dumping investigations on the import of Synchronous Digital Hierarchy Transmission Equipment originating in or exported from China PR and Japan, F No. 15/20/2014-DGAD dated February 5, 2016

[5] Refer to Para IV of Chapter 24 for Dispute Settlement

[6] Refer to Para IV of Chapter 24 for Dispute Settlement

4.9.2. While estimating the total domestic production in the country, the entire production has to be taken into account which will include production meant for domestic sales, exports as well as captive consumption (subject to qualification).

4.9.3. It is necessary that the DI provides total production data for the PUC manufactured by it. A confirmation must be obtained from DI that the production figures indicate entire production volume of PUC produced by all the units of DI including the related units. This is necessary to ensure that no unit has been left out in providing the data in the application.

4.9.4. The total production in the country as furnished should be verified independently from other sources at the disposal of the investigating team. Reference can also be made to the administrative departments/ministries, Associations, Councils, market intelligence, calculations (if production of downstream or upstream industries is known) or any other reliable source. The estimation is especially required where the industry is highly fragmented[7] or most of the producers exist in the MSME sector. The team can also rely on a web search for finding information pertaining to other producers in India[8]. As there are no specific provisions/guidelines in this regard, it is open to the discretion of the Authority to accept any reasonable method to estimate the quantum of the total production of PUC in India.

4.9.5. In a case where the PUC is traded in different units of measurement (e.g. MT or Sq Mtr or Number) the DI is required to give a common unit, whichever is the most common unit for the commerce of the subject goods. The basis for such conversion should be clearly brought out in the confidential as well as the non-confidential version of the application. The applicant should be asked to furnish reasonable evidence in support of the formula or the methodology used.

4.9.6. It is essential to remember that under all circumstances, the eligibility tests of 25% and 50% have to be carried out on the basis of volume and not value terms.

[7] Final Finding in Anti-Dumping investigations on imports of Mulberry Raw Silk originating in or exported from China PR, F No. 15/12/2007-DGAD dated December 11, 2008; Final Findings in Sunset Review of Anti-Dumping investigations on imports of Silk Fabrics 20-100 gms per meter originating in or exported from China PR, F No. 15/24/2010—DGAD dated December 5, 2011; Final Findings in Anti-Dumping investigations on imports of Ceramic Tableware and Kitchenware, excluding knives and toilet items originating in or exported from China PR, F No.14/05/2016-DGAD dated December 8, 2017.

[8] Some of the reliable tools could be observation, personal interviews, enquiry, telephone/mail/email/internet surveys, Literature search (including internal industry information, relevant trade publications, newpapers, magazines, annual reports of concerned companies or public bodies, corporate literature, online databases or any other published material).

**Eligibility Test**

4.9.7. The applicant should be the actual producer of the PUC during the period of investigation;

4.9.8. The sole producer can file an application and is allowed to be an applicant DI[9];

4.9.9. Generally, the producer should have merchant sales of subject goods in the domestic market. This is necessary as the manufacturer consuming all its production captively will not be able to give data for carrying out injury analysis where analysis has to done by comparing net sales realization with other parameters and the demand in the country on account of other users of the subject goods will remain unfulfilled;

4.9.10. The Associations /Federations/Councils can also file an application on behalf of DI. However, in such cases, they are required to furnish the names of the specific members (producers/manufacturers) who will provide the costing/financial data for the analysis of economic parameters. The member producers filing the data will have to qualify all prescribed eligibility criteria. The following information will be examined to establish their claim (instructions circulated vide F.No. 14/44/2016-DGAD dated Nil):

(i) Is the Association a registered body? If so a copy of the Registration Certificate;

(ii) A copy of the Bylaws & Memorandum of Association (MOA);

(iii) A list of the members;

(iv) Details of the Executive body / Managing structure of the Association;

(v) A copy of the minutes of the meeting in which it was resolved by the Association to file an anti-dumping application on behalf of some of / all its members;

[9] Final Finding in Anti-Dumping investigations on imports of Resorcinol originating in or exported from China & Japan, F No. 14/37/2016-DGAD dated January 4, 2018; Final Finding in Anti-Dumping investigations on imports of Sodium Nitrite originating in or exported from China PR, F No. 39/1/99-DGAD dated November 3, 2000; Final Finding in Anti-Dumping investigations on imports of Sodium Nitrate originating in or exported from European Union, China PR, Ukraine and Korea RP, F No. 15/1009/2012-DGAD dated November 12, 2014; Final Finding in Anti-Dumping investigations on import of Viscose Staple Fibre excluding Bamboo fibre originating in or exported from China PR and Indonesia, F. No. 14/6/2009-DGAD dated May 17, 2010; Final Finding in Anti-dumping investigation on Import of Diketopyrrolo Pyrrole Pigment Red 254(DPP Red 254) originating in or exported from China PR and Switzerland, F.No. 14/8/2014-DGAD dated June 19, 2015.

(vi) A list of the members, who either supported, opposed or remained neutral with regard to the application; and

(vii) Any other information which may be relevant in this regard.

4.9.11. In case of multiple producers, they should be clearly identified in various categories as: (1) Applicant Producers; (2) Supporter Producers; (3) Producers opposing the application;and (4) Neutral or known silent producers, who are neither supporting nor opposing. This categorization will help in applying the 25% and 50% eligibility test. It must be borne in mind that the said twin tests are to be carried out in respect of the PUC only as defined in the previous chapter, and the determination must be based on volume data only.

(i) For the purpose of passing 25% test under proviso to rule 5(3)(a), it is absolutely necessary that the Applicant Producers and (express) supporters constitute at least 25% of the total production of eligible DI in the country. Further, 25% is to be seen with respect to eligible DI and not total domestic production.

(ii) The supporters expressing support to the application are mandatorily required to furnish information in the prescribed format notified vide Trade Notice No 13/2018 dated 27.9.2018.

(iii) In terms of the provisions of Rule 2(b) read with 5(3) alongwith the existing established practices, the "major proportion" is generally understood to mean the volume of production, which is more than 25% of the total production by the eligible DI in the country.

(iv) In case of any opposition to initiation of investigation from any of the domestic producers of the PUC and like article, the DI has to be tested for 50% test. In such a situation, it needs to be seen that the collective production of the Applicant producers along with the Supporters is more than the total production of the like article produced by eligible domestic producers opposing the application. Here the output of those producers who do not express any opinion on the application will not be taken into account.

(v) In case,the applicant producer/s (collectively) constitute more than 50% of the total eligible domestic production, then it is deemed to have satisfied both the 25% as well as the 50% tests.

4.9.12. It is essential that the "standing", in terms of Rule 5(3) of the Rules, has to be decided prior to the initiation itself. Utmost care needs to be taken in marginal or doubtful cases and it must be brought to the notice of DG specifically raising the issue on the case file. However, it is not necessary to ensure that the information about the DI structure, its constituents, or the level of production is available with arithmetical precision. But the information should be sufficient to reflect that adequate care has been taken to make a justifiable estimate about the production in the country.

4.9.13. The non-participating industry must be contacted to ascertain their support or opposition to the application,particularly when the total production of the applicant is less than 50%. The information may also be sought from other sources, like industry associations, concerned administrative Ministries, etc.

4.9.14. The composition of the DI must be defined at the time of the initiation itself. Subsequent addition/deletion to the composition(constituents) of the DI should be specifically processed with the approval of DG based on the merit of the case.

4.9.15. In the case of the applicant being an association, it is compulsory for the applicant to furnish details of the member producers whose data and information would be furnished, for consideration during the process of investigation.

4.9.16. If one of the constituent DI applicant does not subsequently furnish required information during the course of the investigation, then that company could be considered for such disciplinary action as deemed fit.

4.9.17. If it is considered necessary in the larger interest of investigation, to seek information from a domestic producer who was originally not an applicant or an express supporter, then that company could also be asked to furnish detailed information. This is most relevant in cases where any of the major domestic producer have chosen not to furnish the detailed information and had not opposed the application.

4.9.18. Complete reasons must be sought, where any major domestic Producer of PUC refuses to share his detailed information during any investigation with the Authority. Since the benefit of trade remedy measures shall accrue to all the domestic producers.

4.9.19. If there is any change in the ownership structure or any constituent of DI subsequent to initiation of investigation for example acquisition or merger with any other company, complete details thereof including the basis of valuation and financial implications must be examined.

**Ineligible Producer(s)**

4.9.20. Rule 2 (b) of the Anti-Dumping Rules provide that following producers are ineligible[10] and hence cannot consider as DI. But they can be asked to furnish information if the DG considers it fit in the overall interest of the investigation:

(i) The Producer(s) in India are related to exporters in the subject countries will render them ineligible. However, any exceptional circumstances claimed by the applicant have to be examined separately, albeit carefully, with the approval of DG. The term 'related party' has been explained in the Explanation to the proviso 2(b). Further, the Trade Notice No. 09/2018 dated 10th May 2018 has been issued in the subject matter, though it pertains to exporters, but it surely explains the conditions where the parties are held related to each other.

(ii) The domestic producers importing subject goods into India directly or through related parties or being related to the exporters of subject goods in the exporting country, are rendered ineligible. However, it is the duty of the applicant to declare names of all the producers of subject goods in India along with the relevant details to enable the Authority to take a final call regarding inclusion or exclusion of a certain producer.

(iii) In the application, the applicant is required to furnish details of all the producers of the subject goods in India. The Authority shall decide based on the information furnished, regarding the ineligibility of any one or more producer/s. It should not be the discretion of DI to decide on the eligibility or ineligibility of any of the producer/s in India.

(iv) The applicant company(ies)are required to furnish details of all the imports of subject goods made by them,under any/all instrument,from the all the countries (subject countries and non-subject countries). The team should examine and understand the reasons of DI for seeking imposition of duty only against some and not others, in the application. The team should be

[10] Article 4.1 of the ADA recognizes that it may not be appropriate to include such producers of the like product in the DI, which are 'related' to the exporters or importers or are themselves importers of the alleged dumped product.

careful that the DI is not indulging in selective pick and choose of subject countries without assigning valid reasons.

(v) Any exceptional circumstances claimed by the applicant (for example, nominal imports in special circumstances beyond the control of applicant, or nominal imports taking place under duty free scheme, or imports undertaken by a new industry when they are approaching DGTR for a case of material retardation) for seeking relaxation of ineligibility, will have to be examined on case to case basis with the approval of DG. DG has the discretion to decide on the eligibility of a producer to be accepted as DI, who has also imported the subject goods into India[11] or has a related exporter in the subject country. A specific reference of this ruling by DG should be mentioned in the Initiation Notification.

(vi) Even in cases where the DI has imported subject goods under duty-free schemes for the fulfilment of an export obligation, all such imports by DI should be examined in totality and a decision to accept or reject the eligibility should be on the facts and merits of each case.

(vii) The status of each of the known producers should be evaluated in terms of Rule 2(b) of the Rules. Once it is established that the producer/s is/are ineligible, then they are excluded from the definition of "DI". Accordingly, their production is not included for estimating India's total production, and production of eligible producers/supporters vis a vis parties in opposition. For example, if there are five Indian producers and some of them have been found eligible and others ineligible then the case will look like as follows:

| S.No. | Particulars | Status | Production (MT) |
|---|---|---|---|
| 1 | P1 | Eligible | 1000 |
| 2 | P2 | Ineligible | 2000 |
| 3 | P3 | Eligible | 2000 |
| 4 | P4 | Ineligible | 3000 |
| 5 | P5 | Eligible | 2000 |
| 6 | TOTAL | | 10000 |
| 7 | ELIGIBLE TOTAL | | 5000 |

[11] Final Finding in Anti-Dumping investigation on import of Viscose Staple Fibre originating in or exported from China PR and Indonesia, F.No14/6/2009-DGAD dated May 17, 2010.

(viii) In this case, even though total domestic production is 10000 MT, but it will only be considered as 5000 MT on account of P2 and P4 being declared ineligible. P1, P3, and P5 will constitute 100% of the total domestic production for the purposes of Rule 2(b).

**Status of SEZ**

4.9.21. The units existing in Special Economic Zones ("SEZ") are not to be treated as DI[12]. This is on account of their special status granted in terms of Section 30 of the SEZ Act, 2005.

4.9.22. The SEZs are regarded as international territory. Local raw materials bought by producers within SEZs are regarded as exports whereas those goods that are produced in SEZs and sold in the Domestic Tariff Area ("DTA") are regarded as imports. SEZ units are allowed to retain 100% of their foreign exchange earnings in special Export Earners Foreign Currency Exchange accounts. They are free to sell goods in the DTA but on payment of applicable duties. Sales from DTA firms to SEZ units are on par with regular trade transactions and hence eligible to benefit from all export incentive and foreign currency exemption schemes. SEZ units are also exempt from the central government's service and excise tax regimes.

4.9.23. SEZ is a specifically delineated duty-free enclave and shall be deemed to be foreign territory for the purposes of trade operations and duties and tariffs. SEZ have no entitlement of domestic sales. In order words, SEZ is a geographical region that has economic laws different from a country's typical economic laws. Thus, the production of SEZ should not be included while estimating the total production of the country. However, production of EOU to the extent of domestic sales may be taken into account for estimating total domestic production because EOU is legally different entities.As a matter of practice, 100% Export Oriented Units ("EOU") have been considered DI for their domestic sales subject to entitlement.

**Localized Market: Regional Industry**

4.9.24. The Article 4.1(ii) of ADA reads as under:

> *"4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products*

[12] Final Finding in Safeguard investigation on imports of Solar Cells whether or not assembled in modules or panels, F. No. 22/1/2018 - DGTR dated July 16, 2018.

*constitutes a major proportion of the total domestic production of those products, except that:*

*(i) …….;*

*(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.*

*4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), antidumping duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of antidumping duties on such a basis, the importing Member may levy the antidumping duties without limitation only if (a) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question."*

4.9.25. It is clear from above that the ADA provides for consideration of injury to the producers localized in a geographically isolated area which can also be termed as a regional industry.

4.9.26. A localized/regional industry may be found to exist in a separate competitive market, if the producers within that market sell all or almost all of their production of the like product in that market, and demand for the like product in that market is not to any substantial degree supplied by the producers of the like product located outside that market.

4.9.27. Rule 11(3) of the Rules recognizes the exceptional circumstances where the Designated Authority may give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if:

(i) there is a concentration of dumped imports into an isolated market, and

(ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

4.9.28. Article 4.2 of ADA further provides that if an affirmative determination is based on injury to a regional industry, the Agreement requires investigating authorities to limit the duties to products consigned for final consumption in the region in question, if constitutionally possible. If the Constitutional law of a Member Country precludes the collection of duties on imports to the region, the investigating authorities may levy duties on all imports of the product, without limitation, if anti-dumping duties cannot be limited to the imports from specific producers supplying the region. However, before imposing those duties, the investigating authorities must offer exporters an opportunity to cease dumping in the region or enter a price undertaking.

## COMPOSITION OF APPLICANT(S) IN DIFFERENT INVESTIGATIONS

### Original Investigation

4.10 The Applicant(s) is (are) the domestic producer(s), directly or through their representative bodies. The DI standing is examined as detailed above.

### New Shipper Review Investigation

4.11 The Applicant(s) is (are) exporter(s) in the exporting country against whom ADD has been imposed but who had not exported to India during the POI of the original investigation. They are covered in the residual category of the ADD but want separate individual duty margin for themselves.

### Midterm Review Investigation

4.12 The applicant(s) could be the original DI, any other Indian producer, Indian importer, Indian user or an exporter, from the subject country(ies) against whom ADD has been imposed, directly or through their representative body.

**Sunset Review Investigation**

4.13 The Applicant(s) is(are) the domestic producer(s) directly or through their representative bodies. They can be the same DI who had filed the original investigation or any other producer(s). The test of DI standing has to be applied afresh.

**Anti-Circumvention Investigation**

4.14 The Applicant(s) is(are) the Domestic producer(s) of PUC and like article in India (PUC as defined in the original investigation) which is alleged to be circumvented, directly or through their representative body.

**Countervailing Investigation**

4.15 The Applicant(s) is(are) the domestic producer(s), directly or through their representative bodies.

**Safeguard Investigation**

4.16 The Applicant(s) is(are) the domestic producer(s), directly or through their representative bodies.

Appendix-10

F. No. 14/44/2016-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-dumping and Allied Duties

**Subject: Filling of application by Associations on behalf of some or all member producers**

The Designated Authority has decided that where anti-dumping investigation petition is filed by an Association/Board/any representative body on behalf of some or all member producers, the Following information will be examined to establish their claim:

i. Is the Association a registered body? If so a copy of the Registration Certificate,

ii. A copy of the By-laws & Memorandum of Association (MDA).

iii. A list of the members.

iv. Details of the executive body/Managing structure of the Association.

v. A Copy of the minutes of the meeting in which it was resolved by the Association to fill an anti-Dumping petition on behalf of some of /all its members.

vi. A list of the members, who either supported, opposed or remained neutral with regard to the petition.

vii. Any other information which may be relevant in this regard.

-sd/-
Addl. DGFT

All Officers of DGAD
Copy to:

1. APJ SLG Law officers, e-mail: bhansali@apjslg.com
2. Lakshmikumaran and Sridharan Attorney e-mail.seetharaman.s@lakshmisri.com
3. Economic Laws practices, e-mail: saniaynotani@elp-in .com
4. DU Associates, e-mail: shroz@duassociates.com
5. CryilAmarchandMangaldas, e-mail:contact @amsshardul.com
6. TPM Consultant Pvt, Ltd, e-mail:akg@tpm.in
7. M.S. Pothal&Associate,e-mail: msp@pothal.in
8. M/s KMNP Law, e-mail,: postbox@kmnplaw.com

Appendix-11

No. 4/21/2018-DGTR
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5th Parliament Street, New Delhi - 110001

Dated 27th September, 2018

**Trade Notice No. 13 / 2018**

**Subject: Requirements for companies expressing support for any Anti-Dumping Duty / Countervailing Duty Petition / Application**

Attention of Trade and Industry is invited to Rule 2(b) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the "Rules") read with Rule 5(3) therein. The Authority notes that the "domestic industry" as defined must be representative, in so far as possible, of the domestic producers as a whole. Accordingly, it is felt that the examination of the "degree of support for, or opposition to the application expressed by domestic producers of the like product" requires the Authority to be cognizant of details regarding as many of the domestic producers as possible.

2. It has been noted that many petitions are being filed on behalf of domestic producers having limited share in domestic production, but with support from other domestic producers in the form of a simple letter of support. It is noted that there is no 'prescribed format' for such domestic producers who express their support for a petition wherein 'supporters' could supply information to the Authority. Hence, meaningful and sufficient information of such supporting companies is not available with the Authority which has a bearing on the quality of Trade Remedial Investigations carried out by the Authority.

3. The Authority therefore prescribes the format, as laid out in **Annex-I** and **Annex-II,** wherein information is to be provided by each of the 'supporters' of a petition (hereinafter, "supporting company"). The data submitted by the supporters should be accompanied by a Certificate signed by the Chief Executive or a duly authorised representative of the Supporting Company. Format of the certificate is enclosed at **Annex-III.** Data of all supporting companies is required to be filed by the petitioner with the original petition at pre-initiation stage.

4. The acceptance of the data provided by a supporting company and its sufficiency would be subject to verification by the Authority.

5. This Trade Notice will supersede all previous instructions or Trade Notice, if any, issued by the Directorate with regard to the aforesaid subject.

-sd/-
(Sunil Kumar)
Additional Secretary and Designated Authority

To,
All concerned

**ANNEX-I**

| S. No. | Particulars / Requirements | Response by the Supporting Company |
|---|---|---|
| i. | Name(s), Address(es) of the Regd. Office, contact person, telephone numbers, fax numbers and e-mail id of the supporting company | |
| ii. | Details regarding the manufacturing plants of the supporting company which are involved in the production of PUC along with annual capacity thereof | |
| iii. | Details regarding the production process including broad stage wise process of manufacturing and various routes of manufacture. Process flow chart indicating cycle time taken at each process be also indicated. | |
| iv. | Indicate, if any, difference in the production process employed by the supporting company and the petitioners or foreign producers, wherever possible. | |
| v. | Names of major raw materials and packing materials consumed in the production and sale of the PUC | |
| vi. | Details regarding the PUC (including size, type, range, models) that is produced by the supporting company | |
| vii. | Details regarding the importation of the PUC by the supporting company, if any. Please include details of country-wise volume and value of imports during the POI and the last two years. | |
| viii. | Reasons for supporting this petition and not becoming the co-petitioner in the instant case. | |
| ix. | In case the supporting company is related to the exporters or importers of the subject goods from any source, the nature of such relationship | |
| x. | Performance Parameters of Supporting Company as per Annex-II attached | |
| xi. | Provide copies of Annual Reports for the POI and the last two financial years with complete schedules and annexes | |

**ANNEX-II**

**Name of Company ……..**

## Performance Parameters of the Supporting Company (PUC)

| Particulars | Unit | Year 1 | Year 2 | Year 3 | POI |
|---|---|---|---|---|---|
| Installed Capacity | | | | | |
| Production Quantity* | | | | | |
| Capacity Utilization Percentage | | | | | |
| Average Industry Norm for Capacity Utilisation, if any | | | | | |
| Sales Quantity:<br>Domestic Sales- Small Scale Industry** (SSI)<br>Domestic Sales – Other than SSI<br>Export Sales<br>Captive Consumption | | | | | |
| Sales Value:<br>Domestic Sales – SSI<br>Domestic Sales – Other than SSI<br>Export Sales<br>Captive Consumption | | | | | |
| Sales Realisations per unit:<br>Domestic Sales – SSI<br>Domestic Sales – Other than SSI<br>Export Sales<br>Captive Consumption | | | | | |
| No. of Employees | | | | | |
| Productivity per Day | | | | | |
| Average Industry Norm for Productivity per day, if any | | | | | |
| Inventory | | | | | |
| Inventory as No. of days of Production | | | | | |
| Inventory as No. of days of Sales | | | | | |
| Average Industry Norm for Inventory, if any | | | | | |
| R&D Expenses | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Funds Raised:<br>Equity<br>Loans and Advances<br>Working Capital<br>Other, if any | | | | | |
| Cost of Sales per Unit-Domestic Sales (excluding outward freight, outward insurance etc. | | | | | |
| Cost of Sales per Unit- Exports | | | | | |
| Selling Price per Unit- Domestic Sales (excluding excise duty or GST whichever is applicable, outward freight, outward insurance etc.) | | | | | |
| PBIT per Unit- Domestic Sales | | | | | |
| Total Profit before Interest and Tax – Domestic Sales | | | | | |
| Interest / Finance Cost – Domestic Sales | | | | | |
| Depreciation and Amortisation Expense | | | | | |
| Other non-cash expenses | | | | | |
| Cash Profits | | | | | |
| Average Capital Employed | | | | | |
| PBIT as % of Avg. Capital Employed | | | | | |
| Average Industry Norm for PBIT as % of Avg. Capital Employed, if any | | | | | |

** If the same plant can be used for the production of NPUC also, the total production including NPUC needs to be indicated.*

***Small Scale Industries (SSI) means a micro enterprise/small enterprise or a medium enterprise as defined in The Micro, Small and Medium Enterprises Development Act, 2006*

**CERTIFICATE**

I/We have verified the above data with reference to the books of account, cost accounting records and / or other relevant records of the company and have found the same to be in accordance with the Accounting Standards / Cost Accounting Standards as applicable as on date. Based on the information and explanations given to me/us, and on the basis of Generally Accepted Cost Accounting Principles & Practices followed by the industry, I/We certify that the above data reflects true and fair view for production and sales of the PUC concerned as per the books of accounts maintained by the Company.

Date: Seal and Signature of Cost Accountant

Membership No.

**ANNEX-III**

## CERTIFICATE BY THE CHIEF EXECUTIVE OF THE COMPANY / DIRECTORS / PARTNERS OR THE PROPERIETOR OF THE FIRM

(On Letterhead of the company)

On behalf of the [name of the producer/ company constituting the Supporter Industry], it is hereby certified that I have read the attached submission of [name of the producer/ company constituting the Supporter Industry] dated _____ pursuant to request by [name of the producer/ company constituting the Domestic Industry] for initiation of the Anti-Dumping/Countervailing Investigations against the Product _____ originating in or exported from _____.

2. It is certified that the information contained in this submission is true, complete and correct to the best of my knowledge and belief. The same is based on the records of the company consistently made by the company. We have neither knowingly and/ or wilfully concealed or misrepresented any material information nor made any material false statements to the Designated Authority. I am fully aware that in the event of any data/information/ claim found to be contrary to the facts, the Designated Authority would have full discretion to reject our entire submission.

3. I/We also understand that we may be responsible, individually and severally, for the consequences of any deliberate or wilful and/or fraudulent concealment, mis-declaration or misrepresentation by me /us in any manner whatsoever. We also agree to provide such further information, if any required by the Designated Authority relating to this investigations in the current case.

Name: _____ Signature

Seal

Designation: _____

Date: _____

Note: if this Certificate is signed by an Authorised Representative other than the Officers referred above, a copy of the authorization from the Competent Officer or the Chief Executive of the Company/ Director/Partners or the Proprietor of the Firm or the board of Directors be also attached.

# PERIOD OF INVESTIGATION & INJURY INVESTIGATION PERIOD

## LEGAL PROVISIONS

5.1 Article VI of the GATT refers to the Period of Investigation ("POI") as the period of data collection for dumping investigations but the ADA and the AD Rules do not provide established guidelines for determination of POI. However, the Working Committee on Anti-dumping practice has provided guidelines for determining period or periods of data collection which may be appropriate for the examination of dumping and of injury. These guidelines are as follows:

> *"As a general rule:*
>
> *(a)the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable;*
>
> *(b) the period of data collection for investigating sales below cost, and the period of data collection for dumping investigations, normally should coincide in a particular investigation;*
>
> *(c) the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation;*
>
> *(d) In all cases the investigating authorities should set and make known in advance to interested parties the periods of time covered by the data collection, and may also set dates certain for completing collection and/or submission of data. If such dates are set, they should be made known to interested parties."*

5.2 In order to incorporate the aforementioned guidelines of Working Committee on Anti-dumping practice, the Directorate had issued a Trade Notice No. 2 of 2004 dated 12th May 2004 (attached to this chapter), which forms the basic guidelines in this regard. The relevant extracts of para 2(iii) of the said trade notice are detailed as under:

> *"Application should invariably contain information and data relating to the proposed period of investigation ("POI") and previous three financial years. There should be no gap but there can be overlap between the POI and the previous financial years. The data for previous three years would be utilized for trend analysis for determination of injury."*

**SIGNIFICANCE**

5.3 It is important to identify an appropriate period of investigation and injury investigation period since this has a cascading effect on the determination of DI as well as the standing of the application. The determination of *prima facie* dumping and injury for the purpose of initiation and subsequent investigation is entirely based on POI and the injury period.

5.4 AD Rules in India refer to the POI but do not expressly specify the time period of any such POI. However, there are indirect references to suggest that the POI should not be less than 6 months[1]. General practice is to specify a 12 months period as POI. However, in exceptional cases, the Directorate has also accepted the POI as 6 months/9 months/15 months/18 months depending on the facts of each case with specific approval of the DA[2].

**OPERATING PRACTICE**

5.5 The team is required to determine:

(i) Period of Investigation ("POI"): for the purposes of the determination of dumping margin, the impact of dumping and injury margin; and

(ii) Injury Investigation Period ("IIP"): for injury analysis.

5.6 The general rule is to consider the total period which includes POI and three preceding financial years for analysis and impact study[3]. There can be exceptions to this rule in special circumstances as explained in the subsequent paragraphs.

[1] Import of Acrylonitrile Butadiene Rubber into India 2000 (119) ELT 157 (Tri.).

[2] Refer to Para V of Chapter 24 for WTO Jurisprudence.

[3] Trade Notice 2/2004 dated 12.5.2004

5.7 There can be an overlap of the periods as POI may not necessarily be a financial year in each case, whereas IIP is always taken as financial years. However, there should not be any gap in the periods.

5.8 While deciding the POI and IIP, it must be ensured that a minimum of four complete years of details is available.

**Period of Investigation (POI)**

5.9 The POI proposed in the application should be as latest as possible[4], and in any case not more than six months old as on date of initiation. If the proposed POI is more than six months old, then applicant may be asked to furnish revised application with fresh data.

5.10 The POI should normally be twelve months. As far as possible attempt should be made to identify POI as per the financial year, as it will make analysis easier and more accurate. An attempt should be made to select POI in such a way that at least one complete financial year is included in the POI to ensure availability of audited details at least for a part period of POI. It is always desirable to add period in terms of quarters (as the financial results are prepared quarter wise only)instead of any odd number of months as it may be difficult for other interested parties to submit their audited figures for such odd period.

5.11 There have been cases where the Directorate has allowed POI for 15 months[5] or 18 months[6], depending on the facts of the case. In exceptional circumstances,

[4] Refer to Para V of Chapter 24 for WTO Jurisprudence.

[5] Final Finding in Anti-Dumping investigation on import of Axle for Trailers originating in or exported from China PR, F. No. 14/17/2015-DGAD dated September 30, 2016 wherein POI was 1st April, 2014 to 30th June 2015; Final Finding in Anti-Dumping investigation on import of Normal Butanol or "N-Butyl Alcohol" originating in or exported from European Union (EU), Malaysia, Singapore, South Africa and United States of America (USA), F.No. 14/4/2013-DGAD dated February 19, 2016 wherein POI was 1st April 2013 to 30th June 2014; Final Finding in Anti-Dumping investigation on import of Sodium Chlorate originating in or exported from Canada, People's Republic of China and EU, F. No.14/13/2015-DGAD dated August 10, 2017 wherein POI was 1st October 2014 to 30th September 2015(12 months). However, the Authority has extended the same by 3 months thereby considering the modified POI as 1.10.2014 to 31.12.2015, to undertake the analysis on most recent data.

[6] Final Finding in Anti-Dumping investigation on import of Fishing net originating in or exported from Bangladesh and China PR. F. No. 14/44/2016-DGAD dated March 5, 2018, Final Finding in Anti-Dumping investigation on import of Clear Float of nominal thicknesses ranging from 4mm to 12mm (both inclusive)" originating in or exported from Iran, F.No 14/7/2015-DGAD dated March 20, 2017; Final Finding in Anti-Dumping investigation on import of playing cards originating in or exported from China PR,F.No. 14/43/2016-DGAD dated March 7, 2018; Final Finding in Sunset Review of Anti-dumping duty imposed on the imports of Nylon Filament Yarn originating in or exported from China PR, Chinese Taipei, Malaysia, Indonesia, Thailand and Korea RP, F.No. 15/17/2016-DGAD dated January 5, 2018

POI for nine months[7] or six months[8] has also been accepted supported by proper justification.

5.12 If the POI is different from financial year/ accounting year of the company, the certified copy of the balance sheet/profit & loss account has to be provided by the DI/other stakeholders. However, no initiation can be delayed merely because the POI is different from the financial year of the company.

5.13 The investigation team can *suo motu* revise the POI by one or two quarters, with the approval of DG, at the time of initiation of investigation with a view to obtain more updated and representative data. The revision of POI should be communicated to the Applicant immediately in order to enable him to update the data accordingly so that revised data can be placed in the inspection folder.

5.14 No request for a change in POI can be considered after initiation.

5.15 As the Post POI data needs to be considered for examination in case of threat of injury and likelihood scenario, the same should be preferably mentioned in the initiation notification itself that Post POI data shall be considered. In such a case, the post POI data could either be given by the applicant or sought by the investigation team from DGCI&S or responding exporters.

**POI for new shipper review cases ("NSR")**

5.16 POI determination is different in NSR cases. The prospective POI was considered in some of the recent cases. However, it allows the NSR applicant a flexibility in fixing the export price which is not desirable. Therefore, the following options could be considered:

a) Where anti-dumping duties were originally based on "sampling" method during the original investigation for the relevant subject country i.e., sampled units were each given a separate rate and other co-operative units were given the weighted average rate of the sampled units. It may be considered to extend the said weighted average rates to the NSR applicant to expedite the findings after following the due process of investigation.

[7] Final Finding in Anti-Dumping investigation on import of SDH transmission equipment originating in or exported from China PR and Israel. F.No. 14/2/2009-DGAD dated October 19, 2010 wherein POI was 1st April- 31st Dec 2008;

[8] Final Finding in Anti-Dumping investigation on import of Wire Rod of Alloy or Non-Alloy Steel originating in or exported from China PR, F. No. 14/17/2016-DGAD dated August 30, 2016 wherein POI was 1st July 2015 to 31st December 2015.

b) Another option could be to consider POI as part retrospective and part prospective,at the time of initiation. The actual period can be decided on case to case basis.

5.17 It may be desirable that the exporter has some track records of actual exports to India on the date of filing of NSR application in order to establish its credible intent to export to India. This is in line with the fact that similarly placed producers/exporters are not considered for individual rate if these units have not exported during POI of an anti-dumping investigation.

**Injury investigation period ("IIP") for injury analysis**

5.18 The injury investigation period is generally for three immediate preceding years plus the POI selected for dumping margin analysis. Any period longer than this can be considered provided the applicant has good reasons to propose the longer injury period.

5.19 The period of data collection for injury investigation should be at least three years. However, if an applicant has been in existence for less than three years, then the data available for the entire period should be taken into consideration[9].

5.20 Even in cases of material retardation to the industry, the data for a period lesser than three years can be considered if the industry has been inexistence for a shorter period. In such a case the data for three years is obviously not available and hence cannot be furnished by the industry. Therefore, monthly/quarterly/half yearly analysis may be desirable.

**Illustrations**

5.21 If the proposed POI is July 2016-June 2017, and IIP is April 2013- March 2014; April 2014 - March,2015 and April, 2015-March, 2016, then the applicant should be advised to revise the POI as April 2016 to June 2017.

5.22 POI as December 2016 to March 2018 and IIP April 2013-March 2014; April 2014- March 2015 and April 15-March 2016; then the applicant should be advised to revise the IIP as April 2014-March 15; April 2015-March 2016-April 2016-March 2017. POI can also be considered for revision, if desired to April 2017-March 2018.

[9] Refer to Para V of Chapter 24 for WTO Jurisprudence.

Appendix-12

NO. 4/9/2004-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE

**DIRECTORATE GENERAL OF ANTI DUMPING & ALLIED DUTIES**

Dated the 12th May, 2004

**Trade Notice No. 2/2004**

1. Attention of the Trade and Industry is invited to Section 9 A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 5 and 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed there under. Attention is also invited to the Application Proforma for making application for anti-dumping investigation by the domestic industry.

2. Trade & Industry is advised that the following requirements should also be kept in view while making the application for anti-dumping investigation:

(i) The source of data must be indicated by the applicant(s) while furnishing the information.

(ii) A soft-copy using MS-Word/MS-Excel software of the petition is also required to be submitted.

(iii) Application should invariably contain information and data relating to the proposed period of investigation (POI) and previous three financial years. There should be no gap but there can be overlap between the POI and the previous financial years. The data for previous three years would be utilized for trend analysis for determination of injury.

(iv) Information furnished in the application to demonstrate dumping, injury and causal link between such dumped imports and alleged injury should invariably be supported by evidence as required under Rule 5(2) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

(v) Detailed information along with evidence of injury should cover all relevant economic factors indicated in Para (iv) of the Annexure II to the above mentioned Rules as reproduced below:-

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

Accordingly, the data relevant to productivity, return on investment, the magnitude of the margin of dumping, negative effects on cash flow, inventories, wages, growth, ability to raise capital investments should also be specifically furnished under item no. 18 of Proforma IV A to the application to substantiate the injury with regard to all the parameters mentioned in the Annexure II.

(vi) Any information furnished on a confidential basis should be supported by a statement of reasons to demonstrate the good cause as to why the particular information need to be kept confidential. All information/ documents/submissions given on a confidential basis must be accompanied by a meaningful non-confidential summary thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

-Sd/-
(Dr. M.S. Rao)
Director
For Designated Authority
Tele: 23016461

To
All concerned
(As per list)

# INITIATION, NOTIFICATION AND INSPECTION FOLDER

## INITIATION

### LEGAL PROVISIONS

6.1. Rule 5 of the Anti-Dumping Rules provides as follows:

*"Initiation of investigation. –*

*Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.*

*(1) An application under sub-rule (1) shall be in the form as maybe specified by the designated authority and the application shall be supported by evidence of –*

*(a) dumping*
*(b) injury, where applicable, and*
*(c) where applicable, a causal link between such dumped imports and alleged injury.*

*(2) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless:*

(a) *it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:*

*Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like article by the domestic industry, and*

(b) *it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding-*

(i) *dumping,*
(ii) *injury, where applicable; and*
(iii) *where applicable, a causal link between such dumped imports and the alleged injury, to justify the initiation of an investigation.*

*Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application[1].*

*(3) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause(b) of sub-rule (3).*

*(4) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation."*

**SIGNIFICANCE**

6.2. The initiation of an investigation (Original/Review/Circumvention/Anti Subsidy/Safeguard/QR) is done on the basis of examination of the written application (or suo motu) and after prima facie determination of the existence of dumping, injury and causal link. In case of CVD matters, there is a mandatory requirement of consultation with the Government of the subject country at the pre-initiation stage.

**OPERATING PRACTICES**

6.3. The Application is to be examined in terms of the provisions of Rule 5 to decide whether an investigation is required to be initiated or not:

6.3.1 **Domestic Industry** or their representative body, is the applicant in case of an original investigation, anti-circumvention and sunset review investigation. The

[1] Refer Para VI of Chapter 24 for WTO Jurisprudence.

Rules also permit *suo motu* initiation of an original investigation[2] as well as a sunset review investigation, although it is preferable that an investigation is initiated on the basis of a written application from an eligible applicant.

6.3.2 **Exporter or Importer or DI** or their representative body can be the applicant in case of mid-term review investigations. The Rules allow *suomotu* initiation of a Mid Term Review investigation, the circumstances of which are explained in Chapter 17.

6.3.3 **The new exporter** is the applicant in case of New Shipper Review investigation.

6.4. The application should be in the specified format along with all applicable/ relevant Annexures. The application shall be supported by evidence of:

(i) dumping;
(ii) injury; and
(iii) a causal link between such dumped imports and the alleged injury.

6.5. The onus is on the DI to file evidence in support of its case on the above-mentioned factors.

6.6. Once an application is received,it should be examined for the following:

(i) Identification of PUC and like Article as detailed in Chapter 3 of this Manual.

(ii) DI standing of the applicants as detailed in Chapter 4 of this Manual.

(iii) The suitability of POI and the injury period as detailed in Chapter 5 of this Manual.

(iv) The accuracy and adequacy of the evidence provided in the application should also be examined[3].

(v) The team should put up a detailed note as prescribed vide Circular 6/2018 dated 26 September, 2018.

[2] Initiation of anti-dumping investigation concerning imports of Dry Batteries originating in or exported from PR China, F.N. 53/1/2000-DGAD dated November 11, 2000);Initiation of anti-Dumping investigation concerning imports of Sports Shoes (both branded and un-branded) originating in or exported from People's Republic of China, F.N.56/1/2000-DGAD dated, November 20, 2000;Initiation of anti-dumping investigation concerning import of Bisphenol-A from the United State of America F.N.37/ADD/IW/95 dated November 20, 1995.

[3] Panel Report, European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, 6.199, WTO Doc. WT/DS141/19, (Oct. 30, 2000) and also refer to Para VI of Chapter 24 for WTO Jurisprudence.

6.7. The Investigation team shall inform the Government of the subject country through their Embassy in India about the receipt of an application for initiation of an investigation[4]. This letter shall be sent prior to the issuance of the initiation notification particularly in the original investigation (Rule 5 is not applicable for MTR/SSR investigation hence prior intimation is not mandatory, but it is desirable). However, in certain bilateral trade arrangements, longer periods are specified for giving advance intimation such as:

| S. No. | Trading partner | Timelines |
|---|---|---|
| 1. | Japan | 10 working days in advance of the date of initiation with a copy of full text of the application. |
| 2. | Singapore | 7 working days in advance of the date of initiation |
| 3. | Korea | 10 working days in advance of the date of initiation |

6.8. Only after the Authority is satisfied that there is sufficient (prima facie) evidence regarding dumping, injury and causal link, can the Authority initiate an investigation.

6.9. It has to be borne in mind that even at the time of initiation all such elements and factors, that form part of Final Findings, are needed to be examined for initiation of an investigation, though the same stringent yardstick may not be applied. This analysis is not required to be indicated in the initiation notification. The law only prescribes that the Authority is required to be "satisfied" that the information with regard to dumping, injury and causal link is sufficient to justify the initiation of an investigation. The level of evidence is not expected to be the same as may be required for the issuance of Final Findings.

6.10. **Procedure to be followed for Rejection of an Application:** In the event, it is found that satisfactory evidence regarding any of the preconditions of initiation mentioned above does not exist then, the application filed by or on behalf of the DI may be rejected. An order of rejection should be issued with the approval of the DG in accordance with the principles of natural justice and it must be a well-reasoned speaking order passed after granting an opportunity of hearing of the DI.

6.11. **In case of Review applications:** In case it is decided by the Authority that the case is not fit for initiation of the investigation, then a speaking order containing the reasons for the closure of the investigation should be issued to the

[4] Refer to Para VI of Chapter- 24 for WTO Jurisprudence. See Panel Report, Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico, WTO Doc. WT/DS156/R, (Oct. 24, 2000).

applicants after granting an opportunity of hearing to the applicant. The details of the hearing and submissions made, orally and written, should be clearly mentioned in the rejection order.

## NOTIFICATION-PROCEDURE AFTER THE DECISION OF INITIATION

6.12. Once a decision for initiation of investigation has been taken by the Authority, the following steps have to be taken:

6.12.1. The initiation notification has to be drafted clearly indicating the PUC & like articles, DI Standing, Subject Countries, Normal Value, Export Price, POI &Injury Investigation Period, Dumping Margin, Injury,and Causal Link, reasons for initiation, prescribed time for filing of response and registration of interested parties. Sample formats of Initiation Notification for various types of investigation are attached as annexures to this chapter.

6.12.2. The initiation notification has to be issued in English and Hindi. The original notification has to be signed by the DA. The original signed copy (in English and Hindi) of the initiation notification has to be sent to the Government Press on the very same day that it is signed.

6.12.3. A copy should also be sent to TRU, Department of Revenue with a D.O. letter for their information in the case of an original investigation and Mid-term review. In the case of sunset review and new shipper review, the TRU should be requested to take further necessary action by way of issuance of follow-up notification. Thereafter, the initiation notification must be sent to NIC with a copy to the trade policy division for uploading to the DGTR website immediately.

6.12.4. A copy of it is also marked to the Administration as per internal instructions vide Office Order No. 32/2018 dated 13th September 2018 for the compilation of all the Confidential Notifications.

## COMMUNICATION

6.13. The initiation notification should be immediately communicated to all known stakeholders. There is no need to wait for the Gazette copies while sending the documents to the concerned interested parties. A copy of the signed covering letter and description of the website link should be sent to all concerned.

6.14. The applicant DI should be asked to provide an updated non-confidential version of the application. Such an application should, *inter alia*, include the information which has been filed by the DI subsequent to the submission of the application, if any. The revised and updated application and its non-confidential version should contain all the information submitted by DI,including all such information provided by the DI in response to queries by the Authority.

6.15. The applicant DI is required to furnish two hard copies each of the confidential and non-confidential version each. Further, the DI must be asked to furnish several copies of the non-confidential version in soft form (CDs) for sending to all known interested parties.

6.16. The covering letter should be drafted such that it mentions all the general as well as specific instructions related to a particular investigation. Time of 40 days from the date of initiation shall be allowed for the registration of the interested parties. A template for the covering letter is attached herewith with this chapter.

6.17. The interested parties are required to fill a proforma stating their interest and relevant details. This registration shall be done through the online filing system once it has been activated. It is pertinent to mention that interested parties will not be given additional time to file questionnaire response if not filed within the stipulated time. Please refer to Trade Notice No.11 dated 10.9.2018 (Attached herein).

6.18. The supplementary questionnaire should be sent by way of registered post/ speed post to all the known Exporters/Importers/Users/Domestic Producers and the Embassies along with the non-confidential version of the updated application. It should also state the URL address link giving details of the initiation notification and formats for filing questionnaire responses by the respective exporters/ importers/ users. A record of dispatch is to be maintained in the file.

6.19. Based on submissions by DI or on the basis any other prima facie evidence indicating that an exporting entity may not be operating under market economy conditions on account of any of the reasons indicated in para 7 & 8 of Annex I of the Rules, a supplementary questionnaire may be issued, as per the template annexed to this chapter, seeking necessary information for extending market economy status.

6.20. As a matter of practice, a letter is also sent to Associations/Federations/ Chambers of Commerce/Export Promotion Councils involved with the subject goods for the dissemination of information to all the stakeholders with a view to encourage maximum participation in the proceedings.

6.21. Any party who is included after initiation on making itself known within the stipulated time should be supplied with a non-confidential version of the application through email or CD.

6.22. The team should prepare a list of interested parties within 80 days from the date of initiation and keep a copy in the NCV folder and also upload it on the DGTR website.

## MAINTENANCE OF INSPECTION FOLDER

6.23. Maintenance of a proper NCV folder is an important part of the investigations from the point of view of principles of natural justice, transparency and due process of law. In pursuance of this objective, the following guidelines are suggested:

6.23.1. The folder should contain the application of the DI which forms the basis of the decision by the DA.

6.23.2. In case the applicant was asked to submit any revised information subsequent to the submission of their original application, then an updated application has to be submitted by the applicant(s) in hard copy and soft copies. If the additional information has not altered the contents of the initial application, the applicant may supply such information in the form of an addendum under the title "non-confidential version of the information supplied subsequent to the initiation application". However, if the material information itself has undergone a change, the non-confidential version of the updated application should be filed in addition to the addendum. The updated application must contain all the information filed by the applicant from the time of filing the initial application and the initiation of the investigations.

6.23.3. The applicant DI should normally be allowed a period of one week to complete the exercise. Copies of all additional documents should bear a stamp "NCV for Public File".

6.23.4. The team should not accept any document or communication,from any of the interested parties, marked as "confidential"unless the same is accompanied by a non-confidential version appropriately marked.

6.23.5. All documents in the NCV Folder should be chronologically placed and appropriately page numbered. An index of the same along with a brief mention of the subject should also be maintained.

6.23.6. Copies of the non confidential version of all the responses received from interested parties should be kept in the folder. Copy of NCV of submissions and other communications should also be kept in the folder.

6.23.7. In case a response is filed by the concerned Associations/Chamber of Commerce/Industry, it should contain details of members of the PUC or the downstream product in case of user industries. It should contain import/export details of PUC and other procurement details of the product.

6.23.8. A list of all interested parties along with details such as the name of the Counsel, the address for contact, contact person, email id etc. should be maintained and kept in a folder.

6.23.9. An inspection index should be created in the folder. The inspection of the folder should be allowed only to the authorized representative of the interested party. Whenever the representative inspects the folder or takes any document, the details thereof should be mentioned along with the signatures and contact details of that representative.

6.23.10. The DGCI&S data is not to be kept in the folder although upon a specific request of the interested party (or on their behalf) as per Trade Notice 1/2017 dated 8.12.2017 & Trade Notice 1/2018 dated 1.2.2018,the NCV data in hard copy is made available to the requested party. Soft copy of the same can be obtained by them directly from DGCI&S on specific authorization by the Directorate.

6.23.11. The non-confidential version of all the responses and submissions, as well as the communications made during the course of the investigation, should be kept in the folder for inspection by the interested parties and/or their authorized representatives.

6.23.12. The Disclosure Statement is issued (via e-mail) to specific interested parties who have participated in the investigation and a NC copy should be kept in the inspection folder. However, the comments received on Disclosure Statement are not kept in the inspection folder as this would keep on increasing the chain of submissions and counter submissions thereby delaying the outcome of the investigation.

6.23.13. The NCV Final Finding Notification is sent to Government Press for Gazette notification and also uploaded on the DGTR website. Therefore, there is no need to keep it in the NCV folder. The folder is sent to the record room along with the case file after the issues of final finding notification.

**REGISTRATION OF INTERESTED PARTIES**

6.24. Rule 6 (4) of the Anti-Dumping Rules, *inter-alia,* states that the Designated Authority may call for any information and such information shall be furnished by concerned persons in writing within 30 days from the date of receipt of the notice or within such extended period as the Designated authority may allow on sufficient cause being shown.

6.25. As per general practice, the Designated Authority grants 40 days' time period to all interested parties from the date of publication of the initiation notice to file their responses. Further extension can be permitted on a case to case basis depending on the facts and circumstances of each case.

6.26. In order to bring uniformity in the procedure, the following procedure has been prescribed vide Trade Notice No. 11/2018 dated 10th September 2018. Where a party interested in participating in an investigation, such party shall, in writing, request the Authority to include it as an interested party within 40 (forty) days of initiation of investigation or such extended period as may be allowed by the Authority. Any request at a later stage for registration as an interested party shall not be entertained.

6.26.1. All requests for registration shall include the following details:

| |
|---|
| Name and Designation of the Officer applying |
| Contact / Phone Numbers |
| Contact E-Mail id |
| Name and Address of the entity, on whose behalf the registration is being sought |

| |
|---|
| Details of Investigation & PUC/Countries |
| Whether Domestic Producer/ Importer/ User/ Exporter/ Association |
| If represented by any Law Firm, details thereof. |

6.26.2. An interested party is also obligated to file its questionnaire response in the required formats within the timeline prescribed by the Authority or the extended timeline as may be prescribed by the Authority. When an interested party files its questionnaire response within the prescribed timelines, such entity shall be deemed to be registered as an interested party with the Authority, even if it has not submitted an application in writing, requesting for registration as an interested party.

6.26.3. In case, an interested party which has registered itself with the Authority within the timelines prescribed in paragraph 6.26.1 above, but does not file a questionnaire response, this shall not prevent such interested party from participating in other stages of the investigation by filing legal submissions, attending the public hearing, filing disclosure comments etc. However, the Designated Authority may grant more weight age to the submissions made by such interested party, which has filed the duly prescribed questionnaire response as it allows the Authority to verify the authenticity of the data/information submitted to the Authority by corroborating the same with the facts during verification.

6.26.4. A list of interested parties shall be maintained by the Designated Authority and placed in the public file within 80 days of the publication of notice of initiation. All the interested parties are advised to follow the time-lines stipulated in an investigation for filing the submissions.

6.26.5. If a party has neither registered itself with the authority within the timelines prescribed in paragraph 6.26.1 above nor filed any questionnaire response, such party shall not be allowed to participate in subsequent stages of the investigation.

6.26.6. It may be clarified here that *vide* the Trade Notice No. 11/2018 dated 10.09.2018, the Authority reserves the right to include any other entity as an interested party if it is in the larger interest of the investigation impacting the findings in any way.

Appendix-13

Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

Dated 9th January 2012

**Trade Notice No. 01/2012**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended and to Rule 6 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereunder, as amended.

2. Rule 6 of the AD Rules stipulates the principles governing the infestations. Rule 6(4), inter-alia, states that the Designated Authority may call for any information and such information shall be furnished by such persons in writing within 30 days from the date of receipt of the notice or within such extended period as the Designated authority may allow on sufficient cause being shown.

3. In pursuance thereof, the Designated Authority has been granting 40 days' time period to all interested parties from the date of the publication of the initiation notice. It is, however, noted that some of the interested parties file information/ data with the Designated Authority during the last stages of the investigation. Considering that an investigation has to be completed within a stipulate time frame, any late submission has an adverse impact on the investigation process, which needs to be completed expeditiously.

4. It has therefore been decided that a request must be filed within 15 days of publication of a notice of initiation of investigation for inclusion of any party to an investigation as an interested party. A list of interested parties shall be maintained by the Designated Authority with 21 days of the publication of notice of initiation. Any requests at a later stage to this shall not be entertained.

5. All interested parties are advised to follow the time-lines stipulated in an investigation for filing the submissions.

6. A public file containing relevant submissions (non-confidential) would be available for inspection by all interested parties in the office of the Designated Authority as per mutual convenience.

7. An oral hearing may be held by the Designated Authority. Information presented orally by any interested party in such an oral hearing shall be submitted in writing by such party to the Designated Authority within 5 days of the hearing. Interested Parties may collect copies of such submissions on a day indicated by the Designated Authority and submit rebuttals, if any, within such period as allowed by the Designated Authority.

8. Any evidence or any other submissions made by any party shall be provided in sufficient number of copies (number of interested parties + five) to the Designated Authority.

9. An English translation of any information provided in a language other than Hindi or English would need to be supplied simultaneously by the provider of the information, failing which the information shall be disregarded.

10. All the Participating interested parties shall also forward a soft copy (both the Confidential Version and the Non Confidential Version in MS word format) of the submissions filed by them in an investigation.

11. It is further clarified that the Non Confidential Version of the submissions shall be forwarded simultaneously to all other participating interested parties, while forwarding the same to the Designated Authority. A confirmation to this effect shall be attached while filing the submissions with the Designated Authority. If the confirmation is not attached the submissions will not be treated as 'on record'.

-sd/-
(Santosh Kumar)
Deputy Secretary

For Designated Authority
To: All concerned.

Appendix-14

**REVISED**

No. 06/AS&DGAD/2016
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties

Dated: 22.11.2016

**Note**

**Subject: E-mail communications from/to official Email Id of DGAD**

**Ref.:instructions No. 06/AS&DGAD/2016 Dated 15th November, 2016 & E mail dated 16.11.2016 from DGAD**

Now that an official NIC e-mail Id of DGAD (dgad.india@gov.in) is available, all the parties connected with ADD/CVD cases (applicants/domestic industry/exporters/ importers, Embassies of other concerned countries and other interested parties etc.) should be intimated of this email id with the request that henceforth all applications/ communications/submissions/data/statistical details etc. pertaining to ADD/CVD cases should be submitted to DGAD as per the following broad instructions:

i) only 02 sets of hard copies of complete application/other documents/ submissions/data/statistical details/other details etc. to be submitted in the office of DGAD (to the IO/CO concerned/JD (Admin) /other authorised officers) (one copy for use by IO & other for use by CO).

ii) A soft copy of the entire application and other documents referred to under para (i) above in PDF from (preferably in single PDF file at the time of a particular submission), along with soft copy in MS Word/MS Excel format/ such other compatible format for data/statistical details to be sent to official email Id of DGAD (dgad.india@gov.in) along with the copy to IO and CO concerned (if case is allotted by that date to a particular IO/CO).

iii) Official email Id will be operated by one or more authorised officers for the purpose of forwarding such mails/communications to concerned IOs/ Cos, wherever required, and other officers (as required in each case) and/or sending response in other non-case related matters. The concerned officers

forwarding/receiving the mail will maintain strict confidentiality of the case related data/statistical details/information and will not forward any such mail or pass on such information to any other officer/person without prior written authorisation from DGAD.

iv) Official email Id of DGAD should be duly notified on the website (by JD (Admn)) to enable any person/public/case related interested parties to send any kind of communication meant for DGAD on this email Id, which will then be forwarded by the authorised officer to the concerned officers of DGAD for appropriate action as required in each case.

3. To begin with Ms Rita Mahna, JD (Admn.) is hereby authorised to access this email Id in addition to JS (Admn.) and DGAD for the above stated purpose.

4. All/any communication (hard copy or e-mail) made by any IO/CO to any domestic industry applicant or other interested party of the case (exporters/ importers/producers etc.) will be copied to his other Team Member (CO/IO) and on official e-mail Id of DGAD. **Any e-mail communication received directly by any CO/IO from any DI/interested party. If not already marked/sent to official e-mail Id of DGAD, shall be immediately forwarded to official e-mail Id of DGAD for record** (and to his other team members if not already marked/sent by the sender).

5. Attention of all IOs/Cos is also drawn to para (iv) of instructions contained in Note/Important Instructions No. 06/AS&DGAD/2016 dated 15th November, 2016 (with respect to maintenance of File(s) of a particular case) and para (ii) of the above said Note (with respect to preparation of a proper transfer report of case records on transfer out of IO/CO). These instructions should also be duly observed.

-sd/-
(Inder Jit Singh)
Additional Secretary
22.11.2016

To
All Officers of DGAD for information and necessary action.

Appendix-15

No. 04/18/2018-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara building, 5, Parliament Street, New Delhi -110001

Dated 10th September 2018

**Trade Notice No. 11/2018**

**Subject: Streamlining of Investigation Process - Registration of interested Parties regarding.**

1. Rule 6 (4) of the Anti-Dumping Rules, *inter-alia,* states that the Designated Authority may call for any information and such information shall be furnished by such persons in writing within 30 days from the date of receipt of the notice or within such extended period as the Designated authority may allow on sufficient cause being shown. In pursuance thereof, the Designated Authority has been granting 40 days' time period to all interested parties from the date of publication of the initiation notice to file their responses.

2. A Trade Notice No. 1/2012 dated 9th January 2012 was issued requiring that a request must be filed within 15 days of publication of a notice of initiation of investigation for inclusion of any party to an investigation as an interested party. A list of interested parties shall be maintained by the Designated Authority within 21 days of the publication of notice of initiation. Any requests at a later stage to this effect shall not be entertained.

3. However, it is noted that some of the interested parties file their requests for registration much beyond the prescribed period. Further, sometimes information/ data is filed with the Authority during the last stages of the investigation. Considering that an investigation has to be completed within a prescribed time frame, any late submission has an adverse impact on the investigation process, which needs to be completed expeditiously. In view of above, it is considered necessary to streamline the process of registration of interested parties and also their participation during the investigation. The revised procedure is detailed as under:

(i) Where a party is interested for participation in an investigation, such party shall, in writing, request the Authority to include it as an interested

party within 40 (forty) days of initiation of investigation or such extended period as may be allowed by the Authority. Any request at a later stage for registration as an interested party shall not be entertained.

(ii) All requests for registration shall be sent at the e-mail id dgad.india@gov.in. All e-mails shall include the following details:

| | |
|---|---|
| Name and Designation of the Officer applying | |
| Contact Phone Numbers | |
| Contact E-Mail id | |
| Name and Address of the Entity, on whose behalf the registration is being sought | |
| Details of Investigation & PUC/Countries | |
| Whether Domestic Producer/ Importer/ User/ Exporter/ Association | |
| If represented by any Law Firm, details thereof. | |

All physical requests for registration giving aforesaid information shall be made at following address:

Ms. Arti Bangia, Deputy Director
4th Floor, Jeevan Tara Building,
Directorate General of Trade Remedies, Department of Commerce,
New Delhi - 110001

(iii) An interested party is also obliged to file its questionnaire response in the prescribed formats within the timeline prescribed by the Authority or the extended timeline prescribed by the Authority for filing the questionnaire response. Where an interested party files its questionnaire response within the prescribed timelines, such entity shall be deemed to be registered as an interested party with the Authority, even if it has not submitted a written request specifically for registration as an interested party.

(iv) In case, an interested party which has registered itself with the Authority within the timelines prescribed in clause (i) above, but does not file a questionnaire response, this shall not prevent such interested party from participating in other stages of the investigation by filing legal submissions, attending public hearing, filing disclosure comments etc. However, the Designated Authority may grant more weight age to the submissions made by such interested party, which has filed the duly prescribed questionnaire response as it allows the Authority to verify the authenticity of the data/

information submitted to the Authority by corroborating the same with the facts during verification.

(v) A list of interested parties shall be maintained by the Designated Authority and placed in the public file within 80 days of the publication of notice of initiation. All the interested parties are advised to follow the time-lines stipulated in an investigation for filing the submissions.

(vi) If a party has neither registered itself with the authority within the timelines prescribed in clause (i) above nor filed any questionnaire response, such party shall not be allowed to participate further in subsequent stages of the investigation.

4. Notwithstanding anything contained above, the Authority reserves the right to include any other entity as interested party if it is in the larger interest of the investigation impacting the findings in any way.

5. This Trade Notice shall apply with immediate effect to all the cases of Trade Remedy Investigations initiated on or after 10th September 2018. This Trade Notice supersedes any previous instructions or Trade Notice, if any, issued by the Authority in regard to the subject matter of this Trade Notice.

-sd/-
(Sunil Kumar)
Additional Secretary and Designated Authority

To
All concerned

Appendix-16

No. 4/5/2017-DGAD
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5th Parliament Street, New Delhi - 110001

Dated 26th September, 2018

**Circular No. 6 /2018**

**Subject: Need to bring uniformity and comprehensiveness in Notes/Files submitted for approval of initiation of trade remedy investigations.**

It has been observed that the Initiation Notes submitted for approval by different Investigating Teams vary significantly in terms of content as well as analysis of data. Certain important data relating to overall performance of the Domestic Industry, quantum and value of import of product under consideration as well as past history of trade remedial measures are generally not mentioned in the Note. This sometimes may affect quality of decision making.

2. Therefore, in order to bring uniformity and comprehensiveness in Notes / Files submitted for initiation of trade remedy investigations by the respective investigation teams, sample formats requiring tabular information are attached herewith for submission along with each initiation proposal. The tabular formats will not only capture the comprehension and interpretation of the detailed analyses by the investigation team, but will also present at a glance summary information necessary to have a holistic understanding of the specific aspects of initiation proposal.

3. In view of above, henceforth all Investigating Teams will ensure that fresh initiation proposals invariably include the information in the prescribed formats too.

-sd/-
(Sunil Kumar)
Additional Secretary & Designated Authority

Encl.: Formats for initiation (3 pages)

To
All members of Investigating Teams

## TEMPLATE FOR INITIAL SCRUTINY

### PRODUCT PROFILE

Significance Analysis

| Particulars | Year-1 | Year-2 | Year-3 | POI |
|---|---|---|---|---|
| | Volume (MT) | Volume (MT) | Volume (MT) | Volume (MT) |
| Total Installed Capacity Country | | | | |
| Installed Capacity-DI | | | | |
| Installed capacity - supporters | | | | |
| DI as %age of total installed capacity in country | | | | |
| Total Production of PUC - Country | | | | |
| PUC Production-Domestic Industry | | | | |
| PUC production-Supporters | | | | |
| PUC production-Others | | | | |
| Capacity Utilisation of DI | | | | |
| Capacity Utilisation of Supporters | | | | |
| Capacity Utilisation-Others | | | | |
| DI % share- PUC's production | | | | |
| % share of PUC's production of Supporters | | | | |
| % share of PUC's production of Other Producers | | | | |

Each Petitioner constituent details:

| Particulars | Year-1 | Year-2 | Year-3 | POI |
|---|---|---|---|---|
| | Volume (MT) | Volume (MT) | Volume (MT) | Volume (MT) |
| Installed Capacity PUC-Petitioner 1 | | | | |
| PUC Production - Petitioner | | | | |
| Capacity Utilization %age | | | | |
| Petitioner as % of DI installed capacity | | | | |
| Total imports of PUC | | | | |

Import Analysis

| Particulars | Year-1 | | Year-2 | | Year-3 | | POI | |
|---|---|---|---|---|---|---|---|---|
| | Vol. (MT) | Value (USD) | Vol. (MT) | Value (USD) | Vol. (MT) | Value (USD) | Vol. (MT) | Value (USD) |
| Total Imports of PUC in India | | | | | | | | |
| Total Imports of PUC in India-Subject Countries | | | | | | | | |
| Total Imports of PUC in India-Each Subject Country | | | | | | | | |
| Total Imports into India of concerned sectoral category (Selected 30 major commodities by DGCI&S) | | | | | | | | |
| % Share of PUC Imports to Total Imports in India | | | | | | | | |
| % Share of PUC Imports from Subject Countries to Total Imports of PUC in India | | | | | | | | |
| % Share of PUC Imports from Subject Countries to Total production of PUC in India | | | | | | | | |
| % Share of PUC Imports from Subject Countries to Total DI production of PUC in India | | | | | | | | |

Demand Analyses:

| Particulars (Rs. Lakhs) | Unit | Year-1 | Year-2 | Year-3 | POI |
|---|---|---|---|---|---|
| Sales by Domestic Industry | | | | | |
| Captive Consumption by DI | | | | | |
| Sales by other domestic producers | | | | | |
| Captive consumption by other domestic producers | | | | | |
| Imports from subject countries | | | | | |
| Imports from other than subject countries attracting ADD | | | | | |
| Imports from other than subject countries not attracting ADD | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Total Demand | | | | | |
| Total Exports by DI | | | | | |
| %age Market Share in Demand: | | | | | |
| Domestic Industry – Domestic Sales | | | | | |
| Imports from subject countries | | | | | |
| Imports from other than subject countries | | | | | |

Profitability:

| Particulars (Rs. Lakhs) | Year-1 | Year-2 | Year-3 | POI |
|---|---|---|---|---|
| Domestic Per Unit Cost of Production-PUC - DI | | | | |
| Dom.Net Sales Realisation-Per Unit | | | | |
| Per Unit Profit/Loss of PUC - DI | | | | |
| Total Profit /loss of PUC- DI | | | | |
| Total Capital Employed-PUC - DI | | | | |
| Total Sales – PUC - DI | | | | |
| Profit as %age of Capital Employed | | | | |
| Profit as %age of domestic sales | | | | |
| Domestic per unit cost-Petitioner | | | | |
| Per Unit NSR-Petitioner | | | | |
| Per Unit Profit/Loss-Petitioner | | | | |
| Total Profit/loss-PUC of each Petitioner | | | | |
| Capital Employed-PUC -Petitioner | | | | |
| Profit as %age of Capital Employed - Petitioner | | | | |

**COMPANY PROFILE**

Please provide this information for each Petitioner company

| S.No. | Particulars | Reply |
|---|---|---|
| 1 | Name of DI: | |
| 2 | Number of manufacturing units & location | |
| 3 | Date of Establishment: | |
| 4 | Dates of capacity enhancements | |
| 5 | Date of Commencement of present use: | |
| 6 | Whether unit in SEZ area: | |
| 7 | Whether PUC under price control or ceiling by Government of India: | |

| | | |
|---|---|---|
| 8 | Estimated share of PUC cost in finished product: | |
| 9 | Details of other co-products or joint products, if any: | |
| 10 | Details of by-products, if any | |
| 11 | Detailed bottlenecks, if capacity utilization is less: | |
| 12 | Affiliation to Association/Council: | |
| 13 | In how many previous cases petitioner(s) or its related entity (ies) have been Part of DI or acted as supporter for levy of AD/CVD. Please give all the details. | |
| 14 | Whether any items manufactured by company is already subjected to ADD/CVD? | |
| 15 | Whether any product on which ADD/CVD duty is levied is used as raw material or part of value chain in subsequent value added products. | |
| 16 | Percentage share of Petitioner's production in total production | |
| 17 | Whether there has been major shutdown / suspension of production / capacity addition during last 3 years or POI. | |
| 18 | If so, exact details thereof along with reasons | |
| 19 | If so, its impact on the company's performance parameter. | |
| 20 | Whether there has been growth in production or sales commensurate with increase in capacity. | |

**Additional information in cases of SSR**

a) Whether existing measures have worked/worked partially/not at all worked. Please explain in detail.

Appendix-17

**SUPPLEMENTARY QUESTIONNAIRE ON MARKET ECONOMY CONDITIONS**

**1. GENERAL INFORMATION**

A. Company details
Supply the following details about your company;

Name:
Address:
Telephone:
Telefax:
E-mail:
Website:

And indicate the names of the people to contact and their functions within the company.

Indicate also the address where the accounting Records of the company are located. If they are maintained in different locations, indicate which records are kept at each location.

**B. Legal representative(s)**

If you have appointed a legal representative, an accounting firm or any other consultant to assist you in this proceeding, provide the following details for each of them:

Name of the legal representative:
Address:
Telephone:
Fax:
E-mail:

**C. Scope of the investigation**

Indicate the product under consideration in the country of export and if any variation with the product under investigation:

**2. CORPORATE STRUCTURE AND AFFILIATION**

A. Provide an Organizational chart and description of the company's operating structure.

B. Provide an organizational chart and description of company's legal structure. Include any parent companies and subsidiaries of the company and all other persons affiliated with the company and provide the functional and structural description of all such persons. Provide legal form of the company and specify whether the company is a

(i) A foreign (co-operative or equity) joint venture,

(ii) A wholly-owned foreign enterprise,

(iii) A branch of a company established outside the country.

(iv) A fully limited liability company,

(v) A state-owned enterprise (or owned by all people),

(vi) A company limited by shares,

(vii) A collectively owned enterprise,

(viii) A company in transition from State ownership to privatization

(ix) Any other legal form.

C. Provide a copy of business license of the company. Also, provide a copy of all the approvals company has obtained from various Government agencies before start of the business.

D. List all shareholders or owners of the company holding at least 5% of the shares of the company. State for each of these shareholders or owners whether it is a private person, a company, the State or a local/regional authority. In addition:

I. If it is a private person, state whether this person has its own nationality or any other nationality (-ies);

II. If it is a company, please identify its legal status and state whether it is a company formed by locals, a foreign –owned company, or a joint-venture with a foreign-owned company.

III. If it is a company formed by the locals, state whether it is a privately owned company, a State-owned company or a company owned by local/regional authorities.

IV. If it is a company part-owned by the State or Local/regional authorities, specify to what extent State or local/regional authorities are involved;

V. If it is a local, or regional authority provide details;

VI. If in transformation from State or local bodies to privatization, provide all relevant details relating to (a) original status; (b) each stage of transformation till period of investigation (POI)

Provide a copy of business license of the company (with an English translation).

E. Please describe and explain:

(i) Who owns your company?

(ii) Who controls your company?

(iii) Your company's relationship with the national, provincial, and local governments, including ministries or offices of those governments;

(iv) Your company's relationship with other producers or exporters of the subject merchandise. Do you share any owners or managers?

F. Does the entity, which owns or controls the company also own or control other producers/exporters of the subject merchandise? If so, provide complete details thereof.

G. Provide a copy of the Articles of Association and the Memorandum of Association (with an English translation).

H. List all members of the Board of Directors and Board of Shareholders. For each of the members, state who they represent, what their function is and what their voting rights are.

I. If any of the shareholder or director of the company is of local nationality, specify the 'quorum and what majority is required for taking decisions in Shareholders' meetings and in meetings of the Board of Directors. Are these rules set out in the Articles of Association or other documents? If so, provide a copy of such documents (with an English translation)

J. If the company is a subsidiary of another company or the parent company is itself a subsidiary of another company, provide list of ten largest shareholders of its parent company.

K. State whether the company is a part of a Group. If yes then explain all business or operational relationship affecting development, production, sale or distribution of the merchandise.

L. State whether the company is under "common control" with another person by a third person (e.g., a family group or investor group) and/or whether the company and another person commonly control a third person (e.g., a joint venture). Control exists where a person is legally or operationally in a position to exercise restraint or direction over another person. Some factors, individually or in aggregate, which may influence whether or not control may exist include, for example, ownership (with power to vote) of the voting stock of a company, substantial borrowings, business operations, and common officers, directors, or mangers. If there is any such relationship, describe the nature of the relationship (e.g., ownership percentage, common officers/directors).

M. Provide any legislative enactments or other formal measures by the government that centralize or decentralize control of the export activities of the company (with an English translation).

N. Provide copies of business licenses and all government approvals required by the company for conducting business and specify,

(i) Which governmental agency or office is responsible for issuing the licenses?

(ii) Describe the purpose of the licenses.

(iii) Do the licenses impose any limitations on the operations of the company? Do the licenses create any entitlements for the company? Describe and explain these limitations and entitlements.

(iv) Under what circumstances could the licenses be revoked, and by whom?

(v) Will these licenses need to be renewed? What actions the company must take to obtain renewal?

O. Describe any controls on exports of the subject merchandise to India and other countries and specify,

(i) Does the subject merchandise appear on any government list regarding export provisions or export licensing? If so, provide details thereof.

(ii) Do export quotas apply to the subject merchandise? If so, describe the process by which company received its quota. Does the quota allocation process involve any government participation in the setting of export volumes and prices? Explain the quota allocation process.

P. Identify supplier, (sub) contractor, lender, exporter, distributor, reseller, and any other person involved in development, production, sale or distribution of the merchandise. Whether the company acquires a significant amount of a major input from only a single supplier, the length of time the company has had a relationship with a supplier, (sub) contractor, distributor, exporter or reseller, the exclusivity of the relationship, all business relationships company has or had with these persons, and other relationships between the company and other person (e.g., director/ manager relationships).

Q. List major suppliers of main raw materials and if the supplier is affiliated, and provide the details thereof.

R. List major suppliers of utilities and if the supplier is affiliated, and provide the details thereof.

S. Identify all business transactions that may directly or indirectly affect the development, production, sale or distribution of the merchandise.

T. Specify and give the references of the following laws to the extent they are applicable to the company:

- Company law
- Labor law
- Joint Venture law
- Accounting rules or law

  Provide a copy of the relevant laws.

**3. BUSINESS DECISIONS AND COSTS**

(a) How the raw materials and other relevant inputs for manufacturing the product concerned are procured (short or long term contracts, spot market, number of suppliers for the various raw materials, purchased locally or abroad etc.).

(b) For each of the raw materials, provide information about the names and addresses of the suppliers. Whether the supplier is a private person, a company, the State or State enterprise /a local/regional authority.

I. If it is a private person, whether this person has local nationality or any other nationality;

II. If it is a company, whether it is a local company, a foreign-owned company or a joint venture with a foreign-owned company;

III. If it is a local company, whether it is a privately owned company, a State-owned company or a company owned by local/regional authorities. If it is a company part-owned by the State or local/regional authorities; specify to what extent State or local/regional authorities are involved;

IV. If it is a local/regional authority, provide the details.

(c) For each item of utility i.e. coal, electricity, water and oil, provide the names and addresses of the suppliers. Whether these utilities are charged at normal rates or whether any special or subsidized rate is charged. Provide evidence in support of your claim. What are the rates charged for each of the utility?

(d) Whether there are any restrictions or conditions, either direct or indirect, on imports of raw materials used by the producer. If so, these restrictions or conditions may be described. Provide a copy of the documents (with an English translation) in which those restrictions or condition are described and indicate the relevant provision.

**4. SALES**

(a) Explain any local/regional authority or State involvement in setting prices/ quantities. Provide a copy of the documents (together with an English translation) containing such involvement and indicate the relevant provisions.

(b) Describe how company sets the prices of the merchandise it exports to India and other countries. Does your company negotiate prices directly with customers? Are these prices subject to review or guidance from any governmental organization/ bodies? Provide evidence of price negotiations.

(c) Does Company coordinates with other exporters in setting prices or in determining markets being serviced? What role does the Chamber of Commerce play in coordinating the export activities of the company?

(d) Describe how company negotiates sales to India and other countries. Who in the company has the authority to contractually bind the company to sell merchandise? Does any organization outside the company review or approve any aspect of the sales transaction (e.g., the price, the product to be sold, the customer)? If so, identify the organization and explain the organization's role.

Explain any local/regional authority or State involvement in setting prices/ quantities. Provide a copy of the documents (together with an English translation) setting those involvements and indicate the relevant provisions.

**5. INDUSTRIAL PROPERTY RIGHTS AND LEGAL REQUIREMENTS**

(a) Specify contractual links, including joint ventures, with any other company, authority or with the government (national, regional or local) concerning R&D, production, sales, licensing, technical and patent agreements for the product concerned. Provide copies of the agreements accompanied by an English translation.

(b) Provide a list of any royalties or other payments made in respect of any of the above, and state their amount.

(c) List and explain all authorizations the company needs in order to produce, to sell or to export the product concerned. Is the company subjected to any direct or indirect quantitative or other restriction for any of these activities? Provide a copy of business licence, registration and relevant permits. Please describe under what circumstances such a licence and/or registration can be withdrawn.

(d) Describe how the management of the company is selected. If the company is required to notify any governmental authorise about appointment of directors/ managers, provide details thereof including purpose of such notification.

(e) Identify the people who currently manage the company and explain how they were selected for these positions. Also identify the position that each held prior to assuming their current management role in the company.

(f) Are there any restrictions on the use of company's export revenues? If so, explain when export earnings are deposited into a bank account:

(i) In whose name(s) is the account held?
(ii) Who controls of the account?
(iii) Who has the access to the account?

(g) Explain how company's export profits are calculated. What is the disposition of these profits and who decides how the profits will be used?

(h) Has the company suffered a loss on export sales in the past five years? If yes, how was that loss financed? If company obtained loans from a bank, or attempted to obtain loans from a bank, describe the loan application process.

## 6. BANKRUPTCY AND PROPERTY LAWS

(a) Describe the bankruptcy and property laws applicable to the company. Describe any special derogation or exemption the company or the business sector avail under these laws.

(b) State whether company is subjected to any restrictions on the distribution/ repatriation of profits and repatriation of capital invested. If so, provide details along with the copy of the documents (with English translation) where such restrictions are set and indicate the relevant provisions.

## 7. LABOUR

(a) Describe how labour is organized for production purposes. How many skilled workers, unskilled workers, managers etc. are employed? What is the average wage paid to each of these categories in the POI?

(b) How company employees are remunerated (i.e. indicating in detail all elements of remuneration including salary, overtime pay, company car, holiday allowances etc.).

(c) What is the frequency of the remuneration? Which legal entity is the final payer? Do the employees of the company or their families benefit from other facilities such as housing, medical care, pension education etc.? It may be specified who pays for these facilities.

(d) If the company employs foreign staff, where the final payer is located.

(e) Describe in detail the procedure for hiring or dismissing employees. Indicate who is responsible for the final decision

## 8. ACCOUNTS

(a) Financial statements

I. State the financial year followed by the company.

II. Which accounting documentation has to be registered for official purposes each year? Which authorities are involved in the official registration of these documents?

III. Provide the complete financial statements (balance sheet, profit and loss statement, supporting schedules, notes to the financial statements and auditor's opinion) both in the original language and its English translation. Provide the name and address of the auditors (if any).

IV. If the financial statements of the company have not been audited, explain with justification. Is there any legal requirement that accounts should be audited in full or in part?

V. List all qualifications made by auditors and explain why these are not material qualifications.

VI. If the company is filing tax returns with respect to VAT, provide details.

## 9. ACCOUNTING PRINCIPLES AND PRACTICE

(a) Statutory requirements and fundamental accounting principles

I. Books and records

Describe briefly, specifying the reference, the essential statutory requirements such as the language and currency in which the accounts are to be kept and the period for which accounting records and other documents (e.g. important contracts, agreements, articles of association, minutes of board meetings, financial statements and audit reports) have to be kept.

II. Methods and general principles of accounting

Describe briefly the general accounting principles and practices of the company in case the same have not been mentioned in the financial statements. Elaborate how the accounts address issues such as consistency of valuation methods, separate identification of assets and liabilities, prudence of valuation, going concern principles.

(a) Sources of accounting principles

Please specify who has set the accounting rules, which the company has to comply with, such as accounting regulations and standards of regulatory bodies (e.g. the Ministry of Finance, the tax authorities, securities regulations etc.) please list these rules.

(b) Specific accounting principles and practices

Describe briefly the accounting principles and practices regarding the items listed below if these are not covered by the financial accounts:

III. Asset valuation

Explain the methods of depreciation and amortizations used for the main fixed and intangible assets and specify the acquisition value and the current

book value. Explain in each case how the asset was obtained (e.g. bought on the open market, transferred to the company by a shareholder, given for free or at a discount by the State or a third company). If the valuation of the above-mentioned assets has been changed, please plain on what basis and give the reasons for the change in valuation. Quantify impact on the current book value.

List all facilities used for the production and/or commercial purposes that are not owned by the company (land, building, and machines). Provide copies of contracts for lease or rent.

IV. Loans and subsidies

Provide a list of current loans held by the company till the end of the period of investigation. Give details of the accounts, repayment instalments and interest rates. Explain whether the company benefits from special loan or subsidy schemes (e.g. preferential interest rates and extended payback periods, subsidized energy supply, etc.).

V. Foreign currency transactions

(a) Who sets foreign exchange rate(s) used for purchase of inputs, conversion of the proceeds of export sales and repatriation of profits? Is there only one rate, which can be used? If not so, how the rate differs for various purposes.

(b) Explain if there are any limits applicable to the company for the use/ conversion of foreign currencies. If your company has a foreign exchange account, provide a copy of the approval of the application (with an English translation) by the relevant authority.

(c) What does the company do with the foreign currency it earns on sales of the subject merchandise to India and other countries?

(i) If the foreign currency earned (or some portion of it) must be sold to the government, what exchange rate is applied?

(ii) If the foreign currency earned (or some portion of it) is retained by the company, describe any restrictions on the use of that foreign currency.

VI. Barter-trade / Counter Trade

Has the company been involved in barter-trade or counter-trade at any time involving the exchange of goods or commodities for (foreign) equipment, services or commodities? Provide details and explain the accounting methods used.

VII. Compensation-Trade / Product Buy-back

Explain whether the company has been involved in compensation trade (also known as product buy-back) at any time whereby a (foreign) company provides machinery and equipment for which it receives payment-in-kind, usually in the form of goods produced. Explain if such payments were structured as loans or as instalment sales. Explain the accounting methods used.

Appendix-18

## EXPORTERS QUESTIONNAIRE - Part II

### - Further Information concerning the Sunset Review

The purpose of a Sunset review is to investigate whether the cessation of anti-dumping duty is like to lead to continuation or recurrence of dumping and injury. As regards the Sunset review two aspects are to be addressed:

The existence of current injurious dumping may be a strong indicator that continuation is likely but if there are reasons to take a contrary view then exporters should provide evidence to support such a claim.

The term "recurrence" implies a situation where injurious dumping is no longer taking place. As such, the investigation will concentrate on establishing whether the cessation of existing measures is likely to lead to resumption of dumped and injurious exports.

### INFORMATION TO BE SOUGHT CONCERNING SUNSET REVIEW

1. Does your firm or any related firm produce, have the capability to produce, or have any plans to produce PUC in India or other countries?

2. Does your firm or any related firm export or have any plans to export PUC to India?

3. Has your firm experienced any plant openings, relocations, expansions, acquisitions, consolidations, closures or prolonged shutdowns because of strikes or equipment failure; curtailment of production because of shortage of materials; or any other change in the character of your operations or organization relating to the production of PUC since the date on which the antidumping duty under review was levied? If yes, – supply details as to the time, nature, and significance of such changes.

4. Does your firm anticipate any changes in the character of your operations or organizations (as noted above) relating to the production of PUC in the future? If yes, then supply details as to the time, nature and significance of such changes and provide underlying assumptions, along with relevant portions of business plans or other supporting documentation that address this issue. Include in your response a specific projection of your firm's capacity to produce PUC.

5. Does your firm have any plans to add, expand, curtail or shut down production capacity and/or production of PUC in the future? If yes, describe those plans, including planned dates and capacity/production quantities involved, and the reason(s) for such change(s). If the plans are to add or expand capacity or production, List (in descending order of importance) the markets (countries) to which such additional capacity or production would be directed. Provide relevant portions of business plans or other supporting documentation that addresses this issue.

6. Describe the production technology used in the production of PUC and identify major production inputs. Also explain any significant changes in production technology since the year the antidumping duty under review was levied.

7. Has your firm, since the year the antidumping duty under review became effective, produced; or does your firm anticipate producing in the future, other products on the same equipment or machinery and related work force used in the production of PUC? If yes, provide yearly data on your firm's combined production capacity and production of these products and PUC in the periods indicated.

8. What percentage of your firm's total sales in its most recent financial year was represented by sales of PUC?

9. Has your firm maintained any inventories of PUC in India?

10. (a) Are your firm's exports of PUC subject to tariff or non-tariff barriers to trade (for example, antidumping or countervailing duty findings or remedies, tariffs, quotas, or regulatory barriers) in any countries other than India?

(b) Are your firm's exports of PUC subject to current investigations in any countries other than India that might result in tariff or non-tariff barriers to trade?

11. Identify export markets (other than India) that you have developed or where you have increased your sales of PUC as a result of the antidumping duty order on PUC from India. Please identify and specify.

12. Describe the significance of the existing antidumping duty order covering imports of PUC in terms of its effect on your firm's production capacity, production, home market shipments, exports to India and other markets, and inventories. You may compare your firm's operations before and after the imposition of the anti-dumping order.

13. Would your firm anticipate any changes in the production capacity, production, home market shipments, exports to India and other markets, or inventories relating to the production of PUC in the future if the antidumping duty order on PUC from COUNTRY were to be revoked? Supply details as to the time, nature, and significance of such changes and provide underlying assumptions, along with relevant portions of business plans or other supporting documentation, for any trends or projections you may provide.

14. Please furnish data on installed capacity, production, shipments, and inventories of PUC produced by your firm since last five years.

15. To what extent have changes in the prices of raw materials affected your firm's selling prices for PUC since last five years? Also discuss any anticipated changes in your raw material costs in the future, identify the time period (s) involved and the factor(s) that you believe would be responsible for such changes. Provide any underlying assumptions, along with relevant portions of business plans or other supporting documentation, that address this issue.

16. What percentage of your firm's sales of PUC to Indian customers are on a contract (per cent) vs. spot sales (percent) basis? If you sell on a contract basis, please answer the following questions with respect to provisions of a typical contract.

(a) What is the average duration of a contract?

(b) How frequently are contracts renegotiated?

(c) Does the contract fix quantity, price or both?

(d) Does the contract have a meet or release provision?

(e) What are the standard quantity requirements, if any?

(f) What is the price premium for sub-minimum shipments?

17. Have individual Indian producers, importers, purchasers, or foreign producers/exporters of PUC influenced market price of PUC in India since the year the antidumping duty under review became effective?

18. Is there any supply factor(s) (e.g. changes in availability or prices or raw materials, energy, or labour; transportation conditions; production capacity and/or methods of production; technology; export markets; or alternative production opportunities) that affected the availability of PUC in the Indian market since the year the antidumping duty under review became effective? If so, please identify the

same and explain the time period(s) of any such changes, the factor(s) involved, and the impact such had on your shipment volumes and prices.

19. Please discuss any anticipated changes in the supply factors noted above that may affect the availability of PUC in the Indian market in the future, identifying the time period(s) involved and the factor(s) that you believe would be responsible for such changes. Provide any underlying assumptions, along with relevant portions of business plans or other supporting documentation, that address this issue.

20. Is the PUC range, PUC mix, or marketing of PUC in your home market significantly different from the PUC range, PUC mix, or marketing of PUC for export to India or to third country markets? Have there been any significant changes in the PUC range, PUC mix or marketing of PUC in your home market,for exports to India,or for exports to third country markets since the year the antidumping duty order under review became effective?

21. Please discuss any anticipated changes in terms of the PUC range, PUC mix, or marketing of PUC in your home market, for export to India, or for export to third country markets in the future, identifying the time period(s) involved and the factor(s) that you believe would be responsible for such changes. Provide any underlying assumptions, along with relevant portions of business plans or other supporting documentation, that address this issue.

22. What other Products may be substitutes for PUC, and how frequently does such substitution occur?

23. Have there been any changes in the number or types of Products that can be substituted for PUC since the year the antidumping duty order under review became effective?

24. Please discuss any anticipated changes in terms of the substitutability of other Products for PUC in the future, identifying the time period(s) involved and the factor(s) that you believe would be responsible for such changes. Provide any underlying assumptions, along with relevant portions of business plans or other supporting documentation, that address this issue.

25. Discuss any changes in the end uses of PUC since the year the antidumping duty order under review became effective by market and time period.

26. Please provide transaction wise details of exports of PUC to third country markets, i.e., markets other than India.

27. What is the current level of production and demand of the subject goods in your country? Please provide the information in the table given below:

**Financial years prior to POI**

| Particulars | 3rd year | 2nd year | 1st year | POI | Estimate Next 1st year | Estimate Next 2nd year |
|---|---|---|---|---|---|---|
| Country's Production | | | | | | |
| Company's Production | | | | | | |
| Other producer sales in domestic market | | | | | | |
| Total sales in domestic market | | | | | | |
| Imports in your country | | | | | | |
| Total demand in your country | | | | | | |
| Company's exports to India ** | | | | | | |
| Company's export to countries other than India ## | | | | | | |
| Other producers' exports to India | | | | | | |
| Other producers exports to countries other than India | | | | | | |

****** *The sales figure for POI should reconcile with the transaction wise information provided in Appendix – 2 of the main Exporter's Questionnaire.*

**##** *The transaction wise data for POI should be provided in the same format as prescribed in the Appendix – 2 of the main Exporter's Questionnaire.*

Appendix-19

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

No. XX/XX/XXXX-DGTR
Government of India
Department of Commerce
(Directorate General of Trade Remedies)
New Delhi -110001

Dated ----------

**Initiation Notification**

**(OI Case No….)**

**Subject: Initiation of Anti-Dumping Investigation concerning imports of XXX originating in or exported from YYYYY.**

**F.No.XX/XX/XX-DGTR**: M/s XXX (hereinafter also referred to as the Petitioner or Applicant) has filed an application before the Designated Authority (hereinafter referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of injury) Rules, 1995 as amended from time to time (hereinafter referred to as the Rules) for imposition of Anti-dumping duty on imports of XXX (hereinafter referred to as the subject goods or PUC) from YYYY (hereinafter referred to as the subject countries).

**Product under consideration**

2. The product under consideration in the present application is "XXX". These …… are also commonly referred to as …….. …….

3. XXX is mainly used in ……

4. The subject goods are classified under chapter heading ZZZZZZ. However, it has been claimed by the petitioner, that the subject goods are also being imported under tariff headings ZZZZZZ and ZZZZZZZ. It is clarified that the HS codes are only indicative and the product description shall prevail in all circumstances.

5. The Product under Consideration is defined as follows: "……".

**Like Article**

6. The petitioner submitted that subject goods produced by the petitioner companies and the subject goods imported from the subject countries are like articles. There is no known difference between the subject goods exported from subject countries and that produced by the petitioner. XXX produced by the domestic industry and imported from subject countries are comparable in terms of essential product characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. Consumers can use and are using the two interchangeably. The two are technically and commercially substitutable and hence should be treated as 'like article' under the Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the applicant in India are being treated as 'Like Article' to the subject goods being imported from the subject country.

**Domestic Industry & Standing**

7. The Application has been filed by M/s AAAAA supported by BBBBB, as domestic industry of the PUC. The petitioner has certified that there are no imports of the PUC by the petitioner or any of its related party from the subject countries. Since the production of the petitioner accounts for "a major proportion" in the total production of the PUC in India, the petitioner satisfies the standing and constitutes Domestic Industry within the meaning of the Rules.

**Countries involved**

8. The present investigation is in respect of alleged dumping of the PUC from YYYYY.

**Normal Value**

9. The applicant has also constructed the normal values in respect of XX on the grounds that they were neither able to get any documentary evidence nor reliable information with regard to domestic prices of the subject goods in the said countries. Further, such information is also not available in public domain. The Authority has *prima-facie* considered the normal value of subject goods in subject countries on the basis of constructed values as made available by the applicants for the purpose of this initiation.

**Export Price**

10. The applicant has determined the export price on the basis of data published by XXX. Price adjustments have been claimed on account of ……. During the course of investigation, the Authority will also analyse transaction-wise import data from Directorate General of Commercial Intelligence & Statistics (DGCI&S).

**Dumping Margin**

11. The normal value and the export price have been compared at ex-factory level, which show significant dumping margin in respect of the subject countries. There is sufficient prima facie evidence that the normal value of the subject goods in the subject country is significantly higher than the ex-factory export price, indicating, prima facie, that the subject goods are being dumped into the Indian market by the exporters from the subject country.

12. The applicant has claimed that domestic industry has suffered ……. There is sufficient prima facie evidence of injury to the domestic industry caused by dumped imports from subject countries to justify initiation of an anti-dumping investigation.

13. And whereas, the Authority prima facie finds that sufficient evidence of dumping of the subject goods, originating in or exported from the subject countries; injury to the domestic industry and causal link between the alleged dumping and the injury exist to justify initiation of an anti-dumping investigation, the Authority hereby initiates an investigation into the alleged dumping, and consequent injury to the domestic industry in terms of Para 5 of the Rules, to determine the existence, degree and effect of alleged dumping and to recommend the amount of antidumping duty, which if levied, would be adequate to remove the 'injury' to the domestic industry.

**Period of Investigation (POI)**

14. The period of investigation for the purpose of present investigation is from XXX to XXX (XX months). However, the injury investigation period will cover the data of previous three years, i.e. April XXX to March XXX, April XXXX to March XXXX, April XXXX to March XXXX and POI.

**Submission of Information**

15. The exporters in the subject countries, their government through their Embassy in India, the importers and users in India known to be concerned and the domestic industry are being addressed separately to submit relevant information in

the form and manner prescribed and to make their views known to the Authority at the following address:

The Director General
Directorate General of Trade Remedies
Department of Commerce,
Jeevan Tara Building, 4th Floor, 5, Parliament Street, New Delhi -110001

16. Any other interested party may also make its submissions relevant to the investigation in the prescribed form and manner within the time limit set out below. Any party making any confidential submission before the Authority is required to make a non-confidential version of the same available to the other parties.

Time Limit for Registration of Interested Parties and Filing of the Response

17. All the interested parties are hereby advised to intimate their interest (including the nature of interest) in the instant matter and file their questionnaire responses and offer their comments to the domestic industry's application within forty days (40 days) from the date of publication of this Notification. The information must be submitted in hard copies as well as soft copies.

18. Any information relating to the present investigation should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days (40 days) from the date of publication of this Notification. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record its findings on the basis of the facts available on record in accordance with the AD Rules.

**Submission of information on confidential basis**

19. The parties making any submission (including Appendices/Annexures attached thereto), before the authority including questionnaire response, are required to file the same in two separate sets, in case "confidentiality" is claimed on any part thereof.

20. The "confidential" or "non-confidential" submissions must be clearly marked as "confidential" or "non-confidential" at the top of each page. Any submission made without such marking shall be treated as non-confidential by the Authority and the Authority shall be at liberty to allow the other interested parties to inspect such submissions. Soft copies of both the versions will also be required to be submitted, along with the hard copies, in two (2) sets of each.

21. The confidential version shall contain all information which are by nature confidential and/or other information which the supplier of such information claims

as confidential. The information which is claimed to be confidential by nature or the information on which confidentiality is claimed because of other reasons, the supplier of the information is required to provide a reasoned cause statement along with the supplied information as to why such information cannot be disclosed.

22. The non-confidential version is required to be a replica of the confidential version with the confidential information preferably indexed or blanked out (in case indexation is not feasible) and summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, party submitting the confidential information may indicate that such information is not susceptible to summary, and a statement of reasons why summarization is not possible, must be provided to the satisfaction of the Authority.

23. The Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the Authority is satisfied that the request for confidentiality is not warranted or if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information. Any submission made without a meaningful non-confidential version thereof or without a good cause statement on the confidentiality claim shall not be taken on record by the Authority.

24. The Authority on being satisfied and accepting the need for confidentiality of the information provided, shall not disclose it to any party without specific authorization of the party providing such information.

**Inspection of Public File**

25. In terms of Rule 6(7) of the AD Rules, any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

**Non-cooperation**

26. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

(……..)
Additional Secretary & Director General

Appendix-20

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

Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building
5 Parliament Street, New Delhi - 110001

Dated: ……..

**Initiation Notification**

**(Sunset Review)**

**Subject: Initiation of Sunset Review of Anti-Dumping Duty imposed on imports of XXX originating in or exported from XXXX.**

**File No. XX/XX/XXXX-DGTR:**Having regard to the Customs Tariff Act, 1975 as amended in 1995 (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 to as the Rules), the Designated Authority (hereinafter referred to as the Authority) recommended imposition of anti-dumping duty on imports of "XXX" (hereinafter also referred to as the subject goods), originating in or exported from XXX (hereinafter referred to as the subject country).

2. Whereas, the original investigation concerning imports of the subject goods from the subject countries was initiated by the Authority vide Notification XX/XX/XXXX-DGAD, dated XX XX XXXX. The final finding was published by the Authority vide Notification No. XX/XX/XXXX-DGAD dated XX XX, XXXX and definitive anti-dumping duty was imposed by the Central Government vide Notification No. XX/XXXX-Customs dated XX XX, XXXX.

3. Whereas, the present petition has been filed by M/s. XXXX (hereinafter referred to as Petitioners) and supported by XXXX. The petitioners have provided relevant financial information to file this application for the extension of period, modification and enhancement of existing anti-dumping duties on imports of XXXX (hereinafter referred to as XX or subject good)from XXXX (hereinafter referred to as subject country). The petition is in the form and manner prescribed by the Authority.

**Country involved**

4. The country involved in this investigation is XXXX.

**Product under Consideration and Like Article**

5. The product under consideration in the present investigation is XXXX. XXXX is classified under Customs sub heading No XX XX XXXX under chapter XX of the Customs Tariff Act, 1975. However, customs classification is indicative in nature and not binding on the scope of the investigation.

6. The Authority has noted as follows in the final findings of the original investigation,"……"

7. Since the proposed investigation is a sunset review investigation, the scope of the product under consideration is the same as that in the original investigation.

**Like Article**

8. Rule 2(d) with regard to like article provides as under:

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

9. Petitioner has claimed that there is no known difference in subject goods exported from subject countries and that produced by the Indian industry. Both the products have comparable characteristics in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification, etc.

**Domestic Industry & Standing**

10. The petition has been filed by M/s XXXX and has been supported by XXXX. It has been stated that the production of petitioners along with supporters is XX% of Indian production in the Country. On the basis of information furnished by the applicants, the Authority notes that no exports have been made to India by the related exporters in subject countries and petitioners have not made any imports of the subject goods from the subject country during the POI. Therefore, the Authority has considered the petitioner company as domestic industry within the meaning of Rule 2(b) of the Rules and the application satisfies the criteria of standing in terms of Rule 5.

**Initiation of sunset review**

11. Whereas in view of the duly substantiated application filed, and in accordance with Section 9A(5) of the Act read with Rule 23 of the Anti-dumping Rules, the Authority hereby initiates a Sunset review investigation to review the need for continued imposition of the duties in force in respect of the subject goods, originating in or exported from the subject country and to examine whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

**Period of Investigation**

12. The period of investigation (POI) is XX XXXX – XX XXXX (XX months) for the purpose of the present investigation. The injury investigation period will however cover the periods of April XXXX-March XXXX, April XXXX-March XXXX April XXXX - March XXXX and the POI. The data beyond POI may also be examined to determine the likelihood of dumping and injury.

**Procedure**

13. The present sunset review covers all aspects of the final findings of the original investigation published vide Notification No. XX/XX/XXXX-DGAD dated XX XX, XXXX (final findings of the original investigation).

14. The provisions of Rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19 and 20 of the Rules supra shall be *mutatis mutandis* applicable in this review.

**Submission of Information**

15. The known exporters in the subject country, the government of the subject country through its embassy in India, the importers and users in India known to be concerned with the product are being addressed separately to submit relevant information in the form and manner prescribed and to make their views known to the Authority at the following address:

The Director General
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi – 110001

16. Any other interested party may also make its submissions relevant to the investigation in the prescribed form and manner within the time limit set out below. Any party making any confidential submission before the Authority is required to

submit a non-confidential version of the same to be made available to the other parties.

**Time Limit for Registration of Interested Parties and Filing of Response**

17. All the interested parties are hereby advised to intimate their interest (including the nature of interest) in the instant matter and file their questionnaire responses and offer their comments to the domestic industry's application regarding the need to continue or otherwise the Anti-dumping measures within 40 days from the date of initiation of this investigation.

18. Any information relating to the present review and any request for hearing should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days (40 Days) from the date of publication of this Notification. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record its findings on the basis of the facts available on record in accordance with the Anti-Dumping Rules.

**Submission of Information on Confidential Basis**

19. In case confidentiality is claimed on any part of the questionnaire response/ submissions, the same must be submitted in two separate sets (a)marked as Confidential (with title, index, number of pages, etc.) and (b) Non- Confidential (with title, index, number of pages, etc.). All the information supplied must be clearly marked as either "confidential" or "non-confidential" at the top of each page and accompanied with soft copies.

20. Information supplied without any confidential marking shall be treated as non-confidential and the Authority shall be at liberty to allow the other interested parties to inspect any such non-confidential information. Two (2) copies of the confidential version and two (02) copies of the non-confidential version must be submitted by all the interested parties.

21. For information claimed as confidential, the supplier of the information is required to provide a good cause statement along with the supplied information as to why such information cannot be disclosed and/or why summarization of such information is not possible.

22. The non-confidential version is required to be a replica of the confidential version with the confidential information preferably indexed or blanked out/

summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, parties submitting the confidential information may indicate that such information is not susceptible to summarization; a statement of reasons why summarization is not possible must be provided to the satisfaction of the Authority.

23. The Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the 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 authorize its disclosure in generalized or summary form, it may disregard such information.

24. Any submission made without a meaningful non-confidential version thereof or without a good cause statement on the confidentiality claim may not be taken on record by the Authority. The Authority on being satisfied and accepting the need for confidentiality of the information provided, shall not disclose it to any party without specific authorization of the party providing such information.

**Inspection of public file**

25. In terms of Rule 6(7) of the Rules, any interested party may inspect the public file containing non-confidential version of the evidences submitted by other interested parties.

**Non-cooperation**

26. In case any interested party refuses access to and otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may declare such interested party as non-cooperative and record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

(……)
Additional Secretary and Director General

Appendix-21

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

Case no. (MTR) XX/20XX
Government of India
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Trade Remedies)
4th Floor, Jeewan Tara Building, 5, Parliament Street, New Delhi

Dated the .....

**Initiation Notification**

**(Mid-Term Review Investigation)**

**Sub: Initiation of Mid-Term Review (MTR) investigation with regard to the anti-dumping duties in force on the imports of XXX originating in or exported from XXX.**

1. No. XX/XX/20XX-DGTR: Whereas having regard to the Customs Tariff Act, 1975, as amended from time to time, (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter referred to as the Rules), the Designated Authority (hereinafter referred to as the Authority), notified its final findings vide Notification No. XX/XX/20XX-DGAD dated XX XX 20XX and recommended imposition of definitive anti-dumping duty on import of "XXX" (hereinafter referred to as "subject goods" or "the product under consideration" or "PUC") originating in or exported from XXX and the definitive anti-dumping duty was imposed by the Central Government vide Customs Notification No. XX/20XX dated XX XX 20XX.

**Request for Initiation of Mid-Term Review**

2. XXX (hereinafter referred to as "the applicant"), an association of importers/users of the subject goods, has submitted an application requesting for initiation of a review of the anti-dumping duties imposed on the imports of the subject goods from the subject countries in accordance with section 9A of the Act read with Rule 23 of the Rules. They have claimed that the circumstances that were prevalent during the period of investigation of the original investigation have changed significantly leading to a situation where the existing antidumping duties are no longer warranted.

**Grounds for Review**

3. An anti-dumping investigation on imports of the subject goods was initiated vide Notification. No.XX/XX/20XX- DGAD dated XX XX, 20XX on the basis of an application filed by XX(hereinafter collectively referred as "Domestic Industry").

4. The Applicant has submitted that: "……."

Product Under Consideration and Like Article

5. The product under consideration for the purpose of the present investigation is "XXX" from XXX. The main function "…."

6. The product under consideration is classified under Customs Tariff Heading XXX and are primarily imported under tariff item number XXX and XXX of the Act. The customs classification is indicative only and is in no way binding on the scope of the present investigation.

7. The applicants have claimed that the subject goods being produced by the domestic industry are similar to the subject goods being imported into India. The applicants have claimed that PUC produced by the applicants and imported from the subject country are having comparable characteristics in terms of parameters such as physical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable and hence should be treated as 'like article' under the Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the applicants in India are being treated as 'like article' to the subject goods being imported from the subject country.

**Country Involved**

8. The country involved in the present investigation is XXX.

**Initiation**

9. Sub-Rules (1) and (1A) of Rule 23 are similar to Article 11 of the ADA and provide as follows:

> *(1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.*

*(1A) The Designated Authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that injury to the domestic industry is not likely to recur, if the said antidumping duty is removed or varied and therefore no longer warranted.*

10. In terms of the aforesaid provision, the Authority shall review from time to time, the need for continued imposition of Anti-Dumping Duty and if it is satisfied on the basis of information received by it that there is no justification for continued imposition of such duty, the Authority may recommend to the Central Government for its withdrawal.

11. On the basis of information made available by the aforementioned Applicant to the Authority, the Authority considers it *prima facie* appropriate to initiate a mid-term review of the anti-dumping duties imposed on the imports of the subject goods originating in or exported from the subject countries.

**Procedure:**

12. Having regard to the information provided by the Applicant indicating changed circumstances necessitating a review of the measure in force, the Designated Authority now considers that it is appropriate to initiate a mid-term review of the final findings notified vide Notification No. XX/XX/20XX-DGAD dated XX XX 20XX published in the Gazette of India Extraordinary Part I, Section I and the definitive duties imposed by the Central Government vide Customs Notification No. XX/20XX dated XX XX20XX and the Authority hereby initiates an investigation in accordance with the provisions of Section 9(A) of the Act read with Rule 23 of the Rules to review the need for continued imposition of the anti-dumping duties. The review will cover all aspects of Notification No.XX/XX/20XX-DGAD dated XX XX 20XX.

**Period of Investigation**

13. The period of investigation (POI) for the present investigation is from XX XX XXXX to XX XX XXXX. The injury investigation period will, however, cover the

periods April 20XX-March 20XX, April 20XX-March 20XX, April 20XX-March 20XX and the POI.

**Submission of information**

14. The known exporters in the subject country and its government through its Embassies in India, importers and users in India known to be concerned with the subject goods and the domestic industry are being informed separately to enable them to file all the relevant information in the form and manner prescribed within the time limit set out below.

15. Any other interested party may also make its submissions relevant to the investigation in the form and manner prescribed within the time limit set out below. The information/submissions may be submitted to:

The Director General,
Directorate General of Trade Remedies,
4th Floor, Jeevan Tara Building, 5, Parliament Street,
New Delhi-110001

16. Any party making any confidential submission before the Authority is required to make a non-confidential version of the same available to the other parties.

**Time limit for registration of parties and filing of response**

17. Any information relating to the present investigation should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days (40 days) from the date of the publication of initiation notification. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record its findings on the basis of the facts available on record in accordance with the AD Rules.

18. All the interested parties are hereby advised to intimate their interest (including the nature of interest) in the instant matter and file their questionnaire responses and offer their comments to the domestic industry's application within forty days (40 days) from the date of the publication of initiation notification. The information must be submitted in hard copies as well as in soft copies.

**Submission of Information on Confidential Basis**

19. The parties making any submission (including Appendices/Annexures attached thereto) before the authority including questionnaire response, are required to file the same in two separate sets, in case "confidentiality" is claimed on any part thereof:

i. one set marked as Confidential (with title, number of pages, index, etc.), and

ii. the other set marked as Non-Confidential (with title, number of pages, index, etc.).

20. The "confidential" or "non-confidential" submissions must be clearly marked as "confidential" or "non-confidential" at the top of each page. Any submission made without such marking shall be treated as non-confidential by the Authority and the Authority shall be at liberty to allow the other interested parties to inspect such submissions. Soft copies of both the versions will also be required to be submitted, along with the hard copies, in five (5) sets of each.

21. The confidential version shall contain all information which is by nature confidential and/or other information which the supplier of such information claims as confidential. For information which are claimed to be confidential by nature or the information on which confidentiality is claimed because of other reasons, the supplier of the information is required to provide a good cause statement along with the supplied information as to why such information cannot be disclosed.

22. The non-confidential version is required to be a replica of the confidential version with the confidential information preferably indexed or blanked out (in case indexation is not feasible) and summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, party submitting the confidential information may indicate that such information is not susceptible to summary, and a statement of reasons why summarization is not possible must be provided to the satisfaction of the Authority.

23. The Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the Authority is satisfied that the request for confidentiality is not warranted or if the supplier of the

information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information.

24. Any submission made without a meaningful non-confidential version thereof or without good cause statement on the confidentiality claim shall not be taken on record by the Authority.

25. The Authority on being satisfied and accepting the need for confidentiality of the information provided, shall not disclose it to any party without specific authorization of the party providing such information.

**Inspection of Public File**

26. In terms of Rule 6(7) of the AD Rules, any interested party may inspect the public file containing non-confidential version of the evidence submitted by other interested parties.

**Non-Cooperation**

27. In case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

(……)
Additional Secretary & Director General

Appendix-22

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

Government of India Department
Department of Commerce
Ministry of Commerce & Industry
(Directorate General of Anti-Dumping & Allied Duties)
4th Floor, Jeevan Tara Building, 5 Parliament Street, New Delhi - 110001

Dated the ……

**Initiation Notification**

(Case No. NSR XX/20XX)

**Subject: - Initiation of New Shipper Review (under Rule 22) of Anti-Dumping duty imposed on imports of XXX from XXX**

No. XX/XX/20XX-DGT: M/s AAA., (hereinafter referred to as the applicants) have filed an application in accordance with the Customs Tariff Act, 1975 (as amended) (hereinafter referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as the Rules) before the Designated Authority (hereinafter referred to as the Authority) requesting for a review of the anti-dumping duty recommended by the Authority on exports of Anti-Dumping duty imposed on imports of XXX (hereinafter referred to as subject goods) from China PR in the earlier case of anti-dumping investigation where the Central Government has notified the anti-dumping duty vide Notification No.XX/20XX-Customs dated XX.XX.20XX falling under Chapter XX of Customs Tariff Act, consequent upon issue of Sunset Final Findings Notification No.XX/XX/20XX-DGAD on XX XX,20XX

**Exporters Involved:**

2. The present investigations relate to exports of XXX by M/s. AAA, and have filed an application in accordance with the relevant provisions of the Act.

**Initiation of Review in Respect of New Exporter:**

3. The Act and the Rules made thereunder require the Authority to review for the purpose of determining individual margin of dumping for any exporter or producer in the exporting country in question who has not exported the subject goods to India during the period of investigation of the earlier case of anti-dumping

investigation concerning imports of XXX from XXX and that the applicants are not related to any of the exporters and producers in the exporting country who are subjected to anti-dumping duty.

4. The Authority having been prima facie satisfied with the conditions as prescribed under Rule 22, decides to review the Anti-Dumping duty imposed by the Central Government in pursuance of the recommendations made by the Authority vide Notification No. XX/XX/20XX-DGAD dated XX XX, 20XX, and having regard to Notification No. XX/20XX Customs dated XX.XX.20XX, as requested by AAA.

5. As requested by AAA in terms of their application, the Authority, on the basis of *prima facie* evidence regarding the conditions as prescribed under Rule 22, hereby decides to initiate a New Shipper Review investigation for determination of their individual dumping margin for the purposes of imposition of the anti-dumping duties levied on dumped imports of XXX originating in or exported from XXX in pursuance of the recommendations made by the Authority vide Final findings Notification No. XX/XX/20XX-DGAD dated XX XX, 20XX in the original anti-dumping case.

6. The Authority recommends provisional assessment on all exports of the subject goods made by AAA, till this review is completed, in accordance with the Rule 22 and having regard to Customs Notification No. XX/20XXCustoms (ADD) dated XX.XX.20XX.

**Period of Investigation:**

7. The period of investigation for the purpose of the present review is XX.XX.20XX to XX.XX.20XX.

**Submission of Information:**

8. The known exporters in the subject countries, the governments of the subject countries through their embassies in India, the importers and users in India known to be concerned with the product are being addressed separately to submit relevant information in the form and manner prescribed and to make their views known to the Authority at the following address:

The Director General
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5 Parliament Street, New Delhi -110001.

9. Any other interested party may also make its submissions relevant to the investigation in the prescribed form and manner within the time limit set out below.

**Time Limit for Registration of Interested Parties and Filing of Response:**

10. Any information relating to the present investigation should be sent in writing so as to reach the Authority at the address mentioned above not later than forty days (40 Days) from the date of completion of the period of investigation. If no information is received within the prescribed time limit or the information received is incomplete, the Authority may record its findings on the basis of the facts available on record in accordance with the Anti-Dumping Rules.

**Submission of Information on Non-Confidential Basis**

11. In case confidentiality is claimed on any part of the questionnaire's response/ submissions, the same must be submitted in two separate sets (a) marked as Confidential (with title, index, number of pages, etc.) and (b) other set marked as Non Confidential (with title, index, number of pages, etc.). All the information supplied must be clearly marked as either "confidential" or "non-confidential" at the top of each page.

12. Information supplied without any confidential marking shall be treated as non- confidential and the Authority shall be at liberty to allow the other interested parties to inspect any such non-confidential information. Two (2) copies of the confidential version and five (05) copies of the non-confidential version must be submitted by all the interested parties.

13. For information claimed as confidential; the supplier of the information is required to provide a good cause statement along with the supplied information as to why such Information cannot be disclosed and/or why summarization of such information is not possible.

14. The non-confidential version is required to be a replica of the confidential version with the confidential information preferably indexed or blanked out/ summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, parties submitting the confidential information may indicate that such information is not susceptible to summarization

and a statement of reasons as to why summarization is not possible, must be provided to the satisfaction of the Authority.

15. The Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted. If the 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 authorize its disclosure in generalized or summary form, it may disregard such information.

16. Any submission made without a meaningful non-confidential version thereof or without a good cause statement on the confidentiality claim may not be taken on record by the Authority. The Authority, on being satisfied and accepting the need for confidentiality of the information provided, shall not disclose it to any party without specific authorization of the party providing such information.

**Inspection of Public File**

17. In terms of Rule 6(7), any interested party may inspect the public file containing non-confidential versions of the evidence submitted by other interested parties.

**Non-cooperation**

18. In case any interested party refuses access to and otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the Authority may declare such interested party as non-cooperative and record its findings on the basis of the facts available to it and make such recommendations to the Central Government as deemed fit.

(……..)
Additional Secretary & Director General

Appendix-23

F. No. XX/XX/20XX-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remdies
Jeevan Tara Building, 4th Floor, 5, Parliament Street,
New Delhi -110001

Dated: ……

**To,**
**Embassy of YYY,**
**Shantipath, Chanakyapuri,**

**New Delhi, Delhi 110021**

**Subject: Initiation of Anti-Dumping Duty imposed on imports of XXX originating in or exported from YYY.**

Sir,

I am directed to inform you that Anti-Dumping Duty investigation concerning imports of **XXX originating in or exported from YYY** to investigate into the existence of the alleged dumping. Initiation Notification No. XX/XX/20XX-DGTR dated the XX.XX.2018 issued by the Authority is available on the website http://dgtr.gov.in/anti-dumping-cases.

2. The exporters and other interested parties known to the Authority to be concerned with the above mentioned investigation are being requested separately to furnish the relevant information in the form of response to enclosed Questionnaire and offer their comments, if any. However, it is possible that either the addresses are not complete or all exporters of the subject goods might not have been intimated directly by the Authority. It is, therefore, requested that this investigation may be brought to the notice of all concerned.

3. Exporters/producers having interest in export of the subject goods to India may be advised to furnish information in the form and manner prescribed in the

Questionnaire to the Authority within 40 days of the date of this communiqué.

Yours sincerely,
(……)
Additional Director (Foreign Trade)
Email:….

**Enclosures:**

1. Initiation Notification http://www.dgtr.gov.in/.....
2. Exporters Questionnaire - http://www.dgtr.gov.in/sites/default/files/exp_questionaire_0.pdf
3. Copy of the letter sent to the known producers/ exporters
4. Soft copy of Non-confidential version of application with list of exporters

Appendix-24

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

Dated .....

**To,**
**Embassy of the People's Republic of China in**
**the Republic of India**
**50 – D, Shantipath, Chanakyapuri,**
**New Delhi - 110021**

**Subject: Initiation of Anti-dumping investigation concerning imports of 'AAA' originating in or exported from China PR.**

Sir,

I am directed to inform you that anti-dumping investigation in respect of dumped imports of 'AAA' originating in or exported from China PR has been initiated by the Designated Authority constituted to investigate into the existence, degree and effect of the alleged dumping. A copy of the Initiation Notification No. XX/XX/2018-DGAD dated XX.XX.2018 issued by the Authority is available on the website http://dgtr.gov.in/anti-dumping-cases.

2. The exporters in China PR (as per the enclosed petition) known to the Authority to be concerned with the above mentioned investigation are being requested separately to furnish the relevant information in the form of response to an Exporter's Questionnaire. However, it is possible that either the addresses are not complete or all the exporters of the subject goods might not have been intimated directly by the Authority. It is, therefore, requested that this investigation may be brought to the notice of all concerned. The Initiation Notification and the Questionnaire may be downloaded from the above mentioned website.

3. The exporters/producers in China PR having interest in the export of the subject goods to India may be advised to furnish information in the form and

manner prescribed in the enclosed Questionnaires to the Authority within 40 days of the date of this communiqué.

Yours sincerely,
(…….)
Additional Director (Foreign Trade)
Email:…….

**Enclosures:**

1. Initiation Notification http://www.dgtr.gov.in/sites/.....pdf
2. Exporters Questionnaire-http://www.dgtr.gov.in/sites/default/files/exp_questionaire_0.pdf
3. Soft copy of Non confidential version of application with list of exporters
4. Supplementary Questionnaire

Appendix-25

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

**To,**
**Exporters/Producers of the subject goods**

**Subject: Initiation of Anti-dumping investigation concerning imports of 'XXX' originating in or exported from YYY.**

Sir,

The Designated Authority, constituted under the Customs Tariff Act, 1975 to investigate into the existence, degree and effect of the alleged dumping, has initiated anti-dumping duty investigation in respect of imports of 'XXX' originating in or exported from YYY. Initiation Notification No. XX/XX/2018-DGTR dated the XX.XX.2018 issued by the Authority is available on the website http://dgtr.gov.in/anti-dumping-cases.

2. As per the records available, you are an exporter/producer of the subject goods. You may, therefore, be interested in participating in the investigation. The Authority provides you an opportunity to defend your interests and assist the Authority to arrive at a fair decision and, thus, requests you to file your response to the Questionnaire.

3. The purpose of the Questionnaire is to gather information required for completion of investigation for the purpose of investigation of the antidumping duty applied to import of subject goods from the above territory. It is important for your company to give the answers clearly and precisely, indicating the sources of information used, and wherever required, attaching supporting documents. Any worksheets or documents used to answer this questionnaire, which by any reason cannot be attached, shall be kept in the hands of the company and be made available for the purposes of further examination/verification.

4. Although a Questionnaire is given, the Designated Authority reserves the right to call for any information in this regard at any time during the investigation and the course of anti-dumping proceedings. You may also submit any additional information relevant in this regard

5. The period of investigation (POI) is from …..20XX to 20YY. However, for the purpose of analysing injury, the data of previous three years, i.e. Apr'AA- Mar'BB, Apr'BB-Mar'CC, Apr'CC-Mar'DD and the period of investigation will be considered.

6. The response must be in English and all supplementary information or other material provided along with it must also be in English or accompanied by an English translation.

7. Where exporter's transactions are involved, you must include information regarding its related corporate entities in India along with the information regarding its sales in the home market or third country market(s).

8. We request you to give careful consideration to the Questionnaire, particularly to the question concerning merchandise characteristics. Specifically we need to know the difference, if any, between the merchandise sold in your home market or in a third country market and that sold in India.

9. All financial information is to be indicated in the local currency. Applicable conversion rate of local currency to US Dollar for the relevant period may also please be made available/mentioned in each statement.

10. If your business does not perform all of the following functions in relation to goods under consideration, please provide names and address of the companies, which perform each of the following functions: -

a. Produces or manufactures the goods under consideration
b. Sells in the domestic market
c. Exports to India
d. Exports to countries other than India

Simultaneously the company concerned may be advised to furnish information to the extent they are relevant as per Para (3) of introduction to the enclosed questionnaire.

11. The information submitted in this Questionnaire must be certified by the Chief Executive of your company as accurate, complete and presenting a true and fair view of the accounts and other data to the best of his/her knowledge and belief.

12. The information furnished is subject to verification. You are, therefore, requested to convey your willingness to offer yourself for any verification by the Authority as per the Performa attached. You are also advised to preserve all the working papers for such verification.

13. The response should be filed, containing two copies of confidential version and two copy of non-confidential version, not later than forty days from the date of issue of this letter, regardless of the time limit prescribed in the initiation notification. The response is to be sent to:

The Designated Authority
Directorate General of Trade Remedies
Department of Commerce,
Jeevan Tara Building, 4th Floor 5, Parliament Street, New Delhi -110001

14. In case you wish to appoint a person/firm to represent your interests, you may please issue a proper authorization in favor of such person/firm.

15. If no response is received within the time stipulated in this letter, it would be presumed that you have no comments to offer. Your attention is specifically drawn to the Anti-Dumping Rules, which authorize the Designated Authority to record its findings on the basis of facts available to it in case of non-cooperation from the interested parties.

16. **Confidential Information:** An interested party supplying information must ensure that all the information supplied is clearly marked either "confidential" or "non-confidential" at the top of each page. Information supplied without any mark shall be treated as non-confidential and the Designated Authority shall be at liberty to allow the other interested parties to inspect any such non-confidential information. Confidential information must be accompanied by a non-confidential summary or, if it is not susceptible to summarization, a statement of the reasons why summarization is not possible. However, 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 authorize its disclosure in a generalized or summary form, the Designated Authority may disregard such information. A copy of all non-confidential submissions shall be placed in a public file, open for inspection by an interested party participating in the investigation, on request.

17. As per Rule 6(6) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 "the Designated Authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the Designated Authority only when it is subsequently reproduced in writing." Please send a written request in advance if you desire a hearing at the address mentioned in Para 13 above so as to reach within 40 days from the date of issue of this communication.

18. You are also required to file an electronic copy of your submission including the data and annexure(s) to the questionnaire response in appropriate machine-readable formats. The information may also be sent by email at the addresses mentioned hereunder.

19. You may contact this Office, should you need any clarification and/or assistance in furnishing the information in the prescribed manner.

20. We appreciate your cooperation in providing the requisite information within the required time and assisting us in conducting the present investigation in a time bound manner.

21. Questionnaires and Application Performa can be downloaded from our web site http://www.dgtr.gov.in/anti-dumping-cases .However, all the replies to the Questionnaires must be sent by post only, followed by an electronics copy.

Thanking you,

Yours sincerely,
(……)
Additional Director (Foreign Trade)
Email:……

**Enclosures :**

1. Initiation Notification http://www.dgtr.gov.in/anti-dumping-cases/
2. Exporters Questionnaire - http://www.dgtr.gov.in/sites/default/files/exp_questionaire_0.pdf
3. Non confidential version of Petition.
4. Soft copy of Non-confidential version of application with list of exporters

Appendix-26

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

Dated ----------

**To,**
**Exporters/ Producers**
**China PR**

**Subject: Initiation of Anti-dumping investigation concerning imports of 'AAA' (DMF) originating in or exported from China PR.**

Sir,

I am directed to inform you that anti-dumping investigation in respect of dumped imports of 'AAA' originating in or exported from China PR has been initiated by the Designated Authority constituted to investigate into the existence, degree and effect of the alleged dumping. A copy of the Initiation Notification AA/BB/2018-DGAD dated XX-XX-2018 issued by the Authority is available on the website http://dgtr.gov.in/anti-dumping-cases.

2. As per the records available, you are an exporter/producer of the subject goods. You may, therefore, be interested in participating in the investigation. The Authority provides you an opportunity to defend your interests and assist the Authority to arrive at a fair decision and, thus, requests you to file your response to the Exporter's Questionnaire which may be downloaded from the above mentioned website, as also the Initiation Notification.

3. The purpose of the Questionnaires is to gather information required for completion of the investigation. It is important for your company to give the answers clearly and precisely, indicating the sources of information used, and wherever required, attaching supporting documents. Any worksheets or documents used to answer this questionnaire, which by any reason cannot be attached, shall be kept in the hands of the company and be made available for the purposes of further examination/verification.

4. The commitments stated under Article 15(a)(i) of the WTO Protocol of Accession signed by China requires that the producers under investigation should clearly prove that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product. In the event of this being substantiated, the importing WTO member shall use Chinese prices or costs for the industry under investigation in determining price comparability. Further, Article 2.2.1.1 of the ADA and Annexure I of the AD Rules in India require that the financial records of producer/exporter reasonably reflect the production costs. Therefore, information and supportive evidence thereof on the following may be provided:

a. Decisions in regard to price, cost, input including raw material, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand, without significant state interference and considering whether cost of major inputs substantially reflect market value.

b. Production costs and financial situation does not suffer from any distortion.

c. The producer(s)/exporter(s) are subject to bankruptcy and property law which guarantees legal certainty and stability for the operation of the firms.

d. Exchange rate conversions are carried out at the market rate.

e. For the purpose of the aforesaid information, a Supplementary Questionnaire is also enclosed.

5. Although the prescribed Questionnaire is available on the web address as prescribed in para 2 of this letter, the Designated Authority reserves the right to call for any information in this regard at any time during the investigation and during the course of the anti-dumping proceedings. You may also submit any additional information relevant in this regard.

6. The period of investigation (POI) is from AA.XX.20XX to AA.XX. 20LL. However, for the purpose of analysing injury, the data of previous three years, i.e. Apr'AA- Mar'BB, Apr'BB-Mar'CC, Apr'CC-Mar'DD and the period of investigation will be considered.

7. The response must be in English and all supplementary information or other material provided with it must also be in English or accompanied by an English translation.

8. The exporter must also provide information regarding its related corporate entities in India along with information regarding its sales in the home market or third countries, wherever applicable.

9. We request you to give careful consideration to the Questionnaires, particularly to the question(s) concerning merchandise characteristics. Specifically, we need to know the difference, if any, between the merchandise sold in your home market or in a third country and that sold in India.

10. All financial information is to be indicated in the local currency. Applicable conversion rate of local currency to US Dollar for the relevant period may also please be made available/mentioned in each statement.

11. If your business does not perform all of the following functions in relation to goods under consideration, please provide names and address of the companies, which perform each of the following functions: -

a. Produces or manufactures the goods under consideration
b. Sells in the domestic market
c. Exports to India
d. Exports to countries other than India

Simultaneously, the company concerned may be advised to furnish information to the extent it is relevant as per Para (3) of introduction to the enclosed questionnaire.

12. The information submitted in the Questionnaire must be certified by the Chief Executive of your company as accurate, complete and presenting a true and fair view of the accounts and other data to the best of his knowledge and belief.

13. The information furnished is subject to verification. You are, therefore, requested to convey your willingness to offer yourself for any verification by the Authority as per Performa attached. You are also advised to preserve all the working papers for such verification.

14. Two copies each of the above referred information, both confidential and non-confidential versions may be furnished within forty (40) days from the date of this letter. Information must also be sent in soft copy and by email to the undersigned. The response is to be sent to:

The Designated Authority,
Directorate General of Trade Remedies
Department of Commerce,
4th Floor, Jeevan Tara building, 5, Parliament Street, New Delhi-110011

15. In case you wish to appoint a person/firm to represent your interests, you may please issue a proper authorization in favour of such person/firm.

16. If no response is received within the time stipulated in this letter, it would be presumed that you have no comments to offer. Your attention is specifically drawn to the Anti-Dumping Rules, which authorize the Designated Authority to record its findings on the basis of facts available to it in case of non-cooperation from the interested parties.

17. **Confidential Information:** An interested party supplying information must ensure that all the information supplied is clearly marked either "confidential" or "non-confidential" at the top of each page. Information supplied without any mark shall be treated as non-confidential and the Designated Authority shall be at liberty to allow the other interested parties to inspect any such non-confidential information. Confidential information must be accompanied by a non-confidential summary or, if it is not susceptible to summarization, a statement of the reasons why summarization is not possible. Two (2) copies of the non-confidential version and two (2) copy of the confidential version must be submitted. If there is no confidential version, it should be specifically endorsed that confidential version may also be treated as non-confidential version. However, 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 authorize its disclosure in a generalized or summary form, the Designated Authority may disregard such information. A copy of all non-confidential submissions shall be placed in a public file, open for inspection by an interested party participating in the investigation, on request.

18. As per Rule 6(6) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 "the Designated Authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the Designated Authority only when it is subsequently reproduced in writing." Please send a written request

in advance if you desire a hearing at the address mentioned in Para 14 above so as to reach within 40 days from the date of issue of this communication.

19. You are also required to file an electronic copy of your submission including the data and annexures to the questionnaire response in appropriate machine-readable formats. The worksheets included in this Questionnaire must be submitted in computerized medium, according to the following specifications: PC-compatible systems, EXCEL programme (Window 98/2000 version), as well as in 3.5" disk, Zip Drive or CD-ROM. The magnetic medium must be identified with a sticker showing the company name, the product in question, the data format and the software used. The information may also be sent by email at the addresses mentioned hereunder.

20. You may contact this Office should you need any clarification and/or assistance in furnishing the information in the prescribed manner.

21. We appreciate your cooperation in providing the requisite information within the required time and in assisting us in conducting the present investigation in a time bound manner.

22. The relevant Questionnaires proforma can be downloaded as stated above from http://dgtr.gov.in/sites/default/files/exp_questionaire_0.pdf and http://dgtr.gov.in/sites/default/files/nmequestionnaire.pdf However, all the replies to the Questionnaires must be sent duly signed and by post along with an electronics copy, in CD or by Email at ID mentioned below.

23. The unit of measurement in the present investigation is weight in MT. Therefore, the information needs to be supplied in weight as theunit of measurement. In case the information is supplied in any other unit of measurement, it should be converted into an equivalent weight clearly showing the calculations.

Yours sincerely,
(----------)
Additional Director (Foreign Trade),
Email: …….

**Enclosures:**

1. Initiation Notification http://www.dgtr.gov.in/sites/.....
2. Exporters Questionnaire-http://www.dgtr.gov.in/sites/default/files/exp_questionaire_0.pdf
3. Supplementary Questionnaire
4. Soft copy (CD) of Non-confidential version of the Application filed by the domestic industry.

Appendix-27

F.No.xx/XX/2018-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building, New Delhi-110001

Dated: .....

**To,**
**Importers/Consumers of the subject goods in India**

**Subject: Initiation of Anti-dumping investigation concerning imports of 'XXX' originating in or exported from YYY.**

Sir,

The Designated Authority, constituted under the Customs Tariff Act, 1975 to investigate into the existence, degree and effect of the alleged dumping, has initiated anti-dumping duty investigation in respect of imports of 'XXX' originating in or exported from YYY. Initiation Notification No. XX/XX/2018-DGAD dated AA.BB.2018 issued by the Authority is available on the website http://dgtr.gov.in/anti-dumping-cases.

2. As per the records available, you are an importer/consumer of the subject goods. You may, therefore, be interested in participating in the investigation. The Authority provides you an opportunity to defend your interests and assist the Authority to arrive at a fair decision and, thus, requests you to file your response to the enclosed Questionnaire.

3. The purpose of the Questionnaire is to gather information required for completion of investigation for the purpose of the antidumping duty applied to import of subject goods from the above territory. It is important for your company to give the answers clearly and precisely, indicating the sources of information used, and wherever required, attaching supporting documents. Any worksheets or documents used to answer this questionnaire, which by any reason cannot be attached, shall be kept in the hands of the company and be made available for the purposes of further examination/verification.

4. Although a Questionnaire is given, the Designated Authority reserves the right to call for any information in this regard at any time during the investigation and the course of anti-dumping proceedings. You may also submit any additional information relevant in this regard

5. The period of investigation (POI) is from XX 20XX to XX 20YY. However, for the purpose of analysing injury, the data of previous three years, i.e. Apr'AA-Mar'BB, Apr'BB-Mar'CC, Apr'CC-Mar'DD and the period of investigation will be considered.

6. The response must be in English and all supplementary information or other material provided with it must also be in English or accompanied by an English translation.

7. Where exporter's transactions are involved, you must include information regarding its related corporate entities in India along with information regarding its sales in the home market or third countries.

8. We request you to give careful consideration to the Questionnaire, particularly to the question concerning merchandise characteristics. Specifically, we need to know the difference, if any, between the merchandise sold in your home market or in a third country and that sold in India.

9. All financial information is to be indicated in the local currency. Applicable conversion rate of local currency to US Dollar for the relevant period may also please be made available/mentioned in each statement.

10. If your business does not perform all of the following functions in relation to goods under consideration, please provide names and address of the companies, which perform each of the following functions: -

a. Producers or manufactures the goods under consideration
b. Sells in the domestic market
c. Exports to India
d. Exports to countries other than India

Simultaneously the company concerned may be advised to furnish information to the extent they are relevant as per Para (3) of introduction to the enclosed questionnaire.

11. The information submitted in this Questionnaire must be certified by the Chief Executive of your company as accurate, complete and presenting a true and fair view of the accounts and other data to the best of his knowledge and belief.

12. The information furnished is subject to verification. You are, therefore, requested to convey your willingness to offer yourself for any verification by the Authority as per Performa attached. You are also advised to preserve all the working papers for such verification.

13. The response should be filed, containing two copies of confidential version and two copies of non-confidential version, not later than forty days from the date of issue of this letter, regardless of the time limit prescribed in the initiation notification. The response is to be sent to:

The Designated Authority
Directorate General of Trade Remedies
Department of Commerce,
Jeevan Tara Building, 4th Floor 5, Parliament Street, New Delhi -110001

14. In case you wish to appoint a person/firm to represent your interests, you may please issue a proper authorization in favor of such person/firm.

15. If no response is received within the time stipulated in this letter, it would be presumed that you have no comments to offer. Your attention is specifically drawn to the Anti-Dumping Rules, which authorize the Designated Authority to record its findings on the basis of facts available to it, in case of non-cooperation from the interested parties.

16. **Confidential Information:** An interested party supplying information must ensure that all the information supplied is clearly marked either "confidential" or "non-confidential" at the top of each page. Information supplied without any mark shall be treated as non-confidential and the Designated Authority shall be at liberty to allow the other interested parties to inspect any such non-confidential information. Confidential information must be accompanied by a non-confidential summary or, if it is not susceptible to summarization, a statement of the reasons why summarization is not possible. However, 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 authorize its disclosure in a generalized or summary form, the Designated Authority may disregard such

information. A copy of all non-confidential submissions shall be placed in a public file, open for inspection by an interested party participating in the investigation, on request.

17. As per Rule 6(6) of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 "the Designated Authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the Designated Authority only when it is subsequently reproduced in writing." Please send a written request in advance, if you desire a hearing at the address mentioned in Para 13 above so as to reach within 40 days from the date of issue of this communication.

18. You are also required to file an electronic copy of your submission including the data and annexure to the questionnaire response in appropriate machine-readable formats. The information may also be sent by email at the addresses mentioned hereunder.

19. You may contact this Office should you need any clarification and/or assistance in furnishing the information in the prescribed manner.

20. We appreciate your cooperation in providing the requisite information within the required time and assisting us in conducting the present investigation in a time bound manner.

21. Questionnaires and Application Performa can be downloaded from our web sitehttp://www.dgtr.gov.in./anti-dumping-cases. However, all the replies to the Questionnaires must be sent by post only, followed by an electronics copy.

Yours sincerely,
(----------)
Additional Director (Foreign Trade)
Email:……

**Enclosures:**

1. Initiation Notification –http://www.dgtr.gov.in/sites
2. Importer's Questionnaire (http://www.dgtr.gov.in/sites/default/files/imp_ques_0_0.pdf)

Appendix-28

F.No. XX/XX/2018-DGTR
Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building, New Delhi

Dated: .....

**To,**
**The Domestic Industry/Petitioners**

**Subject: Initiation of Anti-Dumping Duty imposed on imports of AAA originating in or exported from YYY.**

Sir,

The Designated Authority, constituted under the Customs Tariff Act, 1975 to investigate into the existence, degree and effect of the alleged dumping, has initiated an investigation imposition of anti-dumping duty on imports of AAA originating in or exported from YYY. Initiation Notification No. AA/BB/2018-DGTR dated the AA November, 2018 issued by the Authority is available on the website http://dgtr.gov.in/anti-dumping-cases.

2. The period of investigation (POI) proposed by the applicant was from April, 20XX – March, 20YY and the injury investigation period was for the periods April 20AA-March 20BB, April 20BB to March 20CC, April 20CC to March 20DD. However, for enabling the Authority to make required analysis on the basis of more updated data, the Authority hereby determines the POI as …20XX to … 20YY (… Months). The injury investigation period will be the same i.e. 2013-14, 2014-15, 2015-16 and POI. The data beyond POI will also be examined to determine the likelihood of dumping and injury.

3. Confidential information: Please ensure that the information supplied is clearly marked either 'confidential' or 'non-confidential' at the top of each page. Information supplied without any mark shall be treated as 'non-confidential' and the Designated Authority shall be at liberty to allow the other interested parties to inspect any such non-confidential information.

4. Ten copies each of the above referred information, both confidential and non-confidential versions may be furnished within forty (40) days from the date of this letter. Information must also be sent in soft copy and by email to the undersigned.

Yours Sincerely
(----------)
Additional Director (Foreign Trade)
Email:……

**Enclosures:**
Initiation Notification http://www.dgtr.gov.in/anti-dumping-cases/...

# CONFIDENTIALITY

## LEGAL PROVISIONS

7.1. Article 6.5 of the ADA and Rule 7 of the Rules provide for the protection of information submitted by the interested parties. The legal provisions are as follows:

> Article 6.5:
>
> *"Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it[1]."*
>
> Rule 7:
>
> *"Confidential information.-(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be*

1 Refer to Para VII of Chapter 24 for WTO Jurisprudence. See Panel Report, *Guatemala – Definitive Anti-dumping Measures on Grey Portland Cement from Mexico*, ¶ 8.219, WTO Doc. WT/DS156/R (Oct. 24, 2000); Panel Report; *Panel Report, Russia - Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy,* WTO Doc. WT/DS479/R, (Jan. 27, 2017).

*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].

(2) *The designated authority may require the parties providing information on a 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].

(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 authorize its disclosure in a generalized or summary form, it may disregard such information*[4]*."*

**SIGNIFICANCE**

7.2. The ADA and the Rules as well as domestic jurisprudence have time and again outlined the significance of confidentiality in an anti-dumping investigation.

7.3. It is of utmost importance that the claims of confidentiality must be examined thoroughly and the information furnished on confidential basis should not be disclosed to any other interested party. If the investigating team is of the view that the confidentiality claims are not justified, it may seek a clarification from the parties. However, the investigation team can reject the information if no satisfactory clarification is provided.

7.4. The decision of the Hon'ble Supreme Court in *Union of India v Meghmani Organics Limited,*[5] has laid down the jurisprudence in the subject matter of confidentiality. The main guiding principles are as follows:

[2] Refer to Para VII of Chapter 24 for WTO Jurisprudence. *Oswal Woollen Mills Ltd. v Designated Authority*, 2000 (118) ELT 275 Tri Del.

[3] Refer to Para VII of Chapter 24 for WTO Jurisprudence. *Union of India v Meghmani Organics Limited*, (2016) 10 SCC 28 (India); *Reliance Industries Ltd. v Designated Authority*, (2006)10 SCC 368 (India).

[4] Refer to Para VII of Chapter 24 for WTO Jurisprudence *Sterlite Industries (India) Ltd. v Designated Authority*, 2003ECR1018(SC) (India); *Reliance Industries Ltd. v Designated Authority*, (2006)10 SCC 368 (India).

[5] *Union of India v Meghmani Organics Limited*, (2016) 10 SCC 28 (India).

7.4.1 Rule 7 does not contemplate any right on DA to claim confidentiality[6].

7.4.2 The right is restricted to interested parties and the parties have to claim confidentiality, as it is not something which is automatically assumed.

7.4.3 Information other than that claimed as confidential must be shown to all the other interested parties, in terms of Article 6.4 of the ADA.

7.4.4 Sufficient cause has to be shown by the parties while claiming confidentiality; if revealed,it would give a significant advantage to the competitor and would have a significant adverse impact on the person supplying the information.

7.4.5 The parties providing confidential information should provide Non-confidential summary of the document, so that other parties can reasonably and meaningfully rebut the information.

**OPERATING PRACTICES**

7.5. The following should be kept in mind while examining the claim of confidentiality and the acceptance or rejection of confidential information supplied by any party during the proceedings in terms of the Trade Notice No. 10/2018 dated 7.9.2018.

**Filing of non-confidential version of the information**

7.5.1 Any party claiming confidentiality on any part of the application or questionnaire response or submission, in any investigation shall be required to file a non-confidential version of the same.

7.5.2 The confidential version should specifically be marked as "Confidential" on each page of the document. Any submission made without such marking shall be deemed as non-confidential, in part or whole, and may be placed in the public file and made available to all the interested parties without any further reference to the party supplying such information.

[6] The Supreme Court made an important observation on the applicability and relevance of Rule 7 in *Sterlite Industries (India) Ltd. v. Designated Authority,* 2003 (158) ELT 673 (SC) ¶ 3:
*"It must be remembered that not making relevant material available to the other side affects the other side, as they get handicapped in filing an effective appeal. Therefore, confidentiality under Rule 7 is not something, which must be automatically assumed. Of course, in such cases there is need for confidentiality, as otherwise trade competitors would obtain confidential information, which they cannot otherwise get. But whether information supplied is required to be kept confidential has to be considered on a case-to-case basis. It is for the Designated Authority to decide whether a particular material is required to be kept confidential. Even where confidentiality is required, it will always be open for the appellate authority, namely, CEGAT to look into the relevant files."*

7.5.3 The non-confidential version should be a replica of the confidential version[7] with the confidential information replaced with asterisk symbols, in order to permit a reasonable understanding of the substance of the information submitted in confidence[8].

7.5.4 The detailed item-wise disclosure requirement with regard to confidentiality/ non-confidentiality is elaborated in Trade Notice No. 10/2018 dated 7.9.2018. This has to be strictly adhered to.

7.5.5 These guidelines on confidentiality shall apply to the application and/or Questionnaire responses, as applicable, filed by parties in all investigations initiated. However, the Authority may permit deviation from the said guidelines as issued vide Trade Notice No. 10/2018 dated 07.09.2018, on a case to case basis, if the party seeking the same can establish to the Authority a good cause for the same.

**Duties of the Designated Authority regarding confidentiality**

7.5.6 The claim of confidentiality by any party including the DI on any information, data, document, etc. shall be considered appropriately and expeditiously subject to the provisions of Rule 7. The decision of DG in the form of a speaking order regarding acceptance/rejection of the claim of confidentiality shall be issued and uploaded on the website of DGTR at least 10 days before the oral hearing.

7.5.7 Subject to the claim of confidentiality, any information, which is by nature confidential can be treated as confidential on account of the reasons that the disclosure of such information 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 he acquired the information.

7.5.8 The DG on being satisfied and having accepted the claim for confidentiality, shall not disclose it to any party without the specific written authorization of the party providing such information. Careful consideration should be given to the information that is to be treated as confidential as was held by the Hon'ble Gujarat High Court in *Meghani Organics*, that:

> "*This whole exercise undertaken by the Designated Authority and withholding of certain relevant data of its preliminary finding is certainly*

[7] Trade Notice No. 01/2009 dated 25.03.2009 (attached below)

[8] Refer to Para VII of Chapter 24 for WTO Jurisprudence.

*causing prejudice not only to the petitioners but all importers and in absence of such data in respect of its finding, it is practically impossible for them to raise any objection or to make any effective submission. The data on its conclusions is not revealed by the D.A. under a claim of confidentiality under Rule 7. On reading the said provisions, we find that Rule 7 contemplates confidentiality only in respect of information and not conclusion or data of conclusion. The claim of confidentiality by D.A. is, therefore, not well found. This excessive claim of confidentiality defeats the right to appeal*[9]."

7.5.9 The NIP computed for the DI shall be disclosed only to the relevant producer / DI, in case of several parties. Further, the disclosure of such information should be in accordance with the Trade Notice 10/2018 dated 7.9.2018. Similarly, the NV workings, NEP & LV shall be disclosed to the respective producer/exporter from the respective country.

7.5.10 In the event the claim for confidentiality is to be rejected, the Authority shall pass an order within a reasonable time, but before the non-confidential version is communicated to the concerned interested parties, about its decision on the claims of confidentiality by the supplier of the information. A copy of the said order shall be kept in a public file.

7.5.11 If a request for confidentiality has been rejected as not being warranted and yet the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the team may disregard such information and the same shall not be taken on record.

7.5.12 The claim of confidentiality should not be allowed merely on the ground that the said information is not available in the public domain.

**Trade Notices**

7.6. Various Trade Notices have been issued at various instances to deal with the claim of confidentiality. The details are as below and copies are attached herewith.

7.6.1. Trade Notice No. 2/2000 dated 28th August 2000 provides the requirements regarding the information to be submitted by the interested parties while making a claim of confidentiality; description of information, request in writing for information to be treated as confidential along with a justification for the same. Simultaneously,

[9] *Meghani Organics Ltd. v Union of India,* 2011 (267) ELT 440 (Gujarat High Court).

the party is required to provide the Non- confidential summary which is sufficiently clear and detailed in representing the confidential information submitted. The Party is required to provide a statement of reasons if the summarization of confidential information is not possible. The Trade Notice also recognizes the discretion of the authority to grant confidentiality or not on the content on which confidentiality is claimed.

7.6.2. Trade Notice No.1/2009 dated 25th March 2009 was issued in continuation to the earlier notice and provides that all parties making confidential submissions (including attached Annexure) should specifically mark the documents as confidential and non-confidential. It also stipulated that the Documents (including Annexures) not specifically marked would be considered to be non-confidential. While requesting confidentiality, parties are required to provide a good cause statement along with the supplied information as to why such information cannot be disclosed. The NCV is to be the replica of CV, with confidential information blanked out or summarised based on the nature of information. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance of the confidential information. However, in exceptional circumstances, the party submitting the confidential information may indicate that such information is not susceptible of summary and a statement of reasons why summarization is not possible, must be provided to the satisfaction of the DA. The DA will be at discretion to allow/disallow the confidentiality claimed by the parties.

7.6.3. Trade Notice No. 1/2011 dated 25th May 2011 clarifies that if any party wishes to submit any document in a public hearing, a copy of the same must be provided to all the parties, one day prior to the hearing. If the document is confidential, the CV and NCV copy of the same should be provided to the Designated Authority, three days in advance. It should also be ensured that the NCV provides a meaningful summary of the CV. In case the requirements are not complied with, the interested parties will not be allowed to make a submission on a confidential basis.

7.6.4. Trade Notice No.1/2013 dated 9th December 2013, provides that all parties submitting information,including questionnaires, are required to submit two sets of each document marked as "confidential" and "Non- confidential" along with the title, a number of pages and index. For confidential information, good cause must be given for claiming confidentiality and why such information cannot be disclosed.

NCV documents should be an exact copy of CV but blanked and summarised depending upon information for which confidentiality is claimed. It is the discretion of DA to accept or reject the confidentiality claim. In case the DA is not satisfied with the reasons for claiming confidentiality and if the interested party is unwilling to disclose the information, the same shall not be taken on record.

7.6.5. Trade Notice No. 1/2017 dated 8th December 2017, provides the following terms and conditions to be complied with by the interested parties for obtaining the transaction-wise import data from DGCI&S:

(i) The information obtained from DGCI&S shall only be used for purpose of an investigation.

(ii) The data shall not be used for any other purpose: commercial or otherwise.

(iii) The data shall not be published or shared with any third party.

(iv) The applicant shall inform the DGTR and DGCI&S about the actual usage of information.

7.6.6. For the above purpose, a declaration shall be given to DGTR and also to DGCI&S. The data from DGCI&S is on an actual usage basis and therefore shall not be placed in the public file.

7.6.7. Trade Notice No. 01/2018 dated 2nd January 2018 provides for Non-confidential import data in an Anti-dumping investigation. Any request for DGCI&S data for making application for AD/CVD investigation shall be made to the nominated official in the Directorate.

7.6.8. Trade Notice No. 07/2018 dated 15th March 2018 provides for streamlining the Anti-dumping and Countervailing duty investigation process regarding obtaining and sharing import data pertaining to investigation with interested parties.

7.6.9. The recent Trade Notice No. 10/2018 dated 07.09.2018 provides the most comprehensive instructions and guidelines for all the interested parties to deal with the concept of confidentiality while filing submissions and responses

Appendix-29

5/21/2000-DGAD
Ministry of Commerce & Industries
Directorate General of Anti-Dumping and Allied Duties

Dated 28th August, 2000

**Trade Notice No. 2/2000**

1. Attention of the Trade and Industry is invited to Section 9 of the Customs Tariff Act, 1975 as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 – Rule 7 therein deals with CONFIDENTIAL information.

2. All interested parties must duly state details of information that is to be treated as confidential with adequate justification for such designation. They must simultaneously provide a NON – CONFIDENTIAL version of the CONFIDENTIAL information, which must be sufficiently clear, in detail representing the confidential information submitted.

3. Interested parties must comply with the following requirements while submitting information that has to be treated as confidential:

i. Description of confidential information provided (title, number of pages);

ii. Request in writing for information to be treated as confidential with an explanation as to the justification for such permission;

iii. A non – confidential version thereof (title, number of pages);

iv. If non – confidential information is not susceptible of summary, the party may submit to the Designated Authority a statement of reasons why summarisation is not possible;

4. After the above requirements are met, the Designated Authority may accept or reject the request on examination of the nature of the information submitted by the interested party.

5. i) The Designated Authority on being satisfied and accepting the need for confidentiality of the information given, shall not disclose it to any party without specific authorisation of the party providing such information.

ii) 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 generalised or summary form, it may disregard such information.

-Sd/-
(Siddharth)
Director
for the Designated Authority
Phone 301 4418

To: All Concerned

Appendix-30

No. 4/27/2007-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

Dated 25th March, 2009

**Trade Notice No. 1/2009**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereafter.

2. In continuation to the Trade Notice No.2/2000 dated 28th August, 2000 all interested parties to anti-dumping investigations are advised to comply with the following requirements while submitting "confidential information" before the Designated Authority in an anti-dumping investigation :

i. The parties making any submission (including Appendixes /Annexures attached thereto) before the authority including questionnaire response, are required to file the same in two separate sets, in case 'confidentiality' is claimed on any part thereof:- (a) marked as Confidential (with title, number of pages, index, etc. ) and (b) other set marked as Non-Confidential (with title, number of pages, index, etc.). Any submission made without such marking shall be deemed as non-confidential.

ii. The Confidential version shall contain all information which are by nature confidential and/or other information which the supplier of such information claims as confidential. For information which are claimed to be confidential by nature or the information on which confidentiality is claimed because of other reasons, the supplier of the information is required to provide a good cause statement along with the supplied information as to why such information cannot be disclosed.

iii. The non-confidential version is required to be a replica of the confidential version with the confidential information indexed or blanked out (in case indexation is not feasible) and summarized depending upon the information on which confidentiality is claimed. The non-confidential summary must be in sufficient detail to permit a reasonable understanding of the substance

of the information furnished on confidential basis. However, in exceptional circumstances, party submitting the confidential information may indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible, must be provided to the satisfaction of the Designated Authority.

iv. After the above requirements are met, the Designated Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted by the interested party.

v. If the Designated Authority is satisfied that the request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information.

vi. Any submission made without a meaningful non-confidential version thereof or without a good cause statement on the confidentiality claim shall not be taken on record by the authority.

vii. The Designated Authority on being satisfied and accepting the need for confidentiality of the information given, shall not disclose it to any party without specific authorization of the party providing such information.

viii. During the course of public hearing if any interested party intends to circulate any document/paper copy of the same must be provided to all participants. However, in case an interested party intends to submit/present some information on confidential basis during the public hearing, the same alongwith NCV thereof must be submitted to the Designated Authority at least three days prior to such hearing. It should be ensured that the NCV of such information gives a meaningful summary of the CV, In case no such NCV is provided before the stipulated period, the interested party may not be allowed to present such papers in the public hearing.

3. The above procedure will supersede all previous instructions or Trade Notices issued by the Directorate with regard to confidentiality and in the publications of this Directorate.

-sd/-
(Neeraj Kumar Gupta)
Joint Secretary
For Designated Authority

To
All concerned (as per list)

Appendix-31

F.NO. 4/27/2007-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties

Dated 9th December, 2013

**Trade Notice No. 1/2013**

Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereafter.

2. In Pursuance to the provision of Rule 7 of the above Rules, all interested parties to anti-dumping investigation are advised to comply with following requirements while submitting "confidential information" before the Designated Authority in an anti-dumping investigation:

i. The parties making any submission (including Appendixes/Annexures attached thereto) before the authority including questionnaire response, are required to file the same in two separate sets, in case 'confidentiality' is claimed on any part thereof:-

   a) One set marked as Confidential (with title, number of pages, index etc.) and

   b) The other set marked as Non-Confidential (with title, number of pages, index, etc.).

   Any submission made without such marking shall be deemed as non-confidential. Soft copy of both the versions will also be required to be submitted, along with the hard copies, to the authority.

ii. The Confidential version shall contain all information which are by nature confidential and/or other information which the supplier of such information claims as confidential. For information which are claimed to be confidential by nature or the information on which confidentiality is claimed because of other reasons, the supplier of the information is required to provide a good cause statement along with the supplied information as to why such information cannot be disclosed.

iii. The non-confidential version is required to be a replica of the confidential version with the confidential information indexed or blanked out (in case indexation is not feasible) and summarized depending upon the information

on which confidentiality is claimed. The non-confidential summary must be in sufficient details to permit a reasonable understanding of the substance of the information furnished on confidential basis. However, in exceptional circumstances, party submitting the confidential information may indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible, must be provided to the satisfaction of the Designated Authority.

iv. After the above requirement are met, the Designated Authority may accept or reject the request for confidentiality on examination of the nature of the information submitted by the interested party.

v. If the Designated Authority is satisfied that the request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, it may disregard such information.

vi. Any submission made without a meaningful non-confidential version thereof or without a good cause statement on the confidentiality claim shall not be taken on record by the authority.

viii. The Designated Authority on being satisfied and accepting the need for confidentiality of the information given, shall not disclose it to any party without specific authorization of the party providing such information.

viii. During the course of public hearing if any interested party intends to circulate any document/paper, copy of the same must be provided to all participants at least one working day prior to the date of hearing by way of hard copy or e-mail or both.

ix. In case an interested party intends to submit/present some information on confidential basis during the public hearing, the same along with NCV thereof must be submitted to the Designated Authority at least three days prior to such hearing. It should be ensured that the NCV of such information gives a meaningful summary of the CV, In case no such NCV is provided before the stipulated period, the interested party may not be allowed to present such papers in the public hearing.

3. The above procedure will supersede all previous instructions or Trade Notices issued by the Directorate with regard to confidentiality and in the publications of this Directorate.

Sd/-
(A.K. Jha)
Deputy Secretary
For Designated Authority

To
All concerned (as per list)

**Annexure-1**

## Guidelines on confidentiality of information/data contained in the Petition, response to the Questionnaire or other Submissions

The NCV should be replica of the confidential versions (having same Para No. and Page No.) except the information or data claimed to be confidential for which non-confidential summary should be provided under the heading "Non-Confidential Summary" at places where confidential information were provided in the confidential version. In case any data is claimed as confidential, NCV of the same should be submitted in the indexed form. In case, summarization/indexation of the information/data is not possible, specific reason for the same should be provided on the forwarding letter.

2. The claim of confidentiality on any information/data should be submitted in the following format as a forwarding letter on the NCV:-

| S.No. | Issue/data on which confidentiality is claimed | Reason/ Justification for claiming confidential-ity | Page No. of the NCV at which non-confidential summary is provided | Whether information is avail-able in the public domain or with any Govt. Authority from whom the same can be obtained by the public with or without payment of fee |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |

3. The reason/justification should be on the basis of criteria laid down in Article 6.5 of the ADA. The reason/justification should be specific clearly demonstrating/ establishing that disadvantage would occur by disclosure of information.

4. The confidentiality claims and decision thereon are case-specific. Therefore, precedence of any previous cases would not be considered as justification for claiming confidentiality. In this regard attention is invited to the following:-

(i) The following are examples of information which may be treated as confidential:

a) Information of significant competitive advantage to a competitor, production costs, distribution costs, upstream and downstream pricing data, profit and loss margins, certain conditions of sale, research/invention data, technical designs, business or trade secrets concerning the nature of a product or production process,

specification of components performance/profitability data, details of margin of dumping and adjustments claimed by the party etc. are some examples of such type of information. List is not exhaustive.

b) Information, the disclosure of which would have a significant adverse effect upon the party from whom the information was acquired by the party who submitted the information. Some examples are – customer and supplier lists, letters from buyers on price negotiations, details or technical collaboration.

(ii) The information claimed to be confidential shall be examined by the authority on a case to case basis. Reporting obligation of the Designated Authority under Article 12 of the ADA shall be kept in view while granting confidentiality. For example, address of the domestic industry/exporter, location of plant, etc. cannot be treated as confidential. The balancing interest on disclosure shall be kept in view while examining the information on a case to case basis.

(iii) In case, an interested party submits information on confidential basis and claims that the summary thereof is NCV is not possible, the same claim shall be accepted by the authority only after due consideration and examination. Examples of cases where such claims may be accepted are, technical details of manufacturing process, consumption norms of raw materials/utilities, invention/research data, technical designs, trade secrets concerning nature of production process, technical specifications of the components, etc.

(iv) A claim of confidentiality shall not be accepted by the authority on the grounds of commercial restrictions, for example, in case, the information is available in public domain and can be obtained by any party after payment of fee, etc. information/data procured from a private source as IBIS shall not be treated as confidential and the party submitting the same should submit a letter of permission for its disclosure from the party supplying the same before being accepted.

(v) All the interested parties participating in an Anti-Dumping Investigation are, inter-alia, required to submit a copy of its Annual Accounts along with the B/Sheet, duly certified by a practicing Accountant for the POI and preceding two years. Generally, the Annual Accounts, B/Sheet & P&L Account of a Company, duly certified by a practicing Accountant, shall be treated by the Authority as non-confidential and a copy of the same shall also be kept in the public file.

(vi) In case an interested party claims confidentiality in respect of Annual Accounts and the Balance Sheet for the POI and the previous two years, the interested party shall be required to give a detailed justification for claiming the confidentiality. The justification/grounds for claiming confidentiality, in such cases shall be marked non-confidential and a copy of the same shall be kept in the public file.

(vii) In case the entire Annual Accounts and the Balance Sheet for the POI and the previous two years is claimed to be confidential, a non-confidential version, duly indexed giving meaningful summary of the confidential version, shall also be submitted by the interested party for reference by the other interested parties.

(viii) In case the Annual Accounts and the Balance Sheet of a participating interested party is in the public domain, in accordance with the relevant law/rules of the subject country or can be obtained by the public from the prescribed authorities, the same shall not be allowed by the authority to be treated as confidential under any circumstances.

Appendix-32

F. No. 4/2/2017- DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara Building, 5th Parliament Street, New Delhi-110001

Dated 8th December, 2017

**Trade Notice No. 01/2017**

**Request for Transaction-Wise Import Data**

**Subject: Non-confidential Transaction-wise import data in Anti-dumping investigations**.

1. The Designated Authority receives requests from various interested parties regarding access to Transaction-wise import data for the purpose of AD/CVD investigation being conducted by DGAD. This request could be from a domestic producer for filing a fresh application regarding levy of AD/CVD, or by any other Interested Party i.e. exporter/importer/user, who has registered as an interested party and intends to make submissions or by any of the above entities in case of different reviews viz MTR/SSR/NSR.

2. The Authority, on the basis of a written request of any of the above kinds would authorise the bonafide applicant to obtain the requested Transaction-wise import data from DGCIS as per the following terms and conditions:

(i) The information obtained from DGCI&S by the applicant shall be used only for the purpose of anti-dumping investigation.

(ii) The data obtained shall not be used for any other purpose — commercial or otherwise.

(iii) The data will not be shared by the applicant with any other 3rd party nor placed/published in the public domain.

(iv) The applicant will inform DGAD and DGCIS about the actual use of data.

For compliance with the above conditions, the applicant will give a declaration to DGAD and also to DGCIS.

3. Since Transaction-wise data is provided by DGCIS on an actual use basis to any interested party who requests for the same, based on the above procedure,

the data obtained by any interested party and submitted to Designated Authority in an investigation will not be placed in public file maintained by DGAD. The only manner of obtaining the Transaction-wise data by any interested party will be as per procedure mentioned in paras (1) and (2) above.

Sd/-
(Sunil Kumar)
Additional Secretary & Designated Authority

To
(a) Website of the Ministry of Commerce & Industry.
(b) All concerned(as per list)

Appendix-33

F.NO. 4/2/2017-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties
4th Floor, Jeevan Tara Building, 5th Parliament Street, New Delhi-110001

Dated 2nd January, 2018

**Trade Notice No. 1/2018**

**Subject: Non-Confidential Transaction-wise import data in Anti-dumping investigations.**

Reference is invited to Trade Notice No. 01/2017 dated 08/12/2017. It is hereby clarified that request for obtaining Transaction Wise non-confidential Initiation data from DGCIS by any applicant filing an application/ petition for an AD/CVD case on behalf of Domestic. Industry/ Exporter/ User etc. as mentioned in para 2 of the above mentioned Trade Notice may be made to the following officers.

Ms. Arti Bangia
Deputy Director
Tel. No 23349435/ Extn. 119
Email id: arti.bangia@nic.in

-Sd-
(Sunil Kumar)
Additional Secretary & Designated Authority

To
All concerned (as per list)

Appendix-34

No. 4/17/2018-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara building, 5, Parliament Street, New Delhi -110001

Dated 7th September, 2018

**Trade Notice: 10/2018**

**Subject: Streamlining of Anti-Dumping Investigations- Clarification regarding Disclosure of Information in Confidential Version / Non-Confidential Version of Responses filed by the Domestic Industry and Other Interested Parties**

Attention of the Trade and Industry is drawn to the Stakeholder Consultation Note pertaining to Confidentiality issues and subsequent meetings held with stakeholders regarding the confidentiality requirement in responses filed by various parties in anti-dumping investigations. On the basis of the feedback received from stakeholders and subsequent internal deliberations, the Authority has determined the basic criteria for confidentiality in responses filed by the domestic industry and other interested parties.

2. Annexures I, II and III attached to this trade notice illustrate how information/ particulars required in questionnaire responses are to be furnished in Non-Confidential version-as actuals/trend/range etc.

3. Annexure I lays down the guidelines for Disclosure of Information in Confidential and Non-Confidential Version of application/responses filed on behalf of the Domestic Industry; Annexure II lays down the guidelines for Disclosure of Information in Confidential and Non-Confidential Version of responses filed on behalf of foreign producers, exporters, importers and; Annexure III- lays down guidelines for Disclosure of Information in Confidential and Non-Confidential Version by the Users

4. This guideline on confidentiality shall apply to Petition and Questionnaire responses, as applicable, filed by parties in all Trade Remedy investigations initiated after the date of issuance of this Trade Notice. The Authority may permit deviation from the guidelines contained herein, on a case to case basis, if the party seeking

the same can establish to the Authority a good cause for the same. In case confidentiality is claimed by any party, the non-confidential data / summary must be provided in a manner consistent with the AD Rules.

Sd/-
(Sunil Kumar)
Additional Secretary and Director General

**Encl:**

1. Annexure I- Disclosure of Information in Confidential and Non-Confidential Versions by the Domestic Industry;
2. Annexure II- Disclosure of Information in Confidential and Non-Confidential Versions by the Other Interested Parties.
3. Annexure III- Disclosure of Information In Confidential And Non-Confidential Version By The Users

To
All concerned

**ANNEXURE I**

## DISCLOSURE OF INFORMATION IN CONFIDENTIAL AND NON-CONFIDENTIAL VERSION BY THE DOMESTIC INDUSTRY

| S. No. | Particulars | Confidential Version- Domestic Industry (DI) | Non-Confidential Version[1] | |
|---|---|---|---|---|
| | | | Single Producer/ Two Producer Petitioner(s) | Multiple Producer Petitioners |
| 1 | Write-up on broad stage-wise manufacturing process | Actual Information | Actual Information[2] | Actual Information[9] |
| 2 | Names of major raw materials used in production of PUC | Actual Information | Actual Information[9] | Actual Information[8] |
| 3 | Country-wise Volume and Value of import of subject goods | Actual Information | Aggregate Data | Aggregate data |
| 4 | Relationship, if any, of Petitioners with Foreign Producers / Exporters/Importers/domestic producers of subject goods. | Actual Information | Actual Information | Actual Information |
| 5 | Names and Addresses of all other Indian Producers of subject goods | Actual Information | Actual Information | Actual Information |
| 6 | Volume and Value of Production by all other producers except DI | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof- Aggregated Basis | Best Information available with the DI and source thereof- Aggregated Basis |
| 7 | Country wise estimates of Normal Value in Petition | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof |
| 8 | Country wise estimates of Export Price in Petition | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof |

| S. No. | Particulars | Confidential Version- Domestic Industry (DI) | Non-Confidential Version[1] | |
|---|---|---|---|---|
| | | | Single Producer/ Two Producer Petitioner(s) | Multiple Producer Petitioners |
| 9 | Installed Capacity of the domestic industry | Actual Information | Data must be provided as trend | Aggregate data must be provided in actual figures |
| 10 | Production Quantity of the domestic industry | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 11 | Capacity Utilisation Percentage | Actual Information | Data must be provided as a trend | Aggregated data must be provided in actual %age |
| 12 | Average Industry Norm for Capacity Utilisation, If any | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof |
| 13 | Sales Quantity:<br>Domestic Sales-Small Scale Industry** (SSI)<br>Domestic Sales-Other than SSI<br>Export Sales<br>Captive Consumption | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 14 | Sales Value:<br>Domestic Sales-SSI<br>Domestic Sales-Other than SSI<br>Export Sales<br>Captive Consumption | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 15 | Sales Realisation per Unit:<br>Domestic Sales-SSI<br>Domestic Sales-Other than SSI<br>Export Sales<br>Captive Consumption | Actual Information | Data must be provided as trend | Data must be provided as trend |

| S. No. | Particulars | Confidential Version- Domestic Industry (DI) | Non-Confidential Version[1] | |
|---|---|---|---|---|
| | | | Single Producer/ Two Producer Petitioner(s) | Multiple Producer Petitioners |
| 16 | No. of Employees | Actual Information | Aggregated data in case of two producers | Aggregated data - Actual Information |
| 17 | Productivity per day | Actual Information | Average data in case of two producers | Average data - Actual Information |
| 18 | Average Industry norm for Productivity per day, if any | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof |
| 19 | Inventory | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 20 | Inventory as No. of days of Production | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 21 | Inventory as No. of days of Sales | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 22 | Average Industry Norm for Inventory, if any | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof |
| 23 | R&D Expenses | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 24 | Funds Raised:<br>Equity<br>Loans and Advances<br>Working Capital<br>Other, if any | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 25 | Cost of Sales per Unit- Domestic Sales (excluding outward freight, outward insurance etc.) | Actual Information | Data must be provided as trend | Data must be provided as trend |

| S. No. | Particulars | Confidential Version- Domestic Industry (DI) | Non-Confidential Version[1] | |
|---|---|---|---|---|
| | | | Single Producer/ Two Producer Petitioner(s) | Multiple Producer Petitioners |
| 26 | Cost of Sales per Unit- Exports | Actual Information | Data must be provided as trend | Data must be provided as trend |
| 27 | Selling price per unit- Domestic Sales (excluding excise duty or GST whichever is applicable) | Actual Information | Data must be provided as trend | Data must be provided as trend |
| 28 | Export price/unit | Actual Information | Data must be provided as trend | Data must be provided as trend |
| 29 | PBIT per Unit-Domestic Sales | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 30 | Total Profit before Interest and Tax-Domestic Sales | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 31 | Interest/Finance Cost Domestic Sales | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 32 | Depreciation and Amortisation expense | Actual Information | Data must be provided as trend | Aggregated data must be provided in actual figures |
| 33 | Average Industry norm for PBIT as % of Avg. Capital Employed, if any | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof | Best Information available with the DI and source thereof |
| 34 | Purchase (Qty. as well as Value) of PUC | Actual Information | Data must be provided as trend | Data must be provided as trend |
| 35 | Imports made by the Domestic Industry | Actual Information | Data must be provided as a % of total imports into India -Range ±5% -Petitioner-wise. | Data must be provided as a % of total imports into India -Range ±5%- Petitioner-wise. |
| 36 | Non-Injurious Price Calculation | Actual Information | Aggregated actual data must be provided in actual figure range- ±10% | Aggregated actual data must be provided in actual figure range- ±10% |

**ANNEXURE II**

## DISCLOSURE OF INFORMATION IN CONFIDENTIAL AND NON-CONFIDENTIAL VERSION BY THE INTERESTED PARTIES, INCLUDING FOREIGN PRODUCERS, EXPORTERS, RELATED OR UNRELATED IMPORTERS AND USERS ("OTHER INTERESTED PARTIES")

| S. No. | Particulars | Confidential Version- Other Interested Parties[3] | Foreign Producer(s) | Exporter(s) | Importer(s)- Related/ Unrelated (Non-actual user/ trader) |
|---|---|---|---|---|---|
| 1 | Write-up on broad stage-wise manufacturing process | Actual Information, as applicable | Actual Information[4] | Not Applicable | Not Applicable |
| 2 | Names of major raw materials used in production of PUC | Actual Information, as applicable | Actual Information[11] | Not Applicable | Not Applicable |
| 3 | Details of Volume and Value of export / import of subject goods | Actual Information | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend |
| 4 | Information regarding related parties involved in production/sales/purchase of PUC. | Actual Information | ActualInformation | Actual Information | Actual Information |
| 5 | Installed Capacity | Actual Information, as applicable | Data must be provided as trend | Not Applicable | Not Applicable |
| 6 | Production Quantity | Actual Information, as applicable | Data must be provided as trend | Not Applicable | Not Applicable |
| 7 | Capacity Utilisation Percentage | Actual Information, as applicable | Data must be provided as trend | Not Applicable | Not Applicable |

| S. No. | Particulars | Confidential Version- Other Interested Parties[3] | Foreign Producer(s) | Exporter(s) | Importer(s)- Related/ Unrelated (Non-actual user/ trader) |
|---|---|---|---|---|---|
| 8 | Sales Quantity:<br>Domestic Sales<br>Export Sales- India<br>Export Sales (Country Wise)- Other Countries<br>Captive Consumption | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend for resale of subject goods in India |
| 9 | Sales Value:<br>Domestic Sales<br>Export Sales- India<br>Export Sales (Country Wise)- Other Countries<br>Captive Consumption | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend for resale of subject goods in India |
| 10 | Sales Realisation per Unit:<br>Domestic Sales<br>Export Sales- India<br>Export Sales (Country Wise)- Other Countries<br>Captive Consumption | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend for resale of subject goods in India |
| 11 | No. of Employees | Actual Information, as applicable | Actual Information | Actual Information | Not Applicable |
| 12 | Productivity per day | Actual Information, as applicable | Actual Information | Actual Information | Not Applicable |

| S. No. | Particulars | Confidential Version- Other Interested Parties[3] | Foreign Producer(s) | Exporter(s) | Importer(s)- Related/ Unrelated (Non-actual user/ trader) |
|---|---|---|---|---|---|
| 13 | Inventory | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend |
| 14 | Inventory as No. of days of Production | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Not Applicable |
| 15 | Inventory as No. of days of Sales | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend |
| 16 | R&D Expenses | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Not Applicable |
| 17 | Cost of Sales per Unit- Domestic Sales (excluding outward freight, outward insurance etc.) | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend for procurement price. |
| 18 | Cost of Sales per Unit- Exports | Actual Information, as applicable | Data must be provided as a range | Data must be provided as a range | Not Applicable |
| 19 | PBIT per Unit-<br>Domestic Sales<br>Sales to India<br>Total Sales | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Data must be provided as trend for resale of subject goods in India |

| S. No. | Particulars | Confidential Version- Other Interested Parties[3] | Foreign Producer(s) | Exporter(s) | Importer(s)- Related/ Unrelated (Non-actual user/ trader) |
|---|---|---|---|---|---|
| 20 | Total Profit before Interest and Tax<br>Domestic Sales<br>Sales to India<br>Total Sales | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Not Applicable |
| 21 | Interest/Finance Cost<br>Domestic Sales<br>Sales to India<br>Total Sales | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Not Applicable |
| 22 | Depreciation and Amortisation expense | Actual Information, as applicable | Data must be provided as trend | Data must be provided as trend | Not Applicable |
| 23 | Purchase (Qty. as well as Value) of PUC<br>From Subject Country/ies<br>From Other Countries<br>From Domestic Industry<br>From Other Domestic Producers | Actual Information, as applicable | Not Applicable | Not Applicable | Data must be provided as trend |

**ANNEXURE III**

**DISCLOSURE OF INFORMATION IN CONFIDENTIAL AND NON CONFIDENTIAL VERSION BY THE USERS**

| S.No. | Particulars | Confidential Version (Users) | Non-Confidential Version (Users) |
|---|---|---|---|
| 1. | Relationship, if any, of Users with Foreign producers / Exporters | Actual Information | Actual Information |
| 2. | Purchase (Qty. as well as Value) of PUC<br>From Subject Country/ies (Country Wise)<br>From Related Parties<br>From Unrelated Parties<br>From Other Countries (Country Wise)<br>From Related Parties<br>From Unrelated Parties<br>From Domestic Suppliers<br>From Related Parties<br>From Unrelated Parties | Actual Information | Data must be provided as a trend |
| 3. | Total Sales Turnover (Qty. as well as Value) (Product Wise):<br>Of all Products of the User Company<br>Domestic Sales (Indicating related / Unrelated party sales)<br>Export Sales (Indicating related / Unrelated party sales)<br>Of all Products of the User Company incorporating PUC<br>Domestic Sales (Indicating related / Unrelated party sales)<br>Export Sales (Indicating related / Unrelated party sales) | Actual Information | Data must be provided as a trend |
| 4. | Details of all units linked to the PUC in India and write-up regarding the role/operations performed by each of these units | Actual Information | Actual Information |

| S.No. | Particulars | Confidential Version (Users) | Non-Confidential Version (Users) |
|---|---|---|---|
| 5. | List of all products sold by the User company | Actual Information | Actual Information |
| 6. | Detailed production process for each product manufactured using the PUC and production flow chart | Actual Information | A reasonable summary must be provided to the extent possible, unless the same is protected by any law or is trade secret |
| 7. | Cost of raw material for each of the products that incorporate the PUC (Separate for each product) | Actual Information | Data must be provided as a trend |
| 8. | Total Cost Breakup of products using PUC (Separate for each product) | Actual Information | Data must be provided as a trend |
| 9. | Write up on any causes other than the imports of the PUC from subject country which may have contributed to the alleged injury suffered by the Indian producers | Actual Information | Actual Information |
| 10. | Comment on the comparability of PUC from subject country vis-à-vis domestic product, identifying differences (e.g. technical or physical characteristics, prices, uses, etc) as per questionnaire format | Actual Information | A reasonable summary must be provided to the extent possible, unless the same is protected by any law or is trade secret |
| 11. | Indicate whether the user is in favour of the imposition of antidumping measures or against its imposition | Actual Information | Actual Information |
| 12. | Share of User in the downstream Indian market | Actual Information | Data may be provided as a range |
| 13. | Countries where products manufactured incorporating PUC are sold and estimated market share therein, if applicable | Actual Information | A reasonable summary must be provided to the extent possible |

| S.No. | Particulars | Confidential Version (Users) | Non-Confidential Version (Users) |
|---|---|---|---|
| 14. | Name your five main suppliers for the PUC in India and outside India | Actual Information | Not to be disclosed |
| 15. | List of products that could be easily substituted for the PUC | Actual Information | Actual Information |
| 16. | Write up on the comparative advantage of foreign producers in subject country/(ies) in comparison with Indian producers, if applicable | Actual Information | Actual Information |
| 17. | Write up on the impact of anti-dumping duties, if imposed/ maintained/repealed | Actual Information | A reasonable summary must be provided to the extent possible |
| 18. | Details of Utilization of PUC | Actual Information | Data must be provided as a trend |
| 19. | Details of Profitability Statement | Actual Information | Not to be disclosed |

Appendix-35

No. 4/22/2018-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara building, 5, Parliament Street, New Delhi -110001

Dated 1st October, 2018

**Trade Notice: 14/2018**

**Subject: Streamlining of Anti-Dumping Investigations- Additional clarification regarding Disclosure of Information in Confidential Version / Non-Confidential Version of Responses filed by the Supporting Producers.**

Attention of the Trade and Industry is drawn to the earlier Trade Notice No. 10/2018 dated 7th September 2018 regarding basic criteria for confidentiality in responses filed by the domestic industry and other interested parties.

2. Annexure I attached to the said Trade Notice laid down the guidelines for Disclosure of Information in Confidential and Non-Confidential Version of application/responses filed on behalf of the Domestic Industry; Annexure II laid down the guidelines for Disclosure of Information in Confidential and Non-Confidential Version of responses filed on behalf of foreign producers, exporters, importers and; Annexure III- laid down guidelines for Disclosure of Information in Confidential and Non-Confidential Version by the Users.

3. Now, in view of Trade Notice No. 13/2018 requiring the supporting domestic producers to provide their injury and performance details, Annexure-IV is being prescribed with respect to the disclosure of information / particulars to be furnished by the supporting producer(s) in Non-Confidential version-as actuals / trend / range, etc.

4. These guidelines on confidentiality shall apply to all the information filed by supporting producer(s) in all Trade Remedy Investigations initiated after the date of issuance of this Trade Notice. The Authority may permit deviation from the guidelines contained herein, on a case to case basis, if the party seeking the same can establish to the Authority a good cause for the same. In case confidentiality is claimed by any party, the non-confidential data / summary must be provided in a manner consistent with the AD Rules.

-sd/-
(Sunil Kumar)
Additional Secretary and Director General

Encl: Annexure IV- Disclosure of Information in Confidential and Non-Confidential Versions by the Supporting Producer(s).

To
All concerned

**ANNEXURE IV**

**Disclosure of Information in Confidential and Non-Confidential Version by the Supporting Producer**

| S. No. | Particulars | Confidential Version-Supporting Producer (SP) | Non-Confidential Version[5] |
|---|---|---|---|
| 1 | Write-up on broad stage-wise manufacturing process | Actual Information | Actual Information[6] |
| 2 | Names of major raw materials used in production of PUC | Actual Information | Actual Information[2] |
| 3 | Country-wise Volume and Value of import of subject goods by the supporting producer | Actual Information | Data must be provided as trend |
| 4 | Relationship, if any, of the supporting producer with Exporters or Importers of subject goods. | Actual Information | Actual Information |
| 5 | Installed Capacity of the supporting producer | Actual Information | Data must be provided as trend |
| 6 | Production Quantity of the supporting producer | Actual Information | Data must be provided as trend |
| 7 | Capacity Utilisation Percentage | Actual Information | Data must be provided as a trend |
| 8 | Average Industry Norm for Capacity Utilisation, If any | Best Information available and source thereof | Best Information available and source thereof |
| 9 | Sales Quantity:<br>(a) Domestic Sales-Small Scale Industry** (SSI)<br>(b) Domestic Sales-Other than SSI<br>(c) Export Sales<br>(d) Captive Consumption | Actual Information | Data must be provided as trend |

| S. No. | Particulars | Confidential Version-Supporting Producer (SP) | Non-Confidential Version[5] |
|---|---|---|---|
| 10 | Sales Value:<br>(a) Domestic Sales-SSI<br>(b) Domestic Sales-Other than SSI<br>(c) Export Sales<br>(d) Captive Consumption | Actual Information | Data must be provided as trend |
| 11 | Sales Realisation per Unit:<br>(a) Domestic Sales-SSI<br>(b) Domestic Sales-Other than SSI<br>(c) Export Sales<br>(d) Captive Consumption | Actual Information | Data must be provided as trend |
| 12 | No. of Employees | Actual Information | Actual Information (Aggregated data in case of more than one plants) |
| 13 | Productivity per day | Actual Information | Actual Information-Average data in case of more than one plants |
| 14 | Average Industry norm for Productivity per day, if any | Best Information available and source thereof | Best Information available and source thereof |
| 15 | Inventory | Actual Information | Data must be provided as trend |
| 16 | Inventory as No. of days of Production | Actual Information | Data must be provided as trend |
| 17 | Inventory as No. of days of Sales | Actual Information | Data must be provided as trend |

| S. No. | Particulars | Confidential Version- Supporting Producer (SP) | Non-Confidential Version[5] |
|---|---|---|---|
| 18 | Average Industry Norm for Inventory, if any | Best Information available and source thereof | Best Information available and source thereof |
| 19 | R&D Expenses | Actual Information | Data must be provided as trend |
| 20 | Funds Raised:<br>(a) Equity<br>(b) Loans and Advances<br>(c) Working Capital<br>(d) Other, if any | Actual Information | Data must be provided as trend |
| 21 | Cost of Sales per Unit- Domestic Sales (excluding outward freight, outward insurance etc.) | Actual Information | Data must be provided as trend |
| 22 | Cost of Sales per Unit- Exports | Actual Information | Data must be provided as trend |
| 23 | Selling price per unit- Domestic Sales (excluding excise duty or GST whichever is applicable) | Actual Information | Data must be provided as trend |
| 24 | Export price/unit | Actual Information | Data must be provided as trend |
| 25 | PBIT per Unit-Domestic Sales | Actual Information | Data must be provided as trend |
| 26 | Total Profit before Interest and Tax-Domestic Sales | Actual Information | Data must be provided as trend |
| 27 | Interest/Finance Cost Domestic Sales | Actual Information | Data must be provided as trend |
| 28 | Depreciation and Amortisation expense | Actual Information | Data must be provided as trend |
| 29 | Average Industry norm for PBIT as % of Avg. Capital Employed, if any | Best Information available and source thereof | Best Information available and source thereof |

| S. No. | Particulars | Confidential Version-Supporting Producer (SP) | Non-Confidential Version[5] |
|---|---|---|---|
| 31 | Details regarding the manufacturing plants of the supporting producer which are involved in the production of PUC along with annual capacity thereof | Actual Information | Data must be provided as trend |
| 32 | Details regarding the PUC (including size, type, range, models) that is produced by the supporting company | Actual Information | Supporting Producer may provide a reasonable summary of the data, to the extent possible |

1 When the Single Petitioner is a single product company which is either listed on the stock exchange or reports its financial information to the Ministry of Corporate Affairs, then information regarding these parameters would be available in the public domain. Therefore, claims of confidentiality by such a domestic producer would not be permitted.
Even where the single Petitioner is a multiple product company listed on the stock exchange or reporting its financial information to the Ministry of Corporate Affairs, the extent of confidentiality which can be claimed should be correlated with the nature of its reporting available in the public domain.

2 The Petitioner(s) must provide actual information unless the same is protected by any law or is trade secret for that the petitioner(s) Where the information pertaining to the manufacturing process is protected by any law, the Petitioner(s) must cite the same as the reason for claiming confidentiality along with a summary of the information sought.

3 Certain parameters and the data may be required to be provided by only some of the interested parties. Please refer to Non-Confidential Version Detailed breakdown to cross-verify which parameters are applicable and which are "not applicable" at all to some of the interested parties.
4 The Foreign Producer(s) must provide actual information unless the same is protected by any law or is trade secret for the foreign producer(s). Where the information pertaining to the manufacturing process is protected by any law, the Foreign Producer(s) must cite the same as the reason for claiming confidentiality and provide a summary of the information sought.
5 When the supporting producer is a single product company which is either listed on the stock exchange or reports its financial information to the Ministry of Corporate Affairs, then the information regarding these parameters would be available in the public domain. Therefore, claims of confidentiality by such a supporting producer would not be permitted.
Even where the supporting producer is a multiple product company listed on the stock exchange or reporting its financial information to the Ministry of Corporate Affairs, the extent of confidentiality which can be claimed should be correlated with the nature of its reporting available in the public domain.
6 The supporting producer must provide actual information unless the same is protected by any law or is trade secret for that supporting producer. Where the information pertaining to the manufacturing process is protected by any law, the supporting producer must cite the same as the reason for claiming confidentiality along with a summary of the information sought.

# VERIFICATION

## LEGAL PROVISIONS

8.1 The scope and need for verification of information is contained in Rule 8 and Rule 9 of the Anti-Dumping Rules, which read as under:

> *"Rule 8. Accuracy of the information. - Except in cases referred to in sub-rule (8) of rule 6, the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based."*
>
> *"Rule 9. Investigation in the territory of other specified countries. - The designated authority may carry out investigation in the territories of other countries, if the circumstances of a case so warrant.*
>
> *Provided that the designated authority obtains the consent of the person concerned and notifies the representatives of the concerned government and the concerned government does not object to such investigation"*

8.2 It is also pertinent to reproduce Rule 6(8) which states as follows:

> *"Rule 6(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances".*

8.3 Section 9A (6A) of the Act also provides for the same detailed as under:

*"(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer.*

*Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available".*

8.4 The need of Sampling and the process thereof are provided in Rule 17(3) of AD Rules as detailed below:

*"The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:*

*Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned:*

*Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation".*

**SIGNIFICANCE**

8.5 The Authority relies upon the facts and information contained in the application/ questionnaire response for arriving at final determinations in an investigation. However, the Authority may also validate the information by

conducting a verification at the domestic industry's/respondent's facility/ies. The verification process is designed to focus on a cross-section of information and confirmation of the veracity of the facts that can be relied upon for workings and final determinations[1].

8.6 The two primary objectives of any verification are: (a) verification of the accuracy of the data submitted by the DI/Co-operative Producer/Exporter and (b) verification that no relevant information/data was omitted in the application/ response.

8.7 The process of verification will be similar in case of physical verification for supporters of the application, importers (related/unrelated) and users.

**OPERATING PRACTICES**

8.8 The Investigating Team shall always jointly conduct verification of DI, supporters, Foreign Producers / Exporters or importers/users if the case so requires. Further, the verification would mean verification of facts/figures/data in a table study and/or on the spot physical verification.

**PRE-INITIATION VERIFICATION**

8.8.1. The verification of the DI can sometimes be done at the pre-initiation stage mainly with a view to understand the proposed product, its processes,and operations of the applicant producer(s). A confirmation must be obtained from DI that all details pertaining to production and sale of PUC have been furnished and no unit/related entity manufacturing PUC has been left out. This becomes more important when the Applicants consist ofa small scale industry or belong to the unorganized sector. Rule 5(3)(b) of the Anti-Dumping Rules, inter alia enables the Authority to satisfy itself on the accuracy and adequacy of the evidence provided in the application. In fact, there are instances, where ADD investigations were initiated only after physical verification[2] of the Applicants. Further, in the case of safeguard investigations, which are in the nature of emergency measures requiring immediate relief where deemed fit, it is necessary that accuracy and adequacy is checked prior to the decision on initiation of an investigation to avoid subsequent delays.

[1]Refer to Para VIII of Chapter 24.

[2] Initiation of anti-dumping investigation on imports of Jute Product originating in or exported from Bangladesh and Nepal,F.N..14/19/2015-DGAD dated October 21, 2015

**POST-INITIATION VERIFICATION**

8.8.2. It is important to verify the information provided in the application as well as the responses filed by applicants (petitioners), producers and exporters along with their related entities and importers. There is no bar on post initiation verification even if pre-initiation verification has been done. The verification has to be done for all the responding parties by way of on-the-spot verification or table study except where it is decided to undertake verification on a sampling basis in view of large responses.

**TABLE STUDY/VIDEO CONFERENCING**

8.8.3. The verification through the method of table study means verification of original documents and supporting evidence in the Directorate either by verifying physical documentation or through Video Conferencing. The producer or exporter directly or through their legal representative, is required to get the sample (as directed by the Team) documents verified. The exporter's or producer's information can also be verified from their information system like SAP (a stepwise guide for ERP system based verification is attached herewith), Oracle or any other reliable system which allows the Exporter to access and show his records to the team in DGTR office. The verification process can also be set up through Video Conferencing.

**SAMPLING**

8.8.4. In case there are large number of responses, it is impractical to verify and examine each response individually, therefore it is advisable with a view to having more accurate verification, to resort to sampling as per the methodology described herein:

(i) Generally, sampling must be resorted to where the number of applicants or cooperating producer-exporters from a subject country are three or more.

(ii) It should be notified to all the stakeholders within 80 days from the date of initiation that the Authority is resorting to sampling and the sampling methodology must be specified therein.

(iii) The export volume of PUC by the producer-exporter and presence of a cross section of data are the primary factors to be kept in mind while designing samples to be verified.

(iv) In case of multiple subject countries in an investigation, where there are only one or two responses from each subject country, it may not be advisable to select a sample from the responding exporters from respective subject countries. An attempt should be made to undertake verification of all, even if in a table verification, for determination of individual dumping and injury margin.

(v) The outcome of sampling for a subject country would be the sampled producer-exporters having individual duty margin, followed by the un-sampled producer-exporters who will be given a weighted average duty margin determined for sampled producers,followed by a residual margin for non-responding producers-exporters and non-cooperative producer-exporters on account of incomplete response.

**PHYSICAL VERIFICATION**

8.8.5. Where the team decides to undertake on-the-spot physical verification of the plant and data/documents of DI (herein after also referred as the applicant) or producer-exporters (herein after also referred as respondent), then the following methodology may be adopted:

(i) It must be kept in mind that the domestic verification can be done by the Investigation Team only after obtaining the concurrence of DI or the supporters of the application, as the case may be. If any constituent of the DI refuses to co-operate, the respective unit can be disregarded for investigation purposes. The investigation can even be terminated, if it affects the standing of the DI.

(ii) Further, foreign verification can be undertaken by the Investigation Team only if: (a) the foreign entity agrees for verification, and (b) the team notifies the Government of the concerned subject country and that Government does not object.

(iii) If the entity or the Government objects to verification, the Investigation Team cannot conduct verification and may regard/disregard any or all of the information submitted by the concerned entity on the face of the documents and use the facts available under Rule 6(8) of Anti-Dumping Rules.

(iv) The guidelines for streamlining of the Verification process for foreign producers, exporters and DI, during the course of anti-dumping investigations, are contained in an Internal Circular No. 04/01/2018-O/o DGAD dated 23.01.2018, the gist of the same is provided in subsequent paragraphs.

(v) The tour program should be planned much in advance such that the companies would get sufficient advance notice and the team could also process the documentation for the tour with ease. The domestic verification should at least be planned 3 weeks in advance so that the company can prepare for the forth coming visit. The foreign tour should be planned 6 weeks in advance as the documentation requirement pertaining to approval of competent authority, financial approvals and screening committee clearance,information to embassy, application for political clearance, application for visa, issue of tickets, issue of sanction order, booking for accommodation and transportation etc. are lengthy and tedious.

(vi) In case the verification is in non-English speaking countries, and the team requires the services of an interpreter, then Embassy/Consulate of India should be requested to make the necessary arrangements. The Embassy/ Consulate should also be requested to join the investigation team during the process of verification at the premises of the producer exporter.

(vii) As neither the Act nor the Rules provide for the timing or the format of the Verification Report, a tentative format of the Domestic Verification Report and Exporter's Verification Report suggesting contents of the report is attached herewith, in Annexure-I and Annexure-II.

(viii) It must be borne in mind that the purpose of verification is to confirm the accuracy of information/data submitted by the applicant/respondent and to verify that no relevant information/data was omitted in the application/ response.

(ix) It is necessary that all the data in the application/questionnaire response should be verified. However, if due to time constraints, it is not possible for the team members to verify every topic on the verification outline, team members should select items which are most critical and crucial.

(x) Team members should always ask for invoices during actual verification in addition to the invoices already mentioned in the verification outline.

This shall ensure the integrity of the verification process is maintained, the applicant and respondent must always be prepared to verify all the information relevant to the case.

(xi) Team members must first verify the data as submitted by the applicant/ respondent and unless they are absolutely certain, such data shall not be used in the final determination.

(xii) Prior to verification, the team should internally/independently identify specific sales transactions for detailed examination at the time of verification.

(xiii) Similarly, the team should also identify the high cost items or related party transactions, which may need examining complete details to check the authenticity of the reported costs. The team should aim at finding out the triggers for cost variations amongst several constituents of DI and Co-operative Exporters.

(xiv) To the extent possible, the specific sales transactions selected should cover the full spectrum of terms of sales, costs, adjustments, product models, etc., as well as sales with unusual characteristics. Data analysis prior to verification will provide some direction in choosing these sales. Similarly, issues regarding costing should also be pre-selected to ensure comprehensive verification.

(xv) Even if the team members suspect that some or all of the information that was provided is inaccurate or does not reflect the actual facts of the case, the investigation team should collect as much documentation and other information as possible about the items in question. The record of such adverse evidence is important when making the determination which could lead to termination of investigation or imposition of the duty, as the case may be, and also at the time of defending its stand before the court in legal proceedings.

(xvi) Team members should not solely rely on the applicant's/respondent's worksheets as the source documents for verification of a particular topic. Worksheets should be first tested for accuracy to determine if the formula, calculations, and assumptions yield the results claimed in the worksheet (if these documents are already on the record, this test should be done before verification). Further, team members should not simply accept the applicant/respondent's methodology/assumptions as presented. If the team

members use a prepared worksheet as a verification exhibit, sample source documents used to support the exhibit should be attached to that exhibit.

(xvii) An important issue in verification of cost details is the basis adopted for allocation or apportionment of common expenses or joint costs. This is very critical as any change in the basis of allocation may result in drastic changes in cost figures. It needs to be ensured that the basis of allocation is appropriate or reasonable. If more than one product is coming out of any manufacturing process, where costs cannot be identified, it may be more prudent to allocate costs on the basis of production value (sales value of production during POI) or other reasonable basis instead of production quantities or any other arbitrarily selected method. However, if all the products emerging out of any process have almost similar value, production quantity method could also be adopted.

(xviii) It is equally important that verification is carried out to confirm that no relevant information/data was omitted in the application/response. In other words, completeness of the submission should be verified with respect to the reported cost details and sales transactions as well as charges and adjustments.

(xix) Team members should keep in mind that their purpose is to verify all the relevant facts pertaining to the case, including identifying any relevant information that has not been reported.

(xx) The team members should conduct themselves in an impartial manner at all times and avoid acceptance of hospitality offered by the parties.

(xxi) If the applicant's/ respondent's counsel or outside consultants are present at verification, the officials and employees of the company should be encouraged to participate in the verification process. It is essential that the applicant's/ respondent's officials and employees be the direct sources of information.

(xxii) Where the producer is exporting through other exporters and traders, who have submitted a complete response and are willing to co-operate during verification, such entities should preferably be invited at the producer's premises if they exist in the same city. The process of verification of documents of such unrelated entities should be undertaken in the presence of the producer so that cross verification can be done and any double adjustments be avoided.

**Preparation and planning for verification**

(xxiii) The plan of verification, first entities to be verified and dates of the verification should be scheduled in advance. The verification agenda should be prepared and shared with the entities to be verified. Preparation for verification should be done in advance for the actual verification of the response data as discussed below:

**Examination of application/questionnaire responses**

(xxiv) Team members should examine the submissions in detail. The submissions made therein should be understood with regard to:

(a) All the formats are being duly signed and complete information is available. Name and designation of the concerned senior officer must be mentioned, where documents are signed by the Company Officials.

(b) The documents as per format should be certified by a practicing accountant in the exporting country, where our required. It may be added here that Indian Chartered Accountants may not be competent to certify the statements from books of accounts of the exporters, which have been prepared as per applicable statute and accounting standards in that exporting country.

(c) Peruse the supporting documents evidencing installed capacity and production etc. For example, installed capacity can be verified from various returns filed with the respective Government Authorities. It may be added here that certain polluting industries, especially chemical industries, file a return with the Pollution Board regarding installed capacity.

(d) The different segments, different plants and the various products being manufactured by the company, including any joint products or by-products.

(e) The details regarding captive consumption and the basis of its pricing. This information is necessary during allocation of expenses between PUC and Non-PUC. Even if the basis of captive transfer is market price, the team should verify the duly authenticated cost sheet of the captive inputs. The cost sheet would also help in ascertaining the reasonability of market price.

(f) Annual Reports including Director's Report to find out relevant information, if any, mentioned therein like installed capacities, various segments and their separate profitability, business challenges, related parties and details of transactions with them including pricing policy, comments of the Auditor on arm's length pricing etc.

(g) Peruse the Auditor's Report to understand qualifications, if any, by the Auditors. If there are certain qualifications, the estimated impact on the findings must also be noted

(h) Check details of related party entities and the comments of Statutory Auditors must also be examined to ensure reasonability of costs and net sales realizations.

(i) Check and prepare a comparative chart of cost sheets for all the entities to find out the outliers, which may need special attention during verification.

(j) Identify those products or models with the highest and lowest consumption of inputs or costs which generated the highest and lowest margins and try to identify any inputs or cost elements causing these results for special attention during verification.

(k) Team members should sort the data, for example, by the customers, groups of customers, customer categories, quantity and value, rebates, discounts, channels of distribution, and commissions. Team members should also sum up the totals for all quantifiable data fields and break it out by reported variables within that field. These totals may be useful in determining the significance of certain variables or for checking allocations.

(l) If the respondent has been verified previously and the verification reports from earlier verifications are available, then team members should examine them to understand the DI as well as the producer exporter.

(m) Deficiencies, if any, should be intimated before verification. Rejection of response at the last moment for minor deficiency should be avoided. If no satisfactory clarification is received within a reasonable period, the investigation may be proceeded further based on available facts.

**Verification Agenda**

(xxv) The verification agenda (or outline) is an important tool of verification, as it serves the purpose of advance instructions to the applicant/respondent as to what it must prepare, for the verification. It provides a description of the structure of the verification; what will be verified, what documents will be reviewed, in what order items will be verified, etc. In essence, the outline is a script for the verification. The Investigation Team, however, should feel free to go out of order of the agenda, if needed (e.g., due to time constraints or the need for spontaneity.)

(xxvi) The outline should be presented to the applicant/respondent at least two weeks before the verification begins, but in no case should it be provided less than one week prior to the verification.

(xxvii) The investigation team should attempt to follow the verification agenda but should not be bound by it. The team members may want to discuss the order of the topics to be reviewed at the beginning of the verification, particularly if part of the verification needs to take place at another site, such as a factory or affiliated party at another location. In the course of the verification, when the opportunity arises to pursue another topic that was not anticipated in the agenda, the team members need to make a judgment call on whether to deviate from the defined agenda. This situation frequently occurs when the team members see the opportunity to conduct a completeness test or need to have the applicant/respondent collect certain types of data. [Another example would be the opportunity to verify a topic spontaneously].

**Electronic files and laptop computers**

(xxviii) The questionnaire responses and related documents are required at the time of verification;therefore, a soft copy of the information should be carried. The team should carry a laptop computer (provided by the Directorate) for verification.

**Dealing with revisions (errors/discrepancies) and new information**

(xxix) Investigation Team should confirm whether any errors need to be rectified in the previously submitted information by the Applicant / Respondent.

(xxx) Investigation team should ask the applicant/respondent to describe the nature of each clerical error. This will help them understand whether or not the error can be accepted as a minor correction. If the investigation team determines that the clerical errors and minor omissions are acceptable as such, it will take the corrected version on record as a verification exhibit.

(xxxi) If the team senses that the applicant/respondent is presenting substantially new information, either prior to or during the verification, they should not make any commitment to accept the new information, as it will have to be brought to the notice of the DG and then accepted or rejected. However, the new information must be verified and all the relevant details based on the revised new information must be collected as exhibits.

(xxxii) Although minor discrepancies can be allowed to be rectified, major discrepancies are serious flaws in the data base which call into question the very integrity of certain sections of the response or the complete response itself. In case of major discrepancies, the team should document the existence of the discrepancy and collect complete information as it will require to be dealt with during the post-verification decision making process. It is important that team members make it very clear to the respondent that collection of such information does not constitute acceptance or verification of the new information.

**Corporate organization and structure**

(xxxiii) Team members should also make sure that they have information regarding the organizational structure of the respondent in effect for the POI. Further, even if the response is clear on corporate organization and structure, the industry should be asked to make a detailed presentation to enable the team to understand all the players. This will provide a better overview of the entire company and not just the unit involved with the merchandise under investigation or review. Such information may lead to the discovery of unreported sales distribution channels or affiliated customers and suppliers.

**Product information**

(xxxiv) It is essential that team members understand about all the products the company produces, where they are produced and how individual products are accounted for in the respondent's accounting system. The verification should focus primarily on accounting of PUC.

(xxxv) Investigation Team should review products produced by the respondent and its affiliates that are both inside and outside of the scope of the proceeding. Team members should ask for a product code list covering all products produced by the company as well as codes for larger product groupings. Team members may then examine how this product coding system is integrated into the accounting system. This procedure will provide an understanding of what types of product-specific information is available.

(xxxvi) The company should explain how it segregates PUC from all other products produced. Where applicable, team members should review the computer program used to identify PUC.

(xxxvii) The investigation team should understand the production process and also take the plant tour.

(xxxviii) During a plant tour, observe the flow of the product through the production process, incoming raw materials, packaging of finished goods, shipping, etc. If they are verifying cost-related elements, team members should identify those areas where cost differences between grades/models may occur and consider whether the production differences appear consistent with the reported magnitude of cost differences. The team should feel free to talk to factory personnel, especially in packing, shipping and inventory control.

**Production Quantity**

(xxxix) The investigation team should first verify the production quantity. It is important because it constitutes the denominator in most or all of the respondent's calculations. As they would with a sales quantity verification, team members should use financial statements, production records, and/or inventory ledgers to verify the production quantity.

(xl) As regards domestic verifications in chemical industries, usually this information can be found also in Excise Records/Returns filed with the Pollution Board (Mostly in case of Chemical Industries needing Pollution Board Approval). In some of the cases, it may be possible that the Pollution Control Certificate may have been taken for higher quantity for future expansion but installed capacity may be less. In such cases, appropriate documents in its support may be collected.

(xli) Investigation Team should ensure that the production quantity they are verifying refers to the product as sold. In some cases, a producer will

maintain its production records based on a standard that may be different from the product that is actually sold. For example, a chemical producer may sell its product at a 90% concentration level, but maintain its records on a 100% concentration level standard. Where such differences exist, the investigating team should make sure that all reported factors are appropriately and consistently adjusted, and discuss any inconsistencies in the report. Similarly, as they examine both production and factor inputs, team members should be sure that the respondents have reported, and they are verifying, actual and not standard, production figures. If production yield is relevant in the case, the team members will also verify the net yield in this step.

**Related parties or affiliations**

(xlii) In the application/questionnaire responses, companies are required to report related parties or affiliates involved in the production or sale of the PUC in the investigation. The purpose of verifying affiliations is to confirm that reported affiliations between companies through investment or interlocking board members and officers are accurate and complete. Sometimes applicant/respondents will limit this reporting to affiliated companies that have a direct role in the production or sale of Product Under Consideration in the investigation. In those instances, where there are affiliated companies, team members must also consider the affiliate's relationships with its customers and suppliers. Verification of affiliations in large multinational companies is much more difficult than for smaller companies. The process can be greatly facilitated by pursuing the verification as below:

(a) Verification of the respondent's shareholders can be accomplished through a variety of documents. The notes to the financial report will often list all, or at least the major, shareholders. Team members can also verify using the 'shareholders equity' section of the balance sheet. Other documents include shareholders' reports, government registration documents or published security reports of public companies.

(b) Verification of company share holdings and investments is primarily accomplished using the asset section of the balance sheet. Asset accounts, such as 'marketable securities', 'investment in securities', 'investment in subsidiaries and affiliates', and 'loans to affiliates'

should be traced through the general ledger and sub-ledgers. If percentages of investments and holdings are not observable from the ledgers, the company should be required to compute the percentage for selected investments of interest.

(c) Verification of holdings and investments by reported affiliates is generally more difficult because team members may not have that company's financial statement on record or the company may be distant from the verification site. In these instances, team members may use the respondent's verified company data to check for sales, expenses, charges or production activity between the two companies or they may rely on faxed copies of source documents or require an express delivery of the documents from the distant affiliate.

(d) It is compulsory and necessary for all entities to co-operate and be willing to participate in the process of verification. In the case of multiple producers in a group, the team may decide to undertake plant verification of only one producer if there are no claimed differences in the various plants.

**Accounting Review**

(xliii) The team must have a basic, but a very clear, understanding of the respondent's accounting system in order to adequately conduct a verification of the facts as presented and to verify the gaps in the data. In the verification agenda, the respondent should be asked to:

(a) Identify and describe the data systems used to record production and sales data; and

(b) To review the manner in which source documents for production, sales and expenses flow into the financial statements via accounting vouchers, journals, subsidiary ledgers, and general ledger accounts. If the respondent has not already done so, investigation team should ask the respondent to provide a flow chart that clearly shows how production costs, sales revenues, and sales expenses are tracked in the respondent's accounting system and identify the different stages of each of these accounting records by the names actually used in the respondent's accounts with accurate translations. Furthermore, since verification focuses on reconciling the various information with

the financial statement, the team must ensure that they possess the audited financial statement for the POI and the previous financial period. During the accounting review, the team should:

- Ask for an explanation of the internal accounting system which describes how, when and where the financial and sales accounting systems tie together. While verifying the factors of production, look for how the production and/or inventory accounting system ties to the financial records. Given the limited time of verification, focus on the essential and relevant information for verification.
- The team should verify financial statements submitted in a response and contents thereof, against the original audited financial statement. If the Respondent has failed to file financial statements for affiliate companies along with their questionnaires responses, they should be asked to do the needful during verification.

**Computer Database Review**

(xliv) Most businesses involved in international trade today maintain much of their basic sale and costs records and formal accounts in electronic form using some form of integrated accounting software. Therefore, much of the response material can be directly procured from the on-line documentation maintained by the respective company. In some cases, no hard copies of typical accounting source documents are kept. Therefore, for most companies, team members will need to scrutinize the integrity of the computer databases in order to complete the verification. Below are some useful tips for such verifications. (*Note that some of these documents may have been submitted as part of the questionnaire responses or in a* separate *filing prior to verification)*:

(a) Investigation Team should ask to meet with the person in charge of computer operations and have this person provide a complete list of the types of computer reports generated and/or available in the ordinary course of business.

(b) Team members should review samples of the computer-generated reports and select those that could be of interest during the

verification. Wherever necessary, ask that certain reports be produced for the POI.

(c) As part of the introduction to the respondent's accounting system and request the IT person to demonstrate how data from a specific sale flows through the system and have them generate reports that can be linked to the financial statement. For cost verifications, team members should do the same with electronic records of purchases and input consumption. This procedure will give team members a good idea of what is involved in retrieving the information that is needed to match to response data.

(d) The verification agenda letter should state that the databases used to generate the response should be made available at the time of verification. In addition, wherever possible, the investigation team should ask that the database used for sales listing should also be loaded and that a programmer be available to run that database. If necessary, team members should ask that certain programs be run. This procedure will give a good idea of what is involved and how long it will take.

**Reconciliation of Quantity and Value of Sales**

(xlv) The total quantity and value of sales is simply the sum of the quantity and value of individual transactions in each of the respondent's transaction databases. Thus, verification of total quantity and value is accomplished by typing selected individual sales transactions into the financial statement and by testing the ledgers and worksheets.

(xlvi) The team should bear in mind that it is not always possible to tie sales transactions directly into the financial report using records and ledgers kept in the ordinary course of business. This situation occurs because our definition of the product, POI and date of sale often do not coincide with the company's accounting procedure. Also, the sales figures from the respondent's accounting records may include other amounts (e.g., taxes, fees for services reported elsewhere). Worksheets will be needed to bridge the gap between accounting records and the sales data submitted by the respondent.

(xlvii) In case the quantity and value of sales total from the original sales transaction database differ from the original questionnaire quantity and value of sales figures, an explanation to this discrepancy must be sought. Regardless, the team should check the methodology used to calculate the original quantity and value and any subsequent corrections or revisions

**Date of Sale/Sales Reporting**

(xlviii) Generally, the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business is considered as the date of sale. Team Members should discuss with appropriate personnel as to how the respondent records sales in the ordinary course of business and how changes to material terms of sales prior to shipping are taken into account.

(xlix) The Team should examine original copies of selected sample documents that had been submitted and are on the record. If appropriate, they should select additional sample sales, bearing in mind that they will be examining similar documentation in the course of the sales trace verification.

(a) Once it is clear as to which date of sale methodology was used by the respondent, the team members need to know the procedure used by the company to extract the POI sales transactions from its database. The actual procedure may range from manually reviewing sales and shipment records to examining complicated computer programming.

(b) As part of the quantity and value reconciliation, the company should provide copies of all files or worksheets used in arriving at the sales transactions reported. If team members are concerned, they may ask the company to re-run the program in their presence. If they do this, the team should take careful note of how the actual records that are accessed are linked to the company's normal books and records. Also, observe the retrieval parameters (for dates and product classifications) that are used.

(c) The purpose of the sales trace verification is to verify the factual information reported for the pre-selected sales identified in the agenda as well as those sales identified during verification (i.e., on-site sales). The sales tracing is a two-part process (that includes reviewing corresponding accounting entries). First, a sale is traced through

the customer records from the initial inquiry/order to payment by the customer. Second, charges and adjustments that represent the actual charges and adjustments for that sale are examined and verified.

(d) During the sales tracing, the team should be able to verify the following basic sales transaction data:

- invoice date;
- sale date;
- shipment date;
- payment date;
- product code and control number;
- quantity sold;
- unit price;
- customer information and customer relationship;
- channel of distribution;
- destination; and
- some price adjustments, such as on-invoice discounts.

(e) If certain charges and adjustments (typically credit days, rebates, discounts, commissions, and freight) are the actual expenses (as opposed to allocations) for that sale, then those items should also be verified in that sales tracing. Otherwise, charges and adjustments should not be included in the sales tracing but should be verified as separate, stand-alone topics.

**Sales Tracing Source Documents**

(lv) Typical sales tracing source documents include:

(a) Customer contracts and purchase orders;

(b) Order confirmations and/or pro-forma invoices;

(c) Purchase order logs or pending shipment files;

(d) Production control records;

(e) Invoice to the customer;

(f) Shipping documents such as bills of lading, airway bills and delivery receipts;

(g) Factory shipping logs;

(h) Inventory records;

(i) Base-lined internal sales reports and worksheets;

(j) Sales ledgers;

(k) Accounts receivable records;

(l) Records of payment, such as canceled checks, letters of credit, debit/credit memos, promissory notes, bank deposit slips and/or bank statements;

(m) Credit insurance;

(n) Debit/credit memos for the post-sale price and/or quantity increases or decreases; and

(o) Wherever appropriate, invoices, expense ledgers, journal entry slips and records of payment for actual charges and adjustments.

**Allocations of Expenses**

(lvi) The respondent should describe the calculation and supporting documents it has prepared in accordance with the instructions in the verification agenda. The team must first verify the data as presented in the response. Afterward, they should pursue any concerns they may have with the methodology or the calculation.

(a) Whenever verifying an allocation methodology, the team should be sure that they are verifying the source documents and the financial accounting system rather than simply a worksheet. Worksheets are useful, but they are not, in themselves, source documents.

(b) Team members should look into the reasonability of allocation basis adopted by the company and if possible, also compare with the comparable basis adopted by the other units, if available.

(c) Attention must be paid to the basis of allocation of expenses to NPUC especially to ensure that expenses have been allocated to all the products/activities carried out by the company.

(d) The team should also see the quantitative average consumption of raw materials per unit to ensure that there is not much variation from year to year. All major variations need explanation.

(e) The prices of raw materials to be seen and compared amongst different constituents of DI and producer/exporters to the extent possible or feasible. This is desirable especially if the DI is also using the imported raw material.

(f) The basis of pricing of captive inputs consumption should also be seen and the costs compared with market price, if available.

(g) The form of packing used by producer/exporter for exports to India is very relevant, particularly when it is observed that packing for domestic sale and export sale is different. It is,therefore, necessary that the costing of producer/exporter/DI is worked out for the relevant packing to ensure a fair comparison.

(h) The team should take verification exhibits which support their findings. The exhibits may include the following source documents:

- Sample calculations;
- Allocation worksheets;
- Invoices to the respondent;
- Expense ledger entries;
- Journal entry slips;
- Records of payments;
- Accounts receivable and payable ledgers;
- General ledger entries; and
- Other ledgers and records, which may be used to support such items as calculation of credit days, interest rates, inventory carrying time, duty drawbacks.

(lvii) Environment Costs: The investigation team should verify the expenses booked by the different units under the head "Environment Costs" and compare the costs with estimated requirements under the Environment Law of the country. This is especially required in case of industries falling under Red Category or Orange Category. It may be added here that all units have been broadly classified under the following categories:

| S.No. | Category | Colour |
|---|---|---|
| 1 | Industrial Sectors having Pollution Index score of 60 and above | Red |
| 2 | Industrial Sectors having Pollution Index score of 41 to 59 | Orange |
| 3 | Industrial Sectors having Pollution Index score of 21 to 40 | Green |
| 4 | Industrial Sectors having Pollution Index score of incl. & upto 20 | White |

(lviii) There shall be no necessity of obtaining the consent to operate for white category of industries. An intimation to concerned SPCB/PCC shall suffice.

(lix) The inter-unit comparison with other units in the sector or part of DI may also be done and compared with provisions in other countries during verification.

(lx) The aforesaid information especially incremental costs and their impact on injury may be relevant during investigations while taking the final decision.

**Exhibits**

(lxi) Exhibits are copies of the source documents that the investigation team views at the time of verification and support the response and/or verification findings. Team members should take exhibits on record and put them in a file at the time of finalizing the verification report, which is considered confidential. Generally, team members should incorporate documents as formal verification exhibits if the document supports a particular point in the verification findings. In other cases, team members may simply take a sample of what they have seen. In some cases, applicant/respondent will create worksheets, especially for the verification to facilitate understanding of how the response data ties to the original source documents. Although these worksheets are not part of the applicant's/ respondent's regular books and records, the team should include them in the appropriate exhibits if they contribute to the understanding of the source documents.

(lxii) Formal verification exhibits should be given numbers. A list of exhibits along with detailed description of each exhibit should be annexed to the verification, for ease and convenience of reference.

**Verification Reports**

(lxiii) A standard format has been formulated which provides detailed guidance on the form of the verification report (annexed herewith). Even though the verification report should be modeled on the standard format, team members should keep in mind that the case-specific contents may be incorporated in the actual verification report.

(lxiv) Investigation Team should bear in mind that the verification report is the document to report on the accuracy of the questionnaire response (both submitted and omitted). The report is not an analytical decision

memorandum, and verifiers must avoid drawing conclusions about the use or application of data from the questionnaire response.

(lxv) If possible, the investigation team should begin to write the report during the verification or in the first few days after verification. Verifications proceed at a hectic pace, requiring verifiers to absorb vast amounts of material, so writing each item as the verification proceeds, or immediately afterward, gives verifiers the opportunity to ensure that they fully understand & incorporate what was just verified. Furthermore, writing the report immediately generates new questions and clarifications, which investigation team are then able to pursue immediately or the next day.

Appendix-36

No.14/4/2013-DGAD-Cost
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi-110001

Dated 3rd August, 2015

**Trade Notice No.02/2015**

**Subject: Authenticity of supporting documents/information received during the processing of Anti-dumping cases.**

The processing of Anti-Dumping Petitions in DGAD requires clarifications and supporting documents from the Petitioner to facilitate examination of these petitions. It is, therefore, necessary that correct, complete and authentic information is submitted by the interested parties without withholding any important information.

2. It is noticed that the supporting documents and clarifications provided by the interested parties/consultants during Anti-Dumping investigations after submission of original petition are not authenticated. This leads to the need for seeking further clarifications/supporting documents. This may delay/impede the AD proceeding.

3. In view of the above, it is hereby directed that all documents/financial information/supporting evidence provided after submission of the complete and duly authenticated original petition, shall henceforth be duly authenticated by the Chief Executive of the Company/Director/Partner or the Proprietor of the firm/duly Authorised Officer of company/firm filing the Petition/response to the questionnaire.

4. This is issued with the approval of Designated Authority.

-sd/-
(B.S. Bhalla)
Joint Secretary

To

(a) Website of the Ministry of Commerce & Industry
(b) All the Trade Associations and Chambers of Commerce and Industry are requested to bring the contents of this Trade Notice to the notice of their members/constituents.
(c) (All Embassies and Diplomatic Missions in New Delhi are requested to bring the contents of this Trade Notice to the notice of the concerned.
(d) All IOs/Cos.

Appendix-37

**File No. 4/1/2018-DGAD**

**Subject: Instructions to be followed while submitting the Verification Reports.**

As already indicated in the times lines for disposal of anti-dumping and CVD investigation applications, all Exporter Verifications shall henceforth be carried out only after completion of domestic Industry verification and completion of Oral Hearing. In this regard, the following instructions should be complied with:

i. The Investigating Team will examine the Producer / Exporter response before actual travel in each case and prepare specific questionnaire / points for verification and the same ought to be sent to the parties well in advance;

ii. Before putting up the file for approval of foreign visit, the Investigating Team shall clearly spell out date wise action plan, critical points identified for verification for each producer / trader;

iii. A copy of approved tour Programme along with a copy of each Verification Report (both Domestic Verification and Exporter Verification) is to be placed in the main file and all the Noting sheets to be merged in main file, if any part files are opened during investigation;

iv. A combined date wise summary of itinerary / verification of each foreign visit may be placed in file for information, wherever more than one units are verified during the visit. This is in addition to the respective Verification Report of each unit;

v. The verification of Traders data, if in the same city, be preferably done at producer's premises as this would also help in cross checking of data / transactions;

vi. The Trader's Verification Reports in case of foreign verification must confirm as to whether they have exported the goods (PUC) from other producers too. If so, summary thereof also need to be indicated;

vii. The feasibility of verification through Video Conferencing/ desk study based on certified documents, where the number of invoices are very few, may also be considered by each Investigating Team; and

viii. Wherever deficiencies were noticed and pointed out, they must be incorporated in the Verification Report.

2. The aforesaid instructions must be strictly complied.

-sd/-
(Sunil Kumar)
AS&DA

To
I.Os and C.Os

Appendix-38

**NOTE: The formats have been updated as per the Trade Notice.**

CIRCULAR NO. 04/01/2018-O/o DGAD dated 23.1.2018

**Domestic Industry Verification Report Format**

**Subject: Report for verification of data of domestic industry (……) in the Anti-dumping investigation concerning imports of '…… Product' originating in or exported from …….. (Country) - Verification at the premises of M/s ……**

**Investigating Team:**

Investigating Officer: Mr./Ms. ……..

Costing Officer: Mr./Ms. …….

Date of Verification: XX-XX-XXXX

1. The following persons were present during the verification:

| S.No. | Name | Designation | Organisation |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

2. **Product Under Consideration and Profile of DI:**

(i) Broad details about the company including the date of commencement of commercial production (PUC), number of plants for PUC, installed capacity, production and capacity utilization.

(ii) Details about major business segments and main shareholders may also be indicated.

(iii) Broad details about the manufacturing process and accounting system (SAP, Oracle etc.) be indicated.

(iv) Whether the details about related party entities or associates in other countries involved in production or selling of PUC were also verified and in conformity with the petition?

3. **Segregation of imports data:**

(i) Whether the team understood and verified the import data which has formed the basis of the application by the Domestic Industry and is proposed to be used by the Authority for its final determination?

(ii) The methodology adopted by the Domestic Industry in segregating the import data into PUC and NPUC be indicated along with observations of the verification team.

(iii) The basis of segregating PCN wise imports, if relevant be also verified and reconciled with total imports;

4. **Imports of PUC by DI:**

(i) Whether details of PUC imports made by the Domestic Industry and its related parties, if any were also available for verification? Discrepancies noticed be indicated.

5. **Domestic Sales:**

(i) Details regarding quantity and value of domestic sales during POI to be reconciled with the audited accounts/ERP System.

(ii) Details about sales to related customers, if any along with quantity and value.

(iii) Whether the turnover figures were verified with reference to the audited accounts/ERP System?

(iv) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed.

(v) PCN wise sales figures be also obtained/verified, if relevant. The PCN wise sales should reconcile with overall figures (both quantity and value).

6. **Capacity and production:**

(i) Whether the installed capacity and production for the injury period were verified and the supporting documents evidencing installed capacity and production were taken on record?

Note: The total production included NPUC shall be verified where the same plant produces more than one product and some of them are NPUC.

(ii) Whether exact dates of commencement of enhanced commercial capacity was obtained, if applicable? Details of deficiencies, if any noticed.

**7. Raw materials and packing materials consumption and reconciliation (Format A, B and D):**

(i) Whether the opening stock, purchases, consumption and closing stock of various raw materials, packing materials and utilities reported in relevant

Format was verified from the records maintained by the company and the details verified are in conformity with the information reported in Appendix C?

(ii) Whether the actual consumption of different raw materials for manufacturing of PUC is comparable with the theoretical norms derived from chemical formulae, if any and variations were explained? Similarly, whether large variations, if any in per unit consumption were duly explained?

(iii) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed.

8. **Allocation and apportionment of Expenditure (Format C):**

(i) Whether the data presented in relevant format was verified with reference to the accounting and costing records and the information was cross verified with reference to the Audited financial statements and other statements generated from the ERP system?

(ii) Whether the perusal of the records shows that the costs (including common expenses/ corporate office) had been allocated to the product concerned, wherever required, on a reasonable basis complying with the generally accepted cost accounting principles?

(iii) Whether complete details about the related party transactions and pricing having impact on Cost of Production were provided?

(iv) Whether the cost of captive consumption (including utilities and services) was provided?

(v) Whether the cost of production is in conformity with Cost Audit Report, in case the company is covered under Cost Audit Rules?

(vi) Whether a small write-up on shut downs etc. obtained, if required and relevant?

(vii) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed.

9. **PCN wise costs, if relevant:**

(i) Wherever relevant, PCN wise costs shall also be obtained/verified and details indicated in the Report.

(ii) The PCN wise norms shall be obtained to verify allocation of direct costs and gross total verified with overall figures.

10. **Net Fixed Assets and Working Capital Break-up:**

(i) Whether complete details of Capital Employed (Opening and Closing NFA/ Working Capital) were obtained along with break-up details and verified, wherever required?

(ii) Whether the basis of allocation of common assets to PUC was reasonable?

(iii) Whether the revaluation of assets was done? If yes, the date of revaluation with other details be indicated along with the deficiencies, if any noticed.

11. **Performance/injury Parameters:**

(i) Whether details of all the performance parameters required for injury analysis was obtained and verified? Deficiencies noticed, if any may be indicated. Supporting documents as available be also collected.

(ii) Industry norms on manpower, inventory and profitability be also obtained, if available.

Appendix-39

**CIRCULAR NO. 04/01/2018-O/o DGAD dated 23.1.2018**

**Exporter's Verification Report Format**

**Subject: Report for verification of data of cooperating producer/Exporter in the Anti-dumping investigation concerning imports of '……. Product' originating in or exported from ……. (Country) - Verification at the premises of M/s ……..**

**Investigating Team:**

Investigating Officer: Mr./Ms. ……

Costing Officer: Mr./Ms. ……

Date of Verification: XX-XX-XXXX

1. **Introduction:** The following persons were present during the verification:

| S.No. | Name | Designation | Organisation |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

(i) Details regarding revised information/revised formats, if any submitted to the investigation team before initiation of investigations and accepted, if any.

(ii) Broad details about the company including date of commencement of commercial production (PUC), number of plants for PUC, installed capacity, production and capacity utilization.

(iii) Broad details about the manufacturing process, if different from DI.

(iv) Details about major business segments and main shareholders may also be indicated. Whether there is any state ownership in the entity?

(v) Details of name changes or change in structure of the company or change in ownership structure in the recent past, if any?

(vi) Whether the details about related party entities or associates in other countries (preferably involved in production or selling of PUC) were also verified and in conformity with the reply to the questionnaire.

2. **Validation of ERP System:** Details of validation of genuineness of ERP/SAP system be done by different validation checks like:

* Matching of published data like gross sales revenue in a published/ audited balance sheet,
* Random check of a historical or latest production data not necessarily of POI picked from log sheet details during onsite plant visit of exporter.
* Matching of some export to India Transactions in POI obtained though DG-Systems with entry corresponding in ERS system.

Note: 'ERP' systems generally capture sales values, (Gross and net), quantity, country, product type etc. other adjustments like ocean freight, Inland freight, bank charges, credit cost etc. are dovetailed in this on the basis of other documents which could be receipts, vouchers. These may be co-related with the transactions of POI both domestic and export. The observations, if any be indicated.

3. **Appendix 2, 4A, 4B and 4C: Domestic Sales:**

(i) Details regarding quantity and value of domestic sales by the exporter including number of customers during POI, if possible.

(ii) Details about related customers, if any along with quantity and value.

(iii) Details about domestic sales invoices selected at random for verification in the following format:

| S. No. | Invoice No. | Date of Invoice | Name of the Customer | Total Quantity | Total Amount |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |

(iv) Whether the details of the sample invoices verified are in conformity with the information reported in Appendix-1 and found to be correct?

(v) Whether the selected domestic sales invoices including shipment records and payment vouchers were taken on record?

(vi) The details regarding deductions claimed by the Exporter from the domestic sales i.e., (a) Rebates (b) Inland freight and (c) Credit cost and bank charges etc. and the basis of claim.

(vii) Whether the supporting documents relating to various deductions claimed from the domestic sales in respect of sample invoices were taken on record and details of deficiencies, if any noticed.

(viii) Domestic selling policy; Type of customers (related, unrelated, trader/end-user),

Note: Copies of contract/P. O/invoices may be collected.

4. **Appendix 2, 3A, 3B and 3C: Export sales to India:**

(i) Details regarding quantity and value of Export Sales to India including number of customers during POI, if possible.

(ii) Details about related customers, if any along with quantity and value.

(iii) Details about Export Sales Invoices selected at random for verification in the following format:

| S. No. | Invoice No. | Date of Invoice | Name of the Customer | Net Quantity | Net Invoice Value (Currency) |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |

(iv) Whether the invoices selected in the sample were found to have been correctly reflected in relevant Appendix?

(v) Whether the selected export sales invoices including shipment records and payment vouchers were taken on record?

(vi) Whether the details of post invoicing discounts and rebates, if any were also seen along with their reconciliation with the audited records?

(vii) Whether the supporting documents relating to various deductions (including post invoicing discount, if any) claimed from the export sales in respect of sample invoices were taken on record and details of deficiencies, if any noticed.

Note: The post export discounts may be verified from customer's sales register (listing from ERP), and also through details of commission/discount in the Balance Sheet of exporter.

5. **Appendix-1: Sales Revenue reconciliation:**

(i) Whether the turnover figures were verified with reference to the audited accounts/ Sales Register or Sales Report generated from XXXXX?

(ii) Whether the details verified are in conformity with the information reported in Appendix and Whether the supporting documents in this regard taken on record with details of deficiencies, if any noticed.

(iii) Overall reconciliation of data of Domestic Sales, exports to India and to countries other than India be done through ERP system of producer/exporter (SAP, oracle, or any other) wherever it exists.

**Note:**

- Generally a sample size of 5% for verification of domestic and export data be considered. However, a smaller sample percentage may be considered, if number of transactions is very high, Similarly, a higher percentage may be selected, if number of transactions are very less.
- The basis of choosing sample be month of POI, customer type (related, unrelated, trader/end-user) grade type, etc. so that sample is realistic and representative.
- The transaction verification be done for entire Chain beginning proforma invoice/purchase order to realisation. The deficiencies noticed in this regard be indicated.
- Genuineness of commercial invoices may also be validated by correlating them with customs declaration filed by exporter for VAT refund. As VAT refund is allowed on FOB, the customs declaration contains Ocean freight and Ocean Insurance as well which could be correlated with details provided on adjustments.
- Copies of contracts, purchase order and invoices be collected.
- In case the domestic sales are either insignificant or nil or may not be in ordinary course of trade, sample invoices for exports to third country (Appendix 3C) and corresponding adjustments may be verified in detail to ascertain the ex-factory export prices to such countries,

6. **Appendix 1– Capacity, production and sales (Performance Parameters):**

(i) Whether the installed capacity, production and sales were verified and the supporting documents evidencing installed capacity, production and sales were taken on record?

(ii) Where the same plant produces more than one product and some of them are N-PUC, the complete details regarding installed capacity and production may need to be verified.

(iii) Details of deficiencies, if any noticed.

7. **Appendix-5 and 6: Raw materials and packing materials consumption and reconciliation:**

(i) Whether the opening stock, purchases, consumption and closing stock of various raw materials and packing materials reported in Appendix 6 were verified from the records maintained by the company?

(ii) Whether packing for export sales is different from the packing for domestic sales. If yes, impact on cost on this account?

(iii) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed.

8. **Appendix-6 – Raw materials consumption:**

(i) Whether the consumption of raw materials figures for POI reported in Appendix-5 and Appendix-6 was compared and found to be matching with audited records?

(ii) Whether the actual consumption of different raw materials for manufacturing of PUC is comparable with the theoretical norms derived from chemical formulae, if any and variations were explained?

(iii) Whether the raw material consumption norms are comparable with the DI?

(iv) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed:

9. **Appendices 7: Allocation and Apportionment of Expenditure:**

(i) Whether the data presented in Appendix-7 was verified with reference to the accounting and costing records?

(ii) Whether the information was cross verified with reference to the Audited financial statements and other statements generated from the ERP system?

(iii) Whether the perusal of the records shows that the costs had been allocated to the product concerned, wherever required, on a reasonable basis complying with the generally accepted cost accounting principles?

(iv) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed.

10. **Appendices - 8:**

(i) Whether Appendix-8 has been prepared on the basis of information submitted in Appendix- 5 and 7 and the same was verified from the accounting records of the company?

(ii) Whether complete details about cost of captive consumption (including utilities and services) was provided?

(iii) Whether Appendix-8 were prepared as per the total cost reported in Appendix-5 and 7?

(iv) Major reason for variations in cost, if any between Export product and domestically sold product affecting price comparability;

(v) Whether complete details about procurements (including services) from related party for PUC provided? Whether the related party procurement is at arm's length price?

(vi) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed.

11. **Appendices - 9:**

(i) Whether the SGA figures reported in Appendix-9 duly reconcile with the audited records?

(ii) Whether the allocation of SGA expenses between PUC and non-PUC has been made on reasonable basis?

(iii) Whether the supporting documents in this regard taken on record and details of deficiencies, if any noticed.

12. **Other issues, if any:**

(i) Whether a copy of audited/certified accounts for injury period including POI was obtained?

(ii) Whether duly signed copies of Appendix-A and Appendix-B are available?

(iii) Whether all Appendices are signed by the Company?

(iv) Whether Appendix 5, 7, 8, 10,11 are certified by the Practicing Accountant?

Appendix-40

**No. 01/Dir. (Admin) 2018**

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
Jeevan Tara Building

Dated 06th July, 2018

**Note – 1**

All the officers are requested to ensure all the communications regarding requirement of documents/deficiencies with Domestic Industry/exporters/other interested parties should be made only in writing via email etc., instead of informing them orally.

These instructions are issued for strict compliance.

-sd/-
(Sunil Kumar)
AS&DG

To:
All IOs/Cos and other officers of DGAD

Appendix-41

**SAMPLE VERIFICATION AGENDA**

**INVESTIGATION INTO ALLEGED DUMPING OF XXXXXXXXX**
**VISIT AGENDA**
**……LIMITED**
**AND**
**……..**

Location:

XXX XXXXXX

Dates:

XXXXXX

Investigation Team:

Mr/Ms……...

Mr/Ms……

**Introduction**

- Meet company representatives
- Background to the investigation
- Purpose of visit
- Investigation procedures
- Investigation key dates

**Company information and accounting**

- Ownership, structure, functions
- Range of goods produced – (major goods in terms of value and/or profitability)
- Related parties – relationship with suppliers and/or customers
- Management fees
- Accounting structure – e.g. cost/profit centres
- Accounting information system(s)
- Reporting requirements

- Statutory and audited
- Management reports
- Consolidated and company financial statements
- Discussion of major products manufactured and/or sold by the company

**Goods under consideration and like goods**

- Range of goods produced including any product brochures
- PUC exported to India
- characteristics
- technical specifications
- relevant standards
- Model matching
- Technical/quality differences, if any between PUC exported and PUC sold in the domestic market
- Capacity and production during the injury investigation period
- Stock levels - any difference between domestic and export inventories, including inventory turnover for export and domestic goods
- Inventories – domestic and export

**Production process**

- Detailed discussion on production process concerning PUC including:
- raw material types, supply and inventory
- labour
- quality control and testing
- Joint product, by-products and scrap
- packaging (both domestic and export, as well as differences between the two)
- storage and transportation

NB diagrams/other illustrative material available will assist with this discussion.

**Tour of the production facilities**

- It would be appreciated if this could cover the entire process from raw materials receipt and storage through to packaging and despatch, and include examination of any scrap/by products/joint products.

- We intend to have the tour of the PUC manufacturing plants (possibly …….).

**Verification of sales in financial statements**

- The company's sales details in the following:
  - income and turnover spreadsheets
  - export sales spreadsheet
  - domestic sales spreadsheet
- Verification of the completeness and relevance of the domestic and export sales listings by reconciling the volumes and values to management reports and audited financial statements

This verification should demonstrate that the submitted sales data is a complete record of sales of PUC in each market by ……..and……..(name of entities). The verification team will start by reviewing the total figure for the sales with the total figure in the management reports and then the management report against the audited financial statements.

As this upwards reconciliation can be time consuming please prepare in advance. Have available at the meeting all relevant supporting documents that demonstrate this 'upwards' reconciliation. Please have a copy of these supporting documents available.

**Exports to India/ Indian sales by the domestic industry**

- Describe process from customer order through to manufacture and delivery, (including any trader(s)/branches and major Customer(s))
- What is the pricing policy for export sales and domestic sales and state the changes therein, if any, during the Injury Investigation Period?
- Contracts/agreements, price lists
- Level of trade
- Relationship with Indian customers
- Delivery and credit terms
- Commissions, discounts, rebates
- Overseas freight and marine insurance borne by the domestic industry for export sales

- Any financial assistance, advertising materials, warranty considerations
- Verification of the accuracy of export sales transactions down to source documents.

  For every …….export transaction for each month of the POI, please provide the following copies of English-translated documents along with summarization of the same in a spreadsheet:

- purchase orders and order confirmations;
- commercial invoices;
- packing lists;
- evidence of payment (e.g. bank statements);
- bills of lading;
- invoices for inland transport and handling charges (to port of export); and
- invoices for ocean freight (where applicable).

| Exporter | SL No. | Invoice No. | Date |
|---|---|---|---|
| XXXX XX | 1 | 7134004679 | 22/04/2018 |
| | 41 | 7130035786 | 7/02/2018 |
| | 71 | 7134776896 | 14/04/2018 |
| | 83 | 7134650978 | 27/03/2018 |
| | 115 | 7134005603 | 27/03/2018 |
| XXX XXX | 1 | 7170000358 | 30/04/2018 |
| | 44 | 7170000358 | 31/03/2018 |

NB: The Authority may select a further transaction on site. Please be prepared to collate this information while the verification team are reviewing the pre-selected transactions.

**Domestic Sales**

- Sales process, from customer order through to manufacture and final delivery
- General market conditions
- Price lists
- Domestic customers
- Levels of trade

- Describe the 'Auction' process
- Delivery (including inland freight and handling) and credit terms
- Any commissions, discounts, rebates
- Any financial assistance, advertising material, warranty considerations
- Verification of the 'accuracy' of the domestic sales transactions 'down' to source documents.

| Exporter | SL. | Invoice No. | Date |
|---|---|---|---|
| XXXXX XX | 0754 | 1300035264 | 17/04/2018 |
| | 0876 | 8114002563 | 9/03/2018 |
| | 0917 | 1300039453 | 30/03/2018 |
| | 1065 | 2800055722 | 4/01/2018 |
| | 1235 | 1300039668 | 1/01/2018 |
| | 1356 | 1300040359 | 15/01/2018 |
| | 1879 | 2800069415 | 4/04/2018 |
| | 2167 | 2800070886 | 21/04/2018 |
| | 2465 | 2800073169 | 12/05/2018 |
| | 2956 | 1510228368 | 21/03/2018 |
| | 4568 | 1510339002 | 19/04/2018 |
| YYYY YYYY | 7698 | 1510363277 | 4/01/2018 |
| | 9087 | 1610005677 | 6/04/2018 |

NB: The Authority may select a further transaction on site. Please be prepared to collate this information while the verification team are reviewing the pre-selected transactions.

For each of above transactions could you please provide:

- Purchase order confirmation and or contact;
- Commercial invoice;
- Details of any discounts, rebates or other charges – confirm invoice price is price paid;
- Proof of payment and accounts receivable ledger;
- Explanation of other costs in domestic sales spreadsheet (we may review this further during the visit).
- Please provide scanned copies of these documents prior to our visit. If you have any queries regarding the transactions and documents selected, please contact the Authority.

**Costs to make and sell**

- Explain the costing system and methodology of the submitted cost details/ information
- Discuss what is in each cost item in the cost details
- Verify production volumes (or can we do this as part of the verification of costs)
- Walk though costing system
- Discuss capture and allocation of variances
- Verification of cost to make data for completeness and relevance "upwards" through management reports to audited financial statements
- Verification of actual costs of production 'downwards' to source documents including invoices
- Verify as to how raw material costs are allocated to each grade of PUC. Also confirm as to whether detailed technical norms are there for each such grade
- Confirm unit costs for each grade of PUC based on production volume and allocated costs for that grade.
- Direct labour - Verify allocation to each grade of PUC. We request that scanned copies of supporting documents be provided at the visit.
- Manufacturing overheads
- Explain any variances and provide scanned copies of supporting documents to be provided at the visit.
- Verification of administrative, selling and general expenses – both for completeness and relevance up to management reports and audited financial statements, and for accuracy of the allocation to different products.

  Please prepare for the verification for POI by being able to show how the costs in the various formats provided are a complete record by reconciling this data through management reports to the audited financial statements.

**Costs of Major Raw Material Purchases (including related party purchases/ captive purchases, to the extent available)**

- Explain methodology with supporting document:
  - Purchase order confirmation and or contact;

- Commercial invoice;
- Details of any discounts, rebates or other charges – confirm invoice price is price paid;
- Proof of payment and accounts receivable ledger;

**Revaluation of assets/ Addition of Capacity etc.**

Please provide complete details, if relevant

**Purchase of PUC:**

Please provide complete details including country-wise imports.

**Performance Parameters**

- Capacity utilization
- Sales Qty
- Purchase of PUC, if any
- Number of Employees
- Productivity per day
- Inventory
- R&D Expenses
- Funds Raised
- Cost of Sales per unit- Domestic vs Exports
- PBIT
- Industry Norms for different parameters like capacity utilization, productivity, inventory and PBIT.

**Basis of allocation of Common or Joint Expenses - Justification**

- Overheads
- Corporate Expenses
- Interest costs

**Spreadsheet showing year-wise figures (total as well as per unit/ PCN wise) under the following heads for PUC for the injury period including POI:**

- Cost of production
- Cost of sales
- Net Sales realizations

- PBT
- Net Fixed Assets
- Working Capital

**Spreadsheet showing adjustments to ensure normal value comparable with export price**

- Discuss and verify (if verification has not been done already):
  - export inland transport
  - export handling, port charges
  - export credit terms
  - export commissions
  - domestic inland freight
  - domestic handling, loading ancillary
  - domestic credit terms
  - End users and distributors
  - selling, general and administrative expenses
  - any other matters that may affect a comparison of export price with domestic price

Appendix-42

## SAP and Data Verification

**ERP Processes to be followed during Onsite verification**

1- Checking SAP ERP System Integrity

**Objective To check if live/Production SAP ERP is being used for verification data**

**ASK ERP (SAP ERP) Admin Person to show followings**

a. Number of Servers online for ERP System & Number of Users logged in to ERP System at the time of verification

b. Detailed List of all users logged in to ERP System

c. Cross-checking the details of Current User from Detailed List

d. Check Current ERP System is connected to LAN and Current users' system is also on network

e. Check the license details of the ERP and Cross-check details from Vendor's website

f. Officer should note down the server name, Number of users, Login ID of Admin User and Other users from Sales, Cost etc.

SAP Codes relevant for this sections are

| SAP Code | Remarks |
|---|---|
| SMLG | System Log |
| AL08 | User Details |
| OS01 | LAN Integrity of ERP System |
| SLICENSE | To confirm if Software license is valid and ERP used for verification is as per Software License |

**2 Checking Domestic Sales Data**

***Sales***

a. Check Sales order details like Sales order number, value, volume, Material Code, Date of SO, Supplying Plant etc. for POI and PUC

b. Check the document Flow of the SO (trailing list of all documents from SO to realisation level)

c. Check the Partner Flow of the SO (Tailing list of all person involved in transaction)

| SAP Code | Remarks |
|---|---|
| VA03 | Sales Order |
| VF03 | Sales Document Display |

***Pricing***

d. Check the pricing conditions like base price and other pricing records

e. Check the date of generation and validity of pricing record

f. Check the change history of pricing records

| SAP Code | Remarks |
|---|---|
| VK13 | Pricing Records |

***Accounting***

g. Check the accounting details of the SO like Commercial invoice no, accounting document number, Profit Centre, product is PUC or Non-PUC,

h. Check the date of generation and Change history of Accounting Documents

i. Check the printed Invoice from ERP

| SAP Code | Remarks |
|---|---|
| FB03 | Accounting Document Display |
| J1IP | Invoice Printing |

***Customer Details***

j. Check Documentary trail related to a Customer via customer ledger for a given Period.

k. Cross Check Open Items, balance in Customer a/c etc. for a given date

l. Cross-Check Document Type entries carefully specially for the transactions other than Invoicing and Payments (i.e. credit note, debit note and other adjustments)

m. Cross-Check, Customer Master Record like Statutory Registration Details, Place of Business and Contact Details and check the date of creation of customer code/ customer profile

n. Cross-Check if Customer is a related Party to the Exporter

| SAP Code | Remarks |
|---|---|
| FBL5 | Customer Line Item |
| XD03 | Customer Master |

***Material Movement***

o. Check the material movement at manufacturing, warehouse, Port and cross-check the same with production & Sales record and Cross-Check, Physical location of Inventory

p. Check Stock at a given month End, for PUC and Plant

q. Check if sales has been from opening stock or production for given month

r. Check Current/live Stock at Plant

| SAP Code | Remarks |
|---|---|
| MB51 | Material Movement |
| MM03 | Material Details |
| MCBA | Stock Balance Report |
| MB52 | Live Stock Details |

3 **Cost of Production**

a. Check the Bill of Material (BOM), drill-down it the final Raw Materials used.

b. BOM should be compared with SION or other production norms

c. Check Estimated Cost of Production (if material ledger is not implemented) by referring to Standard Cost and BOM Volume

d. Cross Check Production Volume from Material Movement Code (MB51 and Movement Type 101/102)

e. COP divided by Production Vol= COP per Unit

f. Actual Cost to be validated from SAP ensuring all cost elements (as per Trial Balance) are considered in COP

g. Cross-Check the Expenses and nature from GL Description

| SAP Code | Remarks |
|---|---|
| CS03 | Bill of Material |
| CK13 | Product Cost Estimates |

| | |
|---|---|
| MB15 | Material Description |
| F.08/YFGL | Listing of Trial Balance |
| FAGLL03/FBL3 | Listing of transactions in GL |

**Premises for Verification**

1. In order to ensure that a live/production ERP is being used for verification of data, Officers should occasionally ask exporter to Run certain test i.e. sales/ production/expenses/remittance on a given POI date and Current date.

2. In order to avoid long delay due to download of huge data from SAP, a sample data should be asked to be downloaded for a random period like for 1st week of each month or 1st month of each quarter or 4th Week of each quarter etc.)

3. Please note any SAP transaction Code starting from Y & Z are custom code devised by Exporter, primarily to fulfilling its daily business requirements.

# DETERMINATION OF NON-INJURIOUS PRICE (NIP)

## LEGAL PROVISIONS

9.1 The provisions for determination of NIP are provided in Annexure-III to Rule 4(1)(d)(i) and Rule 17(1)(b) of the Anti-Dumping Rules[1].The Annexure-III was notified on 1st March, 2011 after the decision of the Hon'ble Supreme Court in the case of *Reliance Industries v. Designated Authority and Ors*[2].

9.2 Rule 17(1)(b) is reproduced as under:

Final findings. –

(1) *The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding –*

(a) .....

(b) *Recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry after considering the principles laid down in the Annexure III to rules*[3].

9.3 The provisions of Annexure-III are reproduced as follows:

**"***PRINCIPLES FOR DETERMINATION OF NON-INJURIOUS PRICE*

(1) *The designated authority is required under sub-rule (1) of rule 17 to recommend the amount of anti-dumping duty*

[1] Notified by the Amendment in the Custom Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, Gazette of India, Notification No. 15/2011-Customs (N.T) (March 1, 2011).

[2] *Reliance Industries v Designated Authority*, (2006) 10 SCC 368 (Supreme Court of India).

[3] Notification No.15/2011-Customs (N.T.) dated 01.03.2011

*which, if levied, would remove the injury where applicable to the domestic industry.*

(2) *For the purpose of making recommendation under clause (1), the designated authority shall determine the fair selling (notional) price or non -injurious price of the like domestic product taking into account the principles specified herein under.*

(3) *The non-injurious price is required to be determined by considering the information or data relating to cost of production for the period of investigation in respect of the producers constituting domestic industry. Detailed analysis or examination and reconciliation of the financial and cost records maintained by the constituents of the domestic industry are to be carried out for this purpose.*

(4) *The following elements of cost of production are required to be examined for working out the non-injurious price, namely: —*

(i) *The best utilization of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation,and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilisation of raw materials.*

(ii) *The best utilisation of utilities by the constituents of domestic industry, over the past three years period and period of investigation,and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of utilities.*

(iii) *The best utilisation of production capacities, over the past three years period and period of investigation,and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities.*

(iv) *The Propriety of all expenses, grouped and charged to the cost of production may be examined and any extra-ordinary or non-recurring expenses shall not be charged to the cost of production and salary and wages paid per employee and per month may also be reviewed and reconciled with the financial and cost records of the company.*

(v) *To ensure the reasonableness of amount of depreciation charged to cost of production, it may be examined that no charge has been made for facilities not deployed on the production of the subject goods, particularly in respect of multi-product companies and the depreciation of re-valued assets, if any, may be identified and excluded while arriving at reasonable cost of production.*

(vi) *The expenses to the extent identified to the product are to be directly allocated and common expenses or overheads classified under factory, administrative and selling overheads may be apportioned on reasonable and scientific basis such as machine hours, vessel occupancy hours, direct labour hours, production quantity, sales value, etc., as applied consistently by domestic producers and the reasonableness and justification of various expenses claimed for the period of investigation may be examined and scrutinised by comparing with the corresponding amounts in the immediate preceding year.*

(vii) *The expenses, which shall not to be considered while assessing non-injurious price include—*

a) *research and development provisions (unless claimed and substantiated as related to the product specific research);*

b) *since non-injurious price is determined at ex-factory level, the post manufacturing expenses such as commission, discount, freight-outward etc. at ex-factory level;*

c) *excise duty, sales tax and other tax levies on sales;*

d) *expenses on job work done for other units;*

e) *royalty, unless it is related to technical know-how for the product;*

f) *trading activity of product under consideration; or*

g) *other non-cost items like bad debts, donations, loss on sale of assets, loss due to fire, flood, etc.*

(viii) *A reasonable return (pre-tax) on average capital employed forthe product may be allowed for recovery of interest, corporate tax and profit. The average capital employed is the sum of "net fixed assets and net working capital",which shall be taken on the basis of average of the same as on the be ginning and at the end of period of investigation. For assessment of reasonable level of working capital requirement, all the elements of net working capital shall be scrutinized in detail. The impact of revaluation of fixed assets shall not be considered in the calculation of capital employed. Interest is allowed as an item of cost of sales and after deducting the interest, the balance amount of return is to be allowed as pre-tax profit to arrive at the non-injurious price.*

(ix) *Reasonableness of interest cost may be examined to ensure that no abnormal expenditure on account of interest has been incurred. Details of term loans, cash credit limits, short term loans, deposits and other borrowings taken by the company and interest paid thereon may be examined in detail along with the details of assets deployed.*

(x) *In case there is more than one domestic producer, the weighted averages of non-injurious price of individual domestic producers are to be considered. The respective share of domestic production of the subject goods may be taken as the basis for computation of weighted average non-injurious price for the domestic industry as a whole[4]."*

**SIGNIFICANCE**

9.4 Non Injurious Price (NIP)[5] denotes the fair price, which will enable the DI to recover its cost of production and reasonable profit margins, after taking into consideration all other factors of production which could have affected the company,but for which dumped imports are not responsible. It is the price at which the DI of the like product should be able to compete with exporters or foreign producers of the PUC. The NIP is also used for calculation of Price Underselling and

[4] Please refer to Para IX of Chapter 24 for WTO Jurisprudence.

[5] *See* World Trade Organization, Proposals on the Mandatory Application of the Lesser Duty Rule, Negotiating Group on Rules, Paper from Brazil, Hong Kong, China, India and Japan, WTO Doc. TN/RL/GEN/99, (March 3, 2006) for a general discussion on NIP and the lesser duty rule.

Injury Margin by comparing the NIP with the Landed Value of the dumped imports for application of lesser duty rule.

## OPERATING PRACTICES

9.5 The methodology to be followed for determination of NIP are detailed in Annexure-III of the AD Rules. The applicable Generally Accepted Accounting Principles ("GAAP"), Accounting Standards and Cost Accounting Standards are also kept in mind while finalizing the NIP.

9.6 The NIP is required for initiation of investigation, which is based on the information provided in the application. However, subsequently during the course of investigation, the NIP workings are examined in detail after due verification before finalising the investigations.

## PRE-INITIATION

9.6.1. An application seeking initiation of investigation is accompanied with complete information in the prescribed formats as per the Trade Notice No. 02/2018 dated February 1, 2018. This detailed information along with the following documents forms the basis for computation of NIP for the purpose of initiation of the investigation.

| S.N. | Documents / Information |
|---|---|
| 1. | Total Production of each of the applicant(s) along with its breakup in PUC & NPUC and split up of domestic sales and export sales for the PUC |
| 2. | Installed Capacity of PUC with supporting documents like the Pollution Control Board Certificate |
| 3. | The costing formats – NIP/ Capital Employed Calculations along with soft copy of all relevant excel working sheets |
| 4. | Audited financial statements and cost audit reports for the injury period including POI |
| 5. | In case of new units not having completed four years since the commencement of commercial production – The project report or any other similar document. |
| 6. | PCN – Methodology adopted in defining PCN and its working (If PCN has been suggested in the application) |
| 7. | Confirmation from the DI/consultants that the complete cost data for all the units of the DI manufacturing or selling PUC has been furnished in the application) |
| 8. | Confirmation from the company/consultants that no amount of expense disallowed under Annexure-III has been considered in the cost computations |

9.6.2. The Excel working sheets (along with applicable formulae)containing the following data for POI and the injury period are also required to be submitted:

| S. N. | Document |
|---|---|
| 1 | Details of Job work done during POI, if any |
| 2 | Details of Administration Overheads |
| 3 | Details of Selling & Distribution Overheads |
| 4 | Details of Other/Miscellaneous Overheads |
| 5 | Details of Misc. Income |
| 6 | Details of HO Expenses and their allocation |
| 7 | Details of by-product/wastage/rework generated |
| 8 | The basis of major utility allocation done for PUC & Other Products |
| 9 | Details of revaluation/impairment of asset details, if any, during POI & previous years, if included in the books of accounts. |
| 10 | The explanation for the methodology adopted in segregating the import data into PUC and NPUC. |

9.6.3. The team is required to examine the adequacy and accuracy of evidence in terms of Rule 5 of Rules. The audited accounts must be furnished along with the application for initiation. In case POI is not the same as the financial year or the POI is too recent to have the audited accounts available, the Profit & Loss Account figures along with NFA figures and working Capital details for POI duly certified by the authorised officer of the company for the initiation purposes. This is subject to subsequent submission of duly audited/certified accounts within the stipulated period as per the initiation notification.

**POST-INITIATION:**

9.6.4. The methodology followed for computation of NIP is detailed in Annexure-III of the Rules which is being uniformly followed and has been held as legally valid by the Courts[6]. In addition to the certified formats/documents submitted at the

[6] *SeeBASF Petronas Chemicals v Union of India*, 2017 (347) ELT 354 (CESTAT, New Delhi) where the NIP methodology has been accepted (the NIP for the entire POI was determined by adopting best production capacity utilization norms etc. over the injury period as stipulated in Annexure-III to Rules); *Greenply Industries Ltd. v Union of India*, 2017 (351) ELT 315 (CESTAT, New Delhi), it was decided by CESTAT that spot verification is not always required; *Phillips Carbon Black Ltd. v Union of India*,1999 (65) ECC 600 (CESTAT, Kolkatta),it was observed that the determination of NIP (Fair Selling Price) involves complex issues as it is to arrive at a selling price in a hypothetical situation ("the principles laid down in Annexure III for the cost of production categorically state the best utilization of raw material/utilities/ production capacities are to be considered. The reason is mentioned in the said principles. This is to nullify injury, if any, caused to DI due to inefficiency. We note that the DA is bound by the principles laid down in the said Annexure as it is part of the statutory provisions of AD Rules, 1995").

time of initiation, the DI is required to submit the following documents, wherever applicable, for NIP workings:

| S.N | Documents/ Supporting documents |
|---|---|
| 1 | Annual Audited Accounts (including Balance Sheet, Profit & Loss Accounts, and Annexed Schedules) for IIP. If the same is not audited for the POI at the time of filing application, the same may be certified from the Independent Practising Chartered Accountant and the authorised officer of the company. |
| 2 | Trial Balance for the POI |
| 3 | Cost Audit Reports for IIP, if applicable and not submitted earlier. |
| 4 | Cost Sheet(s) of captively consumed product(s)/utilities |
| 5 | Consumption details of major raw materials including the bills of material for PUC |
| 6 | Supporting Document for Installed Capacity, Actual Production, Capacity Utilization |
| 7 | Details of Related Party Transaction(s) and their basis of pricing as per Accounting Standard 18 |
| 8 | Details of all abnormal close downs, if any |
| 9 | Business Transfer Agreement/Details - if there is any major change in ownership during IIP and consequential change in the value of assets, if any. |
| 10 | Merger/Amalgamation details- if there is any merger/amalgamation and consequential change in the value of assets if any |
| 11 | Valuation Report - if there is a change in the value of assets |
| 12 | Details of major inputs, which are subject to any trade remedy measure |
| 13 | The complete break-up of Sales Real is at ions reconciled with the audited records of the company as a whole. Each major product to be separately indicated. |

**FORMATS**

9.6.5. NIP determination requires detailed information in Format "A" to Format "L" notified vide Trade Notice No. 02/2018 dated 01.02.2018.

| S.N | Format Number | Subject Description |
|---|---|---|
| 1 | A | Statement of Consumption of Raw Materials, Packing Materials, and Utilities |
| 2 | B | Statement of Raw Material Consumption |
| 3 | C | Allocation and Apportionment of Expenses |
| 4 | D | Statement of Consumption of Utilities |
| 5 | E | Statement of Sales Realisations |
| 6 | F | Certificate by the Chief Executive or a duly authorized representative of the Domestic Industry |
| 7 | G | Declaration by Legal Representative |

| | | |
|---|---|---|
| 8 | H | Performance Parameters of Domestic Industry |
| 9 | I | PCN wise summarised Statement of Expenses |
| 10 | J | Related Party Transactions |
| 11 | K | Calculation of Capital Employed |
| 12 | L | Calculation of claimed NIP |

9.6.6. It may be clarified here that the company can furnish details/clarifications in furtherance of the application already submitted to enable the proper processing. However, the DI cannot be allowed to revise the application in such a way that it will structurally alter the original application on which the initiation is based, as it will render the initiation invalid. The team is allowed, within its lawful mandate, to seek clarifications/ details from the applicant(s) during the course of the investigation but it should do so in writing as has been clearly instructed by the DG. No oral request should be made for seeking information.

9.6.7. A brief description of all Formats, regarding their significance with respect to examination, verification,and extraction of relevant data,is given below for the better understanding of the investigators:

9.6.8. **Format-A (Statement of Consumption of Raw Materials, Packing Materials and Utilities):** It shows the total quantity and value of each major raw material, packing material,utilities consumed in the production of PUC. It also indicates per unit consumption of all major raw materials/packing materials/utilities during the injury period along with weighted average rates of consumption during the IIP. The major points to be noted here are:

(a) The opening stock/closing stock shall be shown as "Zero" or "Nil", wherever there is no stock;

(b) Opening and Closing Stock of raw materials ideally should also include the quantity and value of work-in-progress stock lying on shop floor. However, this information is sometimes not available with the DI especially when POI is different from the normal financial/ accounting year of the company. Therefore, there may be no alternative but to ignore the same based on assumptions that (i) quantity/amount involved may not be high; or (ii) there may not be substantial difference between opening stock and closing stock lying at production floor;

(c) The total value of actual consumption of raw material and utilities for PUC during POI and injury period as shown here should reconcile with the total raw material/ utility consumption in Format-C for PUC;

(d) Purchase rates of related party procurements should be confirmed based on arm's length pricing. These rates may be compared with rates of same products procured from non-related parties. The comments of the Statutory Auditors and requirements of Indian Accounting Standard-18 should be seen from the Audited Annual Accounts regarding the arm's length pricing;

(e) Records of relevant related companies/parties should also be seen to confirm that the purchase price of items purchased from such related parties during POI is comparable to the corresponding sale price charged by the said Related Parties from the non-related customers during the said period. In the case of utilities, the sale price is generally published and is reflected on the web site also. The comments of the Statutory Auditors are to be seen from the Audited Annual Accounts regarding the arm's length pricing of the related party transactions, which are furnished by the applicant in Format-J.

(f) If the similar item is purchased from a related party as well as non-related party, the corresponding rates must be compared to understand the variations, if any in the rates. Similarly, if the inputs are captively consumed as well as purchased from non-related parties, the rates must be compared to arrive at the reasonability of the prices charged for captive consumption.

(g) The per unit rates of captive consumption of inputs, closing stock and consumption for PUC during the injury period including POI should be compared for the basis of pricing, and in case wide variations are seen, an explanation should be sought.

(h) Format-A is also required to be verified from Stores/Material Ledger and Utility Ledger/Register maintained by the company/unit. Some of the purchase invoices of various raw materials/utilities are also required to be collected and compared with the annual weighted average price reflected in Format A to ensure that the weighted average price does not vary widely from the purchase price as per sample invoice. If it varies widely, reasons of such variations may be ascertained.

(i) Sometimes, the procurement rates vary widely from day to day or month to month. The monthly consumption rate may need to be worked out in

such a case with scope for monthly/quarterly NIP. This may indicate more accurate injury margins.

9.6.9. **Format-B (Statement of Raw Material Consumption):** It reflects the actual year wise per unit consumption of raw materials/inputs. It seeks to compare consumption per unit of production during the various years of injury period. Anywide variation in year to year figures must be examined. The year-wise per unit consumption of inputs is taken from Format A and multiplied by average rates (net of input tax, credit, GST, etc.) of respective inputs as prevailing during POI. The year wise normative costs so obtained are compared to find out the most efficient consumption of raw materials (optimum consumption) during the Injury period and POI. It may be clarified that optimization for raw materials (Format B) is to be done for each plant producing the PUC.

9.6.10. **Format-C (Allocation and Apportionment of expenses):** It is one of the most critical formats for costing as it captures the details regarding allocation and apportionment of expenses. There is one format for one PUC for the entire company in any investigation. Different units are reflected by way of creating multiple columns in the same format. In other words, if a company has three units manufacturing the PUC, separate column shall be created in this Format for each such entity. This facilitates separate NIP for each of the units based on its own efficiency and performance. The expense heads are indicative and can be changed/ modified based on the uniqueness of any investigations. The General Ledger Codes are aimed to facilitate during the verification. It shows various elements of expense and income of the company grouped under major heads of accounts allocated to PUC (plant wise), common utilities, captive inputs,and Non-PUC on appropriate basis consistently followed by the company as per generally accepted accounting practices/accounting standards. It may be added that separate columns need to be added for each major utility and captively consumed product to ensure verification and availability of complete details. The following are the major points to be seen:

(a) The revenue and expenditure of the company as a whole as per audited accounts/certified records is reconciled with the fourth column of the format i.e., expenses for the company as a whole. The expenses are then allocated/ apportioned to various plants producing PUC, common utilities and non-PUC etc. There will preferably be a separate column for each major common utility. Major captive inputs/utilities should have separate columns to help verification of their costs. These common utilities and captive consumptions

are then apportioned to PUC/Non-PUC through secondary allocation. The basis of allocation should be as direct as possible, and a reasonable one, which is consistently followed by the company.

(b) NIP is worked out for domestic production only. If a company has domestic sales and export sales and the cost is considerably different for both, it may be preferable to allocate costs to domestic and export sales of PUC separately. Income from the export activity shall not be considered for NIP workings.

(c) The basis of allocation should be clearly and specifically mentioned to ensure their reasonability.

9.6.11. **Format-D (Statement of Consumption of Utilities):** It reflects the actual year wise per unit consumption of utilities and seeks to compare them with the normative consumption per unit of production during the injury period. The variations, if any, must be looked into. The average per unit consumption of utilities is taken from Format A and multiplied by average rates (net of input tax, credit, GST, etc.) of respective utility as prevailing during POI and shown in format A. The year-wise normative costs at prices prevailing during POI are aggregated separately and compared to find the most efficient consumption cost of utilities (optimum consumption) during the Injury period and POI. Such optimisation of utilities is to be done separately for each plant producing the PUC.

9.6.12. **Format-E (Statement of Sales Realizations):** It relates to the computation of per unit net sales realization and is not directly linked to the NIP workings. Domestic Sales and Exports Sales need to be segregated because anti-dumping investigations are with regard to domestic sales only. However, it must be ensured that none of the selling and distribution expenses as indicated in this format like Commission, Discounts and outward freight, etc. is allowed as cost constituent for NIP determination. Direct expenses given in the format should match with the expenses allocated to PUC in Format-C. The total amount of PUC sales should reconcile with gross sales of PUC as per Format C as well as the sales register/ record maintained by the company. Sales details should exclude sales returns. It may be noted that the Net Sales Realizations is at INR per unit (it should reconcile with NSR shown in Format H) may have to be worked out PCN wise, if PCNs have been suggested by the DI and subsequently notified for information of all interested parties. The following issues may merit consideration in this regard:

(a) Variation in sales prices due to volume or difference in packing i.e., net sales realizations may vary if a portion of sales is sold in bulk and another portion is sold in small containers. If so, the net sales realizations need to be also seen separately for each type of packing. If there are wide variations in the year to year sales realizations within the same type of packing, detailed reasons must be looked into.

(b) If PCNs have been constructed after the initiation and PCN wise details were not furnished at the petition stage, DI must be asked to furnish this format again with PCN wise details. After examination of producer/exporter's response, it may emerge that some of the PCNs imported into the country, have not been actually produced by the DI during the POI. In such cases, NIP[7] estimated/derived based on the nearest PCN produced by the DI and cost is then adjusted appropriately, on merits.

9.6.13. **Format-F (Certificate by Chief Executive/Duly Authorized Representative of DI):** Format-F is the certificate by the Chief Executive of the Company/Directors/Partners or the Proprietor of the Firm certifying that the information contained in the petition is true, complete and correct to the best of his knowledge and belief. It further certifies that the information is based on the records of the Company and that they have neither knowingly and/or willfully concealed or misrepresented any material information nor made any material false statements. Therefore, it is very necessary to ensure that the certificate given is as per the format only. An explanation to the Format states that if this certificate is signed by an Authorised Representative other than the Officers referred to above, a copy of the authorization from the Competent Officer or the Chief Executive of the Company/Directors/Partners or the Proprietor of the Firm or the Board of Directors is also attached. Sometimes the language is changed from the prescribed language. Therefore, the investigation team must ensure that all certificates are as per the prescribed formats only. A copy of Board Resolution for authorization of an officer may also be obtained, if necessary.

9.6.14. **Format-G (Declaration by Legal Representative):** It is a declaration by the legal representative of the company, if any, to handle the anti-dumping case on behalf of the DI. He helps the DI in the preparation of the Petition submits clarifications on behalf of DI on the issues raised by the Authority, if any attends

[7] Final Finding in Sunset Review of Anti-Dumping investigations concerning imports of Synchronous Digital Hierarchy (SDH) Transmission Equipment originating in or exported from China, F. No. 15/20/2014-DGAD, dated February 5, 2016

Oral Hearing on behalf of the company etc. The Format casts a responsibility on the Legal Representative to do due diligence before filing the application in DGTR. Therefore, the Legal Representative *inter alia* certifies that in his capacity as an adviser, counsel, preparer or reviewer of the Petition, the information contained herein is true, complete and correct to the best of his knowledge and belief and that the petition is based on the records of the Company and that they have neither knowingly/wilfully concealed or misrepresented any material information nor made any material false statements. It further certifies that the Legal Consultant is not a party to any concealment, mis-declaration or misrepresentation by his clients. Therefore, it is very necessary to ensure that the certificate given is as per the format only.

9.6.15. **Format-H (Performance Parameters of DI):** It indicates the performance parameters of DI for PUC only. The information furnished in this Format forms the basis for injury analysis. Since these will be given by each constituent of DI separately, a consolidated statement also needs to be submitted indicating the status of DI as a whole.

(a) The relevant data required in Format-H are installed capacity, production quantity and capacity utilization percentage for the injury period including POI, which is taken into consideration for optimization of capacity utilization/ production while computing NIP. The information furnished in Format-H like installed capacity is required to be substantiated by documentary evidence such as declaration given to pollution control board, project report or any other declaration given to government bodies etc. indicating installed capacity. The production/supply quantity may be verified from applicable GST declaration. It is the duty of the investigation team to ensure that all the information is as per the audited/certified records of the company. Reasons for variations in year-wise productivity or number of employees must be looked into. Similarly, any change in number of employees without any corresponding change in the installed capacity or actual production must be looked into and clarified.

(b) It has been seen on a number of occasions that the installed capacity is restricted due to lower production fixed/allowed by the Pollution Control Board authorities[8]. Therefore, approval from Pollution Control Board must

[8] Final Finding in Anti-Dumping Investigations concerning imports of Sodium Dichromate originating in or exported from Russia, South Africa, Kazakhstan and Turkey, F No. 6/4/2017-DGAD dated June 7, 2018.

be insisted before initiation of any case and in no case should the final finding be issued without considering the approval granted by the Pollution Control Board.

(c) The Format also requires, to the extent available with the DI, the submission of available average industry norms for capacity utilization, average industry norms for productivity per day and average industry norms for inventory. These norms will help in understanding the efficiency of the company vis-a-vis industry norms. Inventory should be mentioned in terms of the number of days' production and number of days' sale. All these would form the basis for injury analysis based on the duly audited/certified information furnished by DI. Similar information is sought from the producer exporters in their Questionnaire format.

(d) In Format-H, the cost of sales, profits, etc. for domestic sales should be based on actual audited/certified costs of DI during POI without any optimization. Therefore, total costs must match with the audited/ certified records. However, selling price per unit of domestic sales should match with net sales realization excluding excise duty/GST, commission, rebates, discounts and all other direct expenses as given in Format-E.

9.6.16. **Format-I (PCN wise summarized statement of expenses):** This information is furnished with respect to POI only. It furnishes PCN wise production quantity, sales quantity, total raw material cost, the total cost of utilities, total direct labor cost, other expenses,and total cost.

9.6.17. **Format-J (Related Party Transactions):** Format-J indicates the details of related party transactions for production and sale of PUC or any of its inputs. The particulars in Format-J are Particulars (Nature of Transaction), Unit, Quantity, Rate per unit, Total Transfer Price, Basis of Pricing, Cost per Unit and whether the transaction is at Arm's Length Price. If transaction is not at Arm's Length Price or Comparable Arm's Length Price (for details refer Format-A above), it shall be the duty of Investigation Team to ensure that NIP is worked out at arm's length prices to ensure that NIP worked out is reasonable and not vitiated on account of related party transactions. Details may also be seen in Chapter 19 related to General Issues. It may be clarified that the related party transactions of both types; namely purchase and sale are to be reflected in this format. Sales of by-products, scrap, PUC etc. may also be relevant for the investigations.

9.6.18. **Format-K (Calculation of Capital Employed):** Format-K indicates the details regarding the calculation of capital employed, which forms the basis for computation of return. It contains two tables viz., one for the details regarding the Working Capital and the other one for Net Fixed Assets. The format requires that the details of Components of Working Capital/NFA including NPUC claimed, PUC claimed (plant wise) and basis of allocation between PUC and NPUC be furnished head wise for company as a whole. An additional information on the impact of revaluation of assets, if any, is also to be furnished in the NFA part. The above information is used for calculation of average capital employed, which will then be used for computation of return. It must be ensured that no return is allowed for facilities not deployed on the production of the subject goods. The figures should reconcile with the audited/certified records of the company. The following issues may merit consideration in this regard:

(a) Efforts should be made to identify the direct working capital for the PUC. Sometimes, it is seen that the figures for product wise working capital are not available with the companies and therefore, working capital is worked out for the company as a whole. This figure is then allocated to different products on the basis of turnover of the respective products (including captive consumption) or any other appropriate basis. It must be seen in all such cases that the allocation bases adopted are reasonable considering the credit period allowed for each product of the company. Further, the share of working capital is preferably allocated to all the activities of the company including the trading activity, if any. It may be noted here that trading activity of PUC is considered as NPUC only for all injury analysis. The current assets for determination of working capital do not include investments/ deposits outside the business. Similarly, huge cash/bank balance/FDR etc. should also be excluded on merits.

(b) Sometimes, it is seen that the amount of net working capital works out in a negative figure. This is more prevalent in the case of sick companies or other companies facing a liquidity crunch. The working capital is taken as zero in all such cases and return is allowed on NFA portion only. The terms of loans received or extended to the related parties must also be seen to ensure their reasonability.

(c) Efforts should be made to directly identify the assets used for the production of PUC. No impact of revaluation is to be considered for return purposes.

Sometimes, the same asset is used for the production of more than one products. The NFA is then allocated to different products on the production value or any other appropriate basis.

(d) The inventory of by-product, if any, must be examined and impact on cost/ working capital may also be analyzed.

9.6.19. **Format L (Calculation of claimed NIP):** Format L indicates the NIP claimed by the petitioner. Since NIP is required to be computed plant wise, value of each major head of expenses given in this format should match with the figure given in Format-C for PUC for the respective plant. This statement also gives optimum production which is obtained by multiplying the maximum capacity utilization percentage during POI and injury period with the installed capacity during the POI.

**METHODOLOGY OF COMPUTATION**

9.6.20. The team is required to determine NIP after due verification of the information submitted by the DI. The following must be taken into consideration while arriving at computation:

(a) It must be ensured that all information has been furnished in the prescribed formats duly signed or certified, wherever certified;

(b) The NIP workings should be based on Audited / Certified Balance Sheet & Profit & Loss Account statement;

(c) In case the POI is not the same as a financial year, then Profit & Loss Account statement/NFA/Working Capital details etc. should be duly authenticated by an independent Chartered Accountant. The Chartered Accountant must certify that the figures relate to the company/unit for the POI as per the books maintained by the Company as per the applicable Accounting Standards;

(d) The Propriety of all expenses charged to the cost of production to be examined to disallow all extraordinary or non-recurring expenses or prior period costs;

(e) The NIP has to be worked out separately for each of the constituents of the DI and a weighted average is then determined for the DI as a whole. Similarly, weighted average is also worked out in case of entities having multiple manufacturing facilities/units, where unit wise NIP is first determined and

then weighted average needs to be worked out for computing NIP for the company as a whole on the basis of volume of domestic production of PUC.

(f) Installed capacity/Production to be confirmed by supporting documents including various returns submitted to the different government departments like the Pollution Control Board etc.;

(g) Optimisation of Capacity Utilisation to nullify injury, if any, caused to the DI by inefficient utilization of production capacities (Para 4(iii) of the Annexure-III). If there is capacity enhancement during the injury period, optimum production is determined in terms of highest capacity utilization percentage to determine optimum production in absolute number;

(h) Optimisation of Raw Material Cost and Utilities to nullify injury, if any, caused to the DI by inefficient utilization of raw materials or utilities (Para 4(i) and 4(ii) respectively of the Annexure-III);

(i) Raw Materials Cost (subject to optimization), Utility Cost (subject to optimization),and Consumables Cost is generally treated as a variable cost. However, if proper valid justification is submitted along with supporting documents, appropriate treatment can be considered in case of other heads of expenditure also.

(j) The year wise cost of sales figure should also be verified for the injury period to ensure fair analysis of the trends over the entire period;

(k) Sometimes, it is seen that the imports are in bulk quantities, whereas domestic sales are sold in small packing, the NIP for bulk and retail sale is generally worked out separately, since packing cost can be a significant component of cost. In other words, only the packing cost will vary based on the nature of packing, whereas all other costs will remain the same. The average cost is then worked out separately for packed quantity and bulk quantity for DI as a whole. Export quantities (not sold domestically) are generally not considered for weighted average workings;

(l) Wherever captive inputs are used and are transferred at cost price (as reconciled with format C) and return @ 22% is allowed after optimization to remove inefficiencies as per Annexure-III. Similarly, expenses not admissible under Annexure-III should also be removed;

(m) Wherever captive inputs are used and are valued at market value in determination of NIP, then no return on captive inputs be allowed.

(n) If captively generated power is supplied to the Grid and power is drawn from the Grid by the manufacturing units, complete details including the basis of pricing etc. must be obtained. This is necessary to ensure that no profit is allowed over and above the prescribed rate of return on the captive power generated. Alternatively, the arm's length price of power may also be considered;

(o) Costs not relevant to PUC should be segregated and then disallowed;

(p) Expenses as specifically mentioned in Para (4)(vii) of the Annexure-III are not to be considered for NIP computations;

(q) Common expenses or overheads, which are not directly related to any specific product to be apportioned on areas on able or scientific basis;

(r) Depreciation on re-valued assets, if any, is to be identified and the impact of revaluation isto be excluded while arriving at the reasonable cost of production. The impact of revaluation of fixed assets shall not be considered in the calculation of capital employed;

(s) Depreciation for facilities not deployed on the production of the subject goods is to be excluded from NIP workings;

(t) The reasonableness and justification of various expenses/working capital requirements claimed for the period of investigation are to be examined and scrutinized;

(u) The average capital employed i.e. the sum of "net fixed assets"and "net working capital" shall be taken on the basis oft heaver age of the respective heads as on the beginning and at the end of the period of investigation;

(v) Reasonable Return @ 22% per annum (12 month period) on Average Capital Employed ("ROCE") for PUCis to be allowed (no specific ROCE is provided under the act or rules, however, the standard Indian practice is to give 22% return per annum). The return amount includes the incidence of profit, interest cost and the impact of taxation. This rate of return is proportionately adjusted if the period of POI is different from 12 months. For example, if POI is 18 months, theoretically total return amount will be 33% (22%X18/12) of the average capital employed – For rationale and background of this refer Chapter 19- General Issues);

(w) In case, there are more than one constituent of DI, the weighted average NIP should be computed based on the NIP of each constituent of the DI. The weight shall be the domestic production i.e., production volume less export volume;

(x) Interest is allowed as an item of cost of sales. After deducting the interest, the balance amount of return is to be allowed as pre-tax profit to arrive at the non-injurious price;

(y) The 'Raw Material cost per unit allowed' in NIP as per Format-L for POI is the optimum raw material cost per unit as per Format-B and optimum utility cost per unit as per Format-D is allowed as the utility cost per unit in NIP;

(z) Change in NIP at shop floor is considered as part of the Raw Material cost and adjusted in Format-A. Packing Material Cost is part of the raw material cost and is allowed accordingly. Since NIP is computed for the production during POI, any change in finished goods is ignored as it is not a part of the cost of production during POI. Hence, impact due to change in finished goods is not considered in the calculation of NIP;

(aa) Raw Materials, Utilities, Direct Labour, and consumables are generally considered as variable costs. However, if proper justification is given along with supporting documents, the investigation team may appropriately deal with other heads of expenditure also;

(bb) Any part of salary and wages which is paid as a share of profit should be disallowed as that is not an expense required for the production of PUC. All per unit costs of fixed costs are worked out based on optimum production only;

(cc) Other expenses such as salary and wages, depreciation, repair and maintenance, factory overhead, administrative overhead, financial expenses, and fixed selling expenses are considered fixed and treated in a similar manner. Similarly, 'Other Income' is treated as income and per unit impact based on the nature of income is reduced from the cost of production for NIP purposes. For example, if other income consists of scrap sale etc., then per unit income is worked out based on actual production. However, if it relates to interest earned on short-term deposits out of surplus cash/bank balance during the period, then per unit income may be worked out based on optimum production;

(dd) Sometimes, especially in case of those products where input cost or selling prices are highly volatile, NIP may need to be worked out on the monthly or quarterly basis. Since cost details may not be available month/quarter wise, only variable input cost is changed based on the prevailing weighted average cost price during that month/quarter. It may be seen that overall month/quarter wise weighted average NIP for the POI as a whole should reconcile with the overall NIP of the POI as a whole.

**DISALLOWANCES**

9.6.21. In addition to disallowances as specifically mentioned in Para (4)(vii) of the Annexure-III, the following expenses are also not allowed for NIP workings as per the practice:

(a) Commission/remuneration based on share in profits or turnover as paid to the CMD or Directors of the company[9];

(b) Impact of revaluation of assets on transfer to/from subsidiary/ parent / joint venture / associate company[10];

(c) CSR Expenses or expenses of this nature like local area development being part of profits;

(d) Expenses related to Branch Office/Sales Depot. However, no income from the branch office/sales depot shall be considered; and

(e) Expenses not related to domestic sales like export expenses.

**BASIS OF ALLOCATION AND APPORTIONMENT**

9.6.22. The basis of allocation adopted for allocation or apportionment of common expenses or joint expenses is very critical for the NIP computations. The basis of allocation should be as direct as possible and a reasonable one. The following issues may merit consideration:

(a) It needs to be ensured that the basis of allocation is appropriate and justified;

(b) If more than one products are coming out of any manufacturing process, where costs can't be identified, it may be more prudent to allocate costs on the basis of:

[9] Final Findingsin Anti-dumping investigation concerning imports of Dioctyl Phthalate, originating in or exported from Korea RP and Chinese Taipei, F No. 6/2/2017-DGAD dated April 27, 2018.

[10] Final Finding in Sunset Reviewof Anti-dumping investigation concerning imports of Viscose Filament Yarn originating in or exported from China PR, F. No. 15/16/2016-DGAD dated April 24, 2017.

- production value (sales value of the production) basis;
- any other reasonable basis. For example, if all the products emerging out of any such process have almost similar per unit value, production quantity method could also be adopted;

(c) If direct costs constitute a significant portion of overall costs, the common expenses/overheads not linked to any specific product can also be allocated in the ratio of product wise direct costs;

(d) Expenses in the nature of fixed selling expenses should preferably be allocated on the basis of turnover of each product of the company.

(e) If the entity has done some trading activity or job work during POI, a proportionate amount of overheads or share of other common expenses must be allocated to this activity. Similarly, if the corporate office deals with all organizations within a group, reasonable expenses must be allocated to all the constituents of the group including income/investments in group companies. The reasonability of the basis adopted for allocation must be verified by the investigation team.

**CALCULATION OF RETURN**

9.6.23. As already detailed in para above, the Authority as per established practice allows 22% return on average capital employed. Average Capital employed means average of opening and closing balances of Net Fixed Assets (NFA) and Working Capital (WC) for POI relating to PUC. Average NFA attributable to PUC is divided by total optimum production during POI to arrive at an average per unit NFA.

9.6.24. Similarly, average working capital allowed is calculated as a percentage of "total cost of sale" minus depreciation claimed by the petitioner and applied to the "cost of sales" minus depreciation per unit allowed to derive the notional working capital component per unit of production. Total per unit NFA and WC is the per unit average capital employed for the PUC. A return of 22% per annum on average capital employed per unit (as reduced by the amount of interest/finance cost per unit as per Format-L) is added to the cost of sales to get NIP. The rate of return is proportionately adjusted, where the period of POI is different from 12 months. The standard practice of 22% has been accepted[11] by the Hon'ble CESTAT also.

[11] *Merino Panel Products Limited v Designated Authority*, 2016 (334) ELT 552 (CESTAT, New Delhi).

**CALCULATION OF NET FIXED ASSETS**

9.6.25. If the petitioner company is a single product company and involved in manufacturing and selling of PUC only, the total net value of assets related to PUC as per Audited/ Certified Balance Sheet is taken as Net Fixed Assets. However, if it is a multi-product company and multi-activity company, the direct NFA allocated to the PUC and the common NFA apportioned to PUC on a reasonable basis are taken together as NFA for PUC. However, care needs to be taken that the assets not related to PUC either directly or indirectly are excluded. The average of opening and closing NFA so calculated is divided by optimum production to derive average NFA per unit.

9.6.26. In case, the PUC is a finished product of some other intermediates manufactured captively, and captive products are being transferred at cost, a proportionates hare of NFA associated in the production of such intermediate should also be added with the direct NFA of the PUC to arrive at total NFA for return purpose.

**WORKING CAPITAL**

9.6.27. Working Capital is the sum total of current assets minus current liabilities attributable to PUC. Current assets related to PUC are identified and taken into consideration. Similarly, current liabilities are also identified for PUC and taken into consideration. Current liabilities except for provisions, statutory liabilities like GST/ Excise Duty/VAT, dividend payable, income tax payable and other payables which do not have a link with production and interest-bearing loans such as Cash Credit loan are excluded. Current assets and Current Liabilities related to "Related Parties" must be examined to ensure reasonability.

9.6.28. In case of multi-product Company, where assets can't be identified with any particular product, the total working capital of the company as a whole is generally allocated to the PUC on the basis of domestic sales turnover of the PUC as a percentage of total turnover of the company or any other reasonable basis. Sometimes overall working capital as a percentage of the overall cost of production is also applied to determine the working capital for PUC.

**VALUATION/ PRICING OF CAPTIVE INPUTS**

9.6.29. 'Captive Consumption' means the consumption of goods manufactured by one division or unit of a company and consumed by same or another division

or unit of the same organization for manufacturing of another product. In other words, intermediate products manufactured in the same company and used for the manufacture of PUC in the same company are called captive inputs.

9.6.30. The captive input can be transferred to the next process either at cost or at market value. While computing the costs of such captive inputs, principles prescribed under Annexure-III must be followed i.e., optimization needs to be done for such captive inputs as well before allowing the return. Similarly, expenses disallowed under Annexure-III should not be included.

9.6.31. If captive inputs are transferred at market rates, no return is allowed on assets used for the manufacture of captive inputs. Otherwise, proportionate NFA attributable to that input is apportioned to PUC for return purpose. Working Capital (WC) being allocated to different products / PUC on the turnover basis takes care of the portion of working capital allocable to captive input. If the DI accounts for the captively produced inputs at the cost of production, an additional return @ 22% on capital employed for assets utilized for producing such inputs is also allowed. In case the company transfers the captively produced inputs at market value consistently and shows it as such in the books of accounts, then such market value of captively produced inputs may be is adopted for determination of NIP.

9.6.32. It may be added here that the cost details need to be collected for all major captive inputs used in the production of PUC, irrespective of the basis of pricing.

9.5.33. When the petitioner insists to value the captively manufactured goods at a market price and doesn't claim a return on capital employed for the captively manufactured product, the reasonability of market price in all such cases be preferably confirmed from the sale price of such goods to the independent buyers.

**TREATMENT OF R&D EXPENSES**

9.6.34. R&D expenses form part of costs that benefit the future as well as current production. If products under anti-dumping are not very high tech, R&D costs will normally form a small portion of total costs in NIP workings based on the actual amount booked under the head during POI.

9.6.35. Para (4)(vii)(a) of Annexure-III provides that research and development expenses unless claimed and substantiated as relating to the product-specific research, shall not be considered while assessing non-injurious price. In other

words, Annexure-III allows the DI to claim R&D costs incurred specifically for the PUC only in their NIP workings.

9.6.36. The investigation team should ask the DI during verification as to whether they, as a general rule, treat R&D expenses as recurring or non-recurring expenses. If the company treats R&D expenses as non-recurring, then it must clarify as to how they determine allocation period in compliance with applicable accounting standards/ cost accounting standards. Also, if the regular practice of the company is to treat R&D expenses as of non-recurring nature and allocate it over a period of time, Investigation Team may be required to verify the R&D expenses for PUC incurred prior to the POI. Normally, R&D expenses are treated as part of manufacturing costs. However, if the DI has been consistently including them in SG&A, the DI request may be considered. However, in cases where R&D expenses are associated with more than one product or model, including the product concerned, the share of R&D costs to PUC may be required to be allocated on a reasonable basis.

**PCN WISE COMPUTATION**

9.6.37. Wherever PCNs are prescribed, NIP is required to be worked out for each PCN for fair comparison with landed value of imported goods.

9.6.38. Direct costs or variable expenses such as raw materials cost, utility, and packing, etc. are generally allocated directly on an actual basis, if possible. Otherwise, these direct costs are allocated on the basis of standard consumption norms or standard costs. In other words, wherever PCN wise accounting record is not maintained by the units, it has to be estimated on the basis of information furnished for standard raw material costs from Bill of Material and utilities to be estimated on the basis of technical estimates. In all such cases it must be ensured that total standard costs are compared with actual costs and variations, if any,are apportioned in the ratio of standard raw material/ utility cost.

9.6.39. All indirect costs and return (since PCN wise NFA is not available) can be allocated to different PCNs in the ratio of total direct costs or any other appropriate basis to arrive at PCN wise NIP. It may be added that component-wise costs of all PCNs, if added, should match the total component-wise costs allowed in NIP workings. The veracity or the reasonability of standard norms also needs to be verified by the Investigation Team during verification and any wide variation in PCNs should be discussed with the technical persons during verification.

9.6.40. In a situation where export quantities include some of the PCNs, which have not been produced by the DI during the POI, then a Notional or Estimated NIP is to be computed for those PCNs. This notional NIP of PCN is computed based on the cost of the most similar PCN produced by the DI duly adjusted for the differences on merit. This notional NIP is subsequently used for determination of injury margin for that PCN.

**JOINT PRODUCTS & BY-PRODUCTS**

9.6.41. This is applicable in the industries where more than one product of equal or differential importance is produced, either concurrently or during the production of the main product. Joint products are the products which are produced simultaneously, with the same raw material and process and have broadly equal commercial importance[12] whereas, by-products have relatively minor or nominal commercial significance[13].

9.6.42. Joint costing is used when a business has a production process from which final products are split off during a later stage of production. There is a separation point called as a split-off point, from where the products are separated and identified. At this stage, the products could either be sold directly or go for further processing, to convert into a finished product. The amount incurred up to the split-off point is termed as joint cost.

9.6.43. If the company has incurred any manufacturing costs prior to the split-off point, it must allocate costs to the final products in compliance with both generally accepted accounting principles/cost accounting principles. All costs incurred after the split-off point, which are linked to a specific product should be charged to that specific product. Beside the split-off point, there may also be one or more by-products.

9.6.44. The by-product is a secondary product whose total sale value is relatively minor in comparison with the sale value of the main product. However, relationships between joint products and by-products change over time as technology and markets change as under:

[12] Final Findingsin Anti-Dumping Investigations concerning imports of Phenol originating in or exported from Japan and Thailand ,F.N. 14/27/2009-DGAD dated October 08, 2010, wherein it was noted that Phenol and Acetone are the joint products.

[13] Final Findingsin Anti-Dumping Investigations concerning Caustic Soda originating in and exported from Saudi Arabia and USA,F.N. 7/16/2017-DGAD dated August 01, 2018, wherein it was held that Chlorine and hydrogen are by-products of little commercial value in the process of manufacture of Caustic Soda.

(a) By-products may become more and more important, eventually becoming joint products[14];

(b) When the relative importance of individual products changes, the products need to be reclassified and the costing procedures need to be changed; and

(c) Physical unit method (if all products have broadly the same per unit value).

9.6.45. Most commonly used method for allocating joint costs is based on the market-based data such as using revenues as a basis for allocation. There are two methods that employ this approach:

(a) Sales value at the split-off method; and

(b) Net realizable value (NRV) method.

(c) Physical units method (if all products have same unit measurable and are equally desirable and valuable).

9.6.46. The aforesaid methods require adding up of all the production costs up to the split-off point, then determine the sales value/net realizable value of all joint products as at the same split-off point, and then assign the costs appropriately. The net realizable value method allocates joint costs on the basis of the final sale value less the separable costs. If there are any by-products, do not allocate any costs to them; instead, charge the proceeds from their sale against the cost of goods sold. However, based on the merits of the case, the investigation team may use another appropriate method also. Applicable cost accounting standard must be kept in mind in this regard.

**WEIGHTED AVERAGE NIP**

9.6.47. As already stated above, the NIP is worked out plant wise for all the constituents of DI. Thereafter, weighted average NIP is computed based on the domestic production with respect to each plant after reducing export sales/captive consumption, if any, from the production during the POI of the respective plant. These weights are then used to compute the weighted average NIP of respective constituents of DI. Finally, one NIP is calculated for the DI as a whole and this NIP is used to determine injury margin.

[14] Final Finding in Anti-Dumping Investigations concerning imports of Methylene chloride originating in or exported from China P.R. and Russia F.N. 14/33/2014-DGAD dated March 30, 2016, wherein it was held that Methylene chloride and chloroform are jointly produced and Carbon Tetrachloride comes out as a by- product. Since the production facilities are common and the products arecoproduced, capacity utilization has been examined accordingly.

| Name of DI | Production during POI | Domestic Sales | Export Sales | Domestic production | NIP (Rs./Kg) |
|---|---|---|---|---|---|
| AAA | 5400 | 5500 | NA | 5400 | 200.00 |
| BBB | 2500 | 1900 | 500 | 2000 | 250.00 |
| CCC | 8000 | 7200 | 1000 | 7000 | 225.00 |
| DDD | 2100 | 1800 | 300 | 1800 | 240.00 |
| TOTAL/ WT. AVG | 18000 | 16400 | 1800 | 16200 | 221.42 |

**MATERIAL RETARDATION / NEW UNITS**

9.6.48. In the case of new units, data may not be available for all the four years. Therefore, the optimization of capacity shall be done based on the available data read with projections in the project report and the data from technology/capital equipment supplier. As regards optimization of inputs and utilities, apart from project report, actual monthly/quarterly/ half yearly data as appropriate may also be considered. Reports submitted with the long-term loans and suppliers may also be called for this purpose.

**DISCLOSURE OF NIP TO THE RESPECTIVE DI**

9.6.49. Rule 16 of the Rules regarding disclosure of information provides that the designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision. Since the NIP workings are one of the essential facts based on data furnished by DI, the finally computed NIP needs to be disclosed to the respective constituents of DI. This provides them with an opportunity to submit their comments/views on the disallowances or the facts considered by the Authority in the determination of NIP. The detailed procedure for disclosure is explained in the relevant Chapter of this Manual. A broad format for disclosure is as under:

Name of the Unit:

PUC

POI:

| Particulars | Unit | Year 1 | Year 2 | Year 3 |
|---|---|---|---|---|
| Installed Capacity | | | | |
| Production (including captive) | | | | |
| Capacity Utilisation | % | | | |
| Domestic Sales | | | | |
| Captive Tfd | | | | |
| Total Sales (MT) | | | | |

**NIP for Domestic production:**

| Particulars* | Claimed | | Allowed | |
|---|---|---|---|---|
| | Rs.Lacs | Rs / Unit | Rs.Lacs | Rs /Unit |
| Raw Materials | | | | |
| Utilities | | | | |
| Packing Materials | | | | |
| Direct Labour | | | | |
| Consumables and Spares | | | | |
| Depreciation | | | | |
| Repairs & Maintenance | | | | |
| Works Overheads | | | | |
| Administration Overheads | | | | |
| Selling & Distribution Overheads | | | | |
| Financial Expenses | | | | |
| Total Cost of Sales | | | | |
| Return | | | | |
| Non-Injurious Price - NIP | | | | |

*Cost heads are indicative and may be changed as per NIP workings

**Working of Return**

| Particulars | Units | Claimed | Allowed Average |
|---|---|---|---|
| Optimum Production - PUC | MT | | |
| POI Opening Net Fixed Assets - PUC | Rs Lacs | | |
| POI Closing Net Fixed Assets - PUC | Rs Lacs | | |

| | | | |
|---|---|---|---|
| PO Average Net Fixed Assets - PUC | Rs Lacs | | |
| Net Fixed Assets Per Unit | Rs/MT | | |
| POI Opening Working Capital | Rs Lacs | | |
| POI Closing Working Capital | Rs Lacs | | |
| POI Average Working Capital | Rs Lacs | | |
| Claimed Cost of Sales | Rs Lacs | | |
| Depreciation | Rs Lacs | | |
| COS excluding Dep. | Rs Lacs | | |
| WC % of COS excluding Dep. | % | | |
| Allowed | | | |
| Cost of Sales | Rs/MT | | |
| Dep. | Rs/MT | | |
| COS excluding Dep. | Rs/MT | | |
| Allowed WC per unit | Rs/MT | | |
| Capital Employed | Rs/MT | | |
| Return @ 22% | Rs/MT | | |
| Less: Interest | Rs/MT | | |
| Return Allowed | Rs/MT | | |

Note: Sample Format may be changed as per actual requirement.

Appendix-43

No. 9/DGAD/2016
Government of India
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties
Jeevan Tara Building

Dated 14th December, 2016

**Note**

**Sub: Verification of economic parameters relating to PUCs in cases where the Domestic Industry/ Exporter is a multi product entity.**

It is seen that in some cases, Domestic Industry/ applicant and/or exporters are a multi product entity in which PUCs constitute only a portion of their total activity and no separate audited accounts are prepared with respect to PUCs due to which it is difficult to verify various economic parameters like production, sales volume, costing, etc., and consequently calculate NIP/ Normal Price etc. of PUCs. At times, there would be a tendency on the part of the Domestic Industry/ applicant or the exporter to prepare separate trial balance/ accounts statements for the PUCs just for the purposes of the case under investigation, which may or may not reflect the actual figures.

In such situations, such trial balance/ accounts statements prepared with respect to PUCs for the purposes of the case in question for the injury investigation period and POI cannot be taken on face value/ relied upon unless these are supported by/ verified with reference to certain other reliable records/ documents of the entity (e.g. sales volume of PUC can be verified with respect to copies of invoices/ bills and other records/ documents maintained in the normal course of business and not prepared just for the purpose of case in question). Hence, the Investigating team conducting investigation in such cases should do a thorough verification and obtain copies of all such reliable documents/ records which would support the details/ statements of PUCs from out of the total accounts of the entity as a whole.

-sd/-
(Inder Jit Singh)
AS & DGAD

All IOs & COs
CC: Pri. Adv. (Cost)

# DETERMINATION OF INJURY MARGIN

## LEGAL PROVISIONS

10.1. Article 9.1 of the ADA provides as follows:

> *"The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry."*

10.2. Corresponding Rule 4 (1)(d)[1]and Rule 17(1)(b) of the Anti-Dumping Rules 1995 read as under:

> ***"Rule 4(1)(d): Duties of the designated authority. -***
>
> *(1) It shall be the duty of the designated authority in accordance with these rules-*
>
> *(d) to recommend to the Central Government –*
>
> *(i) the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, after considering the principles laid down in the Annexure III to these rules; and*
>
> *(ii) the date of commencement of such duty;*
>
> *"**Rule 17(1)(b): Final Findings***
>
> *Recommending the amount of duty which, if levied, would*

[1] Introduced in 1999 vide Customs Notification No.44/99- Cus. (T.N) Dated 15-07-1999

*remove the injury where applicable, to the domestic industry after considering the principles laid down in the Annexure III to rules.*

*The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding- the names of the suppliers, or when this is impracticable, the supplying countries involved; a description of the product which is sufficient for customs purposes; the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;*

*Considerations relevant to the injury determination; and the main reasons leading to the determination.*

*(2) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:*

*Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned:*

*Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.*

*(3) The designated authority shall issue a public notice recording its final findings.*

## SIGNIFICANCE

10.3. Injury margin in the context of antidumping is the injury suffered by the DI on account of dumped imports. Injury margin is calculated as the difference between the Non-Injurious Price (NIP) of the DI and the landed value of imports of the dumped goods. The duty levied up tot he injury margin is expected to be the margin adequate to remove the injury of the DI on account of dumped imports. The injury margin is important since it affects the quantum of duties to be finally recommended by the Authority in view of the application of a lesser duty rule in terms of Rule 4(1)(d)(i) of the AD Rules.

## OPERATING PRACTICES

10.4. The injury margin (IM) is calculated by comparing the exporting producer's / country's landed value (LV) of exports with the non-injurious price (NIP) of the DI. The resulting injury is expressed as a percentage of the Landed Value in order to obtain a %injury margin.

$$IM = NIP-LV$$

$$\% IM = (IM/LV) X 100$$

10.5. The methodology and principles for calculation of Non-Injurious Price are provided in Chapter 9 of this Manual.

10.6. Landed Value for this purpose is calculated from the CIF price of imports of the subject goods or assessable value under the Customs Act including applicable duties of customs. CIF price includes all expenses incurred or due to be incurred like insurance, inland freight in exporting country, ocean freight etc. Landing charges used to be added to CIF @ 1%to arrive at an assessed value for imports cleared till September 2017. However, presently the assessable value includes all the applicable charges[2]. The applicable basic customs duties and cess (except CVD, SAD, and special duties) are added to the CIF price to arrive at the landed value.

10.7. A separate injury margin is calculated for each co-operating producer exporter by comparing the DI's NIP with the landed price of relevant imports from such producer/exporter. In the case of product control numbers ('PCN'), injury margin is determined PCN wise and subsequently,the margin is consolidated on the weighted average basis with relevant export quantities as the basis. A separate common injury margin is also to be worked out for non-responding and

[2] Customs notification No. 91/2017 dated 26.9.2017 and Customs Circular No. 39/2017 dated 26.9.2017

non-co-operative producer exporters, which is called the residual rate applicable to 'others'.

10.8. Sometimes, especially when selling prices of PUC are volatile or vary significantly, NIP and Landed Value is computed month/quarter wise fora more accurate analysis. Injury margin in all such cases shall be worked out monthly/ quarterly. However, it must be ensured in all such cases that overall month/quarter wise weighted average injury margin should reconcile with the overall injury margin for the POI as a whole.

10.9. The calculation of injury margin is comparatively simpler where there are no PCNs asonly one NIP and one landed value figure needs to be determined. However, when the product under consideration is sub-divided into PCNs, landed value and NIP is required to be determined for each of the PCNs individually for calculation of injury margins. This ensures a fair comparison of like articles.

10.10. As per the established practice in DGTR, weighted average injury margins are calculated based on the actual mix of PCNs exported by the respective exporters. In other words, DGTR does not consider the mix of PCNs actually produced by the DI and their quantities for calculation of injury margin.

10.11. The PCN wise NIP will be common for all responding producer exporters. The IM is calculated for individual PCNs based on their individual LV and NIP and then weighted average based on respective exporter's quantity of exports. The landed value will have to be worked out separately with respect to each co-operating producer exporter based on their export price as per Appendix-2.

10.12. Based on PCN wise landed value and NIP, injury margins hall be worked out with respect to each PCN exported to India by the respective producer exporter. Thereafter, a producer exporter wise weighted average of IM is calculated based on the quantity of actual PCN mix of exports by the respective producer exporters to arrive at the figure of injury margin for each co-operative producer exporter. However, in some cases, an exception has been made and PCN wise duty has been recommended on the merits of the case[3].

[3] Final Finding in anti-dumping investigations on imports of Digital offset printing Plates originating in or exported from China PR and Japan, F.N. 14/7/2011-DGAD dated October 3, 2012;Final Finding in anti-dumping investigations on imports of Cathode Ray color television picture tubes originating in or exported from China PR, Korea, Thailand and Malaysia. No. 14/8/2007-DGAD dated February 17, 2009

10.13. In a situation where export quantities include some of the PCNs, which have not been produced by the DI during the POI, the NIP[4] is computed for those PCNs based on closest PCNs, as mentioned in the previous chapter, and this NIP is subsequently used for determination of injury margin for that PCN.

10.14. It may be clarified that even if the injury margin for certain PCNs is negative, the overall weighted average injury margin for all the PCNs exported by the respective Producer Exporter is to be considered for arriving at conclusion regarding the injury. No exemption or exclusion is allowed for any PCN, merely because a particular PCN has negative injury margin or dumping margin.

10.15. It is a clear position that dumping margin and injury margin is computed PCN wise, wherever applicable, for fair and accurate comparison which are kept as workings in the case file. Further, the weighted averages are calculated and they form the basis for recommendation of duty.

10.16. The illustration below explains the principles set out above:

| S. N | PCN No. | The quantity exported by Producer Exporter | Quantity produced by DI | NIP | Landed Value | Injury Margin | Injury Margin %Age |
|---|---|---|---|---|---|---|---|
| 1 | ABC 1 | 50 | 500 | 18 | 12 | 6 | 50.00 |
| 2 | ABC 2 | 60 | 350 | 20 | 10 | 10 | 100.00 |
| 3 | ABC 3 | - | 400 | 28 | - | 0 | 0.00 |
| 4 | ABC 4 | 15 | 500 | 14 | 16 | -2 | -12.50 |
| 5 | ABC 5 | 40 | 300 | 18 | 13 | 5 | 38.46 |
| 6 | ABC 6 | 100 | 250 | 15 | 10 | 5 | 50.00 |
| 7 | ABC 7 | 45 | 500 | 14 | 14 | 0 | 0.00 |
| 8 | ABC 8 | 100 | - | 16 (Notional) | 14 | 2 | 14.29 |
| 9 | ABC 9 | 80 | 300 | 22 | 23 | -1 | -4.35 |
| 10 | Total Qty. Exported/ AVG | 490 | 3100 | 18.33 | 14.00 | 2.78 | 19.84 |
| 11 | Weighted Average | | | 17.17 | 13.94 | 3.45 | 24.74% |

[4] Final Finding in anti-dumping investigations on imports of SDH Equipment originating in or exported from China PR and Israel, F N. 14/2/2009-DGAD dated October 19, 2010.

10.16.1. It may be noted that the simple averages of injury margin in row 10 are not relevant for analysis. Further, a weighted average of 24.74% as mentioned in row 11 calculated on the basis of export quantities of the relevant producer exporter is the relevant figure for the conclusion of the investigation.

10.16.2. It can be seen from above that even though PCNs viz. ABC4 and ABC9 have negative injury margin, the exports from the respective Producer Exporter will still be considered as causing injury because overall weighted average injury margin for all PCNs taken together is positive.

10.16.3. Similarly, PCN viz. ABC 8 is not being manufactured by DI, so NIP has been worked based on the closest product manufactured by DI (proxy PCN) which is ABC7, by adding the relevant additional cost based on the specifications.

**Injury Margin in Case of Sampling**

10.17. If there are a large number of responses, the Authority may resort to sampling in terms of Rule 17(3), as per the methodology explained in Chapter 8. In such a situation, the outcome of sampling for the respective subject country would be as under:

10.17.1. The sampled producer-exporters will be given an individual injury margin as per the methodology explained above;

10.17.2. The un-sampled producer-exporters will be given a weighted average (based on the export volume of sampled exporters) of the injury margin determined for sampled producers,

10.17.3. Another Residual injury margin will be determined for non-responding producers-exporters and non-cooperative responding producer- exporters on account of incomplete response as per the methodology explained in the next paragraph.

**Residual Margin: Injury Margin for Non-Cooperating Exporters**

10.18. The Anti-Dumping Rules do not mandate any particular methodology for the injury margin calculations for the residual category. The practice in the Directorate is as follows:

10.18.1. In case there is a co-operative exporter, the residual injury margin is determined by comparing the landed value, which is the lowest of the co-operative exporter of the relevant subject country, with the NIP of the DI. While working out the injury margin in case of the residual category, it may be ensured that margin for "others" is higher than the highest margin determined for any cooperating producer so that the non-cooperation is not rewarded. The Authority also has an option to take the LV from DGCI&S data. Case to case decision may be taken on the merits with the approval of DG.

10.18.2. In case no exporter has been declared co-operative or there is no response, the residual injury margin is to be determined by comparing the weighted average landed value calculated from DGCIS data with the NIP of the DI.

### Disclosure of landed value to the respective producer exporter

10.19. Rule 16 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 regarding disclosure of information provides that the designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision. Since the LV workings are one of the essential facts based on data furnished by the respective exporter, the finally computed LV needs to be disclosed to the respective exporter. This provides them with an opportunity to submit their comments/views on the disallowances or the facts considered by the Authority in the determination of LV. However, the IM is not disclosed to the exporter/importers as the same shall lead to disclosure of NIP, which is confidential information of the DI. The detailed procedure for disclosure is explained in Chapter 16 of this manual.

## TREATMENT OF INJURY MARGIN IN VARIOUS TYPE OF INVESTIGATIONS

### Original Investigation

10.20. As India follows the lesser duty rule, it determines Dumping margin and Injury Margin[5] for the purpose of recommending duty. For an original investigation determination of injury margin is mandatory. The Authority carries out the injury analysis as well as determines the injury margin based on the NIP of the DI and Landed Value of the producer exporter.

[5] Refer to para X of Chapter 24 for WTO Jurisprudence.

**Mid-Term & Sun-Set Review Investigation**

10.21. Normally the practice in the Directorate is to undertake a comprehensive review.In a review investigation in terms of Rule 23, the injury analysis is more important for the continuation of duty particularly in the cases where the extension is being sought on the likelihood of continuance or recurrence of the injury. NIP is calculated for analyzing the effect of underselling as well as to determine whether the exports from the subject country to the third country are at prices which are otherwise injurious for the Indian DI. Therefore, in the case of review investigations, injury analysis takes a higher significance than injury margin itself. Injury Margin is needed for computation of injury when duty has to be quantified for revision of the duty amount.

**New Shipper Review**

10.22. New Shipper Review investigation in terms of Rule 22, is filed by the producer exporters who had not exported during the period of investigation of the original investigation. In such a scenario the injury analysis and injury margin is not computed during the investigation. The duty at the end of an investigation is determined on the basis of fresh Dumping Margin or the original injury margin whichever is less. However, in those cases, where sampling methodology was used in case of an original investigation, it can be considered that the duty rates are given to the co-operative un-sampled exporter be extended to the NSR applicant with the approval of the Authority. Thus no fresh determination of IM is essential in an NSR.

**Anti-Circumvention**

10.23. The anti-circumvention investigation is to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied under section 9A of the Act. The investigation has to identify the various modes of circumvention as provided in Rule 25 of the AD Rules. The Authority upon determination that circumvention of anti-dumping duty exists, may recommend imposition of anti-dumping duty to imports of articles found to be circumventing an existing anti-dumping duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the antidumping duty (details in Chapter 18). There is no fresh determination of duty in an anti-circumvention investigation meaning thereby no fresh IM determination is essential. The Authority extends the duty on the PUI, if it concludes that the PUI is being exported to India at dumped prices causing injury to the DI. In this scenario, the existing duty is extended to cover PUI.

# INJURY ANALYSIS

## LEGAL PROVISIONS

11.1. The applicable legal provisions are contained in the Article 3 of the ADA and corresponding provisions under the Act are set out below:

> *9B. No levy under section 9 or section 9A in certain cases in the absence of injury to industry in India.*
>
> *(b) the Central Government shall not levy any countervailing duty or anti-dumping duty –*
>
> *(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;*
>
> *(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary finding has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:*
>
> *Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to*

*the domestic industry of a third country exporting the like articles to India;*

11.2. The relevant provisions in the Rules are Rule 11 and Annex II. Sub-rules (1) and (2) of Rule 9 states:

*11. Determination of injury:*

*(1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or material retards the establishment of any industry in India.*

*(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.*

11.3. Specific principles for determination of injury are contained in Annex II which are reproduced below:

*The designated authority while determining the injury or threat of material injury to domestic industry or material retardation of the establishment of such an industry, hereinafter referred to as "injury" and causal link between dumped imports and such injury, shall inter alia, take following principles under consideration:*

(i) *A determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.*

(ii) *While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the affect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the designated authority shall consider whether there has been a significant price under cutting by the dumped*

*imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree.*

(iii) *In cases where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when it determines that (a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is not less than three per cent of the import of like product in the importing country or where the export of individual countries less than three per cent, the imports collectively accounts for more than seven per cent of the import of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.*

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

(v) *It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade*

*restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.*

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

(vii) *A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the designated authority shall consider, inter alia, such factors as:*

(a) *a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;*

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

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

(d) *inventories of the article being investigated.*

**SIGNIFICANCE**

11.4. The Existence of material injury or threat thereof to the like product produced by the DI and its causal relation with the dumped imports is an essential pre-requisite for invoking any trade defense measures in India. Injury analysis can be defined as an evaluation/assessment of the effects of the dumped imports on the concerned DI.

11.5. The injury analysis is the basis for the Authority to arrive at a conclusion for its recommendation regarding imposition, a continuation of anti-dumping duty or termination of an investigation/existing duties. The analysis establishes as to whether the DI is suffering injury.

(i) The injury under Anti-dumping investigations can be identified as:
(ii) Material Injury;
(iii) The threat of Material Injury; and
(iv) Material Retardation.

11.6. Sub-para (i) of the Annexure II to the Rules (corresponding to Article 3.1 of the ADA) requires that the determination of injury must be based on positive evidence and involves an objective examination of:

(i) the volume effect of dumped imports;

(ii) the price effect of the dumped imports on prices in the domestic market for like products;and

(iii) the consequent impact of the dumped imports on the economic health of the domestic producers of the like product (evaluation of Economic Parameters).

**OPERATING PRACTICES**

11.7. Material Injury to the DI is to be analyzed in terms of the volume effect and the price effect caused by the dumped imports in domestic market for the PUC. For this determination, the analysis is carried out over the POI and the injury period (generally preceding 3 years) and assessment of the impact of dumped imports on the DI is analyzed for the PUC and the like product. Following paragraphs mention the various parameters to be analyzed and also the methodology for examination and verification of information for these parameters.

**Cumulative Analysis**

11.7.1. Para (iii) of Annexure II (corresponding to Article 3.3 of the ADA) provides for the cumulative assessment of the effect of imports of a product to India, when more than one country is being simultaneously subjected to an anti-dumping investigation.

11.7.2. The cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic

articles. The cumulative assessment can be undertaken only when the following conditions are fulfilled:

(i) The margin of dumping from each country is more than two percent determined as percentage of export price; and

(ii) The volume of the imports from each country is not less than three percent of the import of the like product; or

(iii) Where the export of individual countries is less than 3 percent but the imports collectively account for more than 7 percent of the import of the like article.

11.7.3. In order to ascertain whether the above-mentioned conditions are satisfied, the injury tables with reference to import volumes and market share may be examined. It may be ensured that the import from each of the countries is more than *de-minimis* limits and the margin of dumping from each of the subject countries is more than *de-minimis* limits[1].

11.7.4. In order to ascertain whether cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles, the following list of parameters may be examined. There may,however, be more parameters which might be relevant to determine whether cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

(i) Whether the product supplied by different parties are like articles;

(ii) Whether the products supplied by various parties are comparable in properties;

(iii) Whether there are arguments on comparability of products supplied by various parties, and if so, how the same has been addressed;

(iv) Whether there are parties who are resorting to using of both imported material from various sources and domestic material;

(v) Whether the imported and domestic material is being used interchangeably;

(vi) Whether there is direct competition between the domestic product & the imported product and the inter-se imported product;

[1] See *Hot Rolled Coils Case – India* 2000 (116) ELT 356 (Tri.) which reiterates this position.

(vii) Whether customers are using domestic material and imported material interchangeably;

(viii) Whether the exporters from the subject countries and the DI have sold the same product in the same period to the same set of customers;

(ix) Whether the channels of distributions employed by different parties shows some absence of competition or whether the sales channels are comparable;

(x) What are the parameters for the consumers to decide the source of supply;

(xi) Whether the domestic producers and exporters from the subject countries sell the like product to the same category of customers and whether both are competing in the same market; and

(xii) Whether import price from various countries has moved in same tandem.

**Volume Effect**

11.7.5. Para (ii) of Annexure II (corresponding to Article 3.2 of the ADA) requires that the volume effect is examined in terms of increase in the quantum of imports in absolute terms; or an increase in the quantumof dumped imports relatively compared to the production of the importing member or the consumption in the importing member[2].

11.7.6. **Volume of imports in absolute terms:** this should be preferably based on DGCI&S data. However, the volume of import reported in DGCI&S must be co-related with the volume of imports reported by the responding exporters and secondary source data (if made available by any interested party). In a situation where volume of imports reported by responding exporters or secondary source is higher than DGCI&S, it may be more appropriate to consider the questionnaire responses or secondary source. Typically, the higher of the volumes reported by various parties should be adopted, considering that this in any case is the actual volume of imports in India[3].

11.7.7. The volume of imports should normally be considered separately for each subject country and then cumulatively for all the subject countries. Further, the volume of import should be separately considered for each of the non-subject countries also.

[2] As given in paragraph 2 of Article 3 of the ADA

[3] Please refer to Para XI of Chapter 24 for WTO Jurisprudence.

11.7.8. **The share of imports from subject countries in total imports: this should be considered** in order to see how the share of dumped imports has changed in relation to total imports in India. This is normally considered on a percentage basis.

11.7.9. **Share in relation to consumption and production:** for the purpose, the market share of various parties is determined in percentage terms. Further, the Indian industry must be considered in the domestic market. As regards other Indian producers, while the Authority requires information with regard to their domestic sales, in a situation where the said information is not readily available, the authority may consider the production volume reported in standing as the best available information.

11.7.10. **Captive consumption:** in a situation where captive consumption of the DI or the other producers is not significant, the captive consumption may not be recognized separately for determining volume and market share. However, in a situation where captive consumption is significant, the demand and market share could be determined by undertaking analysis twice – once including captive, and second excluding captive. The captive consumption should not be excluded from volume analysis.

11.7.11. **Assessment of Demand:** Demand/consumption of the PUCin the domestic market is ascertained by taking the total domestic sales and total imports of the product from all sources. The data is collected over the injury period and POI. Captive consumption by all the Indian companies should also be considered to calculate the total demand. Sales made by 100% EOUs to DTA are also to be taken into account for estimating the total demand. As explained earlier,sales of SEZ for the PUC are not considered for analysis relating to Anti-dumping investigations.

11.7.12. The import data should generally be taken from DGCI&S. The secondary source information may also be considered in exceptional cases for the volume and price analysis during injury period, especially in cases where DGCI&S data is incomplete or unreliable either on account of import of the PUC taking place under various HS codes, or the PUC is such that it is difficult to distinguish on the basis of HS codes.

11.7.13. Volume and market share of imports: with regard to the volume of the dumped imports, it should be considered whether there has been a significant

increase in the dumped imports, either in absolute terms or relative to the production or consumption of the subject goods in India.

11.7.14. The volume analysis is also to be done in terms of the market share of dumped imports in relation to total imports of subject goods into the Country. Market share indicates the increasing/ decreasing share of imports with regards to demand/consumption in the domestic market.

11.7.15. The analysis should be undertaken with regard to the impact of the volume of dumped imports on the DI. This analysis is done on the basis of import data obtained from DGCI&S. In case of any cooperative producer exporter(s) from a subject country(ies) and after examination of respective producer exporter's response, it is found that the dumping margin is either zero or negative,the volume of such imports may be considered as "undumped imports" and hence segregated from dumped imports for the purpose of impact analysis[4]. The transaction wise exports details submitted by cooperative exporters also need to be confirmed with DGS data.

11.7.16. **Cumulative assessment of dumped imports-** where the imports of the subject goods from more than one country are simultaneously subjected to investigations, the cumulative assessment of the impact of such imports on the DI should be undertaken as detailed above.

**Price Effect**

11.7.17. With regard to the effect of the dumped imports on the domestic selling price, the Rules require examination of adverse effect of import prices on the DI. Price effect may be analysed by determination of:(a) price undercutting, (b) price underselling, and (c) price suppression/ depression. However, it is clarified that these may not be the only basis for determining adverse price effect.

11.7.18. Price Undercutting is calculated by comparing the landed value of subject imports with the Net Sales Realisation of the DI[5].

[4] *See* Appellate Body Report, *European Communities – Anti-Dumping Duties on Imports of Cotton-type Bed linen from India*(WTO/DS141/AB/R) adopted on 1 March 2001 for a discussion on whether it was necessary that only those transactions which had a positive dumping margin need to be included in calculating the injury caused. The Appellate Body held that each individual producer or exporter need not be examined to determine the "volume of the dumped imports.

[5] Net Sales Realization is the selling price of the subject goods (minus the taxes) and is ascertained from the sales records maintained in the company (refer Format E – in the previous chapter dealing with NIP), which needs to be duly reconciled with the audited records. Landed value is determined as explained in the Chapter dealing with Injury Margin.

11.7.19. The purpose of determining the price undercutting is to assess whether such dumped imports are undercutting the sales price of the DI. The undercutting is a pricing strategy in which a product is set at a low price with the intention to drive the competitors/DI out of the market or to create barriers to entry for potential new competitors.

11.7.20. The presence of positive undercutting indicates towards a situation where import prices are below the net sale price of the DI and the DI will be eventually made to sell their products at less than the normal selling price, indicating a direct adverse impact. The negative undercutting indicates that the net sales price of DI is less than the import price. However, this could be due to the market compulsion of DI to hold on to the market share. In such a case, the impact of dumped imports will be seen in the reduction in profits or increase in losses of DI because sale prices have been forced to be kept low.

11.7.21. It might be necessary to take into consideration several factors, as mentioned below, in order to ensure proper determination of price undercutting:

(i) In case of wide variations in the periodic cost of production due to fluctuation in raw material, it may be appropriate to determine price undercutting by undertaking the monthly or quarterly analysis; and

(ii) It is possible that the DI may allege that there are other factors affecting prices of the DI or imports. If any such factor has been brought to the notice of the Authority, the same should be adequately considered/addressed.

11.7.22. As far as the price analysis is concerned, typically, the company may not transfer captive consumption at arm's length price, and therefore, the price and the profitability of captive consumption may be distorted. For this reason, the profitability of captive consumption is normally ignored.

11.7.23. Price underselling is calculated by comparing the landed value of the subject imports with the Non-Injurious Price (NIP) as determined by the Authority for the DI. The purpose of determining Price underselling is to assess the injury caused to the DI due to the low priced products in the market resulting in the inability of the DI to realize the fair price which is the Non-Injurious Price for the DI.A positive underselling indicates that the imported goods are being sold at a price which is below the fair price (NIP) at which the domestically produced goods should at least be sold. A positive underselling will not allow the DI to grow/develop or sustain in the long run.

11.7.24. Price Depression or Superposition Depression refers to a situation when the domestic producer is not able to recover the cost because it is forced to keep prices down in order to compete with the imported goods. Price Depression is determined by comparing the cost of sales of the subject goods of the DI with its selling price. Price Suppression, on the other hand,refers to the situation where the domestic producer is restrained from increasing the selling prices i.e. increase in price which otherwise should have been there in normal circumstances is restrained or even if they do actually increase, the increase is less than it would otherwise have been in normal circumstances. Price suppression is determined by comparing selling prices with costs to assess whether the price increases are commensurate with the increase in costs. This is seen in light of the landed value of the imports of the subject goods. Therefore,the Authority considers whether the effect of dumped imports is to depress prices orto prevent price increases.

11.7.25. Another way of analyzing the price suppression or depression could be by determining the trends in operating cost to sales ratio over the injury period. The operating cost to sales ratio takes into account the cost incurred per Rupee of sales. An increasing operating cost to sales ratio implies that the producer had to incur a higher cost per Rupee of sales. In other words, it means that the producer earned less revenue for every Rupee of the cost incurred. Thus, an increase in the operating cost to sales ratio implies that the increase in cost was more than the increase in selling price, implying price suppression. Alternatively, it could mean that the reduction in the selling price was more than that of the cost, indicating price depression. Thus, an increasing operating cost to sales ratio may indicate that the prices of the DI have been either suppressed or depressed.

11.7.26. **Evaluation of prices:** In those situations, where the interested parties have contended steep decline or increase in selling/import prices, the analysis may need to be done on a transaction wise basis. However, if then umber of transactions is large, this analysis can be considered on monthy or quarterly basis. However, this kind of analysis would be viable only if the PUC does not have a large number of different product types having different costs and prices.

**Evaluation of Economic Parameters**

11.7.27. The Authority is required to undertake a systematic examination of various

injury parameters specified under the Rules[6]. Each of the fifteen individual factors listed in paragraph (iv) of Annex-II must be evaluated by the investigating authorities and there is no room for a "permissible interpretation" that all individual factors need not be considered[7]. What is expected in an injury analysis is not merely a faithful mention of each of the criteria and an appropriate notation against each of them, but a sound appreciation of the situation based on each of the factors[8].

11.7.28. The Rules require the Designated Authority to examine both the actual performance and the potential performance. While guidance with regard to potential performance is not available, it can be understood that potential performance implies the likely situation of the DI in the event of continued dumping of the product in the country. Potential performance is more relevant to threat of injury and review cases.

11.7.29. The team should analyze the performance of the DI in respect of each and every parameter over the injury period. For this purpose, it is important that data for all the periods are for the same length of time. For example, if the POI is more or less than 12 months, the data must be appropriately annualized and thereafter considered. It must be ensured that there is no time gap between the POI and the injury period, though the overlapping of the period is allowed, which is in compliance with the ADA.

11.7.30. The team has access to the actual figures in their record. However, it should be noted that the eventual conclusion is drawn on the basis of overall emerging trends in the performance of the DI over the injury period including the POI and post POI.

11.7.31. The analysis of the performance of the DI may also sometimes be required over the injury period to understand the performance of the DI during the injury period or part thereof. This may be necessary where the performance of the DI has suddenly deteriorated due to dumping during the period. This may require quarter

[6] See paragraph (iv) of Annexure II of the Rules.Paragraph 4 of Article 3 of the ADA provides that "*The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.*"

[7] Appellate Body Report, *Thailand – Anti-Dumping duties on Angles, Shapes and Sections of Iron or Non-Iron alloy steel and H Beams from Poland*, (WTO Doc no. WTO/DS/122/AB/R), adopted on 12 March 2001.

[8] Acrylonitrile Butadeine Rubber 2003 (155) ELT 265 (Tri.-Del.).

by quarter or month by month analysis within the relevant periods. However, if any such analysis has been undertaken, it should be ensured that the analysis is undertaken in a manner which ensures that trends of each of the parameters is micro analyzed for enhanced clarity of the impact of dumping on the DI. This period can be the whole of injury period or a part of such period, which may indicate the initiation of dumping and injury thereof. It is therefore vital that the analysis is done objectively and consistently.

11.7.32. For determination of material injury, the specific analyses of factors having a bearing on the state of the industry are to be undertaken by analyzing trends over time i.e., whether its vital performance indicators attributable to the product concerned, collectively show a significant deterioration. Annex II contains specific but a non-exhaustive list of economic factors that must necessarily be considered for assessing the impact of dumped imports on theDI. The parameters are to be examined only for the PUC in an investigation. The mandatory factors of injury having a bearing on the state of industry which have to be analyzed independently are:

(i) The natural and potential decline in

- sales in quantity;
- profits;
- output and market share;
- return on investments;
- utilization of capacity; and
- productivity.

(ii) The factors affecting domestic prices

(iii) The magnitude of the margin of dumping and

(iv) The Actual and potential negative effects on

- cash flow;
- inventories;
- employment;
- wages;
- growth;
- ability to raise capital or investments

11.7.33. While evaluating the capacity utilization, it may be noted that the actual capacity utilization percentages may vary from industry to industry and from company to company. Therefore, the team must look into the reasons for variations and the likely impact of dumping as a cause for those variations. Further, the team must verify whether there has been a capacity addition during the injury period. This needs to be evaluated in light of the fact that the increase in capacity could also be the reason affecting the DI, if it is not matched by an increase in demand.

11.7.34. The Rules require that the Authority consider the effect of the dumped imports of the PUC in relation to the domestic production of the like article under investigation. This is achieved by considering information relating to the PUC only produced by the DI. However, it is possible that the same manufacturing facility is used for the manufacturing of more than one product and not all of them are covered[9] in the definition of the PUC. In such cases, the production and capacity utilization should be analyzed on the overall basis both in respect of the PUC as well as the NPUC, as capacity utilisations of individual sub products may vary and be compensated against one another. This requires detailed qualitative and quantitative analysis and an understanding of the business situation. This should also be focused at the time of physical/on the spot verification of the manufacturing facilities.

11.7.35. The parameter pertaining to the volume of inventory must be examined with a view to compare the stock of inventory as a proportion of sales volume and industry-specific average inventory norms. The injury may be determined only if there is an increase /decrease in inventory levels relative to sales volume rather than in absolute terms. Captive consumption of PUC may also need to be considered, wherever relevant. In case of an increase in sales volume, the DI may increase its average inventory level to ensure there is no shortfall and increase in inventory may not be necessarily an indicator of injury on account of alleged dumped imports.

11.7.36. While evaluating the return on investments, it must be examined whether there has been an increase in the capital employed by the DI in the injury period. If there has been a sudden increase in the capital employed during the injury period,

[9] In Final Finding in Anti-dumping investigation concerning imports of Viscose Filament yarn originating in or exported from China PR and Ukraine, F.N.14/23/2004-DGAD dated April 4, 2006, the DI had sought ADD only on imports of VFY below 150 deniers. The production facilities however are utilised for making different types of deniers; Initiation of Anti-Dumping investigation concerning imports of "Coated Paper" originating in or exported from China PR, European Union & USA, F.N. 6/42/2017- DGAD dated January 23, 2018.

there is bound to be a decline in the returns on the capital employed. This increase in the capital employed should be looked into and reasons thereof should be factored int he evaluation. If there is an increase in the depreciation without corresponding increase in fixed assets, an explanation should be sought from the DI.

11.7.37. The profits (PBIT) should be evaluated both as a percentage of capital employed as well as a percentage of sales. The reason for variation during the injury period must be looked into. Interest payments made by domestic producers should also be carefully examined especially the interest payments to the related parties. Further, the reasons for the increase in total capital employed should also be examined as new investments could also be contributing to the reduction in profits or losses, for example, acquisition of new assets/ merger of new units/ amalgamation of new units in the DI.

11.7.38. It is important that the evaluation of injury must be based on examination of all factors, as no single factor can be considered as decisive. For example, a mere increase in imports or loss of market share by the DI alone cannot be decisive. Loss of market share should be considered with a range of all other relevant injury indicators before material injury may be established.

11.7.39. Performance parameters of DI for the PUC are to be considered from Format H which provides most of the aforesaid details duly audited (and verified during verification) regarding all the above parameters.

| Particulars | Unit | Year 1 | Year 2 | Year 3 | POI |
|---|---|---|---|---|---|
| Installed Capacity | | | | | |
| Production Quantity* | | | | | |
| Capacity Utilization Percentage | | | | | |
| Average Industry Norm for Capacity Utilisation, if any | | | | | |
| Sales Quantity:<br>Domestic Sales- Small Scale Industry** (SSI)<br>Domestic Sales – Other than SSI<br>Export Sales<br>Captive Consumption | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Sales Value:<br>Domestic Sales – SSI<br>Domestic Sales – Other than SSI<br>Export Sales<br>Captive Consumption | | | | | |
| Sales Realisations per unit:<br>Domestic Sales – SSI<br>Domestic Sales – Other than SSI<br>Export Sales<br>Captive Consumption | | | | | |
| No. of Employees | | | | | |
| Productivity per Day | | | | | |
| Average Industry Norm for Productivity per day, if any | | | | | |
| Inventory | | | | | |
| Inventory as No. of days of Production | | | | | |
| Inventory as No. of days of Sales | | | | | |
| Average Industry Norm for Inventory, if any | | | | | |
| R&D Expenses | | | | | |
| Funds Raised:<br>Equity<br>Loans and Advances<br>Working Capital<br>Other, if any | | | | | |
| Cost of Sales per Unit-Domestic Sales (excluding outward freight, outward insurance etc. | | | | | |
| Cost of Sales per Unit- Exports | | | | | |
| Selling Price per Unit- Domestic Sales (excluding excise duty or GST whichever is applicable, outward freight, outward insurance etc.) | | | | | |
| PBIT per Unit- Domestic Sales | | | | | |
| Total Profit before Interest and Tax – Domestic Sales | | | | | |
| Interest / Finance Cost – Domestic Sales | | | | | |
| Depreciation and Amortisation Expense | | | | | |
| Other non-cash expenses | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| Cash Profits | | | | | |
| Average Capital Employed | | | | | |
| PBIT as % of Avg. Capital Employed | | | | | |
| Average Industry Norm for PBIT as % of Avg. Capital Employed, if any | | | | | |

** If the same plant can be used for the production of NPUC also, the total production including NPUC needs to be indicated.*

******** *Small Scale Industries (SSI) means a micro enterprise/small enterprise or a medium enterprise as defined in The Micro, Small and Medium Enterprises Development Act, 2006*

11.7.40. It is important to note that the Format H requires the DI to provide average industry norms for relevant performance indicators, like capacity utilization, productivity, inventory and PBIT, as a percentage of average capital employed.

11.7.41. The impact of dumped imports is to be examined on domestic sales only,and if there is a fall in export performance of the DI, it should not be attributed to dumped imports. Performance of export sales or costs related to export production may not be relevant for injury analysis. Pricing of captive consumption/transfers may be very relevant in this analysis especially if captive transfers are not at arm's length price.

**Threat of Material Injury**

11.7.42. A threat of material injury in Anti-dumping investigations is a situation where the DI has not suffered an injury over the period considered, but an injury to the DI is clear and imminent if the present circumstances continue. Sub-para (vii) of the Annexure-II (corresponding to Article 3.7 of the ADA) inter-alia provides that the determination of threat of material injury should be based on facts, and not merely on allegation, conjecture or remote possibilities.

11.7.43. According to the Para (vii) of Annexure II to the Rules, the following non-exhaustive list of factors should be considered in totality when making a determination of the threat of material injury:

(i) Whether there is a significant rate of increase of the dumped imports into the domestic market, indicating the likelihood of substantially increased importation;

(ii) Whether there is a sufficiently freely disposable, or an imminent, substantial increase in, the capacity of the exporting producer(s), indicating the likelihood of substantially increased dumped exports to the domestic market, taking into account the availability of other export markets to absorb any additional exports;

(iii) Whether imports are entering at prices that will have a significant depressing or suppressing effect on the DI prices, and whether it would likely increase demand for further imports; and

(iv) Whether inventories of the product being investigated available with foreign supplier suggests that imports could increase in the future.

11.7.44. The presence of one factor alone may not be conclusive evidence of the threat of material injury. For example,even if there is a substantial increase in capacity in exporting country, this does not conclusively mean a threat to Indian industry,as enhanced capacity may be for their own domestic/captive consumption in value-added products, or the exporter may be targeting some other country, where realizations are high.

**Source of Various Information**

11.7.45. The information related to various injury parameters is available in Format H along with other relevant Formats. The source of extracting and analyzing in formation on these injury parameters is tabulated below:

| S N | Parameter | Source of information-document/physical verification |
|---|---|---|
| 1. | Production | Cost Audit Report/ SAP/ Audited Financial Records / reporting to banks and other government organizations/ Excise records |
| 2. | Installed Capacity/ Capacity Utilization, | Cost Audit Report/ SAP/Audited Financial Records / reporting to banks, other government agencies like Pollution Control Board/ Excise Records |
| 3. | Sales | Cost Audit Report/ SAP/ Audited Financial Records / reporting to banks/ GST records |
| 4. | Market Share | Calculated from DI sales vs. total demand |
| 5. | Inventories | Cost Audit Report/ SAP/ Audited Financial Records / reporting to banks |
| 6. | Profits | Cost Audit Report/ SAP/ Audited Financial Records / reporting to banks |
| 7. | Return on Investments | Cost Audit Report/ SAP/ Audited Financial Records / reporting to banks |

| | | |
|---|---|---|
| 8. | Cash Flow | SAP/ Audited Financial Records |
| 9. | Factors affecting Domestic Prices | Various submissions available on record by various stakeholders and market intelligence |
| 10. | The Magnitude of the Margin of Dumping | Determined as per NEP and NV/CNV |
| 11. | Employment | Payroll record |
| 12. | Wages | SAP/ Audited Financial Records |
| 13. | Productivity Per Employee | Production quantity/ Number of employees |
| 14. | Productivity Per Day | Production quantity/ Number of days |
| 15. | Growth | Calculation on year to year basis in respect of each of the parameters |
| 16. | Ability to Raise Capital Invest-ments | Submissions as verified/ Audited Financial Records |

11.7.46. **Clubbing of parameters or separate analysis of each parameter:** analysis is undertaken separately for each parameter, while sometimes, the analysis may be undertaken by clubbing certain parameters. For example, parameters such as production, capacity utilization, domestic sales, market share, inventories, etc., could be examined either individually for each of these parameters, or in a combined manner for all these parameters. Whatever be the methodology adopted, the analysis should expressly show the application of the mind of the Investigator to each and every parameter. There should be specific commentary/analysis in respect of each of these parameters.

11.7.47. Even if the DI has considered some parameter as irrelevant, the same should still be examined. It is however possible to hold that some parameters have been considered irrelevant or indecisive.

11.7.48. It is not necessary that each and every parameter or majority of the parameter should show that the performance of the DI has been adversely impacted. It is clearly understood that neither one, nor more, of these parameters may give decisive guidance. One (or more) parameter(s) may sometimes be strong enough to outweigh the performance by the rest of the parameters. For example, in several investigations relating to products such as chemicals, petrochemicals, steel industry, and more particularly where production process is such that the production

of the product is continued activity as a compulsion and it is not possible for the DI to regulate the production, it is most often found that the volume parameters such as production, sale, capacity utilization do not show a declining trend despite dumping and the effect of imports is more pronounced on price parameters such as profits, cash flow, return on investment, etc.. What is relevant in this regard is the identification of parameters which show that the performance of the DI is adversely impacted by dumped imports.

**Material Retardation**

11.7.49. The material retardation is evaluated for a DI, which is not yet established and which has not yet performed for a reasonable period of time. These DIs are in nascent (just started) or embryonic stages(in process of starting). Therefore, it becomes difficult to assess or evaluate the impact of dumped imports on these industries. Hence, the analysis in such cases focuses on whether the imports are retarding the establishment of the DI, and for this reliance can be placed on project report of the company on the basis of which the plant was commissioned. In other words, in a case of material retardation, it has to be examined whether the newly established industry would be viable but for the alleged dumping. Material retardation of the establishment of the DI is examined in terms of the existence of the material injury or threat thereof. It mainly involves the examination of the following:

(i) the ability to produce a marketable product;
(ii) the product being qualitatively acceptable to purchasers; and
(iii) the ability to sell the product at a price that is competitive with fairly traded imports.

11.7.50. The analysis of above mentioned known factors and any other factor (such as the actual or potential production capability of an industry) as claimed by the DI in their application may be regarded while considering whether the establishment of a DI has been materially hindered. The claims of the DI should be supported by positive evidence to the effect that the industry has plans for the establishment at an advanced stage, and financial commitments had been entered into by the prospective producers. Further, Authority may do the monthly or quarterly analysis for evaluating the material retardation[10].

[10] Final Finding is anti-dumping investigation on imports of PVC flex film originating in or exported from China PR No. 14/04/2010-DGAD dated July 29, 2011;Final Finding is anti-dumping investigation on imports of Non-woven Fabric originating in or exported from Malaysia, Indonesia, Thailand, Saudi Arabia and China PR, F.No. 14/23/2015-DGAD dated September 2, 2017; Final Finding is anti-dumping investigation on imports of O-Acid originating in or exported from China PR, F.No. 14/31/2016-DGAD dated December 19, 2017.

**Causation of Injury (Causal Link Between Dumping and Injury)**

11.7.51. As per the Rules,it needs to be demonstrated that the injury has been caused to the DI producing like goods, and that injury is caused or likely to be caused by the alleged dumped imports. Sub-para (v) of the Annexure II (corresponding to Article 3.5 of the ADA) requires evidence to the effect that a causal link exists between the dumped imports and the material injury to the DI.

11.7.52. Therefore,the causal link analysis is not easy mainly due to lack of guidance in the legal provisions. In other words, determination of the causal relationship between the dumped imports and the injury to the DI has been left open-ended under the WTO provisions to a certain extent[11].

11.7.53. The demonstration of a causal relationship between the dumped imports and the injury to the DI should be based on an examination of all the relevant evidence before the Authority. The team should also examine any known factors other than the dumped imports, which at the same time are injuring the DI, and the injury caused by these other factors should not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices, competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the DI[12].

11.7.54. In conducting safeguards investigation,the law provides more guidance for the manner in which this analysis is to be conducted. The Panel and Appellate Body in *Argentina* – Footwear *(EC)* held that in the context of a causation analysis, there should be a relationship between the movements in the imports and the movements in the injury parameters. In other words, the increase in the imports

[11] The Appellate Body in *US – Hot rolled Steel* noted that the obligation under Article 3.5 of the AD Agreement requires the Authority to undertake a two-step approach – first, to examine all "known factors", other than the dumped imports which are causing injury to the DI; and second, the authority must ensure that the injury being caused by the other identified factors is not attributed to the dumped imports. See Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan,* (WTO Doc no. WTO/DS184/AB/R) adopted on 24 July 2001.

[12] Final Finding in sunset review of anti-dumping investigation concerning imports of Phenol originating in or exported from Japan and Thailand, F.N. 14/27/2009-DGAD dated July 1, 2016, wherein it was noted that the reason for the losses of DI was directly linked to its working capital losses and management issues and therefore negative performance of DI could not be linked to imports from the subject countries. On this basis, the Authority did not find any causal link between the allegedly dumped imports and the injury being suffered by the DI as a whole; In Final Finding in sunset review of anti-dumping investigation concerning imports of Acetone originating in or exported from Japan and Thailand, F.N. .15/29/2014 dated July 1, 2016, the Authority noted that while SI Group was operating almost at its full capacity during the entire injury investigation period but the production facility of HOCL was operational only for 119 days during the POI. Therefore, the Authority held that there is no significant causal link between the alleged dumped imports and the injury suffered by the DI as a whole.

should coincide with the decline in the relevant injury parameters. Although the nature of the analysis in a safeguards investigation would differ from an anti-dumping investigation,but guidance on the manner in which such an analysis may be undertaken could be from the examination in a safeguards investigation[13].

11.7.55. In view of above, causation may be examined by using a 'coincidence' analysis—where the volume and prices of the dumped imports and the injury factors are examined in order to assess whether a linkage exists between these events. The other factors that cannot be attributed to dumped imports should be examined and their effects should be excluded while determining causation. Information obtained from all stakeholders in the domestic market, e.g. The DI, importers, end-users, etc., is used to evaluate the causal effect of the dumped imports on DI.

11.7.56. The significance and weight to be assigned to various causal factors is a matter which is case specific and by the team in consultation with the Designated Authority, having regard to all the available information.

11.7.57. This causal link has to be seen in totality over the entire notified period, inclusive of the injury period and the period of investigation.

**Non-Attribution Analysis**

11.7.58. Article 3.5 of the ADA requires the establishment of a causal relationship between dumped imports and injury to the DI. This requires the investigating Authority to examine any known factors, other than the dumped imports, which at the same time are injuring the DI, and the injuries caused by these other factors must not be attributed to dumped imports.

11.7.59. It is possible that the DI is suffering injury due to several factors, other than the dumped imports, at the same time. The notion of attribution analysis requires the identification of factors, other than the dumped imports,which could be inducing the injury caused to the DI,and examination of these factors. The Authority must isolate and exclude any factors other than the dumped imports which may be contributing to the injury.

[13] Final finding in safeguards investigation concerning imports of cold rolled flat products of stainless steel of 400 series dated March 23, 2015, wherein it was held that based on an evaluation of the overall position of the DI, the factors such as abnormally high depreciation and finance charges were responsible for the losses being suffered by the DI. Therefore, the investigation was terminated based on the fact that the causation analysis in the particular investigation was absent.

11.7.60. It may be added that the injury can either be an existing material injury or a threat of material injury to a DI or a material retardation to the establishment of the DI. In order to conclude that the dumped imports have caused material injury to the DI, the investigation Authority must analyze through an objective examination of positive evidence:

(i) whether there exists a significant increase in dumped imports in absolute terms or relative to production or consumption in the importing member which by means of their volume, price or both effected in;

(ii) a significant price undercutting effected in a significant price depression or a price suppression of significant price increases which otherwise would have occurred in the market of importation for like products;

(iii) the impact of the subject imports on unrelated *domestic producers* of the like products as a whole, or those domestic producers whole collective output constitutes a major proportion of the total domestic production of those products by *inter alia* evaluating: all relevant economic factors and indices having a bearing on the state of the industry; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth and the ability to raise capital and investment.

11.7.61. It can be said that undertaking a non-attribution analyses is generally not direct and not very easy. Figures are not to be accepted at their face value and trends need to be interpreted correctly. The following factors could, include, but are not limited to:

(i) the volume and prices of imported like articles that are not dumped;

(ii) contractions in demand or changes in patterns of consumption;

(iii) restrictive trade practices of, and competition between, foreign and Indian producers of like articles;

(iv) developments in technology; and

(v) the export performance and productivity of the DI.

(vi) some other factors that may be relevant for examination include:

  (a) *force majeure* (Act of God) events (such as a natural disaster);

  (b) labour strike or acute shortage of labour;

(c) difficulties in the Indian economy and/or financial market in India;

(d) shortage of raw materials/inputs in India required for the production of the like article by the DI;

(e) Inter-se competition between domestic producers;

(f) change in the management leading to focus on other products;

(g) a sudden change in economic policies of the government;

(h) other operations of the DI that have affected/are affecting/likely to affect the DI, for instance, investment in anew facility;

(i) vulnerability to dumped imports may be confined to a specific region and Injury may be occurring in that region. In such cases, it is still possible to take account of such regional injury which is analysed to determine such injury to be material to the industry as a whole; and

(j) any adverse impact due to related party transactions that need to be segregated.

11.7.62. Information regarding the above factors is usually to be obtained from credible sources such as reliable newspaper articles, annual reports of the domestic producers, published industry intelligence reports/magazines, etc.

# DETERMINATION OF NET EXPORT PRICE

## LEGAL PROVISIONS

12.1. Under the Customs Tariff Act 1975, "Export Price" is defined in Section 9A(b) as under:

> *(b) "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);*

12.2. Annexure- I of the Rules, 1995 contains the principles governing the determination of normal value, export price and margin of dumping for each of the co-operating producer exporter, who have exported to India during the POI. The relevant Para 5 and 6 of Annexure- I are as below:

> *5. The designated authority, while arriving at a constructed export price, shall give due allowance for costs* including *duties and taxes, incurred between importation and resale and for profits.*
>
> *6. (i) While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible*

*the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability.*

*(ii) In the cases where export price is a constructed price, the comparison shall be made only after establishing the normal value at equivalent level of trade.*

*(iii) When the comparison under this para requires a conversion of currencies, such conversion should be made by using the rate of exchange on the date of sale, provided that when a sale on foreign currency on forward markets is directly linked to the export sale involved the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the exporters shall be given at least sixty days to have adjusted their export prices to reflect the sustained movements in exchange rates during the period of investigation.*

*(iv) Subject to the provisions governing comparison in this paragraph, the existence of margin of dumping during the investigation phase shall normally be established on the basis of comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to the prices of the individual export transactions if it is found that the pattern of export prices which differs significantly among different purchasers, regions or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of weighted average – to-weighted average or transaction –to-transaction comparison.*

**SIGNIFICANCE**

12.3. The determination of export price is a crucial step in anti-dumping investigations for calculation of individual dumping margins for a responding co-operative producer exporters. It is critical to ensure fair comparison by considering the export price and normal value at the same level of trade. It is the established

practice of the Authority, to compare the export price and normal value at ex-factory level.

**OPERATING PRACTICES**

12.4. The Act and the Rules on Trade Remedy Measures have not defined the term "exporter". In the context of investigations, it is generally understood to be the producer whose goods have finally been exported to India.

12.5. "Export Price" is the price at which the subject goods under investigation, are sold or agreed to be sold, for export to India. EP is generally based on the price to the first unaffiliated purchaser in India. As the comparison of EP and NV/CNV has to be done at the same level of trade, there is a requirement to calculate ex- factory net export price (NEP). Therefore, appropriate adjustments are required to be made in export price (CIF/FOB/FOR etc.) for determination of NEP.

**Pre-Initiation:**

12.6. An application seeking initiation of investigation should be accompanied with complete information in the prescribed formats duly signed and certified. This information forms the basis for computation of NEP for the purpose of initiation of investigation.

12.7. As per application proforma prescribed for DI and Trade Notice No. 15/2018 dated 22.11.2018, each application seeking initiation of anti-dumping investigations should inter-alia be accompanied with the following information/documents:

| S. No. | Documents / Information |
|---|---|
| 1 | Soft Copy of the application |
| 2 | Transaction wise DGCI&S import data along with soft copy |
| 3 | Computation of Ex-Factory Export Price |
| 4 | Evidences for adjustments done in export price |
| 5 | Basis or justification for adjustments in export price. |

12.8. The investigation team is required to prima facie confirm the adequacy and accuracy of information in terms of Rule 5 of AD Rules.

**Post-Initiation**

12.9. After notification of initiation of investigation, the producer exporters are required to submit the Questionnaire response along with the prescribed formats inside T.N. No. 05/2018 dated 28.2.2018 within the stipulated time, including following:

| S. No. | Document |
|---|---|
| 1 | Listing of transaction wise exports to India in the prescribed format in appendix-3A, 3B, 3C |
| 2 | Evidence for adjustments done in export price |
| 3 | Details of different channel of exports to India |
| 4 | Evidence that transactions with related party are at arm's length. |
| 5 | Sample sales invoices for period of investigation |

12.10. The filing of a complete Exporter Questionnaire Response (EQR) makes responding producer exporter to be considered as co-operative and eligible for individual dumping margin leading to individual duty margin.

12.11. The Producer Exporters, who have not exported to India during the period of investigation, are not to be considered for calculation of individual dumping margins as they are not eligible for individual duty rates, unless they are part of a single group and are related to parties / entities of that group, who have exported to India during the period of investigation.

12.12. Generally, one Export Price is determined for each co-operative producer exporter for the POI as whole. However, in some cases monthly or quarterly Export Prices may also need to be worked out especially in case of products with highly volatile market prices. Normal Value in such cases should also be determined month wise or quarter wise for working out more accurate dumping margins. The Rules do not prohibit even transaction to transaction workings of Normal Value and NEP resulting in transaction wise dumping margin if the case so warrants. However, for quantification of duties to be recommended as per Rules, the analysis done on transaction wise, weekly, monthly, quarterly or yearly basis should be converted into one weighted average dumping margin.

12.13. The determination of dumping margin should be made producer wise[1]. This requires determination of net export price for each of the channels of exports identified and then take a weighted average thereof, as follows:

[1] Earlier the practice was to give specific rate of anti-dumping duty to the combination of producer and exporter/ trader. This created challenges for co-operative producer exporter, wherein producer was getting restricted to the

(i) Exports directly to unrelated Indian importers;

(ii) Exports to a related Indian importer who in turn re-sells to unrelated Indian customers;

(iii) Exports through an unrelated exporter (in any country) to unrelated Indian importer;

(iv) Exports through a related exporter (in any country) to unrelated Indian importer;

(v) Any other channel of export during the POI by the respective producer.

12.14. As already mentioned above, if any entity has more than one channel of exports to India, then after calculation of above mentioned individual NEP, a weighted average NEP is to be worked out for that entity for comparison with the weighted average Normal Value of the respective producer.

12.15. The present method would cast a duty upon the producers to submit a complete response accounting for whole of the quantity of exports to India. In case the response is not 100% adequate due to any reason, the same has to be specifically explained in detail and the Authority has the discretion to take the final decision regarding accepting or rejecting the response based on the merit of each case.

12.16. The exports could also be invoiced through another party – related or unrelated. However, it will not alter the fact that the producer, who is in knowledge of the fact of exports of the goods, will continue to be treated as the exporter even if goods have been shipped from any country other than country of origin.

12.17. In the event of exports taking place through related intermediaries, it would be obligatory for each of these related intermediaries to submit information and cooperate in the investigations in order to get an individual dumping margin for the responding Producer. It should also not matter whether the intermediary is situated in the country of origin or any other third country. The producer exporter may be considered non-cooperative if there is non-cooperation by any of the related entity (Refer to Chapter 19 for Related party provisions) dealing in the subject goods.

channel of exporter and trader combination. This also resulted in some of the traders getting multiple rate of duties. As the combination of producer, exporter and trader is a commercial arrangement wherein the maximum onus is on the producer, the decision was taken to revise the practice.

12.18. If the producer exporter is exporting through its unrelated intermediaries, it would still be necessary for each of these intermediaries to cooperate during the investigations and submit the information called for by the Designated Authority. It does not matter whether the intermediary is situated in the country of origin, or any other third country. Whether the intermediary is involved in the physical movement of the goods or in financial transactions / documents, they have to submit information and co-operate in the investigation as explained in the following paragraphs.

12.19. If there is more than one related producer in a group in the country of origin, which are producing PUC, then one duty rate would be recommended for the entire group even if one or more producers in that group have not actually exported PUC to India during POI but have filed complete response.

12.20. It is mandatory for the responding producer to file a complete response[2] in respect of all its related entities namely producers, exporters, traders, importers who are involved in exports of PUC to India directly or indirectly for being considered co-operative and get an individual dumping margin. In case, exports are through un-related exporter/trader, the response from all unrelated entities is still required (with some relaxation as detailed in subsequent para). In case the information from unrelated entities is not complete, the response is liable to be rejected. However, if the response is accepted by the Authority (to be mentioned specifically in the Disclosure/Final Findings), following methodology is to be adopted for processing the response and working out the producer wise NEP (for exports through unrelated exporters/traders):

(i) The NEP with respect to co-operative producer/exporters shall be worked out for each channel of exports separately.

(ii) The export price with respect to share of non-cooperating exporter shall be constructed based on available information

(iii) Based on the actual net export price and the constructed export price(for the non-co-operative non-related exporter), an overall weighted average export price shall be computed to work out the overall NEP for the responding producer, which will then be used for computation of dumping margin;

(iv) In case the share of exports to India of unrelated exporters not participating in the investigation constitutes more than 30% of the total volume of

[2] Refer to para XII of Chapter 24 for WTO Jurisprudence.

exports to India by the respective Producer, then the responding producer may be considered non-cooperative and the entire response is liable to be rejected.

12.21. As a matter of general practice, an individual dumping margin is not granted to non-producer intermediaries/trader exporter even when they have filed an independent response.

12.22. The producer can export the subject good directly or through other exporter(s). In each of the scenarios, the adjustments required to be made in the export price, will be different. The exhaustive list of all possible adjustments is mentioned in the paragraph below and the team has to select items of adjustment based on actuals on case-to-case basis, after due verification.

12.23. In case the exports are through another exporter, then the team has two options for computation of ex factory export price:

12.23.1 Take the final export price of the exporter/trader to unrelated Indian customer and make all applicable adjustments as listed below (as per appendix 3A, 3B, 3C) and additionally also make adjustments on account of indirect SGA expenses and of the exporter/trader (whether the exporter/trader is related or unrelated) based on details given in Appendix 5&9 as well as profit/loss of the exporter/trader based on appendix 5 & 9 of the EQR pertaining to PUC only, for computation of ex-factory export price.

12.23.2 Alternatively, if it is established that the producer has exported through an unrelated exporter, then take the sale price of the subject goods from producer to first exporter and adjust for ex-factory expenses to arrive at NEP. In this case it should be verified that the unrelated exporter should have made the exports at profits. In case exporter has posted losses (as verified from appendix 5 & 9) then a reasonable profit has to be deducted for computation of ex-factory export price.

12.24. In a case where the Producer exports to India through a related trader, who is like an extended arm of the producer, then profit & indirect SGA expenses of the related trader should not be reduced while arriving at the NEP, provided that it can be demonstrated that the related trader is acting as a sales department for the producer i.e. if the producer is selling the product in export market solely through said trader. The logic behind this is that if producer would have set up a separate

sales department within its own producing company, then no such adjustment of profit and indirect SGA expenses would have been made.

12.25. **Adjustments for determination of NEP:** For arriving at ex works NEP, the starting price will either be the CIF (cost, insurance, and freight), C&F (cost & freight) or FOB (free on board) price, as the case may be to the first independent customer. The terms on which the subject goods are shipped or the amount which is received by the producer or producer exporter is to be verified. An exhaustive list of various adjustments which are to be made in EP for arriving at NEP (ex- factory net export price) are given below. All the elements may or may not be present in each case. Hence, adjustments will also be made after examining the actual facts pertaining to the subject goods for each of the export transaction:

(i) Ocean freight(in case of CIF/CFR);

(ii) Overseas insurance(in case of CIF)

(iii) Handling charges in the country of origin/export

(iv) Inland freight in the country of origin/export

(v) Differential packing cost, if any

(vi) Port expenses in the country of origin/export

(vii) Inland handling charges in the country of origin/export

(viii) Inland insurance in the country of origin/export

(ix) Freight & forwarding charges in the country of origin/export

(x) Port charges

(xi) Credit costs - actual credit period should be considered from the date of invoice to the customer to the actual date of receipt of payment

(xii) Bank charges

(xiii) Commission paid to the agents/distributors/indenting agents for the subject goods

(xiv) Export incentives

(xv) Year-end rebates/ discounts

(xvi) Warranty and guarantee expenses, if any

(xvii) Export taxes, duties or other charges imposed by the exporting country on the exportation of the subject goods provided delivery terms are duty paid.

(xviii) Any selling expenses that the seller pays on behalf of the purchaser.

(xix) Any other selling expenses not identified above.

(xx) SGA Expenses of Trader/ Shipper(for PUC Only)

(xxi) Direct and indirect expenses incurred in the domestic market of the exporting country.

(xxii) Duty Drawback - Duty drawback refund received on inputs used for manufacturing the export products should be added back to arrive at the NEP after verifying from documents and correlating to the Product under consideration.

(xxiii) Applicable VAT (only Non refundable amount to be deducted)

(xxiv) Profit of Trader/ Shipper (for PUC Only)

(xxv) Any other expense (to be verified specifically)

12.26. The Net Export Price should be computed PCN wise, wherever PCNs have been prescribed. All direct expenses, wherever directly identified with any PCN, shall be charged to the respective PCN only. All common expenses like ocean freight etc. shall be allocated/apportioned on reasonable basis in all such cases.

12.27. **Certification of Documents** All formats prescribed for exporting entities requiring certification must be signed by a practising Chartered/Public Accountant having a certificate of practice in the Exporting Country from a professional body like ICAI in India. A Chartered Accountant/Cost Accountant having certificate of practice in India shall not be competent to sign the documents in foreign country based on statute, accounting standards and regulations etc. as applicable in the exporting country. In case the documents are not properly certified, the same are liable to be rejected.

**RELATED PRODUCERS/EXPORTERS/ AFFILIATED PARTIES**

**All related producers exporting to India during the POI:**

12.28. In the event both or all the producers have exported the subject goods to India during the period of investigation, the determination can be as follows:

(i) Normal Value: To be calculated for each producer and then a single Weighted Average to be computed for all the producers of that group on the basis of volume of domestic sales in the exporting country.

(ii) Net Export Price: To be calculated for each producer and then a Weighted Average to be computed for all the producers of that group, on the basis of volume of exports to India.

(iii) Dumping Margin: To be calculated for that group

**Only One or more Producer exporting to India during the POI:**

12.29. If one or more of the related producers have exported and other related or group producers have not exported to India during the POI, the determination can be made as follows:

(i) Normal Value: To be calculated for each producer exporting to India and then determining one weighted average of all the producers of the group.

(ii) Export Price: To be calculated only for the exporting producers to India and then determining one weighted average for the group

(iii) Dumping margin: A single dumping margin to be calculated by comparing such weighted average normal value and the weighted average export price. The dumping margin so arrived at shall be applicable to the entire group of all related producers.

(iv) Injury margin: A single injury margin to be calculated by taking the weighted average landed value of the producers exporting to India. The injury margin so arrived at shall be applicable to the entire group of related producers.

(v) The duty shall be the same for all the producers of the group /related producers.

**Export Price when Sales are made to a Related Importer:**

12.30. If the sales are made to a related importer in India, and if the goods are subsequently resold in India by the importer (in the same condition as imported) to an independent buyer, the net export price shall be the selling price of those goods to the independent buyer after making appropriate additional adjustments. Export price will include following cost/price elements incurred on ex-factory basis and hence have to be adjusted:

(i) Any customs duty (including CVD/GST, VAT, cess, etc.);

(ii) Any costs arising after importation like costs incurred by the importer such as transportation (any entry tax), handling, storage and overheads;

(iii) Any warehousing charges incurred by the related importer;

(iv) While making adjustments for the costs incurred for the sale of the goods, the Authority may deduct only those expenses / costs which are normally incurred by the importers;

(v) The profit, if any, on the sale by the related importer;

(vi) Where there is insufficient information to enable an export price to be determined; the Authority may resort to the principles of best information available.

**EXPORT PRICE FOR RESIDUARY CATEGORY OR NON-COOPERATING EXPORTERS:**

12.31. The Anti-Dumping Rules do not mandate any particular methodology for the net export price calculations for the residual category. The practice in the Directorate, separately for each of the subject countries, is as follows:

(i) In case there are co-operative exporter, the export price for residual category is determined as the NEP which is the lowest of the co-operative exporters.

(ii) In case no exporter has been declared co-operative or there is no response, the NEP is determined from DGCI&S data on weighted average basis.

**DISCLOSURE OF NEP:**

12.32. Rule 16 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 provides that the Designated Authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision. Since the NEP workings are one of the essential facts based on data furnished by the respective producer, the proposed computed NEP should be disclosed to the respective producer exporter along with workings. This provides them an opportunity to submit their comments/views on the adjustments or the facts considered relevant by the Authority in determination of NEP. Detailed procedure for disclosure is explained in Chapter 16 of this manual. A broad format for disclosure of NEP is as under:

| Particulars | Direct Exports | Through unrelated exporter/Trader | Through related exporter/Trader |
|---|---|---|---|
| | USD per MT | USD per MT | USD per MT |
| Quantity | | | |

| Particulars | Direct Exports | Through unrelated exporter/Trader | Through related exporter/Trader |
|---|---|---|---|
| Invoice price to Indian Customer (CIF) | | | |
| Less: Adjustments | | | |
| Inland Freight | | | |
| Handling Charges | | | |
| Ocean Freight | | | |
| Credit Expense | | | |
| Bank Charge | | | |
| Commission | | | |
| Any other Direct SGA of Trader (related & unrelated) | | | |
| Indirect SGA of Unrelated Trader | | | |
| Profit of Unrelated Trader | | | |
| Duty Draw Back | | | |
| Total Adjustments | | | |
| Ex-factory Export Price | | | |
| Weighted Avg. NEP | | | |

Note: Sample Format may be changed as per actual requirement.

# DETERMINATION OF NORMAL VALUE

## LEGAL PROVISIONS

13.1. Section 9A (1) (c) of the Customs Tariff Act, 1975:

*"(c) "normal value", in relation to an article, means –*

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

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

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

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

*Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin*[1].

13.2. Annexure I of the AD Rules provides for detailed methodology for determination of normal value:

*"ANNEXURE I*

*Principles governing the determination of normal value, export price and margin of dumping*

*The designated authority while determining the normal value, export price and margin of dumping shall take into account inter alia, the following principles:*

1. *The elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or producer under investigation, provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records reasonably reflect the cost associated with production and sale of the article under consideration.*

2. *Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price. The designated authority may disregard these sales, in determining normal value, provided it has determined that:*

   (i) *such sales are made within a reasonable period of time (not less than six months) in substantial quantities, i.e. when the weighted average selling price of the article is below the weighted average per unit costs or when the volume of the sales below per unit costs represents not less than twenty per*

[1] Please refer to Para XIII of Chapter 24 for WTO Jurisprudence.

*cent of the volume sold in transactions under consideration, and*

(ii) such sales are at prices which do not provide for the recovery of all costs within a reasonable period of time. The said prices will be considered to provide for recovery of costs within a reasonable period of time if they are above weighted average per unit costs for the period of investigation, even though they might have been below per unit costs at the time of sale.

3. (i) The said authority in the course of investigation shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer provided that such allocation has been historically utilized by the exporter or producer, in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditure and other development costs.

*(ii) unless already reflected in allocation of costs referred to in clause (1) and sub-clause (i) above, the designated authority, will also make appropriate adjustments for those non-recurring items of cost which benefits further and/or current production, or for circumstances in which costs during the period of investigation are affected by startup operation.*

*4. The amounts for administrative, selling and general costs and for profits as referred to in sub-section (1) of section 9A of the Act, shall be based on actual data pertaining to production and sales in the ordinary course of trade, of the like article by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:*

*(i) the actual amounts incurred and realised by the exporter or producer in question, in respect of production and sales in the domestic market of the country of origin of the same general category of article;*

*(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to*

*investigation in respect of production and sales of the like article in the domestic market of the country of origin; or*

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by the exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

5. *The designated authority, while arriving at a constructed export price, shall give due allowance for costs including duties and taxes, incurred between importation and resale and for profits.*

6. (i) *While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability*[2].

(ii) In the cases where export price is a constructed price, the comparison shall be made only after establishing the normal value at equivalent level of trade.

*(iii) When the comparison under this para requires a conversion of currencies, such conversion should be made by using the rate of exchange on the date of sale, provided that when a sale on foreign currency on forward markets is directly linked to the export sale involved the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the exporters shall be given at least sixty days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.*

*(iv) Subject to the provisions governing comparison in this paragraph, the existence of margin of dumping during the*

[2] Please refer to Para XIII of Chapter 24 for WTO Jurisprudence.

*investigation phase shall normally be established on the basis of a comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if it is found that a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.*

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

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

*(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy*

*country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country.*

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

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

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

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

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

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

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

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

**SIGNIFICANCE**

13.3. The normal value is the domestic sales price of the like article of the producer exporter in the home market of the exporting country. An anti-dumping investigation, requires assessment of dumping and injury besides many other parameters. The determination of dumping margin is contingent on determination of ex-factory Normal Value (selling price of the participating producer exporter in its home country market) which is then compared with the export price (selling price of that participating producer exporter to India).

13.4. In terms of Section 9A(1)(c)(i) of the Act,the Authority determines the normal value on the basis of domestic sales of each cooperative producer exporter as declared in the EQR.

13.5. The determination of normal value is not possible on account of non-acceptance of normal value due to: (i) no sales of the like article in the *ordinary course of trade*; or *(ii) particular market situation or, (iii) low volume of the sales,* in the domestic market of the exporting country or territory. In such a situation, under Section 9A(1)(c)(ii)the normal value should be determined as follows:

(i) Comparable representative appropriate third country export price; or
(ii) Cost of production of the said article in the country of origin along with reasonable SGA and profits.

**OPERATING PRACTICES**

13.6. Annexure- I of the Rules provide the principles governing the determination of normal value, export price and margin of dumping which is required to be determined for each of the responding and co-operative producer exporter who have exported to India during the POI.

13.7. The consideration of normal value depends, in large part, on the availability of a "comparable price in the ordinary course of trade"[3].However, this requires application of ordinary course of trade test. To apply the test of ordinary course of trade, the determination of Cost of Production is essential. This test is normally called 80: 20 test, the details of which are mentioned in subsequent paragraphs.

13.8. The normal value is required for initiation of investigation, which is based on the information provided in the application by the DI. However, subsequently after initiation of investigation, the normal value is determined on the basis of the responses of the co-operating producer exporter from the subject country(ies) received during the course of investigation.

**Pre-Initiation**

13.9. A petition seeking initiation of investigation should be accompanied with complete information in the prescribed formats duly signed and certified. This information forms the basis for computation of normal value for the purpose of initiation of investigation.

13.10. As per application proforma prescribed for DI and Trade Notice 15/2018 dated 22.11.2018, each application seeking initiation of anti-dumping investigations should *inter-alia* be accompanied with the following information/documents:

| S. No. | Documents / Information |
|---|---|
| 1 | Soft Copy of the application |
| 2 | Direct evidence of domestic selling price in the exporting country, if available |
| 3 | In case direct evidence is not available, reasonable other evidence of the prevailing selling price in the exporting country |
| 4 | In case of non-availability of the domestic selling price in the country of export, then Constructed Normal Value be provided along with the methodology for the calculations |
| 5 | The detailed reasons in case of the claim that any of the exporting country is alleged to be operating in non-market conditions |

13.11. The investigation team is required to prima facie confirm the adequacy and accuracy of information in terms of Rule 5 of the AD Rules.

[3] Please refer to Para XIII of chapter 24 for WTO Jurisprudence.

**Post-Initiation:**

13.12. The determination of normal value is solely based on the fact of responding producer exporter submitting complete response and satisfying the eligibility tests.

13.13. After notification of initiation of investigation, the producer exporters are required to submit the EQ Ralong with the certified formats as notified vide Trade Notice No. 05/2018 dated 28.02.2018 within the stipulated time. The responding producers/exporters are *inter-alia* required to submit the following information/ documents for workings of the normal value:

| S. No. | Document/Information |
|---|---|
| 1 | Listing of domestic sales transactions for the PUC along with adjustments – Appendix 4A, 4B and 4C |
| 2 | Listing of exports to India for the PUC along with adjustments and supporting evidences/ justification - Appendix-3A, 3B and 3C |
| 3 | In case of PCNs, the sale listing should be as per PCNs. |
| 4 | Details of complete sales of the entity as per Appendix 4A, 4B, 4C |
| 5 | Details of all channels of sales |
| 6 | Detailed listing of sales transactions of PUC with related party along with evidence of arm's length pricing – Appendix 11. |
| 7 | Sample sales invoices for POI |
| 8 | Detailed information for computation of COP |

13.14. Generally, one normal value is determined for each of the co-operative producer exporter for the POI as whole. However, in some cases monthly or quarterly normal value may also be determined especially in case of volatile market for the product. Normal Value in such cases should be determined month wise or quarter wise based on the relevant information submitted by the co-operative producer exporter for computation of accurate dumping margins. However, for quantification of duties to be recommended as per the Rules, the result of analysis done on transaction wise, weekly, monthly, quarterly or yearly should be converted into one weighted average dumping margin.

**NORMAL VALUE DETERMINATION**

13.15. The first step in normal value determination is examination of the questionnaire response filed by the producers and exporters. If the response is

complete and accepted by the Authority then the mandatory eligibility tests are applied as detailed below:

**Eligibility Tests**

13.15.1 There are three basic tests to be applied for qualification of a response to be accepted for determination of normal value:

(i) Low Volume of Sales or Sufficiency Test (5% test);

(ii) Sales in the Ordinary Course of Trade (80-20 test); and

(iii) Particular Market Situation.

**Low Volume of Sales or Sufficiency Test**

13.15.2 The test of low volume of sales, is conducted by calculating the total sales made by the exporter in question to India during the POI[4].

13.15.3 For the purpose of assessing "low volume of sales", the team is required to consider the total volume of domestic sales by the relevant producer exporter and if these domestic sales constitute 5% or more, of the sales to India in volume terms for all the PCNs/grades/models taken together, then the same can be accepted for the purpose of normal value determination. If the overall PUC sales in domestic market are 5% or more of the total exports to India, it is assumed to have passed the test.

13.15.4 In case there is low volume or insufficient (less than 5%) sales volume, the eligibility test is "failed" and the Authority would be constrained to determine the normal value based on comparable representative appropriate third country export price or on cost to make and sell and reasonable profits. In such a case, the principles discussed under the heading of Constructed Normal Value must be considered.

**Sales in the Ordinary Course of Trade**

13.15.5 Once sufficiency test is passed, the team should carry out OCT test. The subject goods or like articles are considered to be sold in ordinary course of trade

[4] ADA states that, "*sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value, if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.*"

if they are sold at a price which is not less than the cost of those goods such that costs are recoverable within a reasonable period.

(i) For assessing whether transactions are made in the "ordinary course of trade", the following is to be examined for determination whether the sales are made at a loss:

  (a) Determination of the domestic cost to make and sell the subject goods (see subsequent paragraphs for determination of cost to make and sell (COP))

  (b) Comparison of COP with the transaction wise domestic sales to determine the volume of sales at loss,

(ii) Application of Ordinary Course of Trade Test (OCT Test): the steps mentioned below are to be followed for application of OCT test:

  (a) The basic documents for this test are Appendices 4A, 4B and 4C in producer exporter's QR pertaining to the Domestic Sales in the Exporting Country and the COP of the producer exporter.

  (b) All the workings should be done in the Excel Sheet and preserved for records.

  (c) At the first instant, the team should compare the transaction wise per unit selling price (SP) with per unit COP of the subject goods for the POI.

  (d) If all the sales transactions are in profit or the profit making transactions are more than 80% of the total volume sold in the domestic market, then all the transactions are considered for determination of Normal Value by computing a per unit weighted average of all the domestic sales.

  (e) If the volume of loss making transactions in 20% or more of the total volumes old in the domestic market, then the team should discard all the loss-making transactions from the sales listing given in Appendix-4A, 4B and 4C leading to determination of the normal value.

(iii) In those cases where PCNs have been notified, 80:20 test is to be applied again at PCN level.

(iv) As a matter of practice, all those sales which are not in the ordinary course of trade for reasons other than price should also be removed even before carrying out the OCT test.

(v) The team should assess the OCT keeping both figures – unit SP and unit COP of the subject goods,at the same level of trade. This means the comparison should at ex-factory to ex-factory cost or total cost to total selling price.

(vi) Sales at a loss is not the only factor for deciding whether sales are in the ordinary course of trade or not. There may be sales transactions which are not in the ordinary course of trade on account of factors such as:

(a) sales to affiliated parties that are not at arm's length;

(b) sales where there is any consideration payable for or in respect of the goods other than price; or

(c) sales where the price is influenced by other than commercial relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or

(d) sales where there is a direct or indirect compensatory arrangement whereby some part of the consideration shall be reimbursed or adjusted; or

(e) sales where the merchandise is custom-produced according to unusual product specifications;

(f) sales where the merchandise is sold at aberrational prices; or

(g) sales where the merchandise is sold pursuant to unusual terms of sale.

(h) Sale price is artificially low.

**Particular Market Situation**

13.15.6 The term "particular market situation" as used in Rule 9A(1)(c)(ii) has not been defined or explained in the Act or in the Rules. Therefore, the term should be understood with reference to the given market situation only and not any other factor. Such market situation can only be considered which are unique and do not permit proper comparison. There could be conditions in the market which render sales in that market not suitable for use in determining prices such a government control over the prices, different price pattern, etc.

**Normal Value for Cooperative Producer Exporter**

13.15.7 Once the eligibility tests have been passed, the normal value of the cooperative producer exporters may be determined based on the eligible domestic sales transactions.

13.15.8 The invoice prices are duly adjusted to arrive at ex-factory works price. The producer exporters may claim adjustments relevant for fair comparison. The onus of claiming and proving the validity of the additional claims of adjustments lies with the producer exporter making such a claim.

13.15.9 In a case where Producer sells through a related trader to Unrelated Customer, then the price paid by the Unrelated Customer should be considered as selling price after due adjustments for SG&A and profits of the Trader to arrive at the ex-factory price.

13.15.10 In case the producer(s) is a part of a group separate normal value for each producer is to be determined and a weighted average of NV for the entire group is then determined. There can be several scenarios as detailed below:

(i) In a case where all goods are being sold through a group entity, the normal value shall be based on sale price to un-related customer by such related trader.

(ii) If a producer(s) in the group sell directly in the domestic market and also exports directly as well as sells through a related trader(group entity), in such a case, the normal value shall be determined based on his direct domestic sales to unrelated parties (as given in Appendix 4A) and also domestic sales to unrelated parties by the related trader (Appendix 4C read with Appendix 4B). The sales are to be duly adjusted for profits & direct & indirect SG&A expenses as per the evidence provided and verified.

(iii) In a case where a Group of Producers/producer exporter sells in the domestic market through a related trader/group entity, who is like an extended arm of the producer, then profit & indirect SGA expenses of the related trader should not be reduced while arriving at the normal value provided it can be demonstrated that the related trader is acting as a sales department for the producer i.e. if producer is selling the product in domestic market solely through said trader and the said trader also deals solely with the products of the group entity. The logic behind this is that if producer would have set

up a separate export sales department within its own producing company, then no such adjustment of profit and indirect SGA expenses would have been made.

13.15.11 An exhaustive listof various adjustments which are to be made in Normal Value for arriving at ex- factory selling price is mentioned as below. All the elements may or may not be present in each case. Hence, adjustments will also be made after examining the actual facts pertaining to the subject goods for each transaction. The various kinds of adjustments are:

(i) Any and all figures correlating to the indirect taxes and duties, such as sales tax, turnover tax, service tax, etc.;

(ii) Level of Trade Adjustments;

(iii) Credit Cost;

(iv) Bank Charges

(v) Quantity Discounts,

(vi) Other Discounts and Rebates;

(vii) Inland freight

(viii) Insurance charges

(ix) charges directly associated with movement of the goods to the purchaser

(x) logistics and handling charges ,

(xi) documentation fees

(xii) Packing Charges;

(xiii) Commissions;

(xiv) Warehousing expenses;

(xv) Royalties; and

(xvi) Advertising and Sales Promotion expenses.

13.15.12 In addition to the foregoing, there may be other adjustments claimed on account of any other factor that may be allowed if it affects the price comparability. One of the prerequisites for allowing such an adjustment is that the difference should be quantifiable.

13.15.13 Appendix 2 indicates the details of purchase and sale of PUC (traded goods). These details should not be used for normal value determination as these PUC are not manufactured by the said producer exporter and the cost to make and sell will not cover these quantities. Traded goods exported by any producer are also required to be disclosed in Appendix 3A, 3B and 3C.

**COP for Cooperative Producer Exporter**

13.15.14 COP is determined for domestic sales of PUC by each of the co-operative producers in the country of export. If a company has domestic sales as well as export sales and the cost is different in both kinds of sales, it may be preferable to allocate costs to domestic sales of PUC and export sales of PUC separately. Income from the export sales shall not be considered for COP workings.

13.15.15 COP should reasonably reflect the costs of production associated with the like articles appearing in the books of account maintained by the producer / exporter

13.15.16 COP has to be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.

13.15.17 The team should consider all available evidence on the consistency and reasonability of allocation of costs, particularly in relation to R&D Costs, amortisation and depreciation and allowances for capital expenditures. The COP also includes indirect selling, general and administrative expenses. No profit margin is added in costs.

13.15.18 COP is worked out for domestic sales during POI and no optimization is generally done. However, necessary adjustments may be required in case of extraordinary situations.

13.15.19 The aim of the determination of COP is not to be a reflection of an "ideal cost" or "suitable" cost. Rather, the COP should be such that it reflects the actual cost of production for a specific producer exporter during POI. The cost cannot be increased to notionally compensate for the subsidies provided by the exporting country;

13.15.20 Where transactions with related parties have been reported with regard to consumption of inputs/utilities/services etc., the team must examine if

such transactions are carried out at arms-length. Where it is determined that the transactions are not at arms-length, the same may need to be adjusted to ensure that they reflect market values. It may be clarified that the related party transactions of both types; namely purchase and sale are to be reflected in Appendix 11. Sales of by-products, scrap, PUC etc. may also be relevant for the investigations;

13.15.21 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;

13.15.22 Cost of procurement of traded goods, if any must be compared with the cost of self-manufactured products. In case of variations, reasons must be looked into for such variations;

13.15.23 In case of multiple product companies, the expenses to the extent identified to each of the products are to be directly allocated to the respective product cost;

13.15.24 Common expenses or overheads, which are not directly related to any specific product are to be apportioned on a reasonable or scientific basis (see para below);

13.15.25 The team will collect a copy of the audited accounts including balance sheet etc. along with information as indicated in point 7 and 8 of the Part-IV of Trade Notice 05/2018 dated 28th February 2018 and confirm that the figures of COP are broadly in conformity with the Records;

13.15.26 All certifications, wherever required, must be done by the practicing accountant of the subject country, who is having the certificate of practice in that country and is conversant with accounting laws, rules and standards applicable in that country;

13.15.27 The cost of Raw Materials, Packing Materials and Utilities etc. as indicated in Appendix 6 shows the total quantity and value of each major raw material, packing material, utilities consumed in the production of PUC. It also indicates per unit consumption of all major raw materials/packing materials/utilities during the period along with weighted average rates of consumption during POI and the previous accounting period. The major points to be noted here are:

(i) Opening and Closing Stock of raw materials ideally should also include the quantity and value of work-in-progress stock lying on shop floor. However, this information is sometimes not available with the producer exporter

especially when POI is different from the normal financial/ accounting year of the company. Therefore, there may be no alternative but to ignore the same based on assumptions that (i) quantity/amount involved may not be high; or (ii) there may not be substantial difference between opening stock and closing stock lying at production floor;

(ii) The total value of actual consumption of raw material and utilities for PUC during POI and previous year should generally reconcile with the total raw material/ utility consumption in Appendix-7/Appendix-8 for PUC. The corresponding figures should reconcile with Appendix-5 also, in case, these costs are separately shown in Appendix-5;

(iii) The actual year wise per unit consumption of raw materials/inputs during POI be compared with the previous year. Any wide variation in figures must be examined;

(iv) Purchase rates of related party procurements should be confirmed based on arm's length pricing. Detailed data (for determining price base) and supporting documents should be collected along with rates of similar products procured from non-related parties. The comments of the Statutory Auditors and requirements of Accounting Standard should be seen from the Audited Annual Accounts regarding the arm's length pricing;

(v) Records of relevant related companies/parties may also be seen to confirm that the purchase price of items purchased from such related parties during POI and during the injury period is comparable to the corresponding sale price charged by the said Related Parties from the non-related customers during the said period. In the case of utilities, the sale price is generally published and is reflected on the web site also. The comments of the Statutory Auditors are to be seen from the Audited Annual Accounts regarding the arm's length pricing of the related party transactions, which are furnished by the applicant in Appendix-11;

(vi) Similarly, if the inputs are captively produced as well as purchased from non-related parties, the rates must be compared to arrive at the reasonability of the prices charged for captive consumption;

(vii) Appendix-6 is also required to be verified from the source documents maintained by the producer exporter. Some of the purchase invoices of various raw materials/utilities are also required to be collected and compared

with the annual weighted average price reflected in Appendix-6 to ensure that the weighted average price does not vary widely from the purchase price as per sample invoice. If it varies widely, reasons of such variations may be ascertained;

(viii) Sometimes, the procurement rates vary widely from day to day or month to month. The monthly consumption rate may need to be worked out in such a case with scope for monthly/quarterly COP;

(ix) Allocation and Apportionment of expenses as indicated in Appendix-7 is one of the most critical tasks for costing. The same methodology needs to be applied in case of Appendix-5 also. There is one format for one PUC for the entire company in any investigation. Different units are reflected by way of creating multiple columns in the same format. In other words, if a company has three units manufacturing the PUC, separate column shall be created in this Format for each such entity. This facilitates separate COP for each of the units based on its own efficiency and performance. The expense heads are indicative and can be changed/modified based on the uniqueness of any investigations. It may be added that separate columns need to be added for each major utility and captively consumed product to ensure verification and availability of complete details. This also ensures that the pricing of all inputs is at arm's length pricing. The following are the major points to be seen:

(a) The revenue and expenditure of the company as a whole as per audited accounts/certified records is reconciled with expenses for the company as a whole. The expenses are then allocated/apportioned to various plants producing PUC, common utilities and non-PUC etc. There will preferably be a separate column for each major common utility. Major captive inputs/utilities should have separate columns to help verification of their costs. These common utilities and captive consumptions are then apportioned to PUC/Non-PUC through secondary allocation. The basis of allocation should be as direct as possible, and a reasonable one, which is consistently followed by the company;

(b) The basis of allocation adopted for allocation or apportionment of common expenses or joint expenses is very critical for the COP

computations. The basis of allocation should be as direct as possible and a reasonable one;

(c) The basis of allocation adopted for allocation or apportionment of common expenses or joint expenses should be as direct as possible and a reasonable one;

(d) If more than one products are coming out of any manufacturing process, where costs can't be identified, it may be more prudent to allocate costs on the basis of:

- production value (sales value of the production) basis;
- any other reasonable basis. For example, if all the products emerging out of any such process have almost similar volume and value, production quantity method could also be adopted;

(e) If direct costs constitute a significant portion of overall costs, the common expenses/overheads not linked to any specific product can also be allocated in the ratio of product wise direct costs;

(f) Expenses in the nature of Selling Expenses should preferably be allocated on the basis of turnover of each product of the company;

(g) In case the Books of Accounts of the producer reflects interest free loans, due adjustments need to be made in such cases to reflect the fair cost;

(h) If the entity has done some trading activity or job work during POI, a proportionate amount of overheads or share of other common expenses must be allocated to this activity. Similarly, if the corporate office deals with all organizations within a group, reasonable expenses must be allocated to all the constituents of the group including income/investments in group companies. The reasonability of the basis adopted for allocation must be verified by the investigation team;

(i) Total costs under respective heads for Allocation of Selling, General and Administration Overheads as indicated in Appendix-9 should

reconcile with other Appendixes also like Appendix-5, Appendix-7 and Appendix-8;

(j) Performance Parameters of Co-operative producer as indicated in Appendix-1 indicate the performance parameters of the respective producer exporter for PUC only. The information furnished in this Format forms the basis for analysis. It is the duty of the investigation team to ensure that all the information is as per the audited/certified records of the company;

(k) PCN wise summarized statement of expenses is indicated in Appendix-10. This information is furnished with respect to POI only for PCN wise production quantity, sales quantity, total raw material cost, the total cost of utilities, total direct labor cost, other expenses, and total cost. The team should look into the basis of cost allocation to different PCNs along with confirmation as to whether there is different bill of materials for each PCN or not?

(l) Sometimes, it is seen that the exports to India are in bulk quantities, whereas domestic sales are sold in small packing. The COP for bulk and retail sale is generally worked out separately, since packing cost can be a significant component of cost. Export quantities (not sold domestically) are generally not considered for COP workings;

(m) In case there are more than one entity under any group producing the PUC which may be sold directly or indirectly, in such a case COP needs to be determined for each of the producing entity separately. This COP is to be used for applying 80/20 test for respective entity individually.

**NV ON THE BASIS OF APPROPRIATE THIRD COUNTRY EP**

13.15.28 For application of the option of selection of appropriate third country in terms of section 9A(1)(c)(ii)(a) of the Act, a suitable surrogate country may be selected to the extent that data is available and considered reliable. However, it has inherent complexities with respect to selection of an "appropriate third country" for comparison. If this method is relied upon, efforts should be made to ensure that the country so selected is comparable in terms of volume, pricing, status of development, etc.

**NORMAL VALUE FOR NON-MARKET ECONOMY PRODUCERS / EXPORTERS**

13.16. Annexure I of the Rules provides guidance for determination of the normal value with respect to producers and exporters from non-market economy countries as well.

13.17. The relevant part of the Rules, Annexure I is reproduced below:

> *"7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner keeping in view the level of development of the country concerned and the product in question] and due account shall be taken of any reliable information made available at the time of the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.*
>
> *8. (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph (3).*
>
> *(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country.*
>
> *Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that*

*such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).*

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

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

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

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

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

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

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

13.18. In the case of producers/exporters from countries considered to be non-market economy, the said producer exporter may claim that it functions under market conditions. For establishing the same, the producer / exporter has to file a separate supplementary Questionnaire Response seeking Market Economy Treatment (MET). The MET Response has to be assessed and if satisfied, the data can be accepted for determination of the Normal Value for that producer / exporter. However, where the response is not satisfactory with respect to the MET claims of the producer / exporter, the data of the said party may be discarded for NV determination.

13.18.1 The Authority may follow one of three methodologies prescribed under Rule 7 for determination of the normal value:

(i) On the basis of the price or constructed value in a market economy third country;

(ii) On the basis of the price from such a third country to other countries, including India;

(iii) Where the options listed above are not feasible, on the basis of "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.

13.18.2 For application of first and second option mentioned above, a suitable surrogate country may be selected to the extent the data is available and considered reliable. However, it has inherent complexities with respect to selection of an "appropriate third country" for comparison. If this method is relied upon, efforts should be made to ensure that the country so selected is comparable in terms of volume, pricing, status of development, etc.

13.18.3 For application of the third option mentioned above, i.e., "any other reasonable basis", the team should rely on the data of the DI for constructing the normal value as suitable, including certain adjustments pertaining to the raw material prices by taking the international raw material prices into consideration and the inclusion of 5% profit, as considered practical. Where more than one Indian domestic producers have submitted data, the constructed normal value, as a matter of practice, should be based on the data of the most efficient domestic

producer (based on cost of production excluding returns) for calculation of cost of production.

**CONSTRUCTED NORMAL VALUE (CNV)**

13.19. Where the NV cannot be determined on the basis of QR of the co-operative producer exporter, then the Authority has to resort to CNV as discussed below:

13.19.1 The Authority may follow the methodology given under Section 9A(1)(c)(ii)(b) in which the cost of production, along with reasonable additions for administrative, selling and general costs and for profits for construction of NV. The construction of COP and SG&A is done on best available information at the disposal of the Authority.

13.19.2 In cases, where there is no response from any producer or exporter is filed, then normal value has to be calculated on the basis of the best information available. The key elements for Constructing Normal Value are[5]:

(i) DI's cost of production of the like articles;

(ii) Selling, general and administrative costs that would have been incurred had the goods sold in the domestic market of the exporting country; and

(iii) An amount for profit that the exporter would have earned had the goods sold in the domestic market.

13.19.3 In the cases where the response is incomplete, or the responding producer is declared non co-operative or operating under non market conditions, then CNV is computed with norms of the DI or the norms of most efficient domestic producer. The various elements and steps for computation are:

(i) Consumption norms of the most efficient applicant Indian domestic producer are considered;

(ii) International prices of raw material are obtained from the World Trade Atlas or from other authentic sources of international repute, preferably published by the Government Authority of the exporting country. The raw materials prices could also be adopted from the records of the DI, if they are using imported raw materials, but adjustments with regard to freight,

[5] Please refer to Para XIII of Chapter 24 for WTO Jurisprudence.

custom duty and other related expenses must be made to arrive at the cost of said raw material in the country of export;

(iii) Conversion cost is taken from the most efficient producer in terms of weighted average cost excluding profits;

(iv) A profit at the rate of 5% of the cost of production is also added as normative return;

(v) Another adjustment, which may be considered is the cost of packing, to arrive at same level as is sold by the producer exporter in their domestic market and export market;

(vi) In case exported product are at 50% concentration/strength/potency, the cost of production of the DI needs to be adjusted to be made comparable with the goods of the producer exporter. The same will be true if the PUC is of lesser concentration/strength and imports are comparatively of higher concentration/strength;

(vii) Similarly, if there are differences in terms of sale like difference in credit terms etc, the CNV also will have to be adjusted accordingly. However, if credit cost has been adjusted in export price, no adjustment may be made in constructed normal value;

(viii) It may be noted that CNV is worked out at ex-factory level. Therefore, other adjustments done in the NV like VAT refund etc. are not to be done in case of CNV.

**DISCLOSURE OF NV TO THE RESPECTIVE PRODUCER**

13.20. Rule 16 of the Rules provides that the designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision. Since the NV workings are one of the essential facts based on data furnished by the respective producer, also with workings, the finally computed NV should be disclosed to the respective co-operative producer. This provides them an opportunity to submit their comments/ views on the disallowances/adjustments or the facts considered by the Authority in determination of NV. Detailed procedure for disclosure is explained in the relevant Chapter of this manual.

13.21. In case the Normal value is constructed on the basis of cost of production of the DI (duly adjusted) and the DI is composed of single producer, then CNV will be treated as confidential and not to be disclosed to the producer.

# DETERMINATION OF DUMPING MARGINS

## LEGAL PROVISIONS

14.1. Section 9A(1) of the Act provides as following:

*"dumping" occurs when the export price is less than the normal value. The "margin of dumping" or "dumping margin" is the fair comparison between the export price and the normal value. Irrespective of whether the duties are recommended on an ad valorem basis or in specific terms, the Authority must necessarily calculate the dumping margin in percentage terms in order to carry out the de minimis test. All data for the calculation of dumping margin should be only for the defined period of investigation*[1].

14.2. Extract of Rule (6) of Annexure-1 to the Rules states that:

*6. (i) While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability.*

*(ii) In the cases where export price is a constructed price, the comparison shall be made only after establishing the normal value at equivalent level of trade…*

[1] Please refer to Para XIV of Chapter 24 for WTO Jurisprudence.

*… (iv) Subject to the provisions governing comparison in this paragraph, the existence of margin of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if it is found that a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison[2].*

**SIGNIFICANCE**

14.3. The determination of dumping margin is critical for dumping/injury assessment. The dumping margin is used in the application of lesser duty rule for quantification of duty. Also,*de minimis* dumping margin will lead to termination of an investigation against the concerned country and also a recommendation for non-imposition of duty against the concerned producer exporter(s).

**OPERATING PRACTICE**

14.4. Dumping margin is determined by comparing the Normal Value (or the Constructed Normal Value, as the case may be) with the Net Export Price of the relevant responding co-operative producer exporters unless the response is not complete or it is not being accepted for reasons to be mentioned clearly. The calculation of NEP and NV has been explained in detail in the earlier chapter.

14.5. For the calculation of Dumping Margin, the Normal Value and Net Export Price should be compared for sales made as nearly as possible at the same time.

14.6. In exceptional cases, if it is found that a pattern of export prices significantly differs amongst different purchasers, regions or time periods, then the comparison of daily/monthly/quarterly NV with export transactions for the respective period may be undertaken[3].

14.7. The method for calculation of DM is generally weighted average method, wherein the weighted average normal value is compared to the weighted average net export price over the period of investigation. The weighted average method

[2] Please refer to Para XIV of Chapter 24 for WTO Jurisprudence.

[3] Please refer to Para XIV of Chapter 24 for WTO Jurisprudence

requires that all sales which are in the ordinary course of trade (including the OCT test) and which have passed the sufficiency test (5% test) must be included for the normal value used for calculating the dumping margin. Similarly, for export sales, all commercial transactions which are in the normal course of business must be considered.

14.8. The Dumping Margin should be expressed as a percentage of the net export price. For this, the DM is divided by Net Export Price. DM is also mentioned in terms of range (needed for non-confidential version) which should normally be unit of 10.

$$\text{Dumping Margin} = (\text{NV or CNV}) - \text{NEP}$$
$$\%\ \text{Dumping Margin} = (\text{DM/NEP}) \times 100$$

14.9. The Authority shall determine one single dumping margin for each cooperating producer exporter irrespective of whether the goods are exported to India directly or through any intermediary by taking into account the producer's normal value (including that of its related producer in the country under investigation) and the export prices of all the intermediaries. In such cases, the intermediaries have to file all the relevant information called for by the Designated Authority in order to complete the chain right upto the independent importer in India. Also, a separate common dumping margin is worked out for the residual category of exporter(s), who have not filed response or have responded but declared non-cooperative.

14.10. The calculation of dumping margin is comparatively simpler, where the product under consideration is homogeneous, as only one NEP and one NV figure for the product under consideration needs to be determined.

14.11. In case, the PUC has been sub-divided into distinct models or types, called product control numbers (PCNs), then NEP and NV for each of the PCN is required to be determined individually for calculation of dumping margins. This ensures a fair comparison between the NEP and NV.

14.12. As already pointed above, the NEP and NV are to be worked out separately for each of the PCNs exported to India by the respective foreign producer/exporter. There is possibility that some of the exporter(s) would have exported few PCNs, but have not sold those in their home market during the POI. Notional or Estimated NV is worked out in such cases based on the most similar product produced & sold in the home market by such producer exporters. If there is no similar product sold in

the domestic market, then NV may be constructed for such PCN on the basis of COP of most similar PCN plus reasonable profit. Necessary adjustments are then made for various differences in the product sold in their country. This is compliant with WTO rules as all PCNs are like products and NIP is worked out based on best available information.

14.13. The Anti-Dumping Rules do not mandate any particular methodology for the dumping margin calculation for the residual category. The practice in the Directorate is as follows:

14.13.1. In case there are co-operative exporters,the residual dumping margin is determined by comparing the normal value, which is the highest of the co-operative exporters, with the NEP which is the lowest of the co-operative exporters. While working out the dumping margin in case of residual category, it may be ensured that margin for "others" is higher than the highest margin determined for any cooperating producer so that non-cooperation is not rewarded.

14.13.2. In case, there is only one co-operative responding exporter, its transaction wise export data is considered for arriving at NEP for the residual category following the same methodology as explained above.

14.13.3. In case no exporter has been declared co-operative or there is no response, the residual dumping margin is determined by comparing the constructed normal value with the net export price to be calculated from DGCI&S data as per aforesaid methodology.

14.14. In case of PCNs, the dumping margin, whether positive or negative, shall be worked out with respect to each PCN exported to India by the respective producer exporter. Finally, Producer Exporter wise weighted average of all PCNs is worked out to arrive at the figure of dumping margin with respect to each of the co-operative producer exporter and residual category.

14.15. In determining the weighted average dumping margin for the Product under Consideration as a whole, there should not be any "zeroing" of any negative 'margins' for a particular PCN/model/grade. In fact India does not have the provisions under law or act providing for "zeroing"[4].

[4] In this regard it may be noted that "Zeroing" has been held inconsistent with Article 2.4 and Article 2.4.2 of the AD Agreement in the Appellate Body Report, *European Communities – NTI-Dumping Duties on Imports of cotton-type Bed Linen from India,* 44-66, (WTO Doc No. WTO/DS141/AB/R) adopted on March 1, 2001; Appellate Body Report, *United States – Final Dumping Determination on Softwood Lumber from Canada*,76-117 (WTO Doc No. WTO/ DS264/AB/R) adopted on August 11, 2004. The Appellate Body has held that zeroing fails to fully and duly account for actual prices of export transaction that take place during a period of investigation and thereby result in inflated dumping margin.

14.16. It may be clarified here that even if the investigation reveals that certain PCNs are not dumped, the overall weighted average dumping margin of each Producer Exporter is considered to be representative for all the PCNs exported by the respective Producer Exporter. No exemption or exclusion from antidumping duty is allowed for any PCN, merely because a particular PCN has negative injury margin or dumping margin. The following illustrations clarify the situation:

| S. No. | Pcn No. | Quantity Exported By Producer | Quantity Produced By DI | Normal Value | NEP | Dumping Margin | Dumping % |
|---|---|---|---|---|---|---|---|
| 1 | ABC 1 | 50 | 500 | 14 | 12 | 2 | 16.67 |
| 2 | ABC 2 | 60 | 350 | 16 | 10 | 6 | 60.00 |
| 3 | ABC 3 | 0 | 400 | 0 | | 0 | 0.00 |
| 4 | ABC 4 | 15 | 500 | 11 | 14 | -3 | -21.43 |
| 5 | ABC 5 | 40 | 300 | 14 | 13 | 1 | 7.69 |
| 6 | ABC 6 | 100 | 250 | 11 | 10 | 1 | 10.00 |
| 7 | ABC 7 | 45 | 500 | 13 | 14 | -1 | -7.14 |
| 8 | ABC 8 | 100 | - | 15 | 14 | 1 | 7.14 |
| 9 | ABC 9 | 80 | 300 | 18 | 22 | -4 | -18.18 |
| Total QTY. Exported/.Avg | | 490 | 3100 | 14.00 | 13.63 | 0.38 | 6.84 |
| Weighted Average Dumping Margin | | | | 14.31 | 13.71 | 0.59 | 4.32 |

14.17. The margins are determined PCN wise, wherever applicable, for fair and accurate comparison, which are kept as workings in the case file. Further, the weighted averages are calculated and form the basis for recommendation of duty.

**COMPUTATION OF DUMPING MARGIN IN CASE OF PCNs:**

14.18. The following procedural steps should be followed after receipt of response from the producer exporter:

(i) Compute the Normal Value for each PCN individually.

(ii) Compute the Net Export Price for each PCN individually

(iii) Compare the PCN wise normal value and net export price for calculation of dumping margin.

(iv) The PCN wise dumping margin is multiplied with the respective export quantity supplied to India during the period of investigation and divided by total quantity exported by the respective exporter to arrive at the weighted average dumping margin for that exporter.

(v) Following illustration explains the methodology:

| PCN | Export Price ($/MT) | Normal Value ($/MT) | Export Quantity (MT) | Dumping Margin ($/MT) | Dumping Margin (%) |
|---|---|---|---|---|---|
| | | | | (3-2) | (5/2) |
| 1 | 2 | 3 | 4 | 5 | 6 |
| A | 100 | 150 | 1000 | 50 | 50% |
| B | 150 | 135 | 2000 | -15 | -10% |
| C | 200 | 250 | 1500 | 50 | 25% |
| Total | | | 4500 | | |

*Weighted Average= [(50X1000)+ (-15X2000) +(50X1500)]/4500 =21.11%

(vi) In the above illustration, the Dumping Margin has been calculated on weighted average basis[5].

**DUMPING MARGINS IN CASE OF SAMPLING**

**LEGAL PROVISION**

14.19. Article 6.10 of the AD Agreement provides that the investigating authorities must, calculate an individual dumping margin for each known exporter or producer of the product under investigation. However, the second sentence provides an exception to the above principle, *i.e.*, where the number of exporting producers is so large as to make the determination of an individual dumping margin impracticable, investigating authorities may limit their examination "by using samples". Accordingly sampling is the only exception to the rule of individual margins[6].

14.20. The Indian provision for sampling is contained in Rule 17(3). If there are large number of responses, the Authority may resort to sampling as per the methodology explained in the Chapter 8.

[5] Please refer to Para XIV of Chapter 24 for WTO Jurisprudence.

[6] Please refer to Para XIV of Chapter 24 for WTO Jurisprudence.

**OPERATING PRACTICE**

14.21. In case there are three or more responses from any of the subject country it may be advisable to resort to sampling.

14.22. In an event where the Authority resorts to sampling, it would have to determine:

(i) Individual dumping margins for the sampled producer exporter;

(ii) One common margin for non-sampled co-operative producer exporter; and

(iii) Residual margin for the non-cooperative exporters as well as the non-responding producer exporter:

14.23. Individual dumping margin shall be calculated for each of selected sampled exporters.

14.24. A weighted average dumping margin is calculated from the sampled exporters which is extended to all non-sampled exporters in terms of Rule 18(2) of the AD Rules. These are the producer exporters, who participated in the sampling exercise and offered cooperation but were not picked up as a part of the sample.

14.25. The dumping margin for all other non-responding exporters including non-cooperative exporters is calculated by comparing the normal value, which is the highest of the sampled exporters, with the NEP which is the lowest of the sampled exporters.

# ORAL HEARING

## LEGAL PROVISIONS

15.1. Article 6.2 of GATT:

*Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally*[1].

15.2. Article 6.3 of GATT:

*Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2*[2].

15.3. Rule 6(6) of AD Rules:

*The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into*

[1] Please refer to Para XV of Chapter 24 for WTO Jurisprudence.

[2] Please refer to Para XV of Chapter 24 for WTO Jurisprudence.

*nsideration by the designated authority only when it is subsequently reproduced in writing*[3].

**SIGNIFICANCE**

15.4. The Directorate aims to conduct all investigations in a transparent and fair manner based on the principles of natural justice. Before finalisation of the disclosure statement, an oral hearing must be granted before the Designated Authority in order to provide an opportunity to all the stakeholders including the Embassy of the respective subject countries, to present their case and make oral submissions with a view to protect their interest[4]. This also gives a chance to all the interested parties to not only present their case but also hear the views of the other parties/stakeholders involved in the investigation in the presence of the Authority[5]. This is in line with Articles 6.1 and 6.2 of the GATT.

15.5. It is imperative to mention that the Authority has a discretion to grant oral hearing as the word "*may*" is used in Rule 6(6)[6], however, it has been an established practice of the Directorate to grant oral hearing opportunity in each and every investigation conducted by the Authority.

**OPERATING PRACTICES**

15.6. For holding a hearing, the investigation team should submit the file to the Authority who shall then convey a convenient date and time for the same. The hearing should be held before the finalisation of the disclosure statement, and also give sufficient time to all the parties to submit their written submissions and rejoinders after the hearing which can then be included in disclosure statement.

15.7. The hearing date should be fixed in such a manner that it grants reasonable time to all the interested parties/stakeholders to attend the hearing. Sufficient

[3] For jurisprudence relating to Article 6.1 and 6.2 of the GATT, please refer to Para XV of Chapter 24 for WTO Jurisprudence.

[4] Coumarin case, 2011 (27) ELT 733 (CESTAT, New Delhi).

[5] *See Automotive Tyre Manufacturers Association v The Designated Authority, and Ors.,* ¶ 59,2011 (263) ELT 481 (Supreme Court of India) ("The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses etc. and also clear up his doubts during the course of the arguments.")

[6] *See Rajasthan Textile Mills Association v Director of Anti-Dumping,*2002 (149) ELT 45 (High Court of Rajasthan) where it was held that oral hearing is not an integral part of the opportunity envisaged under the Rules and no insistence can be laid on oral hearing. However, note that this judgment has arguably been implicitly overruled by the Supreme Court decision discussed above.

advance notice should be provided to enable the participation of the domestic industry,representatives from respective embassies of subject countries in India, producers exporters from subject countries or their representatives who will have to make travel arrangements to ensure their presence and participation.

15.8. A list of all interested parties, email ids, representatives and contact information must be maintained separately for each case.

15.9. The oral hearing date as approved by the Designated Authority must be informed via e-mailto all the registered interested parties involved in the investigation and/or their respective consultant.

15.10. In cases where the email addresses of the registered interested parties are not available then such notice of hearing must be sent via fax and/or registered post. Communication of hearing and the email as well as tracking receipts should be kept in file for records.

15.11. The notice of hearing must also be uploaded on the DGTR website. Posting of notice of hearing or any other communication on the website shall be deemed to be served upon all the interested parties even though all efforts shall be made to communicate individually to each of the registered interested parties.

15.12. The notice should mention the details of PUC, date, time of the hearing. It must also mention that any document/paper proposed to be circulated in the hearing must be intimated to all the interested parties prior to hearing in non-confidential version as per Trade Notices on the issue.A template for notice of oral hearing is attached to this Chapter.

15.13. All interested parties to whom notices of hearing have been sent, must intimate the names and designations of all such persons who are interested in attending the hearing.

15.14. An attendance sheet must be circulated and signed by all the parties also indicating their phone numbers and e-mail ids, who are present in the hearing so as to keep a record of appearance.

15.15. The conduct of the hearing must be regulated in a manner so that each party gets sufficient time to make their submission.

15.16. The hearing starts by the investigation team welcoming all the participants and making a brief summation about the case and Domestic Industry is first invited

to put forward their submissions, followed by the Embassies of the respective subject countries, producers' exporters from subject countries, importers and users. Thereafter the Domestic Industry gets an opportunity to present their rebuttal oral submissions.

15.17. With regard to the documents being referred to during the hearing, a set of instructions have been issued from time to time through Trade Notice No. 1/2009, Trade Notice No. 1/2011, and Trade Notice No. 03/2012.

15.18. If any interested party intends to circulate any document/paper during the hearing, copy of the same must be provided to all participants at least one day prior to the public hearing by physical copy or by e-mail or both.If an interested party intends to submit/present some information on confidential basis during the public hearing, the same along with NCV thereof must be submitted to the Designated Authority at least three days prior to such hearing. It should be ensured that the NCV of such information gives a meaningful summary of the CV.In case no such NCV is provided before the stipulated period, the interested party may not be allowed to present such papers in the public hearing.

15.19. Time is given to all the interested parties, who make oral submission, for filing written submission subsequent to the oral hearing. The DGTR directs all the participants to file submissions in writing in CV and NCV, which are to be sent by e-mail and non-confidential copy to be marked to each other.

15.20. At the end of the hearing the Designated Authority grants time for filing written submissions by indicating a specific date. All the participants are instructed to reproduce their oral submissions in writing in CV and NCV which are to be sent by e-mail. The NCV has to be shared with other participants present in the hearing. Another date is also indicated for filing rejoinder written submissions by all the interested parties.

15.21. The non-confidential version of the written submissions is kept in NCV. The rejoinders are not required to be kept in the NCV file.

15.22. In case any written/rejoinder submission is physically filed, then it should be received with a date stamp and sign to note the time of submission.

15.23. Any submission received beyond the date fixed may not to be taken into consideration. The Disclosure Statement may note the delayed filing as reasons for not taking submissions into account.

Appendix-44

No. 4/15/2007-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce Directorate General of Anti-Dumping & Allied Duties

Dated 22nd October, 2007

**Trade Notice No. 1/2007**

1. Attention of the Trade and Industry is invited to Section 9 A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 5 and Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed there under.

2. Sub-Rule 6(6) provides that the Designated Authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

3. Trade & Industry is advised that the following procedural requirements should also be kept in view while making written submissions subsequent to the Public Hearing and while filing rejoinders thereto:-

(i) The rejoinders should be in the form of exact para wise comments to the written submissions.

(ii) No new issues/arguments would be raised at the stage of rejoinder. However, new logic or analysis based on facts already submitted can be furnished to further make the points on the subject matter.

(iii) All submissions and rejoinders must comply with the requirements laid down under Rule 7. Interested parties must provide non-confidential version of the confidential information, if any, contained in written submissions or rejoinders in para wise corresponding form of narration. The non-confidential versions should be in sufficient detail to permit a reasonable understanding of substance of the information submitted on confidential basis.

4. Normally no submissions/information would be submitted interested parties after the expiry of the time allowed during the Public Hearing. However, either with the permission or in response to letter of the Designated Authority, information/ submissions which are clarificatory in nature may be submitted.

-sd/-
(Neeraj Kumar Gupta)
Joint Secretary
For Designated Authority

To
All Concerned
(as per list)

Appendix-45

No.4/27/2007-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

Dated: 25th May, 2011

**Trade Notice No. 1/2011**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereafter.

2. In continuation of sub-para (viii) of Para 2 to the Trade Notice No.1/2009 dated 25th March, 2009, it is hereby clarified that if any interested party intends to present any document in a public hearing, a copy of the same must be provided to all participants prior to the hearing (one day). However, in case an interested party intends to submit/present some information on confidential basis, a copy of the same alongwith the non-confidential version (NCV) thereof must be submitted to the Designated Authority at least three days prior to the date of public hearing. It should be ensured that the NCV gives a meaningful summary of the confidential version.

3. In case the above requirement is not complied with, the concerned interested party shall not be allowed to submit/present the information on confidential basis.

-sd/-
(Bharathi S. Sihag)
Joint Secretary
For Designated Authority

To
All concerned

Appendix-46

No. 4/10/2012-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate of Anti-dumping & Allied duties (Anti-dumping section)

Dated 02nd April, 2012

**Trade Notice No. 03/2012**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 7 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury ) Rules, 1995 framed thereafter.

2. As per Para 2 of Trade Notice No. 1/2011, if any interested party intends to present any document in a public hearing, a copy of the same is to be provided to all participants prior to the hearing (one day). In this connection, all interested parties are informed that henceforth such documents can also be circulated by e-mail to all the participants prior to the hearing (one day).

-sd/-
(Santosh Kumar)
Deputy Secretary to Govt. of India
For Designated Authority

To
All concerned

Sr. Tech. Director, NIC, Deptt. of Commerce with a request to upload this trade notice in the department's website under Anti-Dumping->Trade Notice Section

Appendix-47

No. 4/7/2012-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate of Anti-dumping & Allied duties
(Anti-dumping section)

Dated 23rd May, 2012

**Trade Notice No. 04/2012**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 5 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereafter.

2. In this connection, the procedure stipulated in Trade Notice No. 03/2012 is reiterated. All the concerned are again informed that if they intend to present any document in public hearing, a copy of the same is to be provided to all participants prior to the hearing (one day) by e-mail.

Sd/-
(Santosh Kumar)
Deputy Secretary to Govt. of India
For Designated Authority

To
All concerned

Sr. Tech. Director, NIC, Deptt. of Commerce with a request to upload this trade notice in the department's website under Anti-Dumping->Trade Notice Section

Appendix-48

F.No.XX/XX/2018-DGTR
Government of India
Department of Commerce
Ministry of Commerce & Industry
Directorate General of Trade Remedies
Jeevan Tara Building, New Delhi-110001

Dated the ……., 2018

To,
All Interested parties

**Subject: Oral hearing in Anti-Dumping Investigation concerning imports of '…….' originating in or exported from country ……...**

Sir,

With reference to the subject stated above, I am directed to inform you that Shri ……, Additional Secretary & Designated Authority will hold Oral Hearing in the above matter on XX.XX.20XX at XX:00 PM. The venue of the hearing is DGTR Conference Room, Jeevan Tara Building, 4th floor, 5, Parliament Street, New Delhi - 110001.

2. Any information intended to be submitted/presented during the hearing, the same along with NCV (if confidential) must be submitted to the Directorate General at least three days prior to the hearing. A copy of the same information, in NCV (if confidential), is to be provided to all participants prior to the hearing (one day) by physical copy and/or by e-mail.

3. It should be ensured that the NCV of such information gives a meaningful summary of the CV. In case no such NCV is provided before the stipulated period, the interested party may not be allowed to present such papers in the hearing.

4. Kindly intimate your interest in the hearing and name(s) and address (es) of the person(s) who are likely to attend the hearing on your behalf. No person other than those representing the interested party shall be allowed to attend the hearing. You will be required to submit two copies of the written submissions of the views expressed at the hearing within a time schedule to be indicated on the date of the hearing.

5. Kindly acknowledge receipt.

(……)

Additional Director General
Tel No……..
Email: …….

# DISCLOSURE STATEMENT & FINAL FINDING

## DISCLOSURE STATEMENT

### LEGAL PROVISIONS

16.1. Article 6.9 *of* ADA provides as follows:

> *"The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests."*

16.2. *Rule 16 of the Anti-dumping Rules provides as follows:*

> *"Disclosure of information: The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision"*[1].

### SIGNIFICANCE

16.3. Issuance of the Disclosure Statement is the penultimate stage of an investigation. As mentioned in Rule 16, the purpose of the Disclosure Statement is to enable all the interested parties to be aware of the essential facts, information and data that has been collected by the Authority through submissions of various parties, which would form the basis of recommendations in the Final Findings. If after perusal of the contents of the disclosure statement any interested party is of the opinion that certain relevant facts/information/data of importance has been left out or not properly considered by the Authority, the interested party can bring the

[1] For jurisprudence on Article VI.9 of the GATT, please refer to Para XVI of Chapter 24 for WTO Jurisprudence.

same to the notice of the Authority, for consideration on its merits while forming its opinion in the Final Findings.

16.4. The Disclosure Statement should only convey the facts and data which would be taken into consideration after examining all relevant submissions. The Disclosure Statement contains essential facts under consideration which would form the basis for the final findings in the investigation and, therefore, these cannot be taken as final conclusions of the Authority and it should not be treated as the draft final findings[2].

**OPERATING PRACTICE**

16.5. After conducting investigation in a fair and transparent manner by giving all the parties an opportunity to participate at every stage of the investigation and examining, analysing, tabulating and recording all relevant information, it's time to issue Disclosure Statement[3].

16.6. The team after meticulously examining all the facts/data/information under consideration as per the procedure mentioned in the Rules, presents the case to DG and after discussions submits drafts of disclosure statement to DG proposing to disclose there levant facts to all the interested parties.

16.7. The disclosure must contain all factual details available with the authority till this stage. The disclosure should be issued as per the timelines indicated in Circular No.2 dated 27.2.2018 and revised vide O.M. No.4/7/2018 dated 12.4.2018, annexed herewith.

16.8. The disclosure is not the decision of the investigation but a communication with respect to there levant facts taken into consideration for the concerned investigation which will form the basis of the Final Finding.

16.9. It should contain all the submissions/arguments made by various interested parties at different stages of the investigation considered relevant for processing the investigation. Irrelevant submissions and information may be disregarded.

16.10. The disclosure statement is to be prepared both in confidential and non-confidential versions. Confidential version is for the office file and every care is to be taken that it is not released. Whereas non-confidential version (NCV) of the

[2] Please refer to Para XVI of Chapter 24 for WTO Jurisprudence.

[3] Please refer to Para XVI of Chapter 24 for WTO Jurisprudence.

disclosure statement is circulated to all the interested parties who have provided any meaningful submissions during the investigation.

16.11. The NCV version should be carefully drafted. It is advisable that the soft copy should be freshly created when it is to be issued. The non-confidential version of the disclosure statement hides (by replacing confidential numbers/statements by an asterix symbol) all that information which is being submitted on a confidential basis by the interested parties and the Authority has agreed to grant the confidentiality, the details of which are as mentioned in earlier chapter 7on the subject based on the guidelines issued in this regard vide Trade Notice Nos. 10/2018 dated 07.09.2018 and 14/2018 dated 01.10.2018.

16.12. After discussions and specific approval of DG for issue of Disclosure statement, the final NCV should be converted into a PDF file and emailed to all the responding interested parties. The emails of all the relevant responding parties should be collected and kept ready in advance so that none of them are missed out, otherwise it may lead to redundancy of the whole exercise as non-receipt of disclosure can be a cause of action and the aggrieved party may approach Court. Disclosure Statement should also be emailed to the respective Embassy if they have participated by way of making any submission or attended the hearing.

16.13. The disclosure statement mentions the relevance of the document in the covering letter and has 4 Annexures containing submissions, counter submissions and its examination under following subheadings:

16.13.1 **Annexure I -General Disclosure :** It contains the details that need to be provided under the following heads:

(i) **Procedures:** Facts in a chronological order starting from receipt of application, intimation to embassies, source of data relied upon in the initiation and subsequently obtained during the course of investigation, list of stakeholders which were asked to file response, list of registered interested parties, list of stakeholders who have filed responses/submissions, exchange rate applied for the conversion, date of hearing etc.;

(ii) In case of sunset review, the disclosure statement may also outline the history of reviews of the measures since the time they were first imposed;

(iii) Product under Consideration (as dealt with in Chapter 3 of this Manual);

(iv) Domestic Industry Standing (as dealt with in Chapter 4 of this Manual);

(v) In case of mid-term reviews, the applicant and scope of the review may also be mentioned;

(vi) Confidentiality; and

(vii) Miscellaneous submissions made by different parties to the extent considered relevant by the Authority.

16.13.2 **Annexure II - Normal Value, Export Price and Dumping Margin**

(i) The submission of DI alleging dumping and market/non market status of subject countries/ specific exporters;

(ii) Details of responses received from producer/exporter/importer/user etc.;

(iii) Summary of submissions received from responding producer exporters from responding country(ies);

(iv) In case any of the exporter or subject country is not considered to be operating in Market Economy conditions, then it should be specified giving reasons thereof;

(v) Normal value determination for cooperating exporters: reasons should be given wherever the normal value is not computed from the response of the co-operating exporter and instead normal value is constructed in terms of para 7-8 of Annex I or in view of incompleteness of the response;

(vi) Export price of cooperating producer exporters;

(vii) Dumping margins for cooperating producer exporters;

(viii) Normal value for non-cooperating exporters/residuary category;

(ix) Export price for non-cooperating exporters/residuary category;

(x) Dumping margins for non-cooperating exporters/residuary category; and

(xi) The dumping margin should be reflected in terms of Range of units of 10;

(xii) Any specific situations regarding exporters explaining particular market situation and related party details.

*Note: The cooperating exporters separately should be provided all the details of calculation of its dumping margin.*

### 16.13.3 **Annexure III - Methodology for Injury Assessment and examination of Injury and Causal Link**

(i) Injury factors & analysis;

(ii) Volume effect of dumped imports;

(iii) Price effect of dumped imports on the domestic industry:

- (a) Price undercutting;
- (b) Price underselling; and
- (c) Price suppression and depression.

(iv) Economic parameters of the domestic industry:

- (a) Market share;
- (b) Profitability;
- (c) Return on Investment;
- (d) Production and Capacity Utilization;
- (e) Sales Volumes;
- (f) Selling Price;
- (g) Employment and wages;
- (h) Productivity;
- (i) Magnitude of dumping;
- (j) Cash flow;
- (k) Inventories;
- (l) Ability to raise capital investment;
- (m) Factors affecting domestic prices;
- (n) Growth; and
- (o) Any other economic factor which may be relevant for the injury analysis.

(v) Conclusion on material injury.

(vi) Magnitude of injury (Injury Margin): However, in case of SSR/MTR, the analysis of injury in terms of the aforementioned economic parameters is more important and injury margin need not be indicated.

(vii) Likelihood analysis in case of review investigations

(viii) Other known factors and Causal Link: a comprehensive analysis should be mentioned with a focus stating that that the alleged dumped imports are actually causing/ not causing the injury. The causality should be direct and not distantly indicative. The performance of DI vis a vis supporting producers and other producers (including opposers, if any) may be relevant in this regard.

(ix) Non-attribution analysis: A comprehensive analysis should be undertaken with a specific object to analyse and eliminate various factors which could be otherwise responsible for the injury instead of alleged dumped imports. The analysis of economic parameters should indicate actual injury on some or all parameters. The factors like inter se competition between producers in the country resulting in injury to the applicants should be carefully seen.

(x) In case of SSR cases where the duties have already been in existence for a long time, it should be analysed as to how the existing duties have helped gain ground for the domestic industry and relevance of the duties to the overall economic health of the industry.

(xi) The economic indicators and information in that regard submitted by co -operative producer exporter may also be seen, if required.

16.13.4 **Annexure-IV: Methodology For Determination of Non-Injurious Price**

(i) A brief of the methodology followed for determination of NIP in terms of Annex III of the Rules is to be mentioned and details are mentioned in Chapter 9 of this Manual.

(ii) The NIP so determined is disclosed only to the respective Domestic Industry as the computation of the NIP contains confidential data of the respective producer(s).

16.14. The covering letter of the Disclosure statement should state the date and time up to which all the interested parties can make their submissions. The parties should be given at least five days or such other reasonable period as the Authority may deem fit, for submission of comments.

16.15. It is important to note that the export price and normal value as stated in the Disclosure Statement and adjustments affecting normal value are not final determination, but are only proposed calculations.

16.16. Non confidential Disclosure Statement should be individually sent via email to the interested parties which have participated by way of questionnaire response or legal submissions. This should be followed by:

(i) an email to DI with its details of NIP working;

(ii) an email to respective producer exporter with detailed NV, NEP and LV working. This email can be sent to the legal counsel/ authorised representative of the interested party.

16.17. The interested parties to an investigation are as decided in terms of the Rules. The procedure for registration of interested parties is defined in Trade Notice 11/2018 dated 10.9.2018 attached to Chapter 6 of this Manual.

## FINAL FINDINGS

### LEGAL PROVISIONS

16.18. Rule 17 of the Rules provides as follows:

Rule 17. Final findings. –

*(1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding –*

(a) *as to, -*

*(i) the export price, normal value and the margin of dumping of the said article;*

*(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;*

*(iii) a casual link, where applicable, between the dumped imports and injury;*

*(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:*

*Provided that the Central Government may, in its discretion in special circumstances extend further the aforesaid period of one year by six months:*

*Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year,*

*(b) recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry after considering the principles laid down in the Annexure III to these rules.*

*(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding:*

(i) *the names of the suppliers, or when this is impracticable, the supplying countries involved;*

(ii) *a description of the product which is sufficient for customs purposes;*

(iii) *the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;*

(iv) *Considerations relevant to the injury determination; and*

(v) *the main reasons leading to the determination.*

*(3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:*

*Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can*

*reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned:*

*Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.*

(4) *The designated authority shall issue a public notice recording its final findings.*

**SIGNIFICANCE**

16.19. The whole investigation culminates into a Final Finding Notification wherein duty recommendation, continuation or termination is advised by the Directorate. It is a well-reasoned speaking order on the basis of which Department of Revenue issues a notification for levy of duty. Final findings are in the nature of recommendations only and duty, if levied, by the Central Government is from the date of issue of such duty notification. The recommendation may be positive i.e. levy of duty; negative i.e. zero duty or it may be in form of termination in terms of Rule 14 of the Rules. The Central Government may accept or reject recommendations of the Designated Authority.

**OPERATING PRACTICES**

16.20. The Final Findings should be issued as per the timelines indicated in Circular No.2 dated 27.2.2018 and revised vide O.M. No.4/7/2018 dated 12.4.2018, annexed herewith.

16.21. Time Period: Rule 17(1) of Anti-Dumping Rules provide that the Final Findings must be issued within one year from the date of initiation. The time limit can be extended further by 6 months under special circumstances as provided under the proviso to Rule 17(1). For an extension, a written request giving details, reasons and sufficient grounds should be submitted to Department of Revenue, Ministry of Finance. The request for extension should be made prior to the expiry of due date of issuance of Final Finding.

16.22. The power of granting extension of time beyond twelve months is a discretionary power of Department of Revenue, Government of India. Thus, only in special circumstances, can a request be made to Central Government for the extension of the date of issuance of the Final Finding. Some of the situations where extension can become inevitable are: change in the Director General (Designated Authority), where there has been a judicial order demanding repeat of the oral hearing[4] or where the Hon'be Court/Tribunal has intervened[5].

16.23. The Final Finding notification must contain all the earlier facts plus all the comments received after issuance of Disclosure Statement and the examination of the same by the Authority to form the final recommendations. It must be ensured that all the issues raised by various interested parties are duly recorded and addressed appropriately in the Final Finding Notification.

16.24. The Final Finding notification is not a replica of the Disclosure Statement. It contains the contents of the Disclosure Statement and post disclosure comments. The comments which contain issues that have already been addressed may not be re-examined.

16.25. The Final Finding notification should contain the conclusion on dumping and injury, Indian Industry's interest and categorical recommendations supported with reasons. The recommendations could be in the form of termination of the investigation or imposition of duty on the basis of Lesser Duty Rule. It may be added here that the application of lesser duty rules means the comparison of injury margin with the corresponding dumping margin and the lesser of the two is taken as the basis for recommendation of quantum of duty.

16.26. The duty should be recommended for each co-operative producer[6]. Their responses should be verified to confirm that the respective producer exporter have submitted valid responses as explained earlier in Chapter 12, 13 and 14. It may be added that while 100% information with regard to exports through related exporters/traders is necessary, in case of the unrelated exporters, if the response

[4] *Automotive Tyre Manufacturers' Association v Designated Authority,*(2011) 2 SCC 258 (Supreme Court of India).

[5] Please refer to Para XVI of Chapter 24 for WTO Jurisprudence.

[6] In the past there was a practice of duty recommendations for a combination of producer and exporter/trader thereby indicating a specific channel of sales. This had inbuilt conflict as a co-operative producer gets bound or forced to operate through the notified exporter/trader and in case of any variation in the channel he is pushed in the residual category even though he had co-operated fully, verified and found fit for an individual duty margin. Conversely, an erring producer could choose not to furnish details of some export transactions which are at higher dumping margins, and still ask for lower individual margin to the extent of disclosed information in the response.

constitutes less than 70% of the total volume of exports to India by the respective Producer, then the responding producer may be considered non-co-operative and entire response is liable to be rejected.

16.27. A residual duty margin must be indicated for non-co-operative and/or non-responding producers/exporters for each of the subject country under investigation.

16.28. Wherever, it is found that a co-operative producer exporter is not indulging in dumping or injury, "zero" duty should be mentioned against it in the duty table. Further, when it is determined that imports from any of the subject country are not causing dumping or injury to the domestic industry at all or are below *de minimus*, then the said country should not be included in the duty table and it should be clearly stated that investigation is being terminated against the said country.

16.29. It may be added here that any exporter whose margin of dumping is less than 2% of the export price shall be excluded from the purview of ADD even if dumping, injury as well as the causal link are established. Further, investigations against any country are required to be terminated if the volume of the dumped imports from a particular country is found to be below 3% of the total imports. However, countries whose volume of imports individually is less than 3% of total imports but cumulatively account for more than 7%, imports from all those countries may be cumulated while determining injury.

16.30. Since no Customs Notification is generally issued in case of termination of investigations, the final findings must include a paragraph in case of termination of investigations, specifying that the appeal against these findings lies in CESTAT, the Hon'ble Delhi High Court has given a ruling in this regard in Jindal Polyfilm Ltd. v. Designated Authority in W.P. (Civil) No. 8202/2017.

16.31. The recommendation of duty in the Final Finding notification should be indicated in the duty table indicating details regarding Tariff/ HS Code, description of PUC, specification, country of origin and/or export, producer, amount of duty and unit of measurement. The format of duty table is as below:

| Duty Table | | | | | | | |
|---|---|---|---|---|---|---|---|
| Sl. No | Tariff code | Description of Goods | Specifi-cation | Country of Origin and/or export | Pro-ducer | Duty Amount | UOM |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| | | | | | | | |

16.32. The HS Codes must be specifically checked and re-checked in the duty table. Further, it may be mentioned at the end of the table that HS Codes (Custom classification) is only indicative and the determination of the duty shall be made as per the description of goods at the time of importation.

16.33. It shall also be mentioned that the specific duty rates mentioned above against each of the cooperative producers are for the goods produced by the respective producers in their own manufacturing facility. In case of trading by the named producers, the duty at residual rate shall be applied. Therefore, Customs should verify the fact of goods manufactured by the producer named above.

**FORMS/TYPES OF DUTIES**

16.34. The Anti-Dumping duties imposed after the investigation can be expressed either on fixed basis, ad valorem or reference price basis. Specific/fixed duty is levied as a fixed monetary amount per unit of the PUC imported. Ad valorem duty is levied as a percentage of the value of the PUC imported. Under the reference price method, a reference price is fixed and the duty would be the difference between the landed value and the said reference price. If the landed value exceeds the reference price, no duty shall be payable.

16.35. The type of duty recommended in the final findings depends on facts, circumstances and merit of each case. The team should discuss with the Designated Authority by putting forward all the facts and reasons for different types of duties and seek approval for the imposition of a specific type of duty in each case.

**Fixed Duties:**

16.36. Fixed duty is appropriate in case of a homogenous PUC without wide variation in prices or where various PCNs are not showing steep price variations, as reflected in import price data and the NSR of the domestic industry.

16.37. Fixed Duty is also appropriate in circumstances where the subject goods are susceptible to undervaluation or manipulation of prices or there is likelihood of circumvention of duties.

16.38. As the duties are generally imposed for 5 years, the effect of a fixed duty diminishes in a market where prices are ascending over period while effect increases in a market where prices descend. Fixed duty may result in requests for reviews from either the Domestic Industry (in case of a rising market) or other interested parties (in case of a falling market).

16.39. A fixed duty may not be desirable where the Product under Consideration has a large number of variants in terms of their prices as the lower price variant will have a higher incidence of effective and vice versa for higher price variant. For example, if the anti-dumping duty is USD 200 per MT on different variants ranging from USD 1000 to USD 2000 per MT. In such a case, the effective impact on Variant A will be 20% while on Variant B, it will be only 10%. This impact may be unintended from the Authority's point of view.

16.40. The Authority has to take a decision based on merit after taking into consideration the above mentioned factors for each case and also taking into account the effect of duty on the user industry.

16.41. If the fixed duty is recommended, then it should be preferably in US$ terms as it will protect the domestic industry from rupee depreciation also.

**Ad Valorem Duties:**

16.42. Ad Valorem duties are more appropriate where there are many grades or types within the PUC or there is a considerable price variation within the scope of the Product under Consideration or PCNs. Under this method, the lower as well as higher price goods bear the same level of effective duties over the entire period of imposition of ADD.

16.43. Ad valorem duty is not desirable if the subject goods are susceptible to undervaluation or manipulation of prices or there is likelihood of circumvention of duties. In fact, ad valorem duty can induce errant importers to indulge in under invoicing of imports.

**Reference Price based Duty:**

16.44. This duty is more appropriate when the Authority is convinced that there is a need to protect the interests of the downstream industry while taking care of the concerned Domestic Industry. Sometimes, the Reference Price may need to be recommended when the user industry imports specific grades of PUC, which is not available in the country or DI is manufacturing only certain price range of goods but the same cannot be distinguished as a separate product. Reference Price in such cases ensures fair selling prices for the domestic industry for the PUC.

16.45. This form of duty may not lead to price increases in imports if they are being imported at fair prices.

16.46. This form of duty acts as a disincentive for the exporters to decrease their prices as the decrease in the landed value would correspondingly increase the applicable anti-dumping duty.

16.47. It suffers from the possibility of abuse where the unscrupulous exporters/ importers may artificially increase their prices to avoid the anti-dumping duties but resell in the Indian market at lower prices, thus creating false import data base.

16.48. It is not desirable where major raw materials are liable to significant price fluctuations. For instance, it is possible that the import prices rise mainly on account of the fact that the price of the principal raw material has gone up. In such a case, the Domestic Industry may not be effectively protected as the rise in the raw material prices will also increase their costs. Conversely, if the price of the principal raw material have declined, then domestic industry gets extra protection and exporters/importers get unnecessarily penalized even though they may not be indulging in dumping or causing injury.

16.49. This form of duty suffers from the vice of being inflexible inasmuch as this duty becomes ineffective in a rising market and overly protective perhaps punitive in a falling market.

16.50. This form of duty may not suit the situation where there are many grades or types of the subject goods with significantly different prices.

**Period of Duty Recommended**

16.51. The provision indicates that maximum validity of the duty at one instance in an original investigation could be 5 years, however, minimum time period of validity is not mentioned.

16.52. It is the practice of the Directorate to normally recommend duty for 5 years, however, there have been few cases where duty was recommended for less than 5 years[7].

16.53. In case of Sunset Review Investigation, the provision clearly provides imposition of duty for further period of 5 years, therefore extension should be done for 5 years only.

[7] Final Finding in Anti-dumping investigation on imports of Resorcinol originating in and exported from China PR and Japan, F. No. 15/20/2014-DGAD dated January 4, 2018; Final Finding in Anti-dumping investigation on imports of Ofloxacin and O-Acid originating in and exported from China PR, F. No. 14/6/2016-DGAD dated December 22, 2017, Final Finding in Anti-dumping investigation on imports of O-Acid originating in and exported from China PR, F. No 14/31/2016 dated December19, 2017

16.54. In case of Mid-Term Review Investigation and Anti-Circumvention investigation, the recommendations are co terminus with the validity of duties in the original notification.

**APPEAL PROVISION**

16.55. The last paragraph of the final finding notification, should mention the appeal provision. It should be stated that "an appeal against the order of the Central Government arising out a Final Finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act". The appeal provision is available pursuant to the decision of Delhi High Court[8] in those cases also where the Authority recommends termination of investigation.

**TERMINATION OF INVESTIGATION**

16.56. Rule 14 of the Rules provides as follows:

> *The designated authority shall, by issue of a public notice, terminate an investigation immediately if:*
>
> (a) *it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;*
>
> (b) *it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;*
>
> (c) *it determines that the margin of dumping is less than two per cent of the export price;*
>
> (d) *it determines that the volume of the dumped imports, actual or potential, from a particular country accounts for less than three per cent of the imports of the like product, unless, the countries which individually account for less than three per cent of the imports of the like product, collectively account for more than seven per cent of the import of the like product; or*
>
> (e) *it determines that the injury where applicable, is negligible.*

[8] *Jindal Polyfilm Ltd. v. Designated Authority in W.P. (Civil) No. 8202/2017.*

16.57. The conditions mentioned in Rule 14 are applicable for an original investigation.

**NOTIFICATION**

16.58. The Final Finding has two versions, confidential and non-confidential. The Final Findings have to be translated in Hindi as it is mandatorily to be issued bilingual in English and Hindi. All the Final Finding notifications have to be signed by the Director General of Trade Remedies in original. The confidential version is for the records of the Directorate. Two copies of non-confidential version in Hindi and three copies of non-confidential version in English should be prepared for signatures of DG.

16.59. One set of Non-Confidential Version of Final Finding Notification in English and Hindi signed in original are required to be sent to the government press on the same day it is approved and signed by DG, alongwith a soft copy by email. As soon as the notification is accepted by the Government Press, NCVersion in English is to be sent to the Ministry of Finance with a DO letter from DG requesting TRU to take further necessary action. Thereafter, Final Finding notification must be uploaded on the DGTR website.

**PRELIMINARY FINDINGS**

**LEGAL PROVISIONS**

16.60. Section 9A(2) of the Act provides as follows:

> *The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such antidumping duty exceeds the margin as so determined:*
>
> (a) *the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and*
>
> (b) *refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.*

16.61. Rule 12 of the Rules provides as follows:

*(1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain:*

(i) *the names of the suppliers, or when this is impracticable, the supplying countries involved;*

(ii) *a description of the article which is sufficient for customs purposes;*

(iii) *the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;*

(iv) *considerations relevant to the injury determination; and*

(v) *the main reasons leading to the determination.*

(2) *The designated authority shall issue a public notice recording its preliminary findings.*

*16.62. Rule 13 of the Rules provides as follows:*

*The Central Government may, on the basis of the preliminary findings recorded by the designated authority, impose a provisional duty not exceeding the margin of dumping:*

*Provided that no such duty shall be imposed before the expiry of sixty days from the date of the public notice issued by the designated authority regarding its decision to initiate investigations:*

*Provided further that such duty shall remain in force only for a period not exceeding six months which may upon request of the exporters representing a significant percentage of the trade involved be extended by the Central Government to nine months.*

**SIGNIFICANCE**

16.63. In circumstances where a remedy is urgently needed for protection of the Domestic Industry from injury on account of intensified dumped imports, an interim relief could be considered by recommending provisional duties.

**OPERATING PRACTICES**

16.64. For invoking the power of the Designated Authority for preliminary findings, the DI has to specifically request for provisional duty/interim relief pending final recommendations which should be substantiated with sufficient grounds for seeking the interim relief.

16.65. The request can be considered after examining the import data and establishing that the imports have intensified since the initiation of the investigation which are at dumped prices and are causing injury to Domestic Industry.

16.66. The preliminary finding notification cannot be issued before the expiry of 60 days from the date of initiation of the investigation.

16.67. Even though, there is no outer limit for issue of preliminary finding but wherever warranted, preliminary finding on the basis of facts and circumstances of the case, should preferably be issued within 100 days from the date of initiation of investigation. The time lines were circulated vide Circular No.2 dated 27.2.2018 and further revised vide O.M. No.4/7/2018 dated 12.4.2018, annexed herewith.

16.68. The methodology for investigation leading to preliminary finding notification is same as that of the Final Findings. All the elements of analysis of dumping, injury and causal link have to be specifically dealt with in the preliminary finding notification along with stating the reason for issuance of preliminary findings. The responses received have also to be examined for calculation of dumping margin. In case of large number of responses if the team decides to resort to sampling technique for the case, then the same has to be notified prior to issuance of the preliminary findings thereby notifying all the stakeholders about selection and the process of sampling.

16.69. The preliminary finding is different from final findings to the extent that:

(i) There is no requirement of issuance of disclosure statement.

(ii) There is no mandatory requirement of Oral Hearing before issuance of preliminary findings, however, post issuance of preliminary findings, hearing must be conducted before finalising the Final Finding recommendations.

(iii) The duty imposed by Ministry of Finance on acceptance of recommendations, is valid only for a period 6 months as per second proviso of Rule 13. However, it can be extended for a further period of three months in case of request by the exporter representing a significant percentage of the trade involved.

(iv) It may need to be clarified that the duties imposed under the final findings, when notified are applicable from the date of imposition of preliminary duties, if any as per Rule 20(2)(a) of the Anti Dumping Rules. However, as per Rule 21(1), if the duties recommended in the Final findings are higher than the provisional duties imposed, then the difference of the duties shall not be collected from the importer.

16.70. The procedure of issue of notification and communication is same as mentioned for Final Findings in aforesaid paras.

16.71. There can be no imposition of anti-dumping duty during the "gap period" i.e. the period commencing from the expiry of the imposition of anti-dumping duties provisionally determined and ending on the date of the final determination[9].

**PRICE UNDERTAKING**

**LEGAL PROVISIONS**

16.72. Section 9B(c)(ii) of the Act provides as follows:

(ii) *any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.*

16.73. Rule 15 of the Rules provides as follows:

*RULE 15: Suspension or termination of investigation on price undertaking:*

(1) *The designated authority may suspend or terminate an investigation if the exporter of the article in question, -*

[9] *Commissioner of Customs, Bangalore v GM Exports and Ors.,* (2016) 1 SCC 91 (Supreme Court of India). Also *see Commissioner of Customs v Raghav Enterprises*, 2005 (189) ELT 461 (CEGAT, Bengaluru).

(i) *furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or*

(ii) *in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated:*

*Provided further that the designated authority shall complete the investigation and record its finding, if the exporter so desires, or it so decides.*

(2) *No undertaking as regards price increase under clause (ii) of the sub-rule (1) shall be accepted from any exporter unless the designated authority had made preliminary determination of dumping and the injury.*

(3) *The designated authority may, also not accept undertakings offered by any exporter, if it considers that acceptance of such undertaking is impractical or is unacceptable for any other reason.*

(4) *The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain inter alia, the non-confidential part of the undertaking.*

(5) *In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of section 9A of the Act for such period the undertaking acceptable to the designated authority remains valid.*

(6) *Where the designated authority has accepted any undertaking under sub-rule (1), it may require the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data:*

*Provided that in case of any violation of an undertaking, the designated authority shall, as soon as may be possible, inform the Central Government of the violation of the undertaking and*

*recommend imposition of provisional duty from the date of such violation in accordance with the provisions of these rules.*

(7) *The designated authority shall, suo moto or on the basis of any request received from exporters or importers of the article in question or any other interested party, review from time to time the need for the continuance of any undertaking given earlier.*

**SIGNIFICANCE**

16.74. Price undertakings are alternatives to imposing anti-dumping duties. The undertakings are formal commitments by exporters under anti-dumping investigation to abstain from dumping or to ensure that their exports will not injure the domestic producers of the concerned subject goods. This is a discretionary provision. The word 'may' suggests that in the cases where an exporter offers price undertaking, the Authority may suspend or terminate the investigation with respect to that exporter on his undertaking unless it is impractical or is unacceptable for any other reason. The flipside of price undertaking is that unlike anti-dumping duties, price undertakings are often difficult to monitor and can be circumvented more easily. In the context of high price volatility, there is a basic concern relating to the suitability of price undertakings to remove dumping and its injurious effects.

**OPERATING PRACTICE**

16.75. The exporter has to signify his willingness to offer price undertaking in writing.

16.76. The request can be made anytime during the investigation after issuance of preliminary finding and/or Disclosure Statement or after the completion of the investigation as per the formats annexed in this Chapter[10].

16.77. The request is examined and a personal hearing may also be granted to the interested exporters in this regard[11].

16.78. The Domestic Industry and other interested parties must be informed regarding the request received from the exporter and time must be granted for filing the comments regarding this.

[10] *See* the submission of price undertaking by M/s. Ras Al Khaimah Co UAE in Antidumping duty on imports of white cement originating in and exported from from UAE and Iran,F. No.15/13/2011-DGAD, (Ministry of Com. & Indus., June 6, 2013) (Final Finding).

[11] Final Finding in Anti-dumping investigations concerning import of Nylon Tyre Cord Fabric originating in or exported from China PR, F. No. 14/20/2003-DGAD dated March 9, 2005)

16.79. The following aspects[12] are to be considered relevant for accepting/rejecting price undertaking as was directed by the Hon'ble Tribunal:

(i) Whether injury caused by dumping can be eliminated;

(ii) Whether there exists effective measure to ensure its fulfilment;

(iii) Whether such acceptance is in public interest;

(iv) Whether there exists any possibility of circumvention of the undertaking in anyway;

(v) Any other relevant factor which DG may consider necessary; and

(vi) If there is price variation amongst the like products or the PUC and a single price is provided as a part of the price undertaking[13].

16.80. The exporter should provide all reasonable information, which are considered relevant and necessary. If the exporter has failed to provide requisite information despite showing interest, the price undertaking may be rejected[14].

16.81. The Authority may accept price undertaking by one of the exporter of the subject country and may reject another exporter of the same subject country if found impractical or is unacceptable for any other reason[15].

16.82. The reason for non-acceptance of price undertaking shall be notified to the concerned exporter and time must be given to offer comments. The reason for non-acceptance must explicitly be given in the Final Findings.

16.83. If a negative determination of dumping or injury is made, the undertaking shall automatically lapse.

16.84. The DG shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public

[12] *PT Polysindo EkaParkasa v Designated Authority, 2005(185)ELT 358 (CESTAT, New Delhi).*

[13] *Association of BOPP Films v Designated Authority*, 2004 (167) ELT 185 (CEGAT, New Delhi).

[14] Final Finding in Anti-dumping investigation on imports of Graphite Electrodes from USA, Austria, France, Germany, Italy, Spain, China PR and Belgium, F.N. ADD/IW/43 dated March 27, 1998;Final Findingin Anti-dumping investigation on imports ofimports of Partially Oriented Yarn (POY) from Indonesia, Taiwan, Thailand and Malaysia, F. No. 19/1/2000-DGADdated January 4, 2002.

[15] Final Finding in Anti-dumping investigations concerning import of Nylon Tyre Cord Fabric (NTCF) originating in or exported from China PR, F. No.14/20/2003-DGAD dated March 9, 2005, where the exporter did not offer separate prices for grey and dipped NTCF and has not agreed to link the prices to changes in the major raw materials. The DA noted that given the nature of the product, it would not be appropriate to accept a price undertaking in the form and manner given.

notice in this regard. The public notice shall, contain the non-confidential part of the undertaking.

16.85. Where the price undertaking is accepted for an exporter, he is required to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data.

16.86. In case of any violation of the conditions of undertaking the DG shall recommend imposition of provisional duty from the date of such violation in accordance with the provisions of these Rules pending the final determination[16].

16.87. Upon acceptance of the price undertaking offered by the exporter the investigation against exporter gets suspended and the Authority does not recommend imposition of any definitive duty on this exporter till the undertaking accepted by the Authority remains valid.

16.88. The price undertaking remains valid for the period for which the measure recommended in the final findings of the Authority remains in force. The Authority may also suo-moto or on the basis of any request from exporters/domestic industry or importer of the article in question or any other interested parties review from time to time the need for continuance of the undertaking so given.

16.89. Once a price undertaking is accepted, it can later be revoked in case of violation of terms of price undertaking.

16.90. In case of any violation of the conditions of undertaking after final determination, the Designated Authority makes appropriate recommendations to the Central Government for levy of applicable anti-dumping duties on the basis of the information as available during the investigation or as brought to the notice of the authority from appropriate sources.

16.91. Undertaking would apply only in case of exports made by this company directly to India. In case the goods are exported by some other company/trader, the residual duty, would apply, even if the same is the produce of this company.

16.92. If the exporter has not claimed market economy, then there would be no requisite production data for determination of their normal value and dumping

[16] Final Finding in Sunset Review of Anti-Dumping investigation on imports of Potassium Carbonate originating in or exported from the European Union, Korea RP, China PR and Taiwan (Chinese Taipei), F. No. 14/42/2002-DGAD dated December 19, 2018where the Designated Authority found that the price undertaking was violated and same was terminated and anti-dumping duties imposed.

margin will not be on record, in such scenario it will be administratively difficult to accept price undertaking[17].

16.93. In the event of any violation of the undertaking or non-acceptance by the Central Government, the Designated Authority would make appropriate recommendations to the Central Government for levy of applicable anti-dumping duties on the basis of the information as available during the present investigation or as brought to the notice of the authority from appropriate sources[18].

16.94. Such Anti-Dumping duties may apply retrospectively from the date of violation or withdrawal of price undertaking.

16.95. In the event of Central Government not accepting the price undertaking, the Designated Authority shall separately intimate the Central Government the amount of Anti Dumping duty and the effective date of its levy[19].

16.96. The validity of the price undertaking would be co-terminus with the duration of the Anti-Dumping duties to be imposed by the Notification of the Central Government in this regard, and shall be subject to review as per the applicable provisions of the Rules.

**CORRIGENDUM NOTIFICATION**

16.97. The team should be careful in making every effort to issue a notification which is accurate and proper to obviate the issuance of corrigendum. However, even after taking due caution, if it is brought to the notice of the Authority by any of the interested party or on its own initiative that there appears a need for issuance of correction of an error due to any reason,the same can be considered by DG prior to issue of customs notification or after issue of customs notification but within a reasonable time;

16.98. The Corrigendum can only be issued for correction of inadvertent errors and not to cause any substantive change in the content of the notification or the issues/ situations already dealt with in the Notification[20];

[17] Final Finding in Sunset Review of Anti-dumping investigations on imports of Polytetraflouroethylene (PTFE) originating in or exported from China PR, Investigation No. 15/8/2010-DGAD dated July 25, 2011

[18] Final Finding in Anti-dumping investigations on imports ofBlack and White Photographic Paper including both Resin coated/Fibre based from UK, France and Hungary, F No. 19/1/99-DGAD dated October 24, 2000.

[19] Final Finding in Anti-dumping investigations on imports of Black and White Photographic Paper including both Resin coated/Fibre based from UK, France and Hungary, F No. 19/1/99-DGAD dated October 24, 2000

[20] Final Finding in Anti-dumping investigations on imports of Ammonium Nitrate originating in or exported from Russia, Indonesia, Georgia and Iran Anti-dumping investigation,F.No.14/1/2016-DGAD dated August 1, 2017.

16.99 The Rules do not provide the power to review or amend the final finding already notified by the Authority. It can only be revisited on the directions of Hon'ble Court or Hon'ble Tribunal remanding the case back to DG to reconsider or reissue the final findings on legal considerations; Any Corrigendum, if issued, should be uploaded on the website of DGTR. A Gazette notification should also be issued.

**CLARIFICATIONS**

16.100. In some cases (exceptional circumstances)an interested party may seek clarification on any point of ambiguity in the Final finding notification. The clarifications are normally by way of an explanation of the Final Finding and donot introduce any element of change. For example,an applicant may seek clarification on the scope of PUC as already decided in the Final Finding Notification, as to whether a certain article is covered within the scope of the final findings or whether certain HS codes are covered under the scope where the PUC is reported to be imported. Such clarifications are needed more for the purpose of Customs Authorities to enable them to implement the findings more effectively[21] and the consequent duty notification, in its true letter and spirit. In case it is opined that the clarification could impact the opposing interested parties, the pre intimation of such a clarification must be posted in public domain (Directorate's website), inviting comments before finalising the same. Any clarification, if issued, should always be uploaded on the website of DGTR for information of all concerned.

**CHANGE OF NAME**

16.101. The Authority, while recommending any ADD or CVD measure, recommends the levy of measure in the Duty Table of the Final Finding. The Ministry of Finance based on this recommendation, notifies the measure in a duty table mentioning the names of producer(s) / exporter(s) of the product under consideration.

16.102. At times requests are filed by interested parties particularly Producer(s) / Exporter(s) for change in name in the Duty Table of Final Finding and for corresponding change in the relevant Custom Notification on account of various reasons viz merger / de-merger /acquisition, change in ownership structures / share holding pattern, change in requirement of law of a member country etc.

[21] Clarification vide Customs Notification No.32/2016-Customs (ADD) dated July 14, 2016 regarding Final Finding in Sunset Review of anti-dumping duty imposed concerning imports of Viscose Filament Yarn originating in or exported from China PR, F.N.15/23/2010-DGAD dated February 24, 2012.

The methodology in such cases as follows and is elaborated in Trade Notice No. 12/2018 dated 17.09.2018 (attached).

16.103. The cases, where the change of name is a matter of 'record' only, the following procedure should be adopted:

(i) The Applicant Producer /Exporter may file request in the enclosed proforma (Both Confidential version (CV) and Non-confidential version (NCV).

(ii) The Authority would expeditiously evaluate the request and circulate through e-mail the 'NCV' version of application to all the interested parties identified in the original investigation for their comments within 7 working days from receipt of application.

(iii) The Interested parties may file their comments within 10 days of receiving the above stated NCV version of application.

(iv) The responses received within the stipulated time will be placed in a public file, for examination by all interested parties.

(v) Thereafter, the Authority may hold an oral hearing within a period of 30 days from receipt of application.

(vi) Post hearing submissions/rejoinders may be invited if the interested parties so desire. This would be completed in a period of another 10 days after the Oral hearing.

(vii) The Authority would issue its Finding in the form of Amendment within 60 days from receipt of application.

(viii) The Amendment would be duly notified and a copy of the Notification would be sent to Department of Revenue for notification of change in relevant Custom Notification.

16.104. However, in cases which necessitate reassessment of parameters of dumping, injury and other aspects owing to change in ownership structure, the request for change of name(s) shall be decided by conducting Mid Term Review.

16.105. It will be incumbent on all Producer(s) / Exporter(s), who have been granted individual dumping margin in AD / CVD investigation, to mandatorily report to the Authority any change in name within a period of 90 days of the same becoming effective. Failure to comply with these instructions shall render them

liable to be treated as 'non-cooperative' Producer(s) / Exporter(s) during subsequent investigations by this Authority.

16.106. The prescribed proforma is attached with the Trade Notice 12/2018 dated 17.09.2018.

**POST ISSUANCE OF FINAL FINDING**

16.107. After 100 days of issue of Final Finding Notification, all the case files available with the team (including costing files) should be send to the record room as per the instructions contained in Circular No. 3/2018 dated 9.4.2018 and 24.5.2018 and e-mail dated 27.7.2018. (attached herewith)

Appendix-49

No. 19/AS&DGAD/2017
Government of India
Ministry of Commerce & Industry
Directorate General of Anti-Dumping and Allied Duties
Jeevan Tara Building, New Delhi

Dated 31st July, 2017

**Note**

**Subject: Confidential Version of Draft Disclosure and Final Findings.**

It is seen that different Investigating Teams are following different practices for submission of Confidential Version of Draft Disclosure and Final Findings. While some put it as part of the noting sheet, others are submitting as draft with the brief summary in the noting sheet.

2. With a view to have uniform practice and to have a permanent record, from now onwards, all Investigating Teams may follow a uniform practice of submitting, after the presentation, confidential version of Draft Disclosure (final version)/ confidential version of Final Finding (final version) on noting sheet under their signatures along with all prescribed statements, duly signed. After obtaining approval of AS&DA, the non-confidential version of Draft Disclosure would be issued and in case of final finding, fair copies of non-confidential version (both English and Hindi) would be submitted for signature.

sd/-
(Inder Jit Singh).
AS & DGAD

All IOs & COs
CC: Principal Adviser (Cost)

Appendix-50

No. 19/1/2018-DGAD
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

4th Floor, Jeevan Tara Building
New Delhi- 110001
Dated: 9th April, 2018

**Circular No. 3**

**Subject: Recording, Indexing and Weeding of records in DGAD**

It has been brought to the notice that the voluminous records pertaining to Anti-Dumping Investigations are occupying precious space, and obstructing systematic maintenance and ready retrieval of files / records from the record room. As such, timely review of records, their transfer to Record Room and weeding out of old records, call for priority attention by all the officers concerned.

1. In this regard, the following instructions for recording, indexing of files, and weeding out old records is notified for compliance by all Investigation Teams of this Directorate.

2. For records pertaining to Anti-Dumping/Safeguard duty/QR Measures/Anti-Subsidy/Countervailing Duty etc., the IOs and Cos may ensure the following:

(i) Note portion of both Costing as well as Main file should be page numbered before sending the file to the record division.

(ii) The record should be segregated and only one set of petition / rejoinders etc. should be sent to the record room along with file containing note portion of costing as well as investigation for retention purposes.

(iii) The additional set of documents which are to be weeded out may be sent to record room in a separate bag for disposal.

3. This issues with the approval of the AS&DA.

-sd/-
(Arti Bangia)
Deputy Director

To,
All Officers

Appendix-51

No. 19/1/2018-DGAD
Ministry of Commerce and Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

4th Floor, Jeevan Tara Building
New Delhi- 110001
Dated: 24th May, 2018

**Subject: Recording, Indexing and Weeding of records in DGAD**

In pursuance of the circular no. 3 dated 09.04.2018 issued by the undersigned, the process of weeding out of records in DGTR has started. Currently, files relating to investigations whose final findings have been issued in 2017-18 are being consolidated and extra copies of documents are being removed.

2. While analysing the files sent by the investigation teams, it has been noticed that as a normal practise, both the IO and the CO send their files independently as and when convenient. As a result, tracking of files relating to a particular investigation is difficult and time consuming as files of both IO and CO are placed at different locations in the record room. It has also been noticed that in most cases, complete set of all records (IO and CO files) are not there in the record room.

3. In view of above, the following instructions for recording, indexing of files, and weeding out old records are notified for compliance by all Investigation Teams of this Directorate.

While sending files in the record room all officers must ensure the following

I. The IOs and Cos should submit their files together

II. The contents of the file should be clearly mentioned on cover of each file. Files may be differentiated as main file, public file, Questionnaire Response, Verification Reports, Written Submissions and Rejoinders.

III. Note portion of the file should be page numbered.

IV. A CD consisting of all relevant documents, working statements, DGCIS data etc related to a particular case should also be submitted along with the files. The IOs and CO should coordinate among themselves to prepare one CD of all relevant files and submit it for recording.

V. Efforts should be made by both the IO and CO to remove extra copies of petitions, submissions, questionnaire responses etc. while consolidating their files.

This issues with the approval of the AS&DA.

-sd/-
(Arti Bangia)
DD (Stats)

To
all IOs, Cos

Appendix-52

**E-Mail**

**Subject: Sending case files for recording** Date: 07/27/18 12:55 PM

From: "Arti Bangia" arti.bangia@nic.in

To: advcost-doc@nic.in, rajiv.arora@nic.in, m.thakur@nic.in, asen@nic.in, shubhra.ag@nic.in, as.soni58@gov.in, gpradhan.icoas@nic.in, anand.kpal@nic.in, nichowdhury.icoas@nic.in, manishgoswami.icoas@nic.in, r.mahna@nic.in, jm.bisnoi@nic.in, vivek.singh@nic.in, shobhnath.icoas@nic.in, devanshi.agarwal@gov.in

Cc: sunilk.ias@gov.in, JAIKANT SINGH <jaikant.s@nic.in>Book1 .xlsx (13kB)

Dear madam/sir

The DG has desired that the for all the cases whose final findings have been issued in the financial year (2017-18) and from April 2018 till today, one CD containing the following documents be maintained in the record room:

1. Working files of the IO and the CO
2. Copy of petition (CV and NCV)
3. Preliminary finding
4. DGCIS data
5. Disclosure (CV and NCV)
6. FF (CV and NCV)
7. Other misc. letters/data or any document relevant to the case.

Accordingly, all the IOs and COs are request to please provide one CD each of their respective cases latest by next week.

2. It has also been noticed that many officers have still not sent files for their cases of 2017-18 to the record room yet. The list is enclosed. It is once again requested to send the files for recording. In this regard, the DG is of the opinion that all case related files should be sent to the record room after at the most 4 months of date of issue of FF (in case there is no court case).

Regards,

Arti Bangia
Deputy Director (Statistics)
DGTR, Dept. of Commerce
M/o Commerce and Industry

Appendix-53

No. 4/17/2018 -DGTR
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Trade Remedies
4th Floor, Jeevan Tara Building, 5th Parliament Street, New Delhi - 110001

Dated 17th September, 2018

**Trade Notice No. 12 /2018**

**Subject: Streamlining request for change in name of producer(s) / exporters in Anti-Dumping and Countervailing Duty investigations**

The Authority, while recommending any ADD or CVD measure, recommends the levy of measure in the Duty Table of the Final Finding. The Ministry of Finance based on this recommendation, notifies the measure in a duty table mentioning the names of producer(s) / exporter(s) of the product under consideration.

2. At times requests are filed by interested parties particularly Producer(s)/ Exporter(s) for change in name in the Duty Table of Final Finding and for corresponding change in the relevant Custom Notification.

3. The request of change in name may be on account of various reasons viz merger / de-merger /acquisition, change in ownership structures / shareholding pattern, change in requirement of law of a member country etc.

4. The Authority has, so far, considered such requests under limited Mid-Term Review (MTR) carried out under Rule 22 of Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The Mid-term Review is a time consuming process.

5. In order to reduce avoidable delay, it has been decided to simplify the procedure in respect of name change requests which may fall under the category of change of name as a matter of 'record' only. Undertaking MTR in such cases may not be appropriate and desirable. Therefore, to streamline the procedure of carrying out change of name of producer(s) /exporter(s), the Authority prescribes the following procedure:

i. The Applicant Producer /Exporter may file request in the enclosed proforma (Both Confidential version (CV) and Non-confidential version (NCV).

ii. The Authority would expeditiously evaluate the request and circulate through e-mail the 'NCV' version of application to all the interested parties identified in the original investigation for their comments within 7 working days from receipt of application.

iii. The Interested parties may file their comments within 10 days of receiving the above stated NCV version of application.

iv. The responses received within the stipulated time will be placed in a public file, for examination by all interested parties.

v. Thereafter, the Authority may hold an oral hearing within a period of 30 days from receipt of application.

vi. Post hearing submissions/rejoinders may be invited if the interested parties so desire. This would be completed in a period of another 10 days after the Oral hearing.

vii. The Authority would issue its Finding in the form of Amendment within 60 days from receipt of application.

viii. The Amendment would be duly notified and a copy of the Notification would be sent to Department of Revenue for notification of change in relevant Custom Notification.

ix. However, in cases which necessitate reassessment of parameters of dumping, injury and other aspects owing to change in ownership structure, the request for change of name(s) shall be decided by conducting limited Mid Term Review.

6. All interested parties are required to file request for the aforesaid subject in the enclosed proforma.

7. It will be incumbent on all Producer(s) / Exporter(s), who have been granted individual dumping margin in AD/CVD investigation, to mandatorily report to the Authority any change in name within a period of 90 days of the same becoming effective. Failure to comply with these instructions shall render them liable to be treated as 'non-cooperative' Producer(s)/Exporter(s) during subsequent investigations by this Authority.

8. All applications for change in name will be addressed to DGTR and submitted to the following:

Ms. Devanshi Agarwal
Assistant Director
4th Floor, Jeevan Tara Building,
Directorate General of Trade Remedies,
Department of Commerce,
New Delhi - 110001

9. This Trade notice will supersede all previous instructions or Trade Notices, if any, issued by the Directorate with regard to the aforesaid subject.

-sd/-
(Sunil Kumar)
Additional Secretary & Designated Authority

Encl.: Proforma for Name Change
To
All concerned

***Enclosure***

**PROFORMA FOR CHANGE OF NAME**

| S.No. | ISSUE | REPLY |
|---|---|---|
| 1 | Existing Name in the Duty Table | |
| 2 | Proposed New Name in the Duty Table | |
| 3 | Reasons for change in name from the existing to the new name? | |
| 4 | If change in name is pursuance to any Act or Law, please attach a copy of such law or Act with English translation | |
| 5 | New Address, if changed name also involves change in address. | |
| 6 | Evidence regarding the basis of change and statutory documents / legal evidence regarding change in name, with date from which the change is effective (amended certificate of incorporation / Board resolution etc.). The evidence regarding change in name if in national language other than English, then a translated copy in English be provided. | |
| 7 | Copies of latest Annual Reports with comments of Auditors / Director's reports may also be attached. | |
| 8 | Likely advantages to the entity due to changed name or changed scenario may be explained. | |
| 9 | Whether the changed scenario entails change in Management? If yes, the details of new management may be provided. | |
| 10 | Whether there is any other entity in the group, which has been allowed separate duty rate for the same PUC? If yes, details thereof. | |
| 11 | Whether the change in name is on account of merger/de-merger/ acquisition/hiving off/change in ownership structure | |
| 12 | If change in name is pursuant to change in ownership structure, the details of changes in the shareholding pattern of major shareholders holding at least 2% equity holding/ownership share in the entity be provided. | |

Appendix-54

**FORMAT OF PRICE UNDERTAKING**

UNDERTAKING OFFERED BY *(Company Name (Producer/ Exporter, Country)* TO THE DIRECTOR GENERAL OF TRADE REMEDIES, DEPARTMENT OF COMMERCE, GOVERNMENT OF INDIA, IN THE MATTER RELATING TO ANTI DUMPING INVESTIGATIION CONCERNING IMPORTS OF ……..*(Product Name).*

1. ……..*(Company Name Producer/ Exporter, Country),* hereinafter referred to as "the company", offers to the DIRECTOR GENERAL (hereinafter referred to as Authority) in department of Commerce, Government of India, the undertaking described below and in appendices (appendices at A, B and C) which are attached to and form an integral part of this undertaking concerning …….. *(Product Name)*, as defined in paragraph 2, which are the subject of the anti dumping investigation initiated by the Authority on …….(dated), and preliminary findings notified by the Authority on ……..*(date of the preliminary findings).*

2. This *undertaking* pertains only to those goods named by the Authority in the above-noted preliminary findings. Such goods are defined as: ……(Product Description as defined for the Investigation) and are hereinafter referred to as "the subject goods".

3. The company agrees not to sell the subject goods for export to India at prices lower than …….(state terms of *undertaking*, for example, specify whether prices are FOB, CIF, etc.) and indicate prices …… stipulated in the grid in Appendix "A".

4. The company agrees not to circumvent this undertaking in any way including the shipment of the *subject* goods to India through a subsidiary, branch, agent or other company, or by the direct shipment of the subject goods to India from a country other than the Country of origin/export.

5. The company agrees to provide to the Authority copies of documents as described in Appendix "B".

6. The Company agrees to provide to the Authority invoice and/or the commercial invoice submitted to meet the Authority's invoicing requirements regarding the information as described in Appendix "C".

7. The Company agrees that prior to the execution of any sale for export to India of new products, models or sizes which fall within the definition of the subject goods in paragraph 2, but are not referred to specifically in Appendix "A" to notify the Authority of such a sale; provide any information that may be requested by the Authority to determine an appropriate undertaking price at that time; and to amend Appendix "A" of this undertaking to include such new products, models or sizes.

8. The Company agrees to provide information which may be required by the Authority to demonstrate adherence to this undertaking and to permit, upon request, verification by the Authority of any such information provided.

9. The Company agrees to, at the discretion of the Authority, amend this undertaking, including its appendices, in whole or in part, to take into account any changes in circumstances from those which prevailed at the time this undertaking was accepted.

10. The Company agrees that this undertaking shall take effect from ……*(on the date of its acceptance by the authority or such other date as may be appropriate)* and shall apply to all subject goods released by the Authority on or after this date.

11. The Company acknowledges the right of the Authority to terminate this undertaking at any time after its acceptance where the Authority:

*a. is satisfied that the undertaking has been or is being violated;*

*b. is of the opinion that, as a result of new information not available at the time of the acceptance of the undertaking, the undertaking would have not been accepted; or;*

*c. is of the opinion that, as a result of changing circumstances, the undertaking no longer fulfils its objectives.*

12. The Company further acknowledges the right of the Authority, upon termination of this undertaking, to make a preliminary determination with respect to the goods, as defined in paragraph 2, and to resume the investigation.

13. The Company shall give the Authority written notice of its intention to withdraw from this undertaking at least 30 days prior to the date of such withdrawal.

14. This undertaking shall be binding upon all successors and assignees of the Company.

In witness whereof, the Company has hereto affix its corporate seal, attested by its duly authorised officer(s) on this date of, ……

*(Name of the company)*
*Seal*

Signature of witness

Signature of authorised officer(s)

Name and title of witness

Name and title(s) of authorised officer(s)

This undertaking document and the attached appendices A, B and C are stamped **CONFIDENTIAL** as they contain sensitive commercial information relating to our business operations.

**APPENDIX "A"**

This Appendix is attached to and forms an integral part of the undertaking submitted by Company M/s …….. *(Name: Producer/ Exporter, Country)* to the Director General of Trade Remedies, Ministry of Commerce, Government of India on ……*(dated).*

In accordance with paragraph 3 of the undertaking, the Company agrees not to sell the subject goods to importers in India at prices lower than the prices stipulated as follows:

**i. PRODUCT DESCRIPTION: ……..**

**ii. PRODUCT (GRADE/ MODEL/SIZE) ……**

**iii. PRICE UNDERTAKING ……..**

All prices are quoted in ……..*(state the currency of settlement and the unit of measure, if appropriate – also state terms of sale, for example, specify whether prices are FOB, CIF, etc. and indicate location).* The selling prices in the undertaking mentioned above shall apply to shipments of the subject goods that are imported into India *(on or after the date of acceptance of this undertaking by the authority or such other date as may be appropriate).*

In witness whereof, the Company has hereto affixed its corporate seal, attested by its duly authorised officer (s) on this _____ date of _____, _____.

(Name of the company)

Seal

Signature of witness — Signature of authorised officer(s)

Name and title of witness — Name and title(s) of authorised officer(s)

**APPENDIX "B"**

This Appendix is attached to and forms an integral part of the undertaking submitted by *Company …….. (Name: Producer/ Exporter, Country)* to the Director General of Trade Remedies, Ministry of Commerce, Government of India on ……*(date)*.

In accordance with paragraph 5 of the undertaking, the Company agrees to provide the Department with the following documents:

i. Each time there is a price change in the Company's domestic market, a copy of the notification letter, if any, sent to customers along with the revised price lists. These documents will be telefaxed immediately to the attention of the Director General of Trade Remedies, accompanied by a covering letter referring to this undertaking. The original documents will be forwarded to the Department by express delivery to the address in section (iii) below;

ii. An amended Appendix "A" will also be telefaxed at the same time as the transmittal being made in accordance with section (I) above. The amendment will reflect the revised undertaking prices calculated by …… (details regarding methodology used including an explicit re-statement of the terms of sale, currency of settlement and unit measure where required), to the current prices in effect as stipulated in the above mentioned price undertaking contained in Appendix "A". The original document will be forwarded to the Department by express delivery in conjunction with the documents noted in section (I) above; and

iii. ……*(state other documents which will be provided and when they will be provided).* These documents will be forwarded under a covering letter referring to this undertaking to:

THE DIRECTOR GENERAL,
DIRECTORATE GENERAL OF TRADE REMEDIES,
JEEVAN TARA, PARLIAMENT STREET,
DEPARTMENT OF COMMERCE,
MINISTRY OF COMMERCE,
NEW DELHI - 110001
INDIA

In witness whereof the Company has hereto affixed its corporate seal, attested by its duly authorised officer(s) on this day of, 19.

*(Name of the company)*
*Seal*

Signature of witness — Signature of authorised officer(s)
Name and title of witness — Name and title(s) of authorised officer(s)

**APPENDIX "C"**

This Appendix is attached to and forms an integral part of the undertaking submitted by *Company …….. (Name: Producer/ Exporter, Country)* to the Director General of Trade Remedies, Ministry of Commerce, Government of India, on ……*(dated)*.

In accordance with paragraph 6 of the undertaking, the Company agrees to provide to the Authority invoice and/or the commercial invoice submitted to meet Authority's invoicing requirements with respect to each shipment of the subject goods. The necessary information is as follows:

- *Customer's order number and date of order;*
- *Product (Grade/Model/Number/Size etc.);*
- *Product description in sufficient detail to match the applicable description of the subject good(s) found in the undertaking price grid in Appendix A*'
- *Terms and conditions of sale;*
- *Quantity of (product) in (unit of measurement) for each (class/model/ number/size etc.); and*
- *Unit price of the (product) in (currency of settlement) for (class/model/ number/size etc.).*

In addition, the Company agrees to certify on each document:

"These prices are in accordance with M/s …….(company's name) current undertaking accepted by the Authority for Customs' Authority, Department of Revenue, India, on ……(date of acceptance by the authority)".

In witness whereof, the Company has hereto affixed its corporate seal, attested by its duly authorised officer(s) on this date of, ….

*(Name of the company)*

*Seal*

Signature of witness — Signature of authorised officer(s)

Name and title of witness — Name and title(s) of authorised office

# REVIEW INVESTIGATIONS

## INTRODUCTION

17.1. Under Section 9A (5) of the Act, an anti-dumping duty imposed on a product shall cease to have effect on the expiry of five years from date of such imposition. Further in line with Article 11 of the ADA a duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury[1].

17.2. There are three types of methodology provided in the ADA and the Rules by which an Authority can carry out review of anti-dumping duties. These are as follows:

| SN | Review | Provisions | |
|---|---|---|---|
| | | ADA | Rules |
| 1 | Sunset Review | Article 11.3 | Rule 23 (1B) |
| 2 | Mid-Term Review | Article 11.2 | Rule 23 (1A) |
| 3 | New-Shipper Review | Article 9.5 | Rule 22 (1) |

## SIGNIFICANCE

17.3. **Sunset Review:** This allows the existing anti-dumping duties to be extended further for 5 years on determination that cessation of existing duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry.

17.4. **Mid-term review:** This allows interim review of the existing duties on determination of changed circumstances. The applicant can be domestic industry asking increase in duties or exporter/importer asking reduction or termination of duties on the basis of positive evidence substantiating change of circumstances. In some cases, the parties can ask for exclusion of some product variants from the existing scope of the PUC.

[1] Please refer for Para XVII of Chapter 24 for WTO Jurisprudence.

17.5. **New- Shipper Review:** This allows examination of an application by a new exporter, who could not be examined in original investigation on account of not exporting the product during original POI directly or through its related parties. If it is determined that the exporter satisfies all the conditions of NSR, an individual duty margin could be given for such exporter(s).

## SUNSET REVIEW INVESTIGATIONS

### LEGAL PROVISIONS

17.6. Section 9A(5) of the Act provides that:

*"(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:*

*Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:*

*Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year[2]."*

17.7. In addition to the above provision, Rule 23(1B) provides that:

*"(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry[3].*

*Further, Rule 23 (2) and (3) provide that:*

[2] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

[3] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

(2) *Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.*

(3) *The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.*

17.8. In the absence of a separate procedure, the authority broadly follows the procedure prescribed for original investigation for conducting review investigations also, with some variations as discussed in the following paragraphs.

**OPERATING PRACTICES**

17.9. The SSR can be initiated by the Authority on its own initiative[4] or on receipt of Application by or on behalf of domestic industry[5].

17.10. The SSR can be initiated only during the tenure of the existing duty. The application must be filed prior to the termination date of AD as per the timeline given in Trade Notice No.2/2017 dated 12th December 2017.

17.11. The PUC cannot be modified in a Sunset Review investigation[6]. However, the scope of product can be restricted on specific request from interested parties, after due consideration. In no case can the scope of product be widened or enlarged. (Chapter-2 may be referred for discussion on PUC).

17.12. An application to extend the period of duties can be filed by the domestic producers who account for the major portion of the Indian producers producing PUC and like articles covered by those measures. These may or may not be the same applicants as in the original or any previous investigation.

17.13. It may be noted that as per the provisions in Rule 23(3) governing sunset review, there is no necessity to carry out the "standing" test, however, as a matter of practice in the Directorate domestic industry standing test is normally carried out for all review investigations at the time of initiation of investigation.

17.14. The methodology for conducting review investigation, is broadly similar to that of original antidumping investigation.

[4] Initiation of Sunset Review in Anti-dumping investigations on the import of PTFE originating in or exported from China PR, F. No. 15/8/2010-DGAD dated July 26, 2010; Initiation of Sunset Review in Anti-dumping investigations on the import of sodium nitrite originating in or exported from China PR, F. No. 15/4/2010-DGAD dated July 1, 2010.

[5] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

[6] *Leather Cloth and Plastic Manufacturers Association v Union of India,* 2012 (282) ELT 438 (CESTAT, New Delhi).

17.15. The domestic industry is required to substantiate the application with sufficient evidence showing the need for continuation of anti-dumping duties. The Applicant is required to make a case that cessation of anti-dumping duty would result in recurrence of dumping and injury to the domestic industry.

17.16. The Application can be filed against all the subject countries or against only some countries depending on the facts and circumstances of case.

17.17. The important distinguishing feature in initiation of Sunset review Investigation *vis-à-vis* original investigation is that the Authority must also undertake likelihood analysis to examine whether cessation of duty will result in recurrence of dumping as well as injury[7]. Other relevant factors that must be considered are the change in pattern of production, demand and requirement of the dumped product in the importing country since the imposition of the anti-dumping duty and the change in prices in the exporting market and the international market[8].

17.18. The sunset review is limited to evaluate whether conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is no longer justification for continued imposition of duty or to ascertain that if such duty is revoked, there is imminent danger of the material injury to the domestic industry[9].

17.19. The examination of sunset review application may also consider any changes in the constitution/ ownership of the applicant domestic industry if such applicant was also the domestic industry in the earlier investigation(s). It may be examined whether such change was duly informed to the Authority and has an impact on the economic parameters of the company. Similar exercise will be followed regarding the Producer Exporter(s) from the subject countries as detailed in Trade Notice No. 12/2018 dated 17.09.2018.

17.20. While considering the case for initiation, an opportunity of personal hearing should be given to the Applicant for presenting their case to the Designated Authority[10].

17.21. In case sufficient evidence is not found and the Authority comes to a conclusion after examination of the submissions and the presentation made by

[7] *Vinati Organics v Designated Authority,* 2001 (127) ELT 629 (CEGAT, New Delhi).

[8] *Indian Graphite Manufacturers Association v Designated Authority,* 2006 (199) ELT 722 (CEGAT, New Delhi).

[9] *Apar Industries Ltd. v Ministry of Finance, The Designated Authority,* 2006 (200) ELT 34 (CEGAT, New Delhi).

[10] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

the applicant domestic industry during hearing that the case is not fit for initiation of sunset review investigation,a speaking order for termination/closure stating the reasons therein, must be communicated to the applicant.

17.22. In case sufficient evidence is found in the application for consideration of initiation of Sunset Review, a Notification should be issued with the approval of the DG. The procedure for issue of notification is described in Chapter 6 of this Manual.

17.23. A DO Letter should be sent to TRU enclosing the initiation notification with a request to take necessary action for extension of duty by one year (or less) in terms of Section 9 A(5). In case the sunset review has been initiated when the existing duties are still valid for many more months, TRU may be advised not to issue a notification for extension of duty and the same may followed up subsequently depending on the need to take extension in issuance of final finding.

17.24. At all times, the final finding should be issued well within the validity of duty notification so that there is no time gap in the existing and extended duties. There have been directions by the Hon'ble Supreme Court and High Court of Delhi that extension can take place only when the duty notification to be extended is valid on the day of extension[11]. This becomes complicated because in terms of the second proviso to Section 9A(5), the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year, whereas the period available for completion of the investigation is 12 months which could be extended by 6 months i.e. up to 18 months with the approval of Government in special circumstances. In such a situation while the Authority has a legal backing to issue final finding in 18 months, but duty can only be extended for 12 months. This issue is sub-judice as on date.

17.25. The Authority has the discretion to initiate the case against all the subject countries or only against some[12] countries, even though application could have been made against all the countries. Further, even when the initiation is done against many subject countries, the investigation could result in recommendation of duty against some or all, depending on the facts and merit of the case.

[11] *Union of India v Kumho Petrochemical Co. Ltd,* (2017) 8 SCC 307 (Supreme Court of India).

[12] Initiation of Sunset Review only against China and USA in Anti-dumping investigations on the import of Peroxosulphate from or originating in China& USA, F.No. 7/5/2018-DGAD dated March 20, 2018; Initiation of sunset review only against Saudia Arabia and the USA in Anti-dumping investigations on the import of Caustic Soda from Saudia Arabia, USA F. No. 7/16/2017-DGAD dated November 20, 2017.

17.26. The sunset review investigation requires the likelihood analysis(as described in following para), of continuation or recurrence of dumping and injury therefore presence/absence of dumping and injury is not of sole significance unlike in an original investigation. However, presence of dumping and injury makes the case unequivocally strong[13].

17.27. The importance of likelihood analysis in sunset review investigation was emphasized by CESTAT Delhi[14] and also Hon'ble High Court of Gujarat[15], which has set the guidelines for Sunset Reviews.

17.28. It is not obligatory to carry out the causal link analysis in a sunset review investigation. However, as a matter of practice, the Authority does address the issue in its findings. It may be mentioned that absence of causal link or breaking of the causal link in a sunset review may not have a direct bearing on the outcome of the sunset review.

17.29. Generally speaking, the duties can be modified or revised under a review investigation because the Rule 23 (1) provides that "any anti-dumping duty imposed shall remain in force so long as and to the extent necessary". Further, Rule 23 (3) makes provisions of Rule 17 applicable in the case of review wherein it is provided that duty to be recommended should be such that if levied it would remove the injury where applicable to the Domestic Industry after considering the principles laid down in Annexure III. Duties cannot be imposed on a retrospective basis pursuant to a sunset review[16].

**Likelihood Analysis**

17.30. In assessing the likelihood of continuing or recurrence of dumping and injury, the inquiry may consider the following facts (the list is non-exhaustive):

(i) **For assessing dumping** the following indicators could be examined;

- volumes and values of the imported goods during the POI and post POI (6 months subsequent to the POI);
- effectiveness of the duties in terms of the improvement in the performance of the Domestic Industry;

[13] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

[14] *Indian Metal and Ferro Alloys Ltd V/s Designated Authority*, 2008 (224) ELT 375 (CESTAT, New Delhi).

[15] Nirma Limited vs Union Of India (2016) SCA 16426 to 16429 (High Court of Gujarat)

[16] *SABIC v Designated Authority*, 2006 (200) ELT 488 (CEGAT, New Delhi).

- volume of imports before and after measures were imposed;
- Producer exporters' (in the exporting country) actual production;
- capacity in the exporting country;
- demand in the exporting country;
- excess capacity in the exporting country, if any;
- plans for capacity expansion and capital expenditure;
- exporters' supply chains/ channels of export to other markets and the international prices, if available in a comparable form;
- changes in technology that may impact the market dynamics;
- duty absorption by the exporters (or other means of circumventing measures);
- normal values in the exporting country;
- evidence of sales below costs;
- level of dumping margins during POI & post POI (6 months subsequent to POI);
- change in end users' preferences;
- exporters' domestic profit on sales of like goods;
- availability of other markets including the fact if other markets have been affected due to any trade remedial measures. There should be demonstrable evidence and reasoning as to why the subject goods are likely to find their way into the Indian market if the duties are not continued.

(ii) **For assessing the injury** following indicators could be examined:

- an overview of the Indian industry;
- production capacity and changes post imposition of anti-dumping duties;
- market share;
- any structural changes in the market or the operations of the Domestic Industry since the duties were imposed;
- landed value trends;
- Price Suppression & Depression;
- comparison of landed value of imports with selling Price of DI;

- comparison of landed value with NIP during POI and Post POI (6 months subsequent to POI);
- other causes of injury;
- changes in technology, product types, consumer preferences, demand and supply.

(iii) Dumping margin determined in all previous investigations including the trends in the dumping margin over the period;

(iv) Dumping determination for exports to third country;

(v) Volume of dumped imports;

(vi) Price attractiveness of the Indian market;

(vii) Level of inventories with exporters;

(viii) Capacity expansion by domestic industry;

(ix) Decline in demand for subject goods in subject country;

(x) Demand supply gap in subject countries;

(xi) Price undercutting in the absence of measures;

(xii) Vulnerability of the domestic industry;

(xiii) Market share held by the subject country in the Indian market;

(xiv) The potential for product-shifting with the producers from subject country;

(xv) Effectiveness of the duties in terms of the improvement in the performance of the domestic industry;

**Sunset Review On Suo Motu Basis**

17.31. The Rule provides that the Authority can initiate a sun set review investigation on suo motu basis also.

17.32. The Authority has undertaken suo motu initiations in past[17] either on the directions of the Hon'ble Court or as per the past practice that the Authority is required to undertake review investigation automatically[18]. However, subsequently it became clear that review investigation is not a mandatory requirement or duty of the Authority, rather it has to be done on merits in terms of Rule 23. Thereafter, the

[17] Directorate General of Ant-Dumping and Allied duties, Trade Notice No. 1 of 2008, F. No. 4/31/2007-DGAD (March 10, 2008).

[18] *Kalyani Steels Limited v Secretary, Revenue, Ministry of Finance,* 2008 (224) ELT 47 (High Court of Delhi).

Authority has initiated or rejected the initiation on case to case basis[19]. This view has been confirmed by Hon'ble High Court of Delhi[20].

17.33. As a matter of practice, it is normally preferred that initiation is based on an application filed by the domestic industry after examination of prima facie existence of sufficient grounds to do so.

## MID-TERM REVIEW INVESTIGATIONS

### LEGAL PROVISION

17.34. Rule 23(1A) reads as under:

> *(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted*[21].

### OPERATING PRACTICE

17.35. The MTR can be initiated by the Authority on its own initiative or on receipt of Application from the interested parties[22].

17.36. The established practice of the Authority is to always conduct a comprehensive review which includes analysis of dumping, injury, causal link and likelihood of injury[23].

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[19] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

[20] *Kesoram Rayon v. Designated Authority &Ors W.P.(C) 146/2017; Gujrat Alkalies& Chemicals Ltd. v. Designated Authority &Ors W.P..(C) 147/2017; Grasim Industries Ltd. V. Designated Authority &Ors W.P.(C) 247/2017; TECHFAB India Industries Ltd. v. Designated Authority &Ors W.P.(C) 640/2017; STRATA Geosystems (India) Pvt. Ltd v. Designated Authority &Ors W.P.(C) 641/2017;VVF (India) Limited v. The Director General of Safeguards &Ors W.P.(c) 1847/2017; Strata Geosystems (India) Pvt Ltd &Anrv. Union of India &Anr W.P.(C) 5088/2017; Grasim Industries Ltd vs. UOI &Anr W.P.(c) 5089/2017; Kesoram Rayon v. UOI &Anr W.P.(c)5095/2017; Aarti Drugs Ltd v. Designated Authority &Ors W.P.(C) 7464/2017*(High Court of Delhi).

[21] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

[22] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

[23] The interested parties have requested to introduce practice of partial review involving only the dumping or only the injury pertaining to an exporter only, to be done on a fast track basis, however, it is only at proposal stage under consideration with the Directorate.

17.37. The scope of the review inquiry by the Designated Authority is limited to the satisfaction as to whether there is justification for continued imposition of such duty on the information received by it. By its very nature, the review inquiry should be limited to see as to whether the conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is no longer justification for continued imposition of the duty. The inquiry is limited to the change in the various parameters like the normal value, export price, dumping margin, fixation of non-injurious price and injury to domestic industry[24].

17.38. The scope of Mid-term Review covers the following:

(i) Withdrawal/modification of existing AD duties on the ground of changes in the normal value, export price, non-injurious price, dumping margin or injury margin which are of lasting nature;

(ii) Change in the name of the producer/exporter;

(iii) Change in the form of duty;

(iv) Exclusion of products from scope of PUC; and

(v) Any other specific amendment/modification to the Final Findings.

17.39. The MTR can be initiated only during the tenure of thee xi sting duty. The application must be filed between 12 months to 42 months from the date of imposition of duty. The time for filing MTR application was earlier also mentioned in Trade notice No.1/2004 dated 15.3.2004 and Trade Notice 1/2010 dated 17.5.2010, which are in force to the extent they are not contrary to the present timeline instructions contained in Circular No. 2 dated 27.2.2018.

17.40. The Product under Consideration can be modified in a Mid Term Review investigation on a specific request from interested parties seeking exclusion of some product types from whole of the PUC. In no case the scope of product can be widened or enlarged. Refer chapter-2 for discussion on PUC.

17.41. An application to review the duties/scope can be filed by any interested party such as domestic industry or exporters or importers,users or associations on behalf of their members[25].

[24] *Rishiroop Polymers Pvt. Ltd. v Designated Authority and Additional Secretary,* (2006) 4 SCC 303 (Supreme Court of India).

[25] *Indian Graphite Manufacturers Association v Designated Authority*, 2006 (199) ELT 722 (CESTAT, New Delhi).

17.42. The methodology for conducting MTR investigation, is broadly similar to that of original antidumping investigation[26]. The investigation has to be completed within a period of 12 months.

17.43. The Applicant is required to substantiate the Application with positive evidence showing the need for review of the original investigation due to "lasting nature of changed circumstance".

17.44. The important distinguishing feature in initiation of Mid-term review Investigation vis-à-vis original investigation in the matter of increased/decreased/ discontinuation of duty, is that there is a need to undertake likelihood analysis to examine impact of the review sought by the applicant.

17.45. An opportunity of personal hearing may be given to the Applicant for presenting their case to the Designated Authority. Subsequent to the hearing and examination of the submissions, if the Authority comes to the conclusion that the case is not fit for initiation, a speaking order for termination must be communicated to the applicant.

17.46. In case *prima facie* sufficient evidence is found in the application for initiation of Mid-term Review, a Notification should be issued with the approval of the DG as per the procedure described in Chapter 6 of this Manual.

17.47. There is a flexibility with the Authority to receive application for Mid-term review against all the subject countries or only against some[27] of the subject countries. Further, even when the initiation is done against many subject countries, the investigation could result in recommendation/ modification of duty against none, some or all, depending on the facts and merit of the case.

17.48. The Mid-term review investigation requires the analysis of dumping, injury as well as likelihood analysis (as described in aforesaid paras), of continuation or recurrence of dumping and injury[28].

17.49. In Mid-term review investigation, the authority can arrive at a conclusion for modification by way or increase or decrease of existing Anti-dumping Duties imposed vide original investigation.

[26] Directorate General of Anti-Dumping and Allied duties, Trade Notice 1 of 2010, F. No. 10/18/2003-DGAD (May 17, 2010).

[27] Final Finding in Second Mid-term Review Anti-dumping investigations on the import of Caustic Soda from Saudia Arabia, USA, Iran, Japan and France, F. No. 15/2/2010 dated June 20, 2017.

[28] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

17.50. If the review application is based on a change in the variables like normal value, export price, non-injurious price, dumping margin or injury margin, then it must necessarily contain the details of such changes along with necessary evidence.

17.51. If the application seeks revocation of the duties, the applicant is required to provide evidence of the grounds on the basis of which such a claim is made.

17.52. A review for revocation also includes an examination of the current economic performance of the Domestic Industry as part of assessing whether the injury would be likely to recur following any revocation of the anti-dumping measure.

**Mid Term Review on Suo Moto Basis**

17.53. For initiating MTR on its own initiative, the Authority can rely on many sources of information namely:

(i) Letter/representation with credible information, which prima facie shows the need for suo motu initiation;

(ii) Credible news reports in print or electronic media;and

(iii) In house analysis based on available source of information regarding import prices and domestic prices of the subject goods by the Directorate.

17.54. The change in constitution/ ownership and its consequential impact on costs on account of merger/ amalgamation/ acquisition/ liquidation/ closure etc. of the applicant domestic industry can also be the reason for initiation of MTR on *suo motu* basis.

17.55. In above situations, the views/comments of stakeholders can also be sought on the website of the Directorate. Based on feedback/information received the Authority can take decision on initiation of Mid Term Review investigation.

**Comprehensive extended Mid Term Review**

17.56. If the application for MTR is filed by only one exporter from a subject country whereas there are multiple exporters from that country who were given individual duty rates, in that case it is advisable to initiate MTR against the subject country as a whole. This would entail initiation to review dumping, injury and likelihood against all the exporters of that particular country.

17.57. Further, when there are multiple countries and an application is received against one or two countries only that too quite late in the existence of the duty and there are sufficient grounds to consider initiation, then in that case it may be more preferable to initiate comprehensive review against all the subject countries, which otherwise also would have been due within a short period of time.

17.58. If the comprehensive review is undertaken, then its outcome can be valid for further 5 years instead of being co-terminus with the original validity. This would obviate the need to undertake sun set review and avoid multiplicity of work causing strain on existing shortage of human resource[29]. This emanates from Article 11.

## NEW SHIPPER REVIEW INVESTIGATIONS

### LEGAL PROVISIONS

17.59. Rule 22 (Article 9.5 of the ADA) allows a new exporter (as defined) to apply for a review for determination of an individual dumping margin for the applicant exporter.

> 22. ***Margin of dumping, for exporters not originally investigated.-*** *(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.*
>
> (2) *The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act, on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:*
>
> *Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters,*

[29] Please refer to Para XVII of Chapter 24 for WTO Jurisprudence.

*it may levy duty in such cases retrospectively from the date of the initiation of the review*[30].

**OPERATING PRACTICES**

17.60. The NSR can be initiated by the Authority on receipt of an Application[31] from the new exporter/shipper.

17.61. The NSR can be filed and initiated only before the expiry of existing duty. The application can be filed any time after the imposition of Duty but 12 months before the expiry of the existing anti-dumping duties as per the timelines prescribed.

17.62. NSR is filed only for limited purpose of seeking individual duty by an exporter from the exporting country against whom duty has been imposed.

17.63. The essential requirement for such an exporter is that he should not have exported the subject goods to India during the POI of the previous original/review investigation and neither related to any producer/exporter who have exported the subject goods to India during the original/review investigation. For related party details, please refer to chapter 19 of this manual.

17.64. It may be desirable that the exporter has some track records of actual exports to India on the date of filing of NSR application in order to establish its credible intent to export to India. This is in line with the fact that similarly placed producers/exporters are not considered for individual rate if these units have not exported during POI of an anti-dumping investigation.

17.65. After establishing the eligibility of the applicant(s) from a subject country, the next step is determination of Period of Investigation. The details regarding POI determination may be referred at chapter 5 of this manual.

17.66. The PUC for NSR investigation is the same as that of the original/review investigation against which the NSR is being filed.

17.67. After the prima facie examination of the information submitted by the applicant and finding sufficient justification for initiation of a New-shipper review investigation in accordance with the provisions of Rule 22 of the Anti-Dumping Rules, the Authority recommends provisional assessment on all exports of subject

[30] Please refer to Para XVII to Chapter 24 for WTO Jurisprudence.

[31] Directorate General of Ant-Dumping and Allied duties, Trade Notice 08 of 2018, F. No. 4/5/2018 (April 25, 2018).

goods made by the NSR applicant till the review is completed in accordance with Rules.

17.68. The methodology for conducting New Shipper Review investigation, is broadly similar to that of original antidumping investigation, however, the New Shipper review investigation has to be completed expeditiously. Even though no specific time period is mentioned, it is understood that it should be done faster than the original and review investigations. The timelines for finalisation of NSR have been given in Circular No. 2 dated 27.2.2018. All the process of Initiation, Hearing, Disclosure, Final Finding notification has to be duly followed as applicable for original investigation.

17.69. The New Shipper Review investigation require calculation ofonly dumping margin for the applicant producer/exporter and not injury margin. For quantifying the duty for applying "Lesser Duty Rule", the injury margin is taken from the original investigation.

17.70. In case the Authority had used sampling methodology in original investigation, the duty rates given to co-operative un-sampled exporter may also be considered for the NSR applicant with the approval of the Authority.

17.71. Anti-dumping duties cannot be imposed with a retrospective effect pursuant to a NSR[32].

[32] *H & R Johnson v Union of India*, 2008 (129) ECC 70 (High Court of Delhi).

Appendix-55

10/18/2003-DGAD
Government of India
Ministry of Commerce & Industry

**Trade Notice No. 1/2004**

New Delhi 15th March, 2004

**Subject: Clarification regarding Initiation of Mid-term Reviews in terms of Rule 23 of Anti-dumping Rules.**

Attention of the Trade and Industry is invited to Section 9 A of the Customs Tariff Act, 1975 as amended in 1995 and Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and Trade Notice No.1/99 dated 21.4.1999.

2. It is hereby clarified that an application for initiation of Mid-term review of Anti-Dumping Duty in force can be made to the Designated Authority in the Ministry of Commerce & Industry, Udyog Bhawan, New Delhi by an interested party including exporters, importers, domestic producers, trade representative bodies, firms or institutions, which are representative of domestic industry. The applicant should submit positive information substantiating the need for such review.

3. Application for an interim/Mid-term review may be accepted by the Designated Authority provided at least one year has elapsed from the date of order notifying the definitive Anti-Dumping Duty by the Central Government.

4. Notwithstanding anything contained herein, the Designated Authority may review the need for the continued imposition of the duty, where warranted on its own initiative.

5. As regards, initiation of Sunset Review, the guidelines have already been issued vide Trade Notice No. 1/2003 dated 05.01.2004.

6. All the Trade Associations and Chambers of Commerce and Industry are requested to bring the contents of this trade notice to the notice of their members/ constituents.

7. All Embassies and Diplomatic Missions in New Delhi are requested to bring the contents of this Trade Notice to the notice of the concerned.

-sd/-
(M. S. Rao)
Director
For the Designated Authority
Fax 011-2301 4418

As per list enclosed.

Appendix-56

No. 4/31/2007-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

Dated 10th March, 2008

**Trade Notice No. 1/2008**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended in 1995 and to Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereunder.

2. In the above connection, it is informed that henceforth the Directorate General of Anti-Dumping & Allied Duties (DGAD) will follow the procedure as given under for initiating a Sunset Review (SSR):-

i. Alert letter to the domestic industry (DI) will be issued soon after the 4th year of antidumping measures. The DI must inform within 40 days of the dispatch of the letter whether they intend to file an application seeking extension of anti-dumping measures. If so, an application justifying the need to continue the Anti-dumping measures in force should be received in the Directorate before six months of the date of expiry of AD measures.

ii. The Designated Authority shall initiate SSR either on the basis of domestic industry's application or on suo- moto basis after expiry of the time limits provided under para 2(i) and in the latter case issue a questionnaire to the DI with advice to respond to the same within next 40 days substantiating the need for continued imposition of the AD measures. After its receipt, other interested parties would be advised to offer their comments within 40 days from the date of issuance of the letter regarding the need to continue or otherwise the AD measures.

iii. If the DA is satisfied after receipt of information from various parties that there is sufficient ground for continuation of the AD measures, with or without modification, it may recommend so to the Central Government. The investigation would, however, be closed, if it is found that there is insufficient ground for continuation of the measures in force.

3. The above procedure will supersede all previous instructions or Trade Notices issued by the Directorate with regard to SSR and in the publications of this Directorate.

-sd/-
(Neeraj Kumar Gupta)
Joint Secretary
For Designated Authority

To
All concerned

Appendix-57

10/18/2003-DGAD
Government of India
Ministry of Commerce & Industry

New Delhi 17th May, 2010

**Trade Notice No. 1/2010**

**Subject: Clarification regarding Initiation of Mid-term Reviews in terms of Rule 23 of Anti-dumping Rules.**

Attention of the Trade and Industry is invited to Section 9 A of the Customs Tariff Act, 1975 as amended in 1995 and Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and Trade Notice No.1/2004 dated 15th March 2004.

2. It is hereby clarified that an application for initiation of Mid-term review of Anti-Dumping Duty in force can be made to the Designated Authority in the Ministry of Commerce & Industry, Udyog Bhawan, New Delhi 110011 by an interested party including exporters, importers, domestic producers, trade representative bodies, firms or institutions, which are representative of domestic industry. The applicant should submit positive information substantiating the need for such review.

3. Application for an interim/Mid-term review may be accepted by the Designated Authority provided that a reasonable period of time, i.e. at least one year, has elapsed since the imposition of the definitive anti-dumping duty by the Central Government.

4. Notwithstanding anything contained herein, the Designated Authority may review the need for the continued imposition of the duty, where warranted on its own initiative.

5. As regards, initiation of Sunset Review, the guidelines have already been issued vide Trade Notice No. 1/2008 dated 10th March 2008.

6. The above procedure will supersede all previous instructions or Trade Notices issued by the Directorate on the above subject and in the publications of this Directorate.

7. All the Trade Associations and Chambers of Commerce and Industry are requested to bring the contents of this trade notice to the notice of their members/ constituents.

8. All Embassies and Diplomatic Missions in New Delhi are requested to bring the contents of this Trade Notice to the notice of the concerned.

-sd/-
(Bharathi S Sihag)
Joint Secretary
for the Designated Authority
Phone 011-2306 2526.

As per list enclosed.

Appendix-58

No.4/31/2007-DGAD
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties

Dated 6th June, 2011

**Trade Notice No. 2/2011**

1. Attention of the Trade and Industry is invited to Section 9A of the Customs Tariff Act, 1975 as amended and to Rule 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 framed thereunder, as amended.

2. In the above connection, it is informed that vide Notification No.15/2011-Customs (N.T.) dated 1st March, 2011 read with the corrigendum dated 6th April, 2011 the sub-rule(1) of Rule 23 has been substituted by the following:-

"(1) Any anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1A) The designated authority shall review the need for the continued imposition of any antidumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said anti-dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or (1A), any definitive antidumping duty levied under the Act, shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to the expiry of that period, that the expiry of the said anti-dumping duty is likely

to lead to continuation or recurrence of dumping and injury to the domestic industry."

3. It has been decided that reasonable period of time for the purpose of sub-rule 23(1B) shall be 90 days prior to the date of expiry of the anti-dumping duty.

4. In view of the above, all previous instructions and Trade Notices issued by the Directorate with regard to SSR stand superseded.

-sd/-
(Bharathi S.Sihag)
Joint Secretary
For Designated Authority

To
All concerned

Appendix-59

No. 15/AS&DGAD/2017
Government of India
Department of Commerce
Directorate General of Anti-Dumping and Allied Duties
Jeevan Tara Building

Dated 14th June, 2017

**Note**

**Sub: Initiation of Review cases (SSR/MTR/NSR/Anti circumvention etc.)**

It is seen that in many review cases the records of the original case of which the review is to be done are not readily available and linked with the review cases.

2. Henceforth, it should be ensured that in review cases records of the original case [and/or earlier SSR/MTR cases(s)] are readily available at the time of Initiation itself.

3. In the review file, copy of Initiation, Final Findings (both confidential & non confidential versions) and DOR notifications are put as a base document while proposing review. This may be done immediately for existing/ already initiated cases also.

4. Further, it is seen that SSR cases are initiated at a very late stage due to which extension of duty for 1 year became a compulsion. Hence, all existing cases, in which duty is likely to expire in the next 1 year, immediate appropriate steps may be taken at least 6 months before the date of expiry of duty. DI may be addressed to file the application for SSR, if they so wish, with all relevant details/ documents/ data. Possibility of suo-moto initiation of SSR case may also be explored.

-sd/-
(Inder Jit Singh)
AS & DGAD

All IOs & COs
CC: Pri. Adv. (Cost), Dir.(Admn.), DD(KKS), AD(DA)

# ANTI-CIRCUMVENTION INVESTIGATIONS

## LEGAL PROVISIONS

### WTO Provisions

18.1. It may be noted that neither the ADA nor any other legal instrument under the WTO has provisions concerning anti-circumvention of anti-dumping duty. Nonetheless, many countries apart from India, such as the European Union, the United States, Australia, and Canada have anti-circumvention provisions within their domestic anti-dumping frameworks.

### National Provisions

18.2. In India, the provisions concerning anti-circumvention were introduced vide Section 58 of the Finance Act, 2011. Accordingly, Section 9A(1A) was inserted in the Act which is reproduced below.

> *Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be.*

### Provisions in the Rules

18.3. Rules 25-28 of the Anti-dumping Rules covering anti-circumvention were introduced in 2012.

*25. Circumvention of anti-dumping duty.* **–**

*(1) Where an article subject to anti-dumping duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in such country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping duty in force if, -*

*(a) the operation started or increased after, or just prior to, the anti-dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti -dumping duty; and*

*(b) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.*

*Explanation I. – 'Value' means the cost of assembled, complete or finished article less value of imported parts or components.*

*Explanation II. - For the purposes of calculating the 'value', expenses on account of payments relating to intellectual property rights, royalty, technical know- how fees and consultancy charges, shall not be taken into account.*

(2) *Where an article subject to anti-dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti-dumping duty in force if the alteration of the description or name or composition of the article subject to anti-dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any.*

(3) *Where an article subject to anti-dumping duty is imported into India through exporters or producers or country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through exporters or producers or country not subject to anti-dumping duty.*

*Explanation.- For the purposes of this sub-rule, it shall be established that there has been a change in trade practice, pattern of trade or channels of sales if the following conditions are satisfied, namely: -*

(a) *absence of a justification, economic or otherwise, other than imposition of anti-dumping duty;*

(b) *evidence that the remedial effects of the anti-dumping duties are undermined in terms of the price and or the quality of like products.*

*Rule 26: Initiation of investigation to determine circumvention. –*

(1) *Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied under section 9A of the Act, upon receipt of a written application by or on behalf of the domestic industry.*

(2) *The application shall, inter-alia, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.*

(3) *Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo-motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 ( 52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti-dumping duty in force.*

(4) *The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the antidumping duty in force where it is satisfied that imports of the article circumventing an anti-dumping duty in force are found to be dumped:*

*Provided that, the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.*

*(5) The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule.*

(6) *Any such investigation shall be concluded within 12 months and in no case more than 18 months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.*

*Rule 27: Determination of circumvention -*

*(1) The designated authority, upon determination that circumvention of anti-dumping duty exists, may recommend imposition of anti-dumping duty to imports of articles found to be circumventing an existing anti-dumping duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the antidumping duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.*

(2) *The designated authority shall issue a public notice recording its findings.*

(3) *The Central Government may, pursuant to the recommendations made by the designated authority, extend the anti-dumping duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.*

*Rule 28: Review of circumvention.-*

*(1) The designated authority may review the need for the continued imposition of the duty, where warranted, on its own initiative or provided that a reasonable period of time has elapsed since the imposition of the measures, upon request by any interested party which submits positive information substantiating the need for the review.*

*(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of review*

**SIGNIFICANCE**

18.4. Circumvention refers to an action taken by an exporter/producer of an article in the exporting country which is subject to ADD, to avoid the incidence of ADD imposed by the importing country. Circumvention, as defined under Rule 25 of the Rules,takes place in either of the following circumstances:

**Assembling, Completion, or Finishing**

18.4.1. where the article which is subject to ADD is imported into India in an un assembled, incomplete or unfinished form subject country, and thereafter assembled, or completed in India (sub-rule 1);

18.4.2. where the article which is subject to ADD is exported to another country in an un assembled, incomplete or unfinished form, thereafter assembled, completed, or finished, and then imported into India (sub-rule 1);

18.4.3. In either of the above circumstances, it is necessary for two conditions to exist:

(i) First, the operation (of assembling, finishing, or completion) should have started or increased after, or just prior to the AD investigation, and the parts and components are imported from the notified country.

(ii) Second, the value[1] addition (i.e., the value consequent to the operation) should be less than 35% of the cost of the assembled, finished or complete article.

**Alteration of Description, Name or Composition**

18.4.4. If the article which is subject to ADD has been subject to any process involving alteration of the description, name or composition of such article (sub-rule 2).

18.4.5. Such alteration shall be considered to circumvent the ADD in forceif it results in such article being altered in form or appearance (even in minor form) regardless of variation of tariff classification, if any.

**Change of Country of Export/Origin**

18.4.6. If the article which is subject to ADD is imported through a country which is not notified for the levy of ADD (sub-rule 3).

[1] Explanation I to the sub-rule (1) defines value to mean the cost of assembled, complete or finished article less the value of imported parts and components.

### Change of Exporter/Producer

18.4.7. If the article which is subject to ADD is imported through producers/ exporters who are not notified for the levy of ADD (sub-rule 3).

18.4.8. In all the above cases, circumvention is established only if the producers/ exporters notified for the levy of ADD change their trade practice, pattern of trade, or channels of sales of the PUC in order to have the PUC exported through producers/exporters or country not subject to ADD.

## OPERATING PRACTICES

### Initiation

18.5. An anti-circumvention investigation can be initiated subsequent to receipt of an application from the domestic industry containing sufficient evidence regarding the existence of the circumstances of circumvention. An anti-circumvention investigation can also be initiated *suo moto* by the Authority if it has received information from the Customs Commissioner or any other reliable source and is satisfied from such information that sufficient circumstances of circumvention exist.

18.6. In circumstances of circumvention defined under sub-rule (2), the product alleged to be circumventing the existing ADD is usually different from the product that was the subject of the original investigation. Therefore, to avoid confusion and for clarity of all concerned, it is the practice of the Directorate to term the goods currently under investigation as the "Product under Investigation (PUI)" and distinguish it from the product that was under consideration (PUC) in the original investigation. Therefore, it is important to clearly define the PUI (besides identifying the PUC and the like article)in the Initiation Notification and follow all guidelines for identification as mentioned in Chapter 3 of this Manual.

18.7. It has been recognized under sub-rule (3), that the producer/exporter notified for the purpose of ADD may attempt to circumvent the ADD by exporting through a different country and/or changing the country of origin (subject country) from the one notified for the purposes of ADD. In such instances, the changed country of origin or export must be clearly identified in the Initiation Notification as the country under investigation (CUI) for clarity and to avoid confusion.

18.8. It has also been recognized in sub-rule (3), that the producer/exporter notified for the purpose of ADD may attempt to circumvent the ADD by exporting through a producer/exporter who has not been notified as liable to pay duty. In such instance, such producer/exporter or both such producers/exporters will be investigated by the Authority.

18.9. The procedure and conditions pertaining to standing of the domestic industry are the same as in other anti-dumping investigations and details are as given in Chapter 4 of this Manual.

18.10. The Period of Investigation in this investigation will have to be subsequent to the original period of investigation and should be notified clearly.

18.11. The other necessary requirements of Initiation Notification, Communication and Post Initiation procedure are the same as in any other ADD investigation and can be seen in Chapter 6 of this Manual.

**Investigation**

18.12. In an anti-circumvention investigation, the following steps must be followed:

18.12.1. The investigation procedure in case of anti-circumvention investigations is largely the same as in other investigations. Rule 26 makes the provisions of Rule 6 *mutatis mutandis* applicable to anti-circumvention investigations.

18.12.2. At the outset, it must be determined by the Authority that there is dumping of the PUI or the PUC, as the case may be, depending on the circumstance of circumvention alleged by the domestic industry. In case there is dumping, the provisions of Rule 10 read with Annexure I to the Rules must be followed.

18.12.3. Under circumstances as defined under Rule 25, circumvention of anti-dumping duty must established[2].

18.12.4. The Explanation to sub-rule (3) states that change in trade practice, pattern of trade, or channels of sales shall be established if the following conditions have been met:

[2] Final Finding in Anti-Circumvention investigations concerning imports of ColdRolled Flat Products of Stainless Steel originating in or Exported from China PR, Korea, European Union, South Africa, Taiwan, Thailand and USA, F. No. 14/1/2014-DGAD dated Aug. 18, 2017. In this investigation, the ADD found that cold-rolled steel of certain widths (PUC) was being circumvented by the import of cold-rolled steel above the widths of the PUC (PUI)

(i) Absence of a justification, economic or otherwise, other than imposition of ADD.

(ii) Evidence that the remedial effects of ADD are undermined in terms of price (price effect) and/or quantity (volume effect) of the like products. These are discussed below.

18.12.5. In examining volume effect, the Authority examines whether – since the imposition of the ADD on the PUC – there has been a decrease in the volume of imports of the PUC and a simultaneous increase in the volume of imports of the circumvented product during the POI. This comparison may be made in absolute terms/ relative terms. Examination of volume effect may also be made with regard to whether the domestic industry's market share of the like article has decreased during the POI.

18.12.6. In examining price effect, the Authority examines whether the landed value of the circumvented product is undercutting the selling prices of the like article in India or the landed value is below the NIP determined for the PUC in the original investigation. Any other relevant factors which demonstrate price effect may also be taken into account.

18.12.7. In an examination of alleged circumvention under the circumstance defined under sub-rule (1), the Authority must, in addition, determine the value addition[3]. Explanation I to clause (b) of sub-rule (1) defines 'value' to mean the cost of assembled, complete or finished article less value of imported parts or components.

**Conclusion**

18.13. After detailed examination of anti-circumvention application, the questionnaires and submissions of the interested parties, the Authority can come to one of the following conclusions:

18.13.1 That there is insufficient evidence of circumvention and thereby terminate the investigation.

[3] Final Finding in Investigation regarding Circumvention of Anti-Dumping Duty existing on Diclofenac Sodium (DFS) by imports of "Indolinone", an unfinished form of "DFS", originating in or exported from China PR, Case No. No. 14/22/2014-DGAD dated Feb.15, 2017,in this investigation, the product under investigation (PUI) was Indolinone, a penultimate product of Diclofenac Sodium (DFS) which was the product under consideration (PUC) in the original investigation on imports of DFS from China PR.

18.13.2 That the PUC is being imported into India in an unassembled, incomplete, and unfinished form, and thereafter being assembled, completed and finished in India, with the sole intention of circumventing the ADD on the PUC, and hence recommend that the ADD on the PUC be extended to cover import of PUI which is the unassembled, incomplete or unfinished form of the PUC.

18.13.3 That the PUC has been subjected to a process involving alteration of the description, name or composition of an article, such that the 'article being altered (PUI)' circumvents the ADD on the PUC and hence recommend that the ADD on the PUC be extended to cover import of PUI.

18.13.4 That the producer/exporter notified for the purposes of ADD is exporting through a producer/exporter or country of export/origin other than the producer/exporter or country notified in the original investigation for the purposes of imposing anti-dumping duty. The Authority may recommend extension of ADD to the PUC being exported by such other producer/exporter or from such other country of origin/export.

18.13.5 That the PUC is being imported into another country in an unassembled, incomplete, and unfinished form, thereafter being assembled, completed, and finished in such other country, and then being imported into India with the sole intention of circumventing the ADD on the PUC, and hence recommend that the ADD on the PUC be extended to cover imports of the PUI from such other country.

18.14. The Central Government issues the customs notification imposing duties which are applicable for the circumventing products, or circumventing producer/exporter, or country under investigation, in respect of which the anti-circumvention application has been filed.

18.15. The appeal procedure is the same and lies with the CESTAT.

# GENERAL ISSUES

## RELATED PARTY TRANSACTIONS

### INTRODUCTION

19.1. A related-party transaction is a business deal or arrangement between two parties, who are joined by a special relationship prior to the deal. Related-party transactions are a common occurrence in the business marketplace. These transactions can have significant influence over any financial decision and consequential impact on profit or loss thus impacting financial position of an entity. However, a number of regulatory procedures are in place in the country to ensure that related-party transactions are conflict-free and do not negatively affect value for shareholders. Since the definitions are not very specific, and no separate record for related party transactions is generally available, it is sometimes difficult for the investigation team to verify the accuracy of information furnished by the DI regarding related party transactions. Therefore, it was considered appropriate to provide guidance to the team which can result in uniform practices for the investigations.

### LEGAL PROVISIONS

#### The Rules

19.2. A "related" party is defined in the explanation to Rule 2(b) of the Rules as under:

> *Explanation. - For the purposes of this clause, -*
>
> *(i) producers shall be deemed to be related to exporters or importers only if, -*
>
> *(a) one of them directly or indirectly controls the other; or*

*(b) both of them are directly or indirectly controlled by a third person; or*

*(c) together they directly or indirectly control a third person subject to the condition that are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.*

*(ii) a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.*

19.3. This definition is applied in the Directorate to determine if domestic producer in India is related to exporters in subject countries or importers in India. Explanation to Rule 2(b) of the Anti-Dumping Rules, 1995 clearly states that the definition of related party contained therein is specific to that clause only.

**Customs Valuation Rules, 2007**

19.4. Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 framed under Customs Act, 1962 provides that persons shall be deemed to be "related" only if:

(i) *they are officers or directors of one another's businesses;*

(ii) *they are legally recognised partners in business;*

(iii) *they are employer and employee;*

(iv) *any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;*

(v) *one of them directly or indirectly controls the other;*

(vi) *both of them are directly or indirectly controlled by a third person;*

(vii) *together they directly or indirectly control a third person; or*

(viii) *they are members of the same family.*

*Explanation I. - The term "person" also includes legal persons.*

*Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire,*

*howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.*

19.5. The aforesaid definition of related party under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is similar to as contained in the Article 143 of the implementing provisions of Council Regulation (EEC) No 2454/93 of the European Union. Both of these are based on the definition of related party provided under paragraph 4 of Article 15 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Customs Valuation Agreement). Therefore, this definition of 'related party' has been incorporated in the Exporter's Questionnaire as well as in Application Format for New Shipper Review also.

**Indian Companies Act, 2013**

19.6. The Indian Companies Act 2013 requires the companies especially Public Limited Companies to disclose all transactions with related parties. It may, however, be noted that the NIP of any company is worked out based on the audited data submitted by the respective company. Related Party has been defined under section 2(76) of The Companies Act, 2013 is as under:

19.7. Related party, with reference to a company, means-

(i) A director or his relative;

(ii) A key managerial personnel or his relative;

(iii) A firm, in which a director, manager or his relative is a partner;

(iv) A private company in which a director or manager or his relative is a member or director;

(v) A public company in which a director or manager is a director and holds along with his relatives, more than 2% of its paid up share capital;

(vi) Anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

(vii) Any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-clauses (vi) and (vii) shall apply to advice, directions or instructions given in professional capacity;

(viii) Anybody corporate, which is:

(A) A holding, subsidiary or an associate company of such company;

(B) A subsidiary of a holding company to which it is also a subsidiary; or

(C) An investing company or the venture of the company.

Explanation- For the purpose of this clause, "investing company or the venture of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

(ix) Such other person as may be prescribed;

19.8. Sub-section 77 of Section 2 defines relative as under:

Relative, with reference to any person, means anyone who is related to another, if:

*(i) they are members of a Hindu Undivided Family;*

*(ii) they are husband and wife; or*

*(iii) one person is related to the other in such manner as may be prescribed;*

19.9. Rule 4 given in the Companies (Specification of Definitions Details) Rules, 2014 provides the List of Relatives in terms of Clause (77) of section 2. Accordingly, a person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:

(1) Father: Provided that the term "Father" includes step-father;

(2) Mother: Provided that the term "Mother" includes the step-mother;

(3) Son: Provided that the term "Son" includes the step-son;

(4) Son's wife;

(5) Daughter;

(6) Daughter's husband;

(7) Brother: Provided that the term "Brother" includes the step-brother;

(8) Sister: Provided that the term "Sister" includes the step-sister.

**Income Tax Act, 1961**

19.10. The Companies Act 2013 does not prescribe any methodology to calculate price on arm's length basis (Section 188). However, the Income Tax Act prescribes the following methods to compute arm's length price under section 92C:

(i) Comparable Uncontrolled Price Method;

(ii) Resale Price Method;

(iii) Cost Plus Method;

(iv) Profit Split Method;

(v) Transaction Net Margin Method;

(vi) Such other methods as may be prescribed by the board.

19.10.1 **Under the Comparable Uncontrolled Price Method** (CUP), the price is adjusted so that there are no differences between the related transaction and the comparable uncontrolled transactions. This price adjustment accounts for differences, if any, between the related transaction and comparable uncontrolled transactions or between the parties entering into such transactions, which could materially affect the price in the open market. The adjusted price is taken to be Arm's Length Price in respect of the product/asset transferred or services provided. This method is used in case it is for a product or service i.e. to compare prices charged for product transferred or a service that is provided.

19.10.2 **Resale Price Method is used when product is purchased or services are obtained from related entities and the same are further sold to unrelated enterprises.** Under this method, the price at which the service or product obtained by a related entity and resold to an unrelated one is identified and adjusted by the amount of normal gross profit margin accruing to the entity or to an unrelated enterprise from the purchase and resale of the same or similar product. The price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase and sale of the property. The adjusted price arrived at is taken to be arm's length price in respect of the purchase of product or obtaining of the services by the enterprise from the related entity.

19.10.3 The Cost Plus Method is generally applied in cases where there are semi-finished goods which are sold between related parties or joint facility agreements etc. Under this method, the direct and indirect costs of production incurred by the

enterprise in respect of products transferred or service related entity, are determined and the amount of a normal gross profit mark-up to such costs arising from the transfer or provision of the same or similar products or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction, or a number of such transactions, is determined. The normal gross profit mark-up is adjusted to take into account the functional and other differences, if any, between the related transaction or the specified domestic transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market. The sum so arrived at is taken to be an Arm's Length Price in relation to the supply of the product or provision of services by the enterprise.

19.10.4 The Profit Split Method is mainly used in transactions which deal with unique intangibles or in transactions that are multiple in nature and therefore, cannot be evaluated separately to determine arm's length price as they are interrelated. Under this method, the combined net profit of the related entities arising from the related transaction in which they are engaged, are determined. The relative contribution made by each of the related entities to the earning of such combined net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each entity and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated entities performing comparable functions in similar circumstances. The combined net profit is then split among the related entities in proportion to their relative contributions. The profit thus apportioned to the related entity is taken into account to arrive at arm's length price in relation to the related transaction.

19.10.5 The Transactional Net Margin Method (TNMM) requires establishing comparability level at a broad functional level. It requires comparison between net margin derived from operation of the uncontrolled parties and net margin derived by a related entity on similar operation. Under this method, the net profit margin realised by arelated entity from a related transaction is computed in relation to a particular factor such as costs incurred, sales, assets utilized, etc. The net profit margin earned by a related entity is compared with net profit margin of uncontrolled transactions to arrive at arm's length price.

19.10.6 The Arm's Length Price is determined under Section 92C (1) of the Income Tax Act by using the most appropriate method. The Most Appropriate Method is

best suited method to the facts and circumstances of each particular transaction. If an enterprise entered into various transactions with different related entities, then the same method will not be applicable to all the transactions. The Most Appropriate Method will be selected considering the facts and circumstances of each and every transaction to find out appropriate Arms' Length Price.

### OPERATING PRACTICE FOR INVESTIGATION

19.11. The AD Rules have defined related parties for the purposes of DI standing, however, no guidance has been provided beyond that. As the related party transactions have great ramifications for all the interested parties, the comments and observations of the statutory auditors in the audited accounts may be relevant for trade remedy investigations.

19.12. The purpose of seeking information regarding related party transactions is to ensure that the transactions between two related parties are conducted are at arm's length, so as to avoid any distortions in costs. The arm's length pricing of a related party transaction ensures that both parties in the transaction are acting in their own self-interest and are not subject to any pressure from the other. It ensures that parties to the transaction are on an equal footing.

19.13. In view of lack of specific instructions for determination of arm's length price, the investigating team should seek details from the respective DI on the subject matter with supporting evidences and audited records. The investigation team should look into the details of the related party transactions and segregate those transactions, which are not at arm's length pricing and appropriately adjust them for NIP computation.

19.14. A clarification has been issued regarding the definition of related parties in case of questionnaire for Anti-dumping investigation for producer/exporter/related importer vide Trade Notice No. 9/2018 dated May 10, 2018 (copy attached):

## RATIONALE OF REASONABLE RETURN ON CAPITAL EMPLOYED IN COMPUTATION OF NON-INJURIOUS PRICE (ROCE)

### INTRODUCTION

19.15. The issue regarding reasonability of 22% return on Capital Employed in case of domestic industry for determination of the Non-Injurious Price (NIP) under the Indian anti-dumping laws have been repeatedly raised by various

stakeholders. The Exporters claim that this percentage is very high, whereas the domestic industry often complains that 22% return on capital employed is not attractive enough to promote 'Make in India' especially as their costs are impacted due to optimization carried out by DGAD in working out NIP.

19.16. The NIP is presently worked out based on the optimized cost of production of the domestic industry with 22% ROCE. This return is presumed to be a reasonable return (pre-tax) on average capital employed for the product towards recovery of interest, corporate tax and profit. NIP is supposed to be that level of price which the industry is expected to have charged under normal circumstances in the Indian domestic market during the Period defined. This price would enable reasonable recovery of cost of production and a reasonable profit after nullifying adverse impact of dumping.

19.17. It may further be mentioned here that the sole purpose of fixing the NIP is to apply the "lesser duty rule" envisaged under Rule 4 of the Anti-Dumping Rules, 1995. Therefore, the objective of anti-dumping duties is to protect the affected industry from dumped imports while ensuring that there is no over-protection which may jeopardize the user industry's interests or facilitate windfall profits. As a matter of fact, overwhelmingly large products covered by the anti-dumping duties happen to be industrial inputs, where user industry often complains that excessive anti-dumping duties may make them un-competitive. Therefore, the "lesser duty rule" is a robust mechanism to balance the interests of the industry affected by dumping on the one hand and the user industry on the other. In any case, the objective of anti-dumping laws is not to ensure benchmark profitability, which may depend on several factors including the production efficiencies, competition, technology, financing costs etc.

**BASIS OF FIXATION OF 22% RETURN ON CAPITAL EMPLOYED**

19.18. The Anti-Dumping Rules don't prescribe any specific rate of return. However, the Return Rate @ 22% is understood to have been applied *ab-initio* i.e., from the very beginning. It is understood that the notional rate of return @ 22% was originally based on the provisions of the Drug (Prices Control) Order, 1987. Para 3 (2) of the said order at that time read as under:

*(2) While fixing the price of a bulk drug under sub-paragraph (1) the Government may take into consideration a post-tax return of 14 per cent on net worth or a return of 22 per cent on capital employed or in respect of a new plant an*

*internal rate of return of 12 per cent based on long term marginal costing depending upon the option for any of the specified rates of return that may be exercised by the manufacturer of a bulk drug:*

*Provided that the option with regard to the rate of return once exercised by a manufacturer shall be final and for any change in the said rate of return prior approval of the government shall be necessary.*

19.19. It can be seen that the said Drug (Prices Control) Order, 1987 offered three alternatives to the domestic industry for return purposes i.e., (i) a post-tax return of 14 per cent on net worth or (ii) a return of 22 per cent on capital employed or (iii) in respect of a new plant an internal rate of return of 12 per cent based on long term marginal costing depending upon the option for any of the specified rates of return that may be exercised by the manufacturer of a bulk drug. However, for NIP working only the option of 22% rate of return is uniformly applied in case of all units including new units. It appears that uniform rate of return has largely been applied to avoid arbitrariness or the element of subjectivity. It is further added that the Drug (Prices Control) Order, 1987 is not in force as on date. Further, no break-up of 22% is available. Based on the available information, the break-up is understood as under:

| | | |
|---|---|---|
| Debt-Equity Ratio | 2:1 | |
| Interest Rate | 18% | 12.00 |
| Income Tax Rate | 52.50% | |
| Notional Post Tax Return on Net Worth | 14% | 9.73 |
| Total | | 21.73 say 22.00 |

**Impact of Optimization under existing NIP Rules**

19.20. As per Annexure-III of the Anti-Dumping Rules, 1995, the following optimizations are considered for working out the NIP, namely:

19.20.1 The best utilization of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation, and at period of investigation rates to nullify injury, if any, caused to the domestic industry by inefficient utilization of raw materials;

19.20.2 The best utilization of utilities by the constituents of domestic industry, over the past three years period and period of investigation, and at period of

investigation rates to nullify injury, if any, caused to the domestic industry by inefficient utilization of utilities;

19.20.3 The best utilizations of production capacities, over the past three years period and the period of investigation, and at period of investigation rates to nullify injury, if any, caused to the domestic industry by inefficient utilization of production capacities.

19.21. As regards optimization, it may be added that the rate of anti-dumping duty is fixed for the benefit of all the units manufacturing PUC in a country. Therefore, normalization may be necessary to arrive at the reasonable costs of the domestic units after excluding internal inefficiencies (non-dumping) affecting the performance of any company. In other words, optimization as per Annexure-III may be necessary to promote efficiency and generally there should not be much variation in year to year average per unit raw material/utilities consumption unless there is breakdown or closure of plant or change in technology or non-stabilization of plant due to enhancement in capacity etc. Incidentally, it may be added here that sometimes optimization is difficult especially in case of material retardation, where previous year details are not available or if the actual capacity utilization is very low during the entire injury period.

19.22. Interestingly, similar adjustments seem to be also followed in the methodologies adopted by the Authorities in European Union also, while determining the representative target price. The relevant extracts of para 8.3.3.1 of *EU Anti-Dumping Law and Practice* by Edwin Vermulst are as under:

> *The costs of production of individual Community producers may vary widely. In order to determine the costs of production of Community producers for purposes of constructing the target price, the* Community authorities have sometimes used the cost of production of the most efficient Community producer, *or excluded certain of the least efficient producers. In other cases, costs of a representative produceror the weighted average costs of production of all Community producers were used. In EFMA, the CFI held that:*
>
> *The profit margin to be used when calculating the target price that will remove the Injury in question must be limited to the profit margin which the*

*Community industry could reasonably count on under normal conditions of competition, in the absence of dumped imports.*

19.23. In other cases, the Commission has made adjustments to EU producers' costs.

19.24. It is clear from the above that the EC has also used the cost of production of the efficient community producer. However, there is not much clarity about the complete practice generally adopted by the EC. On the other hand, the policy adopted by DGAD for transparent optimization is to consider the performance of respective constituents of Domestic Constituent companies only. No adjustment is made for inter-se variations in efficiency amongst the constituents of DI. In other words, weighted average NIP which is worked out for all the units, includes impact of high cost domestic producers also.

19.25. Incidentally, even though the costing methodology followed by USA is not transparently available, Chapter 9 of the United States Anti-Dumping Manual states *inter-alia* with respect to Direct Materials Cost with respect to Exporter's cost of production as under:

**Direct Materials Costs**

*Direct materials costs include the acquisition costs of all materials that are identified as part of the finished product and may be traced to the finished product in an economically feasible way.*

19.25.1. The aforesaid indicates that the "economically feasible" direct material costs only are considered, which may be yet another terminology for "optimization". Further, the costing methodology followed in India allows all indirect costs as per books of accounts including corporate overheads, and other misc. expenses, whereas USA Anti-Dumping Manual provides for examination of each element of cost in computation of cost of production. The relevant excerpt with respect to "Fixed Manufacturing Overhead costs" is provided below:

*Fixed Manufacturing Overhead Costs: Fixed manufacturing overhead costs include those production costs that generally do not vary in total with changes in the volume of merchandise produced at a given level of operations. Fixed manufacturing overhead costs may include the costs incurred for building or equipment rental, depreciation, supervisory labor paid on a salary basis, plant property taxes, and factory administrative costs. In addition, fixed*

*manufacturing overhead costs include research and development (R&D) costs which relate specifically to the subject merchandise***.**

**Complaints regarding lesser returns in case of old plants**

19.25.2. The Capital Employed for return purposes consists of Net Fixed Assets and the Working Capital. It is sometimes complained by the domestic industry that the returns are lower in case of old plants due to written down value of plant and machinery. However, it may be clarified here that per unit costs are generally higher in old plants based on old technology as their consumption norms are also higher. Further, DGAD goes as per the actual costs as per the books of accounts under applicable accounting standards to avoid subjectivity and arbitrariness. This also allows a transparent methodology, which is followed in all cases. Incidentally, the amount of working capital also varies from one unit to other and from industry to industry. Since no adjustment is done in case of inter-se variations in working capital in the audited books of accounts, it may not be appropriate to notionally amend the figure of NFA as per books of accounts. At the same time, it is pertinent to note that no adjustment is done in case of new plants also where 22% return is allowed from day one.

**Notional Incidence of Income Tax Paid**

19.25.3 It may be worth mentioning here that units in SEZ areas, 100% E.O.Us, and units in backward areas etc. may be availing tax holiday benefits etc. However, these units are also allowed the same rate of return. Further, many of the companies escape paying income tax through various tax saving strategies. Therefore, the incidence of actual tax rate paid may vary from company to company. However, return allowed by DGAD includes the notional impact of income tax irrespective of actual payments. Therefore, this additional tax not actually paid by the respective company may be additional margin to domestic industry.

**Practice followed by EU in determination of Reasonable Return**

19.25.4. As per the available information, EU determines the profit margin obtained by the industry during the part of the injury investigation period, in which the dumped and/or subsidized imports did not have any negative effects on the situation of the Union industry. This time span is often a period during which the imports of the product concerned were either absent or did not reach significant volumes. In other words, the profit margin used to calculate the target price that will remove the injury in question must be limited to the profit margin which the domestic

industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports.

**Practice followed by Fertilizer Ministry in determination of Reasonable Return:**

19.25.5. The Policy Parameters for the 7th (from 1.7.1997 to 31.03.2000) and 8th (from 1.4.2000 to 31.3.2003) Pricing Periods indicate that the fertilizer Ministry has been allowing a return of 12% with notional income tax rates.

**Return On Net Worth**

19.26. Post-tax return on the net-worth, which comprises equity and free reserves for the urea activity only, under the existing system of priority on the balance outstanding as on 30.06.1997 for the 7th pricing period, and as on 31.03.2000 for the 8th pricing period, would be considered at 12 per cent.

19.27. In respect of new grass-roots and expansion units (wherever final/provisional/ adhoc retention price has been notified), the free reserves would be treated as equity from the date of commercial production.

19.28. The method of calculation of return on net-worth on the basis of notional tax liability subject to adjustment of actual rate of corporate tax notified by the Government on year to year basis and at the rate of return of 12 per cent shall continue for the 7th and 8th pricing periods. Should there be a change in the method in favour of adoption of actual tax in place of notional tax, the same shall be adopted as and when decided upon.

19.29. However, the Fertilizer Ministry also allowed the nominal percentage as Vintage Allowance to old plants for a small period. This may have merit to compensate for the lower depreciation amount in old plants.

**Practice followed by Ministry of Finance in determination of Reasonable Return:**

19.30. Department of Expenditure, Ministry of Finance considers 12% post tax return on net worth for determination of fair prices. However, interest is generally paid on actuals subject to verification and justification in these cases;

19.31. It is important to note that all the practices cited above are in the context of fixation of prices or return to specific industry. The purpose of ascertaining a rate of return in the anti-dumping context is only to ensure that there is no over-

protection which may be detrimental to the domestic user industry and not in the overall interest of industrial growth. The practices of other regimes are not directly relevant to that extent.

**Reasonable interest rate on loans**

19.32. As regards rates of interest paid by any company, it is very difficult to suggest a reasonable rate of interest as these may vary significantly from company to company based on the past track record of the respective company and its promoters, profitability and brand name etc. Further, long term funds through issue of bonds may be cheaper than the rate of interest paid to banks on working capital loans. Similarly, funds raised in the foreign currency are generally cheaper. However, these may involve the exchange risk or the hedging cost.

**Merits in existing methodology**

19.33. The existing methodology has been applied during the last almost 20 years, perhaps with some exceptions. As stated earlier, the main merit of the existing methodology is consistency and avoidance of any kind of arbitrariness.

19.34. It may be mentioned here that ideally, determination of sector wise/industry wise Normal Return percentages as followed in the EU may need enormous database which is reliable and updated. This may be difficult in the present scenario, where reliable data is very difficult to get. Further, anti-dumping duties are generally for subsets of product group, for which separate rates of return may not be available.

Appendix-60

No.4/5/2018-DGAD
Ministry of Commerce & Commerce
Department of Commerce
Directorate General of Anti-Dumping & Allied Duties
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi – 110001

Dated 10th May, 2018

**Trade Notice: 9/2018**

**Subject: Streamlining of the Anti –Dumping Investigations Process – Clarification regarding related parties in case of questionnaire for Anti-Dumping investigations for Producer/Exporter/Related Importer.**

Attention of Trade and Industry is invited to Trade Notice No.05/2018 by which the authority had prescribed questionnaire format for producers/exporters exporting to India and their related importers in India. In this regard, representations have been received from various stakeholders requesting for a clarification as to the meaning of the term 'related' as noted in the questionnaire format.

1. It is felt that there is a need to clearly define as to when producers/exporters/ importers would be considered as 'related'. It is considered appropriate that the definition as indicated in Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as included in the new shipper review questionnaire prescribed *vide* Trade Notice No.08/2018 and as given below may be taken into consideration:

Rule 2(2): Persons shall be deemed to be "related" only if-

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognised partners in business'

(iii) they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family.

Explanation I. – The term "person" also includes legal persons.

Explanation II. - *Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.*

2. This clarification shall apply to Anti-Dumping Questionnaire Format for Producer/Exporter/Related Importer as notified vide Trade Notice No.05/2018 dated 28th February 2018 from the date of issuance of this Trade Notice.

-sd/-
(Sunil Kumar)
Additional Secretary and Designated Authority

To
All concerned

# COUNTERVAILING DUTY INVESTIGATIONS

## LEGAL PROVISIONS

20.1 The provisions concerning the imposition of countervailing duties (CVDs) are contained in Article VI of GATT 1947. Part-V of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) sets forth substantive requirements that must be fulfilled in order to impose a countervailing measure.

20.2 Section 9 of the Customs Tariff Act, 1975 contains the provisions for imposition of countervailing duties in India.

*"Section 9. Countervailing duty on subsidized articles*

*(1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.*

*Explanation - For the purposes of this section, a subsidy shall be deemed to exist if –*

*(a) there is financial contribution by a Government, or any public body in the exporting or producing country or territory, that is, where -*

*(i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;*

*(ii) Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);*

*(iii) a Government provides goods or services other than general infrastructure or purchases goods;*

*(iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or*

*(b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.*

*(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined, -*

*(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and*

*(b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced.*

*(3) Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that -*

*(a) the subsidy relates to export performance;*

*(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or*

*(c) the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles;*

*(4) If the Central Government, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.*

*(5) The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.*

*(6) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:*

*Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:*

*Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.*

*(7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.*

*(7A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act].*

*(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament."*

20.3 The Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995 (CVD Rules) notified under the Act, along with its following Annexures, prescribe the procedural and substantive requirements for the imposition of countervailing duties in India:

i. Annexure I - Principles governing the determination of injury.

ii. Annexure II - Principles for determination of subsidy which has been conferred on a limited number of persons as referred to in Rule 11.

iii. Annexure III –

   A. Part-1 -- Illustrative list of export subsidies

   B. Part-2 -- Guidelines on consumption of inputs in the production process

   C. Part-3 -- Guidelines in the determination of substitution drawback systems as export subsidies

iv. Annexure IV - Guidelines for the calculation of the amount of subsidy in countervailing duty investigations (containing):

   A. Calculation of subsidy per unit/ad valorem

   B. Calculation of certain types of subsidy (in the form of):

      a) Grants
      b) Loans
      c) Loan guarantees
      d) Provision of goods and services by the government
      e) Purchase of goods by government
      f) Government provision of equity capital
      g) Forgiveness of government-held debt

   C. Investigation period for subsidy - calculation of expense versus allocation deduction from amount of subsidy

## Countervailing Duties: An Introduction

20.4 Countervailing Duties (CVDs) are applicable when a government in the exporting country provides subsidies or assistance to a local industry. This can be in the form of subsidized loans, tax exemptions, indirect payments, etc. The assistance provided enables these foreign suppliers and manufacturers to potentially export and sell the goods for a price less than that at which domestic companies of the target member country can reasonably sell. Countervailing Duties are meant to neutralize the adverse effects of the subsidies allowed for a particular product in one member country, on the same industry in the other member country[1].

20.5 The SCM Agreement defines the term "subsidy" along with the concept of "specificity". Only a subsidy which is a "specific" within the meaning of Part I is subject to multilateral disciplines and can be subject to countervailing measures. A specific subsidy is, amongst others, a subsidy available only to a specific enterprise, industry, group of enterprises, or group of industries, sector, set of firms, geographical region(s), limited number of persons including artificial legal persons, use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, etc. - provided by the government of the exporting country (hereinafter an 'exporting country' means the country of manufacture, production, export or otherwise of concerned article) including the governments of the different provinces and municipalities in which the producers/ exporters are located[2].

20.6 The main object and purpose of the SCM Agreement is to increase and improve the GATT disciplines relating to the use of both subsidies and countervailing measures[3].

20.7 These subsidies have been categorised into two broad categories, namely:

(i) Prohibited subsidies (Part-II of the SCM Agreement); and

(ii) Actionable subsidies (Part-III of the SCM Agreement)[4].

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[1] Please refer to Para XX for WTO Jurisprudence

[2] See Article 2 of the SCM Agreement which defines the principles to be applied to determine specificity

[3] Panel Report, *Brazil – Export Financing Programmes for Aircraft*, WTO Doc. WT/DS46/AB/R, (Apr. 14, 1999) also refer to Para XX of Chapter 24 for WTO Jurisprudence.

[4] SCM Agreement originally contained a third category i.e. non-actionable subsidies (Part-IV of the SCM Agreement and Rule 11(1)(c) of the CVD Rules). This category existed for five years and ended on 31 December 1999, without being extended. The agreement applies to agricultural goods as well as industrial products. It must be noted that the subsidies on agricultural products were earlier exempt under the Agriculture Agreement's "peace clause", which expired at the end of 2003.

## SCOPE & ELEMENTS OF A SUBSIDY

20.8 Article 1 of the SCM Agreement defines the term subsidy as a financial contribution by a government or a 'public body' or on behalf of a government and which confers or results in a benefit to the recipient. If any of these elements are missing, the program is not a subsidy under the SCM Agreement[5]. Each of the elements are discussed in detail as follows:

## FINANCIAL CONTRIBUTION

20.9 The principles regarding determination of a measures by a government or a 'public body' or on behalf of a government, that represent a financial contribution are, amongst others, the grants, loans, equity infusions, loan guarantees, fiscal incentives, etc. and are detailed in Annexure III of CVD Rules. However, the financial contribution only is not actionable. A financial contribution, by or on behalf of the government or a public body, amounting to subsidy is illustrated in Part I of Annexure III of CVD Rules[6].

20.10 Further, benefits conferred on prior stage cumulative inputs (captive consumption) which amount to a subsidy are detailed in Part 1 with guideline for the same in Part 2 of Annexure III of CVD Rules. Paragraph (e) alongwith its explanation in (i) to (vii) of Part-1 of Annexure III of CVD Rules may also be referred to for this purpose.

## SPECIFICITY

20.11 The conditions for specificity of a subsidy contained in Article 2 of the SCM Agreement[7], and Section 9(3) and Rule 11 of the CVD Rules, are as under:

(i) if it has been conferred on a limited number of industry/enterprise engaged in the manufacture, production or export of articles; or

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[5] Please refer to Para XX of Chapter 24 for WTO Jurisprudence.

[6] *Direct Transfer of Funds* (grants, loans, infusions). See Appellate Body Report, *Brazil – Export Financing Programmes for Aircraft*, WTO Doc. WT/DS46/AB/R, (Aug. 2, 1999), in this case, the AB determined two different aspects of subsidy i.e. financial contribution and benefit. Economic Value is transferred to the advantage of recipient by Govt.
- *Potential Direct transfer of Funds or Liabilities* (Loan Guarantees)
- *Government Revenue which is otherwise due is foregone*
- *Provisions for Goods and Services other than general infrastructure*

[7] Article 2.1 of the SCM Agreement includes principles such as when the granting authority operates and establishes objective criteria or conditions governing eligibility for the subsidy or if there are other factors present such as, predominant use by certain enterprises, granting of disproportionately large amount of subsidy etc.

(ii) if it is an export subsidy i.e. the subsidy is contingent on export performance; or

(iii) if it is based on the use of domestic goods over imported ones.

**BY GOVERNMENT OR PUBLIC BODY**

20.12 As already stated above, in order for a financial contribution to be a subsidy, it must be made by or at the direction of a government or any public body within the territory of a member country. Thus, the SCM Agreement applies not only to measures of national governments but also to measures of sub-national governments (the governments of the different provinces and municipalities in which the producers/exporters are located) and of such public bodies as state-owned companies. However, the financial contribution must be by a government body in the nature of a Federal, Regional, Municipal or Public Body such as the National Bank, National Power Company, or where the Government entrusts or directs a private body to make a financial contribution[8].

20.13 It may be clarified that all financial contributions by the government may not constitute a subsidy. Part 1 of Annexure III contains an illustrative list of what amounts to export subsidies. A financial contribution by a government is not a subsidy unless it confers a "benefit". Few examples of the term 'benefit' based on WTO jurisprudence are as follows:

(i) An advantage to the recipient, not cost to the Government (If financial contribution places the recipient in a more advantageous position than it would have been, but for the financial contribution)[9];

(ii) If the financial contribution is provided on terms which are more advantageous than those that would have been available to the recipient from the market;

(iii) Investment by the Government inconsistent with the usual investment practices;

(iv) Government loans confer a benefit if there is a difference between the amount the recipient of the loan pays on the loan and the amount the

[8] See Appellate Body Report, *United States-Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WTO Doc. WT/DS379/AB/R , (Mar.11, 2011) [hereinafter, *US – Anti-Dumping and Countervailing Duties (China)* ]

[9] See Appellate Body Report, *Canada – Measures Affecting the Export of Civilian Aircraft,* WTO Doc. WT/DS70/AB/R, (Aug. 2, 1999).

recipient would pay on a comparable commercial loan that the recipient could obtain from the market;

(v) Government loan guarantees confer a benefit if there is a difference between the amount the recipient firm pays on loan guarantee by the government and the amount the firm would have paid on comparable commercial loan;

(vi) Government provision for goods and services: if such goods and services have been provided for less than adequate remuneration based on prevailing market conditions; and

(vii) Government Purchase of goods does not confer benefit unless these are purchased for more than adequate remuneration based on prevailing market conditions[10].

20.14 At times a subsidy may be non-specific on its face value, however, it could, in application or in effect, be specific. These are called *de facto* specific subsidies. If there are reasons to believe that this is the case, it may be required to consider other factors/parameters also, including the use of a subsidy program by a limited number of enterprises, predominant use of certain enterprises, granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. Further, consideration of factors like length of the operation, extent of diversification of economic activities within the jurisdiction of the granting authority, its nature, etc. may also be considered before taking the decision about the presence of *de facto* specificity.

20.15 Section 9 (3) of the Act read with Rule 11(1)(a) of the CVD Rules, provides that the Central Government shall not levy countervailing duty unless it is determined that the subsidies are – (a) export-oriented or (b) contingent upon use of domestic goods over imported ones or (c) conferred on a limited number of persons engaged in manufacturing, producing and exporting the article. In view of the above, only actionable subsidies and prohibited subsidies are to be countervailed by the Investigating Authority.

20.16 **EXPORT SUBSIDY**[11]: Rule 11 (1)(a) identifies the subsidies which are contingent in law or in fact, whether wholly or as one of the several conditions,

[10] See Appellate Body Report, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector,* WTO Doc. WT/DS412/19 WT/DS426/19 (May 6, 2013).

[11] *Please refer to Para XX of Chapter 24 for WTO Jurisprudence.*

upon export performance[12]. The detailed list of export subsidy is provided in Part 1 of Annex III of the CVD Rules. However, the list given is an illustrative one and not exhaustive in nature. Examples of export subsidies are as follows:

(i) The provision of goods or services for use in the production of exported goods in terms being more favourable than those for the production of goods for domestic consumption;

(ii) An export-related exemption, remission or deferral of direct taxes; excess exemption, remission, or deferral of indirect taxes or import duties; and

(iii) Provision of export credit guarantee or insurance programmes at premium rates which are inadequate to cover the operating costs and losses of the programmes.

20.17 Further, the following exemptions also amount to export subsidies:

(i) The exemption or remission of indirect taxes, in respect of production and distribution of export products;

(ii) The exemption, remission, or deferral of prior stage cumulative indirect taxes on goods or services used in the production of exported products provided this does not exceed the corresponding exemption, remission, or deferral on the goods or services used in the production of like products when sold for domestic consumption pursuant to the guidelines on consumption of inputs in the production process contained in Part-2 of the Annex;

(iii) Subsidies on 'prior stage cumulative indirect taxes' on inputs consumed in the production of the exported products. This to be interpreted with the guidelines on consumption of inputs in the production process contained in Part-1 and Part-2 of the Annexure III;

(iv) Remission or drawback of import charges on imported inputs consumed in the production of exported products. This is to be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Part-2 of the Annexure III to the CVD Rules and the guidelines in the determination of substitution drawback systems as export subsidies contained in Part-3 of the Annexure III to the CVD Rules;

(v) The exemption, remission, and deferral of prior-stage cumulative indirect taxes levied on inputs consumed in the production process of the exported

[12] Article 3 of the SCM Agreement identifies export subsidies as prohibited subsidies

product (making normal allowance for waste). The Part 2 of Annexure III to CVD Rules also provides that the prior stage inputs are inputs when they are Physically incorporated; Energy, fuel and oil used in production process: and catalysts consumed in the course of production. It also requires necessary verification and/or practical test(s) to be carried out by the investigation team to confirm which inputs are consumed, directly or indirectly, in the production of the exported article and in what amounts.

20.18 **LOCAL CONTENT SUBSIDIES[13]:** Rule 11 (1)(b) identifies the subsidies which are contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. These subsidies are designed to directly affect trade and thus are most likely to have adverse effects on the interests of other Members.

20.19 Rule 11 (1)(c) inter alia read with the principles laid down in Annexure II to the CVD Rules identifies the subsidies which are conferred on a limited number of persons engaged in manufacturing, producing or exporting the articles.

20.20 As per SCM Agreement, the subsidies that are not prohibited are called actionable subsidies. However, they are subject to challenge, either through multilateral dispute settlement or through countervailing action, in the event that they cause adverse effects to the interests of another member country. There are three types of adverse effects:

(i) Causes or threatens to cause material injury to any domestic industry established in other member countries or materially retards the establishment of any domestic industry in other member countries and such injury and/ or retardation is caused by subsidized imports in the territory of the such complaining member country. This is the sole basis for countervailing action;

(ii) There is serious prejudice. Serious prejudice usually arises as a result of adverse effects (e.g., export displacement) in the market of the subsidizing member country or in a third country market. Thus, unlike injury, it can serve as the basis for a complaint related to harm to a member's export interests;

(iii) There is nullification or impairment of benefits accruing under the GATT 1994. Nullification or impairment arises most typically where the improved

[13] Article 3 of the SCM Agreement identifies import substitution i.e. use of domestic over imported goods as prohibited subsidies

market access presumed to flow from a bound tariff reduction is undercut by subsidization.

## SIGNIFICANCE

20.21 Countervailing Duties are the import measures, imposed to offset the adverse effects of concessions and/or subsidies granted by the government of an exporting country to its exporters/ manufacturer. This duty is typically referred to as countervailing duty ("CVD") or anti-subsidy duty. Imposition of a countervailing duty is an attempt to bring the imported price of subsidized goods to its true market price, and thus provide a level playing field to the importing country's producers. Taken as a whole, the main object and purpose of the SCM Agreement is to increase and improve the GATT disciplines relating to the use of both subsidies and countervailing measures[14].

20.22 In terms of Rule 19 of the CVD Rules, countervailing duty investigation, is carried out to examine the following to reach a conclusion for recommendation of duty which if levied, would be adequate to remove the injury to the domestic industry:

(i) Subsidization: whether imports of PUC from the subject country/countries are subsidized and the nature and quantum of such subsidy;

(ii) Injury: whether there is a material injury or a threat of material injury to an industry established in India or whether there is a material retardation to the establishment of an industry in India; and

(iii) Causal link: whether subsidized imports are causing this injury, taking into account the principle laid down in Annexure I of the Rules.

## OPERATING PRACTICE

### PRE-INITIATION

20.23 An application, pursuant to Rule 6 read with Rule 2(b) of the CVD Rules, has to be filed by or on behalf of domestic industry in India representing major proportion of total domestic production of the like product. No investigation shall be initiated if the domestic producers expressly supporting the application account for less than twenty-five percent of the total production of the like product[15].

[14] Panel Report, *Brazil – Export Financing Programmes for Aircraft*, WTO Doc. WT/DS46/AB/R, (Apr. 14, 1999).

[15] Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, Rule 6(3) (India).

20.24 Rule 2 (b) of the CVD Rules is similar to Rule 2 (b) of the AD Rules[16],[17]. Therefore, practices followed under anti-dumping investigations for determination of DI, as mentioned in chapter 4 of this Manual, may be applied *mutatis mutandis* to CVD investigations.

20.25 The designated authority may initiate an investigation suo-motu in terms of Rule 6(4) of the CVD Rules, if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances referred to in sub-clause (b) of sub-rule (3).

20.26 The process of defining and describing the PUC, is similar to as followed for ADD investigation mentioned in Chapter 3 of this Manual. It is the responsibility of the Investigating team (with the approval of DA) to clearly and accurately define and describe the scope of the PUC concerned during the investigation at the stage of consideration of initiation.

20.27 The POI and IIP should be clearly defined for the CVD investigation. Since the relevant provisions in this regard in CVD law are similar to the ones in ADD law, therefore, the methodology followed in Chapter 5 of this Manual may be followed for this purpose.

20.28 The application should provide sufficient *prima facie* evidence that the exporting country or countries are subsidizing exportation of a particular product to India, which is causing injury to the domestic industry.

20.29 An application seeking initiation of CVD investigation should be accompanied with complete information in the prescribed formats duly signed and certified. The following documents in addition to the prescribed formats should be included along with the application:

| S. No. | Documents / Information |
|---|---|
| 1. | Soft copy of the application |
| 2. | Excel files of the costing formats |
| 3. | Total Indian production of each of the applicant(s) along with its breakup in PUC & NPUC and split up of domestic sales and export sales for the PUC |
| 4. | Installed Capacity of PUC with supporting documents like the Pollution Control Board Certificate |

[16] As Article 16 of the SCM Agreement is similar to Article 4 of AD Agreement

[17] See Panel Report, *China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States*, WTO Doc. WT/DS427/R, (Aug. 2, 2013).

5. Audited financial statements and cost audit reports for the injury period including POI
6. Costing Formats from A to L relating to NIP/ Capital Employed Calculations along with soft copy of all relevant excel working sheets, as prescribed for Anti-dumping investigations
7. In case of new units not having completed four years since the commencement of commercial production – The project report or any other similar document.
8. Transaction wise DGCI&S import data as obtained in terms of Trade Notice 07/2018 dated 15th March, 2018
9. List of Products produced/sold by DI, which are subject to existing Trade Remedial Measures.
10. Details of alleged Subsidies (including Grants and Concessions), along with supporting documents and evidences and, if possible, their respective amounts
11. Details of Injury and Injury margin,
12. Causal link between the subsidized imports and the alleged injury
13. Complete details of Related Parties
14. Details of PUC Imports by the DI from all the countries

20.30 In terms of Rule 6(3)(b) of the CVD Rules, the application has to be examined for the accuracy and adequacy of the information/data prior to initiation of the Investigation[18]. It is necessary that each actionable scheme alleged by the applicant should be substantiated or supported by the evidence thereof.

20.31 The Authority should examine the details of any earlier investigation on the same PUC for ADD. The details of the working of the ADD case for the said PUC should be duly referred to and taken into account in the CVD investigation.

**PRE-INITIATION CONSULTATION**

20.32 The Rule 6 (5) of the CVD Rules provides as follows:

> "*The Designated Authority shall notify the government of the exporting country before proceeding to initiate an investigation*[19]*."*

20.33 Article 13 of SCM Agreement gives detailed guidelines and makes it mandatory for an Investigating Authority to notify the exporting country government for pre-initiation consultation after receipt of application to arrive at

[18] See Panel Report, *China – Countervailing and Anti-Dumping Duties on Grain Oriented Flat-Rolled Electrical Steel from the United States,* WTO Doc. WT/DS414/R, (June 15, 2012).

[19] Please refer to Para XX of Chapter 24 for WTO Jurisprudence.

a mutually agreed solution[20]. The team should write to the government of the exporting country inviting them for consultation as soon as a complete application is received along with the invitation suggesting/proposing date of meeting. A copy of NCV application should also be attached.

20.34 The petition should also be sent to the Embassy/Consulate of India in the concerned subject country(ies) to seek information, if required, regarding the alleged subsidy schemes in the said country.

20.35 It is the choice of the subject country to come for consultation. In case the delegation is coming from the exporting country for the consultations, then the team should send a proper invitation in the form of *Note Verbale* to the Embassy of the subject country(ies) in India.

20.36 After such consultations, the written submission along with supporting evidences should be filed in a week's time or such other extended period as agreed. The documents received from the subject country are analyzed and a decision is taken whether to initiate the investigation against one or more countries based on the merits. Also, it needs to be decided whether to initiate the investigations on all or few of the alleged schemes mentioned in the application.

20.37 Till this time, an application filed by the domestic industry is not publicised and no information is disclosed to the parties at large regarding the receipt of application in accordance with Article 11.5 of the SCM Agreement and Rule 7 of the CVD Rules.

20.38 Once the team satisfies itself regarding the sufficiency of the evidence in the application, notice of initiation is issued with the approval of DG, detailing:

(i) the name of the exporting countries and the article involved;

(ii) the date of initiation of the investigation;

(iii) the period of investigation;

(iv) a description of the subsidy practice or practices to be investigated;

(v) a summary of the factors on which the allegation of injury is based;

[20] Article 13.1 of the SCM Agreement: *"As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution."*
And Rule 6 (5): "*The Designated Authority shall notify the government of the exporting country before proceeding to initiate an investigation."*

(vi) the address to which representatives by interested countries and interested parties should be directed;

(vii) the time-limits allowed to interested countries and interested parties for making their views known.

20.39 Upon initiation of an investigation, the non-confidential version of the application is shared with all the interested parties and also kept in the inspection folder to be made available to all the registered interested parties.

## POST-INITIATION: SUBMISSION OF DOCUMENTS

20.40 The embassy of exporting country, exporters/producers of the exporting country and importers and the user industry in India are issued a questionnaire giving 40 days' time, from the date of letter/issuance of questionnaires, for submitting the response/reply/submissions by the respondents. It may be noted that this time period is only for the initial comprehensive questionnaire and does not apply to the subsequent or supplementary questionnaires, if any issued[21].

20.41 In addition to the documents submitted at the time of filing the application, the applicant domestic industry is required to submit the following documents during the post initiation phase for investigations:

| S. No. | Documents/ Supporting |
|---|---|
| 1. | Annual Audited Accounts (including Balance Sheet, Profit & Loss Accounts and Annexed Schedules) for the Injury Period including POI (as notified in the Initiation Notification), if not submitted earlier. If the same is not audited for the POI, the same may be certified from the independent Practicing Chartered Accountant and the duly Authorised Officer of the Company. |
| 2 | Trial balance for the POI |
| 3 | Cost Audit Reports for the Injury Period including POI, if applicable |
| 4 | Cost Sheet(s) of captively consumed product(s)/utilities |
| 5 | Consumption details of major raw materials including Bill of Materials (BOM) for the PUC |
| 6 | Supporting documents for Installed Capacity, Actual Production, Capacity Utilization |
| 7 | Details of Related Party Transaction(s) and their basis of pricing as per Indian Accounting Standard-18 |
| 8 | Details of major inputs, which are subject to anti-dumping |

[21] See Panel Report, *US – Anti-Dumping and Countervailing Duties (China), (DS 449), Refer Para XX of Chapter 24 for WTO Jurisprudence.*

| | |
|---|---|
| 9 | Details of all abnormal close downs, if any |
| 10 | Business Transfer Agreement/Details - if there is any major change in ownership during IIP and consequential change in the value of assets, if any. |
| 11 | Merger/Amalgamation details- if there is any merger/amalgamation and consequential change in the value of assets if any |
| 12 | Valuation Report - if there is a change in the value of assets |
| 13 | Details of major by-products and their realisations |
| 14 | Complete break-up of Sales Realisations as reconciled with audited records of the company as a whole. Each major product to be separately indicated. |

20.42 The interested parties or their representatives may procure import data from DGCI&S, if required, through an authorization issued by DGTR as per detailed guidelines in the form of contained in trade notice 07/2018 dated 15.3.2018.

20.43 If exporters/producers do not reply to the questionnaire, refuses access to or do not provide necessary information within a reasonable period or significantly impedes the investigation, they are considered to be 'non–cooperating' in the investigation. The Authority will use the best information available for such non-cooperating parties, pursuant to Article 12.7 of the SCM Agreement and Rule 7(8) of the CVD Rules[22].

**CONFIDENTIALITY**

20.44 Rule 8 of the CVD Rules[23] govern the provisions regarding confidentiality:

> *"(1) Notwithstanding anything contained in sub-rule (1), (2), (3) and (7) of rule 7, sub-rule (2) of rule 14, sub-rule (4) of rule 17 and sub-rule (3) of rule 19 copies of applications received under sub-rule (1) of rule 6 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 authorisation 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 in sufficient details to permit a reasonable understanding of the substance*

[22] See Panel Report, *US – Anti-Dumping and Countervailing Duties (China),* (DS 414), Refer Para XX of Chapter 24 for WTO Jurisprudence.

[23] Article 12. 4 of the SCM Agreement contains provisions regarding confidentiality

*of the confidential information 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 summarisation 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 authorize its disclosure in generalized or summary form, it may disregard such information."*

20.45 The provisions of confidentiality/non- confidential are similar to that of Article 6.5.1 of the AD Agreement and therefore the guidelines notified vide Trade Notice No 10/2018 dated 7th September, 2018 and Trade Notice No. 14/2018 (wherever applicable) dated 01st October, 2018 may be applied mutatis mutandis to CVD investigations.

**INSPECTION FOLDER**

20.46 In every CVD investigation, an inspection folder, containing non-confidential versions of the submissions & responses filed by all the interested parties is to be maintained by the team. Interested parties can inspect and obtain copies of the submissions/responses of other interested parties during the course of the investigation. Upon examination of responses filed by interested parties, DGTR may request for more information if it determines that such information is necessary for conducting the investigation.

**INJURY DETERMINATION**

20.47 Rule 13 of the CVD Rules provides for "Determination of Injury"[24]:

*13. Determination of injury-*

*(1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India, or materially retards the establishment of an industry in India.*

*(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the establishment of an industry and the casual link between the subsidised*

[24] Article 15 of SCM Agreement defines injury in three parameters i.e. Adverse Effects (Article 5), Serious Prejudice (Article 6) and Material Injury (i.e. fact-specific in each case)

*import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.*

*(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if –*

*(i) there is a concentration of subsidised imports into an isolated market, and*

*(ii) the subsidised imports are causing injury to the producers of almost all of the production within such market.*

20.48 The existence of material injury or threat thereof to the like product of domestic industry in India or material retardation to the establishment of domestic industry in India and its causal relation with the subsidized imports is an essential pre-requisite for invoking any countervailing measure in India. Injury Determination can be defined as an evaluation/assessment of the effects of subsidized imports on the concerned domestic industry. Injury analysis is the basis for the Authority to arrive at a conclusion for its recommendation regarding imposition, continuation of relevant trade remedial duty or termination of an investigation/existing duties. Such analysis establishes that domestic industry is suffering injury. The different type of injuries under Trade Remedy Investigations can be identified as:

(i) Material Injury;

(ii) Threat of Material Injury; or

(iii) Material Retardation.

20.49 The Annexure I to the CVD Rules requires that the determination of injury must be based on positive evidence and involves an objective examination of:

(i) the volume effect of subsidised imports;

(ii) the price effect of the subsidised imports on prices in the domestic market for like products; and

(iii) the consequent impact of the subsidised imports on the economic health of the domestic producers of the like product (evaluation of Economic Parameters).

20.50 The principles for determination of injury are broadly similar to the procedure followed in case of Anti-dumping investigations. The important

distinguishing thing to demonstrate is that the injury is caused by the subsidized imports, in view of their volume and price effects and their consequent impact on the domestic industry. It is important to first determine if the Domestic Industry is having a material injury, then the Authority would proceed to determine if the injury is due to subsidization or not.

20.51 Further analysis for determining causal factor i.e. causation is important for the determination of injury on account of subsidised imports. The demonstration of the causal link must be based on an examination of all relevant evidence before the authority. The authority must also examine any known factors other than the subsidized imports, which could be injuring the domestic industry at the same time and the injury caused by these other factors must not be attributed to the subsidized imports.

20.52 When imports from more than one country are simultaneously subject to countervailing duty investigation, the Authority can cumulatively assess the effect of alleged subsidized imports for determining injury to the domestic industry for injury purposes as long as they do not qualify for the *de minimis* or negligibility thresholds and a cumulative assessment is appropriate in light of the conditions of competition among the imports and between imports and the like domestic products. Further, the Authority is required to analyze the impact of subsidized imports on the domestic industry, in the same manner, as is done for dumped imports on the domestic industry. The Authority is required to make an analysis of the following factors which are set out in Para 1(5) of Annexure I to the CVD Rules:

(i) Economic parameters and indices having bearing on the Domestic Industry;

(ii) The actual and potential decline in output, sales market share, profit, productivity, return on investments, or utilization of capacity, factors affecting domestic prices;

(iii) The actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments; and

(iv) In case of agriculture, whether there has been increased burden on the government support programme(s).

20.53 The above list is not exhaustive and nor are they the decisive factors for determining injury. Broad principles governing the determination of Injury have also

been discussed in Chapter 11 relating to injury analysis in case of AD investigations which may be applied *mutatis mutandis* in case of CVD investigation.

**INJURY MARGIN**

20.54 Rule 19(1)(b) of the CVD Rules provides for recommending the amount of duty which if levied, would be adequate to remove the injury to the domestic industry. An amount of duty which can ensure a fair price to the domestic industry is understood to be adequate to remove the injury of the Domestic Industry on account of subsidized imports.

20.55 Injury margin represents the injury suffered by the domestic industry on account of subsidized imports calculated as the difference between the Non-injurious Price (NIP) of the domestic industry and the landed value of imports of the subject goods from the countries under investigation. Therefore, a duty levied up to the injury margin is expected to be the margin adequate to remove the injury of the Domestic Industry on account of subsidized imports. The injury margin calculation is important since it affects the level of duties finally recommended because the Authority will recommend the countervailing duty at the level of the subsidy margin or injury margin, whichever is less. Therefore, the team has to compute the Non injurious Price for the DI.

**NIP DETERMINATION**

20.56 Non-Injurious Price (NIP[25]) denotes the fair price, which will enable the DI to reasonably recover its cost of production and reasonable profit margins, after taking into consideration all other factors of production which could have affected the company, but for which subsidized imports are not responsible. It is the price at which the domestic industry should be able to compete with exporters or foreign producers of the like product. The NIP is used for calculation of Injury Margin by comparing the NIP with the Landed Value of the subsidized imports.

20.57 The provisions relating to Lesser duty rule and Injury margin are similar in both Section 9 and Section 9A of the Customs Tariff Act dealing with CVD and ADD respectively. Hence the provisions/guidelines for determination of NIP as provided in Annexure III (as notified on 1st March 2011) read with Rule 17(1)(d) of the AD Rules[26] may be applied for CVD investigations also. The applicable Generally Accepted

[25] Refer Communication dated 2.3.2006, circulated to the Rules Negotiation Group of WTO as an informal document (JOB(06)/39) at the request of the delegations of Brazil; Hong Kong, China; India; and Japan on the mandatory application of the lesser duty rule.

[26] Notified vide Notification No. 15/2011-Customs (N.T) dated 1st March 2011.

Accounting Principles, Accounting Standards and Cost Accounting Standards are also kept in mind while finalizing the NIP. Therefore, the procedure already detailed earlier in Chapter 9 of this Manual may be followed for determination of Non-injurious Price in case of CVD investigations as well.

20.58 NIP determination requires following information in Format "A" to Format "L" notified vide Trade Notice 02/2018 dated 1st February 2018 read with Trade Notice 15/2018 dated 22.11.2018:

| S. No. | Format Number | Subject Description |
|---|---|---|
| 1 | A | Statement of Consumption of Raw Materials, Packing Materials and Utilities |
| 2 | B | Statement of Raw Material Consumption |
| 3 | C | Allocation and Apportionment of Expenses |
| 4 | D | Statement of Consumption of Utilities |
| 5 | E | Statement of Net Sales Realisations |
| 6 | F | Certificate by the Chief Executive or a duly authorised representative of the Domestic Industry |
| 7 | G | Declaration by Legal Representative |
| 8 | H | Performance Parameters of Domestic Industry |
| 9 | I | PCN wise summarised Statement of Expenses |
| 10 | J | Related Party Transactions |
| 11 | K | Calculation of Capital Employed |
| 12 | L | Calculation of claimed NIP |

20.59 It may be clarified here that the company can furnish details/clarifications during post-initiation period in furtherance of the petition/application already submitted to enable the proper processing. However, the DI cannot be allowed to revise the application in such a way that it will structurally alter the original application on which the initiation is based, as it will render the initiation invalid. The team is allowed, within its lawful mandate, to seek clarifications/ details from the applicant(s) during the course of the investigation but it should do so in writing as has been clearly instructed by the DG. No oral request should be made for seeking information.

**DETERMINATION OF SUBSIDY**

20.60 Rule 12 and the Annexure IV of the CVD Rules[27] provide the methodology for calculation of the subsidy margin. This subsidy margin needs to be compared with the injury margin for determination of duty under the lesser duty rule.

20.61 The CVD Rules clearly provide that the subsidy amount is to be determined in terms of benefit to the recipient[28] in the form of subsidization. Further, it may also be noted that the general procedure relating to the investigation is left on to the member countries[29]. Each method applied by the investigating country should be transparent, adequately explained[30] and be in compliance with the guidelines provided in the SCM Agreement.

20.62 The subsidy calculations must be done on a programme-by-programme/ subsidy-by-subsidy basis. This necessitates the determination of the amount of subsidy provided to/received by the exporter/producer in question under a given programme. Subsidy amount received by the exporter/producer during POI is divided by relevant actual or potential sales over the useful life of that subsidy, which gives the rate of subsidization with respect to that scheme. This working to calculate per unit subsidy (Article 19.4 of the SCM Agreement and the Part A of Annexure IV of the CVD Rules) during the period of investigation has to be done with respect to each subsidy scheme. The calculations should reflect the amount of subsidy found to exist during the period of investigation and not simply the face value of the financial contribution. If the subsidy was only for part of the year, appropriate allocation may need to be done. Finally, the subsidy under each of the schemes needs to be added to arrive at the total per unit subsidy margin for all the schemes.

20.63 Apart from the programmes alleged to be actionable subsidies, the Designated Authority may investigate in to any other program of the subject countries which may be revealed during the course of the investigation as actionable

[27] Corresponding to Article 14 and Annex-IV of the SCM Agreement. It is left to the member countries to evolve their own methods for calculation of subsidy margins.

[28] See Appellate Body Report, *United States - Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada,* WTO Doc. WT/DS257/AB/R (Jan.19, 2004).

[29] See Panel Report, *Mexico – Definitive Countervailing Measures on Olive oil from the European Communities - Report of the Panel*, footnote 63, WTO Doc. WT/DS341/R, (Sep.9, 2008).

[30] See Appellate Body Report, *Japan-Countervailing Duties on Dynamic Random Access Memories from Korea*, WTO Doc. WT/DS336/AB/R, (Nov.28, 2007). See also Appellate Body Report, *United States - Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India,* WTO Doc. WT/DS436/AB/R, (Dec.8, 2014) [hereinafter, US – Carbon Steel].

subsidy. Sometimes, it is possible that the alleged program is known by different names other than the one specified by the applicant.

20.64 The information and evidence is required to be co-related with PUC if the program is specific to the PUC or specific to the inputs used in the PUC. If the program is not specific to the PUC (like linked to geographical location), question of providing information or evidences relating to PUC may not be critical. It may be added here that complete details of subsidies or grants received by the alleged entity and its related entities (including holding company etc) must be obtained during investigations. For example, if an entity related to the subject entity obtains grants/subsidy on any intermediate to the input or receives any other similar benefit like free or subsidized land, then such related entity might pass on the said benefit to the subject entity. Similarly any subsidy or grant received by the subject entity on any captive input will also tantamount to subsidy for its downstream products including PUC.

20.65 As regards non-cooperating units, it would be reasonable to proceed on the basis of an assumption that an exporter/producer entitled for the benefits would have availed the benefit available under the program. It is for the cooperative exporter/producer to establish that despite eligibility, it has not availed the benefit.

20.66 If some schemes are related to specific geographical areas or cities and no cooperation is received from producers/exporters from that geographical area, all units in that geographical area, if otherwise eligible, shall be assumed to have availed the benefits.

20.67 Another issue which must be considered is the benefits from non-recurring subsidies received anytime in the past (prior to POI) like free land or subsidized construction etc. It is logical that these benefits should also be considered over the average useful life of the concerned tangible/ intangible assets used in the production of subject article.

20.68 The Agreement foresees two methodologies to calculate total subsidy amount in CVD context namely, Benefit to recipient (how much advantage to the recipient, compared with price at which it could obtain from the market); and Cost to government (how much did it cost the government to provide the concerned subsidy). However, as per Rule 12 of the CVD Rules, the Indian Authority has been using the 'benefit to recipient' approach so far.

20.69 As regards grants, following are some of the examples inter alia listed in Part B of Annexure IV of the CVD Rules:

(i) Direct Transfer of funds: Amount received;

(ii) Tax exemption: Amount of tax payable at applicable rate;

(iii) Tax reduction: Amount of tax payable at applicable rate –tax paid;

(iv) Accelerated depreciation: Amount of tax payable under normal; depreciation schedule –amount actually paid;

(v) Interest rate subsidies: Amount of interest saved by the recipient; and

(vi) In all above cases, an amount for notional interest on subsidies received during the period of investigation is also to be added.

**ON THE SPOT VERIFICATION**

20.70 The Authority relies upon the facts and information contained in the application/ questionnaire response for arriving at final determinations in an investigation. However, the Authority may also validate the information by conducting a verification of the domestic industry or other respondent(s). The team is required to notify the exporter(s)/subject country(ies) in question in advance. If an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the findings may be finalised based on the best available facts in terms of Rule 7(8) of the CVD Rules.

20.71 The Article 12.6 of the SCM Agreement and Rule 10 of the CVD Rules provide for verification in the territory of the other member countries as required. Following are the essential steps for on the spot verification in CVD investigations:

(i) In CVD investigations, the DGTR requests the responding exporter to designate a contact point for verification of the information contained in the questionnaire and also requests for the availability of the concerned officials for verification;

(ii) For schemes of Government, it may be necessary that the verification is done with respective agency officials, i.e., those who are directly involved with the administration of the concerned programs and not the officials who actually prepared the questionnaire responses. The Embassy/Consulate of India in the concerned subject country(ies) shall be requested to coordinate the meetings with the respective Govt. departments and public offices in the respective countries;

(iii) The Investigating Authority is required to provide the verification agenda well in advance. The purpose of providing this agenda in advance of the verification is to allow subject member countries to brief the appropriate government personnel on the items to be covered and the type of records/ evidence required to verify each item;

(iv) Verification is only done for the information which is already submitted with the Investigating Authority. No new submission is accepted at the time of verification, except minor corrections;

(v) Separate questions are provided for each scheme, for which the information is already submitted with the investigating Authority in the questionnaire responses;

(vi) The Investigation Team may request for certain information to be submitted as exhibits, during verification which are taken on record. All the documents submitted should be exhibited and numbered;

(vii) After Verification, the Investigating Authority issues a Verification Report to the respective respondents so verified, which includes the submissions and discussions of the verification[31];

20.72 The detailed methodology and guidance for undertaking verification in AD investigations as given in Chapter 8 of this manual may also be followed for verification[32] in CVD cases.

**ORAL HEARING**

20.73 Article 12.2 of the SCM Agreement and Rule 7 (6) of the CVD Rules require that before the finalization of the disclosure statement, an oral hearing is to be granted before the Authority to give the opportunity to all the stakeholders including the Embassy/Government of the respective subject countries, for presenting their case, making oral submissions and with a view to protecting their interest. This gives an opportunity to all the stakeholders to present the explanation of their views and evidence before the Authority orally. This right of the parties is subject to justification to present information orally. As per the SCM Agreement, the interested parties may request for hearing to present their views orally.

[31] See Panel Report, European Union - Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan, WTO Doc. WT/DS486/R (July 6, 2017).Corresponding to Article 9 of the SCM Agreement

[32] Details also given in Annex-VI of the SCM Agreement

20.74 The notice of hearing must also be uploaded on the DGTR website. Posting of notice of hearing or any other communication on the website shall be deemed to be served upon all the interested parties even though all efforts should be made to communicate individually to each of the registered interested parties. The detailed procedure for oral hearing in Anti-dumping investigation as given in chapter 15 of this manual may also be kept in mind for CVD investigation.

**PRELIMINARY FINDING**

20.75 Section 9(2) of the CVD Act and the Rule 14[33] of the CVD Rules provides for the imposition of preliminary measure. As per these provisions, if DGTR finds in appropriate cases that a preliminary measure is required to prevent injury being caused, it may proceed expeditiously with the conduct of the investigation and shall issue a preliminary finding recommending imposition of a countervailing duty on case to case basis. However, this is not a mandatory provision and is on the discretion of the Authority. In addition, no preliminary measures are imposed prior to 60 days from the date of initiation of the investigation and such a measure imposed shall be limited to a brief period, not exceeding four months.

**PRICE UNDERTAKING**

20.76 With regard to price undertakings, Article 18.1 of the SCM Agreement and Rule 17(1) of the CVD Rules envisage two types of undertakings: (a) an undertaking by the exporting country government to eliminate or limit the subsidy or to take other measures concerning its effects; or (b) an undertaking by an exporter to revise its prices to eliminate the injurious effect of the subsidy or the amount of the subsidy itself, whichever is lower. The detailed procedure for submission and acceptance of Price Undertaking in AD investigations as given in Chapter 16 of this Manual may be followed for CVD cases also.

**DISCLOSURE STATEMENT**

20.77 Rule 18 of the CVD Rules[34] provides as follows:

> "*The designated authority, shall, before giving its final findings, inform all interested parties and interested countries of the essential facts under consideration which form the basis of its decision and permit the interested parties to defend their interest.*"

[33] Corresponding to Article 9 of the SCM Agreement

[34] Corresponding to Article 12.8 of the SCM Agreement

20.78 The Authority before arriving at the final determination is required to inform essential facts under consideration to all the interested parties, which will form the basis of its finding. The disclosure contains all factual details and all the relevant facts available with the Authority, which "the Authority considers relevant" for the purpose of final finding.

20.79 Disclosure statement discusses all the stages of the investigations and essential summary of all the arguments of the interested parties. The Authority after issuance of the disclosure statement gives enough opportunity to the parties to comment on the disclosure statement. Before arriving at final determination, the Authority has to consider the submissions presented to it on the disclosure statement. The disclosure statement mentions the relevant documents in the covering letter and has four annexures i.e. procedure, submissions, rebuttals and examination by the Authority. The detailed procedure for disclosure is provided in chapter-16 of this manual relating to Disclosure statement in anti-dumping investigations.

**FINAL FINDING**

20.80 The investigations shall normally be concluded, with an issuance of Final Finding on such investigation by the Authority, within one year and in no case more than 18 months, after initiation of the concerned investigation.

20.81 Rule 19 of the CVD Rules discusses the issuance of Final Findings. Rule 19 of the CVD Rules states as under:

> *"(1) The designated authority shall, within one year from the date of initiation of an investigation determine as to whether or not the article under investigation is being subsidized and submit to the Central Government its final finding, as to -*
>
> (a) *(i) the nature of subsidy being granted in respect of the article under investigation and the quantum of such subsidy;*
>
> *(ii) whether imports of such articles into India in the case of imports from specified countries, cause or threaten material injury to an industry established in India or materially retards the establishment of any industry in India and a causal link between the subsidized imports and such injury; and*

*(iii) Whether a retrospective levy is called for and if so, the reasons therefor and the date of commencement of such levy.*

*(b) its recommendation as to the amount of duty which if levied, would be adequate to remove the injury to the domestic industry:*

*Provided that the Central Government may in circumstances of exceptional nature extend further the aforesaid period of one year by six months:*

*Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 17 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the said period of one year.*

*(2) The final finding if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding -*

*(i) the names of the suppliers, or, when this is impractical, the supplying countries involved;*

*(ii) a description of the product which is sufficient for customs purposes;*

*(iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;*

*(iv) considerations relevant to the injury determination; and*

*(v) the main reasons leading to the determination*

*(3) The designated* authority shall issue a public notice regarding its final findings."

20.82 Based on the facts and examination, the Authority issues the final finding notification either recommending imposition of a countervailing duty or terminating the investigation without the imposition of a countervailing duty.

20.83 For a decision on quantum of countervailing duties, the lesser duty rule is mandatory in India and accordingly, countervailing duty is recommended by the Authority equivalent to the margin of subsidy or margin of injury, whichever is less.

20.84 The investigation can be terminated in certain cases in accordance with Rule 16 of the CVD Rules. For example, when the authority determines that the amount of subsidy is less than one percent ad-valorem in case of developed countries and less than two percent in case of developing countries, it shall terminate the investigation immediately against such country.

20.85 In case of a recommendation of countervailing duty by the DGTR, Department of Revenue may issue a notification levying countervailing duty within three months from the date of issuance of the recommendation by the DGTR. Countervailing duty can be imposed for a maximum period of five years from the date of imposition of a duty, subject to provisions of review as discussed in paragraphs later in this chapter.

20.86 It may be added that the Paragraph 5 of Article VI of the GATT *inter-alia* states that "*No product of the territory of any contracting party imported into the territory of any other contracting party shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization*". This provision seeks to prevent a situation of double remedy/ compensation for the "same situation" of "dumping" or "*export* subsidization" (and not "*domestic* subsidization") in relation to concurrent anti-dumping (AD) and countervailing duty (CVD) investigations.

20.87 It may be clarified here that an *export* subsidy may lead to reduction in the export price of a product, but will not affect the price of domestic sales of that product in that country. Therefore, this subsidy will result in higher margin of dumping. In such circumstances, the situation of subsidization and the situation of dumping are the '*same situation*'. In other words, the dumping margin already accounts for the export subsidy in such cases; and the application of concurrent duties would amount to the application of 'double remedies' to compensate for, or offset, a same situation. But it may be ensured by the team that such export subsidy is either covered in ADD or CVD investigation.

20.88 Another issue, which may be relevant in CVD investigations is about cross-ownership of the domestic industry. As per the existing practice, the Authority normally attributes a subsidy to the products produced by the company that directly received the subsidy. However, in today's era, where related party transactions are used to further the interests of an organisation, the following subsidies to the following types of cross-owned corporations are to be covered (as is done in USA etc.) for CVD investigations:

(i) Producers of the subject merchandise;

(ii) Holding companies or parent companies;

(iii) Producers of an input that is primarily dedicated to the production of the downstream product; or

(iv) A corporation producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

**REVIEWS OF CVD**

20.89 Section 9(6) of the Act and Rule 24 of the CVD Rules provide for a Review mechanism of the countervailing duties.

20.90 Section 9(6) of the CVD Act reads as under:

*"(6) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition :*

*Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension :*

*Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year."*

20.91 Rule 24 of the CVD Rules reads as under:

*"(1) The designated authority shall, from time to time, review the need for continued imposition of the countervailing duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty or additional duty, recommend to the Central Government for its withdrawal.*

*(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 12 months from the date of initiation of such review.*

*(3) The provisions of rules 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 22 and 23 shall mutatis mutandis apply in the case of review[35]."*

20.92 The SCM Agreement recognizes the following three types of reviews of CVD measures:

(i) Article 19.3: The investigating Authority is required to carry out promptly and in accelerated manner reviews requested by exporters which are subject to a definitive countervailing duty, but which were not actually investigated for reasons other than for refusal to cooperate. However, no such review has been done so far for CVD;

(ii) Article 21 (Sunset Reviews also called as Expiry Review and Mid- Term review): Definitive countervailing duties shall normally expire after five years from their imposition, unless the domestic industry asks for a review within a reasonable period of time preceding the expiry, arguing that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. During the five-year period (hence the term interim review), interested parties may request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both[36]. The duty may remain in force pending the outcome of such a review;

(iii) Article 23 provides that Members, which do adopt countervailing duty legislation, must also maintain independent judicial, arbitral or administrative tribunals or procedures for the purpose of prompt review of administrative final and review determinations. The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in India is the independent judicial forum to consider the appeals against the final findings issued by DGTR.

**APPEAL PROVISION**

20.93 The last paragraph of the final finding notification, should mention the appeal provision. It should be stated that "an appeal against the order of the Central Government arising out a Final Finding shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act".

[35] Please refer to Para XX of Chapter 24 for WTO Jurisprudence.

[36] See Appellate Body Report, *US – Carbon Steel* (DS 436). Refer Para XX of Chapter 24 for WTO Jurisprudence.

# SAFEGUARD INVESTIGATIONS

## LEGAL PROVISIONS

21.1 The Agreement on Safeguards ("SG Agreement") sets forth the broad rules for application of safeguard measures pursuant to Article XIX of GATT 1994. In addition, specific safeguard measures are also provided in various FTAs negotiated on bilateral basis with conditions contained therein[1].

21.2 Safeguard measures are defined as "emergency" actions with respect to increased imports of particular products, where such imports have caused or threaten to cause serious injury to the importing Member's domestic industry (Article 2). Such measures can consist of quantitative import restrictions or duty increases to higher than bound rates. They are one of the three types of contingent trade protection measures, along with anti-dumping and countervailing measures, available to WTO Members.

21.3 In the Indian domestic framework, the applicable legal provision for imposition of safeguard duty on imports is Section 8B of the Act. Sub-section (1) provides for the imposition of safeguard duty by the Central Government on an article if the article is being imported into India in such increased quantities and under such conditions so as to cause or threaten to cause serious injury to the Domestic Industry. The Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997[1]govern the procedural aspects, including the manner of and principles governing safeguard investigations.

21.4 Section 8B of the Act reads as under:

[1] *India-Singapore Trade Agreement (Safeguard Measures) Rules, 2009; India-ASEAN Trade in Goods Agreement (Safeguard Measures) Rules, 2016; India-Japan Comprehensive Economic Partnership Agreement (Bilateral Safeguard Measures) Rules, 2017; India – Korea Comprehensive Economic Cooperation Agreement (Bilateral Safeguard Measures) Rules, 2017*

8B. *Power of Central Government to Impose Safeguard Duty:*

(1) *If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article:*

*Provided that no such duty shall be imposed on article originating from a developing country so long as the share of imports of that article from that country does not exceed three percent or where the article is originating from more than one developing countries, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine percent of the total imports of that article into India.*

*Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.*

*(2) The Central Government may, pending the determination under sub-section (1), impose a provisional safeguard duty under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a domestic industry:*

*Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the duty so collected:*

*Provided further that the provisional safeguard duty shall not remain in force for more than two hundred days from the date on which it was imposed.*

*(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any safeguard duty imposed under sub-section (2), unless specifically made applicable in such notification or such imposition, as the case*

*may be, shall not apply to articles imported by a hundred percent export oriented undertaking or a unit in a free trade zone or in a special economic zone.*

*Explanation: For the purposes of this section, the expressions "hundred per cent export oriented undertaking", "free trade zone" and "special economic zone" shall have the meanings assigned to them in Explanation 2 to sub-section (1) of section 3 of Central Excise Act, 1944.*

(3) *The duty chargeable under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.*

*(4) The duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:*

*Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition:*

*Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.*

*(4A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.*

(5) *The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for safeguard duty may be identified and for the manner in which the causes of serious injury or causes of threat of serious injury in relation to such articles may be determined and for the assessment and collection of such safeguard duty.*

(6) *For the purposes of this section,*

(a) *"developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section;*

(b) *"domestic industry" means the producers*

(i) *as a whole of the like article or a directly competitive article in India; or*

(ii) *whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;*

(c) *"serious injury" means an injury causing significant overall impairment in the position of a domestic industry;*

(d) *"threat of serious injury" means a clear and imminent danger of serious injury.*

(7) *Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.*

21.5 The Central Government has notified the Rules called the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (SG Rules), detailing the process for conducting investigation for safeguard measures (text attached at the end of the chapter). The application format has been prescribed vide Trade Notice SG/TN/1/97 dated 6.9.1997.

**SIGNIFICANCE**

21.6 When imports of a particular product suddenly increase to a point that they cause or threaten to cause serious injury to domestic producers of like or directly competitive products, a safeguard duty is used as temporary relief. Safeguard duties give domestic producers a period of grace to become more competitive vis-à-vis imports. Safeguard measures are defined as "emergency" actions to address serious injury to the importing Member's domestic industry (Article 2) for a particular product.

21.7 The Safeguard duties are applicable against all the countries with uniform rate of duty unlike the anti-dumping duties.

21.8 Section 8B requires that the surge in imports should cause or threaten to cause serious injury to domestic industry. The criteria for import relief under section 8B are based on the provisions in Article XIX of the GATT. This provision is sometimes referred to as the escape clause because it permits a country to "escape" temporarily from its obligations under the GATT with respect to a particular product, when increased imports of that product are causing or are threatening to cause serious injury to domestic producers.

21.9 The guiding principles of the Agreement with respect to safeguard measures are as follows:

(i) Such measures must be temporary;

(ii) They may be imposed only when surge in imports are found to cause or threaten to cause serious injury to a competing domestic industry;

(iii) They (generally) be applied on non-discriminatory basis and applied to all imports irrespective of its source;

(iv) They are progressively liberalized while in effect.

21.10 Thus, safeguard measures, unlike anti-dumping and countervailing measures, do not require a finding of an "unfair" practice (generally) and must be applied on MFN basis.

**OPERATING PRACTICE**

**Pre-Initiation**

21.11 An application for initiation of a safeguard investigation can be made by any aggrieved producer/manufacturer, trade body, firm or institution in India, which is representative of domestic industry, in the prescribed application format. The application should be accompanied with complete information duly signed and certified.

21.12 Imports data must be obtained from DGCI&S.

21.13 The details submitted by the Industry regarding production and the alleged injury should be examined by the investigation team.

21.14 The investigation requires determination of cost of production to examine injury parameters and for this a reasonable return, which is a percentage of cost of production, on case to case basis.

21.15 It may be kept in mind that even though there is no statutory requirement of establishment of an unfair trade practice, the injury requirement under section 8B is considered to be more stringent.

21.16 The Safeguard Rules require that an application shall be supported with evidence of (i) increased imports; (ii) serious injury or threat of serious injury to the domestic industry; and (iii) a causal link between imports and the alleged serious injury or threat of serious injury. Further, a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition is also required to be furnished.

21.17 The application seeking initiation of safeguard investigations should be inter-alia accompanied by the following information for latest available four years and supporting documents in addition to the application in the prescribed format:

| S.N. | Documents / Information |
|---|---|
| 1 | Soft Copy of the application |
| 2 | D.G.C.I &S import data segregated year-wise and county wise |
| 3 | Total Indian Production and basis for the estimation |
| 4 | Year-wise production of applicant and Installed Capacity of PUC with supporting documents like Pollution Control Board Certificate |
| 5 | Total sales (separately for domestic /captive/exports) of the applicant and other Indian producer(s) along with total year wise demand in the country. |
| 6 | Workings of Cost of production along with Excel files |
| 7 | Submissions and Workings in support of claimed injury/threat of injury |
| 8 | Evidence in support of causal link |
| 9 | Statement of adjustment and period thereof |
| 10 | Evidence regarding unforeseen developments |
| 11 | Confirmation from the DI/consultants that the complete cost data for all the units of the domestic industry manufacturing or selling PUC has been furnished in the petition. |
| 12 | Audited financial statements and cost audit reports |
| 13 | Statement of critical circumstances if provisional Safeguard Measure is requested |

21.18 The audited accounts must be furnished along with the application for initiation. In case the audited accounts are not available for the latest period then the Profit & Loss Account figures duly signed by the senior company officials (with name, designation and contact number clearly mentioned) should be submitted for

the initiation purposes. This is subject to subsequent submission of duly audited/ certified accounts within the stipulated period as per the initiation notification.

21.19 Even though Annexure-III as applicable to anti-dumping investigations is not specifically applicable to the safeguard investigations, broad costing principles as contained therein may be followed like allocation of expenses and disallowance of expenses. However, optimisation of capacities is generally not resorted to in safeguard cases. A decision may need to be taken on a case-to-case basis.

21.20 The application should contain satisfactory and sufficient evidence regarding increased imports, serious injury or threat of serious injury to the domestic industry and a causal link between increased imports and serious injury or threat of serious injury to the domestic industry.

21.21 The prescribed timelines require that initiation decision on the application should be finalised within 90 days from the date of receipt of application.

21.22 It is necessary that accuracy and adequacy of the evidence provided in the petition be verified before taking decision. The DI verification should preferably be done before initiation so that all issues are resolved before initiation.

21.23 A time period of eight months has been prescribed under the Rules for completion of safeguards investigations.

**Period of Investigation**

21.24 The Act and the Rules as well as the WTO Agreement on Safeguards and Article XIX of the GATT neither define nor provide guidance regarding the period of investigation. However, it is evident that the investigation period should be adequately long and sufficiently recent in time. This will allow reasonable conclusions to be drawn on the basis of various relevant factors such as domestic market conditions, performance of DI etc., as to whether or not the increased imports are indeed causing serious injury or threatening to cause serious injury to the DI and therefore justify the need for imposition of Safeguard Duty. It may be desirable that information should be sought for the most recent period of four years and the details of the source of information must be sought along with copies of the source document, wherever practicable as per the methodology explained in earlier chapters.

**PUC**

21.25 The principles followed for determination of PUC in AD cases may also be applied for finalization of PUC in safeguard investigations. In fact, the scope of PUC is wider that PUC in AD laws as the SG law covers "directly competitive articles" as well. The issue was also discussed in detail in an investigation dealing with import of Solar Cells[2].

**Domestic Industry**

21.26 Domestic Industry has been defined in clause (b) of sub-section (6) of Section 8B of the Act as follows:

> *(b) "Domestic industry" means the producers –*
>
> *as a whole of the like article or a directly competitive article in India; or whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India.*

21.27 As a general practice,the SEZ units are not considered to be eligible as DI. A detailed explanation has been given in the final finding in the safeguards case of Solar Cells and Modules as per the details mentioned in foot note 2 on pre-page.

**Confidentiality**

21.28 Application and responses are to be submitted in confidential and non-confidential versions, as detailed under Rule 7 of the said Rules read with Trade Notice dated 21.12.2009 issued by Director General (Safeguards) under File No. D-22011/75/2009. Further, the Trade Notice No.10/2018 dated 7th September 2018 may be referred to for detailed guidelines on this issue.

**Initiation**

21.29 After examination of the application and other evidences, available on records, if it is found that sufficient evidence exists for initiation of investigation, the investigation is initiated by the Authority to further examine the existence of injury to the domestic industry caused by the imports of an article.

[2] In case of Final Finding in safeguard investigation concerning imports of Solar Cell whether or not assembled in module or panels into India,F. No. 22/1/2018 – DGTR dated July 16, 2018, some of the interested parties had submitted that DI did not possess Thin-film technology and "PERC" (Passivated Emitter Rear Cell) based technology, & Bi-facial N-type solar cells; High efficiency solar cells using 5 and 6 bus bar production terminology; and Solar modules of mono may vary in terms of efficiency, price, physical characteristics, like size and weight etc. These variations though lead to trade off in price and efficiency,the final usage of the PUC is only to produce power. Therefore, PUC included all like competitive articles and no such exclusionwas allowed in PUC.

21.30 The notification of initiation of investigation is to be notified in the Gazette and uploaded on the DGTR website. The Notification and application of the domestic industry is to be forwarded to the concerned Administrative Ministry, known exporters of the subject article, the Government of the exporting countries, through their Embassy in India, and other interested parties.

21.31 Initiation Notification calls upon exporters, foreign producers and the Governments of interested countries to submit information in writing within 40 days from the date of initiation notification as per Trade Notice No. 11/2018 dated 10.09.2018 or within such extended period as may be allowed by the Director General.

21.32 Any other party who wishes to be considered as an interested party may submit their request within days from the date of initiation notification as per the Trade Notice No. 11/2018 dated 10.09.2018 or as specified by the Director General in the Initiation Notification.

**Maintenance of Inspection Folder**

21.33 Maintenance of a proper NCV folder is an important part of the investigations from the point of view of principles of natural justice, transparency and due process of law. The folder should contain the application of the DI which forms the basis of the decision by the DG. Copies of the non confidential version of all the responses received from interested parties should be kept in the folder. Copy of NCV of submissions and other communications should also be kept in the folder. A list of all interested parties along with details such as the name of the Counsel, the address for contact, contact person, email id etc. should be maintained and kept in a folder. An inspection index should be created in the folder.

21.34 The inspection of the folder should be allowed only to the authorized representative of the interested party. Whenever the representative inspects the folder or takes any document, the details thereof should be mentioned along with the signatures and contact details of that representative. The non-confidential version of all the responses and submissions, as well as the communications made during the course of the investigation, should be kept in the folder for inspection by the interested parties and/or their authorized representatives.

**Post-Initiation: Submission of Documents**

21.35 The applicant DI is required to submit the additional information/ documents, if any during the course of investigations.

21.36 The team should verify the authenticity of the data submitted by all the interested parties. The process of verification is as detailed in Chapter 8 of this Manual. The need to decide on the requirement of physical verification of the plant and data is to be decided on a case to case basis with the approval of DG.

**Computation of Injury Margin**

21.37 Article 5 of the Agreement and Rule 12 of Safeguard Rules require that Safeguard duty should not exceed the amount which has been found adequate to prevent or remedy serious injury. However, no guidance is provided under the Safeguard Agreement, Act or Rules regarding the quantification of serious injury.

21.38 In view thereof, the broad principles followed in anti-dumping cases should preferably be followed in safeguard investigations also.

**Provisional Finding, Oral Hearings and Final Findings**

21.39 In critical circumstances warranting grant of immediate relief to the domestic industry, the investigation may be conducted expeditiously and a preliminary finding is recorded regarding serious injury or threat of serious injury to the domestic industry. In such cases, provisional Safeguard duty may be imposed for a period not exceeding 200 days. In Safeguard investigations, provisional finding can be issued at any time, after initiation.The proviso to sub-section (2) of section 8B also provides that where the Central Government in its final determination concludes that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the amount of safeguard duty provisionally collected.

21.40 Before issue of final finding, an oral hearing is required to be conducted. The notice for Oral Hearing should be given well in advance to all the interested parties. The oral submissions made by the interested parties, including the Domestic Industry during the hearing are required to file written submission of the views presented orally in terms of sub rule (6) of rule 6 of the Custom Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

21.41 The evidence presented by one interested party shall be made available to the other interested parties in order to enable them to file rejoinders.

21.42 The findings are required to be issued within 8 months from the date of notice of initiation of investigation. The findings deal with determination whether the increased imports of the article under investigation have caused serious injury or threat of serious injury to the domestic industry and that a causal link exists between the increased imports and the said injury. Accordingly, the recommendations are given regarding amount of duty which, if levied, would be adequate to prevent or remedy serious injury or threat of serious injury to the domestic industry.

21.43 The preliminary/final findings and recommendations are considered by the Standing Board on Safeguards under the chairmanship of Commerce Secretary under Department of Commerce.

21.44 The views of the Standing Board on Safeguards are then placed before the Finance Minister for approval of levy of Safeguard duty. However, no time period is prescribed for the Department of Revenue to take decision on the recommendations of the Board on Safeguards, unlike in case of anti-dumping investigations, where a period of 90 days has been allowed to Department of Revenue.

21.45 After approval by the Finance Minister, Department of Revenue may issue a notification imposing a Safeguard duty under Sec 8B of the Act. These duties are applied on all countries without discrimination. However, developing countries as detailed in para 21.48 may need to be considered for exemption.

21.46 In the event of conclusion of injury, the Authority generally recommends Ad valorem duty i.e. percentage of CIF price of imports/Assessable Value.

21.47 The second proviso to sub-section (1) of section 8B of the Act, provides that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon. In other words, safeguard duty shall be levied only on the additional quantities over and above such exempt quantities.

21.48 Article 9 regarding Developing Country Members inter-alia provides that Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the

importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned. Even though World Bank, OECD etc. have different lists, the detailed trade notice indicating names of developing countries as per Indian Customs is placed at Annexure-I.

21.49 As per provisions of sub-para (4) of section 8B, the duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition. However, if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition subject to a maximum period of ten years from the date on which such duty was first imposed.

**Unforeseen Developments and Causal Link**

21.50 The WTO Agreement on Safeguards read with Article XIX of GATT obligates the national authorities to examine "unforeseen developments" that led to the increase in imports and the consequent serious injury to the DI[3]. However, domestic laws/rules do not impose any such obligation on the Authority to analyse the unforeseen developments as a result of which the increased imports have occurred. The legal provisions neither contain any parameters that must be verified to identify the unforeseen developments nor do they specify any methodology that must be followed in the analysis of such unforeseen developments. However, in view of WTO requirements , the Authority has consistently been examining the issue of "unforeseen developments" in its investigations.

21.51 During the course of investigation,the temporal nature of the increase in imports of the PUC is established leading to serious injury to the DI or threat of such serious injury, which must be unforeseen or unexpected and factual.

**Causal Link**

21.52 A determination of serious injury cannot be made unless there is objective evidence of the existence of a causal link between increased imports of the product concerned and serious injury. Further, when factors other than increased imports are causing injury to the domestic industry at the same time, such injury must not be attributed to increased imports.

[3] Refer to Para XXI of Chapter 24 for WTO Jurisprudence.

21.53 The WTO Panel in the case of Korea-Dairy Productsset forth the basic approach for determining "causation", which inter-alia includes that in its causation assessment, the national authority is obliged to evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry. In addition, if the national authority has identified factors other than increased imports which have caused injury to the Domestic Industry, it shall ensure that any injury caused by such factors is not considered to have been caused by the increased imports. In addition, having analysed the situation of the Domestic Industry, the authority has the obligation not to attribute to the increased imports any injury caused by other factors.

21.54 The Appellate Body in the US-Safeguard Measures on Wheat Gluten held that the existence of causal link does not mean that increased imports are the sole cause of injury. According to the Appellate Body the language of Article 4.2(b) suggests that the causal link between the increased imports and serious injury may exist, even though other factors are also contributing "at the same time" to the situation of the domestic industry.

**Adjustment Plan**

21.55 "Adjustment Plan" refers to an action plan which a domestic industry is required to submit, that describes a set of quantified goals, specific plans, and timetables that a concerned industry commits to undertake in order to facilitate positive adjustment of the industry to import competition. One of the core features of the WTO Agreement on Safeguards is emphasis on adjustment by the domestic industry.

**Reviews of Safeguard Duty**

21.56 Rule 18 of the Safeguard Rules, 1997 provides for the review of Safeguard Duties. Rule 18 reads as under:

*(1) The Director General shall, from time to time, review the need for continued imposition of the safeguard duty and shall, if he is satisfied on the basis of information received to him that,*

*(i) safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of duty;*

*(ii) there is no justification for the continued imposition of such duty; recommend to the central Government for its withdrawal:*

*Provided that where the period of imposition of safeguard duty exceeds three years the Director General shall review the situation not later than the mid-term of such imposition, and, if appropriate, recommend for withdrawal of such safeguard duty or for the increase of the liberalization of duty.*

*(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 8 months from the date of initiation of such review or within such extended period as the Central Government may allow.*

*(3) The provisions of rules 5, 6, 7 and 11 shall mutates mutandis apply in the case of review.*

21.57 A review is conducted to examine whether safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, however, the recommendation for the withdrawal of duty is made to the Central Government if there is no justification for the continued imposition of such duty.

21.58 A mid-term review is mandatory where the period of imposition of safeguard duty exceeds three years. In appropriate cases, the DG recommends either for withdrawal or for the increase in the liberalization of the duties levied. However, the Authority has so far not levied duty in any case for the period exceeding three years. The methodology for conducting review investigation, is broadly similar to that of original safeguard investigation.

21.59 The domestic industry is required to substantiate the application with sufficient evidence showing the need for continuation of Safeguard duties. The Applicant is required to make a case that cessation of Safeguard duty would result in recurrence of injury to the domestic industry. It may further be added that a safeguard measure,unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition although if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition. In no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

Appendix-61

## CUSTOMS TARIFF (IDENTIFICATION AND ASSESSMENT OF SAFEGUARD DUTIES) RULES, 1997

In exercise of the powers conferred by sub-section *(5)* of section 8B of the Customs Tariff Act, 1975 (51 of 1975) the Central Government hereby makes the following rules, namely: -

1. **Short Title and Commencement**

(i) These rules may be called the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

(ii) They shall come into force on the date of their publication in the Official gazette.

2. **Definitions**

In these rules, unless the context otherwise requires:

(a) "Act" means the Customs Tariff Act, 1975 (51 of *1975);*

(b) "Critical circumstances" means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause serious injury to the domestic industry and delay in imposition of provisional safeguard duty would cause irreparable damage to the domestic industry;

(c) "Increased quantity" includes increase in imports whether in absolute terms or relative to domestic production;

(d) "Interested Party" includes

(i) any exporter or foreign producer or the importer of an article subjected to investigation for purposes of imposition of safeguard duty or a trade or business association, majority of the members of which are producers, exporter or importers of such an article;

(ii) the government of the exporting country; and

(iii) a producer of the like article or directly competitive article in India or a trade or business association, a majority of

members of which produce or trade the like article or directly competitive article in India;

(e) "like article" means an article which is identical or alike in all respects to the article under investigation;

(f) "Provisional Duty" means a safeguard duty imposed under sub-section (2) of section 8B of the Act;

(g) "Specified Country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

(h) all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

3. **Appointment of Director General (Safeguard)**

(1) The Central Government may, by notification in the official Gazette, appoint an officer not below the rank of a Joint Secretary to the Government of India or such other officer as it may think fit as the Director General (Safeguard) here in after referred to as the Director General for the purposes of these rules.

(2) The Central Government may provide to the Director General the services of such other persons and such other facilities at it deems fit.

4. **Duties of the Director General**

Subject to the provisions of these rules, it shall be the duty of the Director General

(1) to investigate the existence of "serious injury" or "threat of serious injury" to domestic industry as a consequence of increased import of an article into India;

(2) to identify the article liable for safeguard duty;

(3) to submit his findings, provisional or otherwise to the Central Government as to the "serious injury" or "threat of serious injury" to domestic industry consequent upon increased import of an article from the specified country.

(4) to recommend,

(i) the amount of duty which if levied would be adequate to remove the injury or threat of injury to the domestic industry;

(ii) the duration of levy of safeguard duty and where the period so recommended is more than a year, to recommend progressive liberalization adequate to facilitate positive adjustment.

(5) to review the need for continuance of safeguard duty.

5. **Initiation of Investigation**

(1) Except as provided in sub-rule (4), The Director General shall, on receipt of a written application by or on behalf of the domestic producer of like article or directly competitive article, initiate an investigation to determine the existence of "serious injury" or "threat of serious injury" to the domestic industry, caused by the import of an article in such increased quantities, absolute or relative to domestic production.

(2) An application under sub-rule (I) shall be in the form as may be specified by the Director General in this behalf and such application shall be supported by,

(a) evidence of, -

(i) increased imports;

(ii) serious injury or threat of serious injury to the domestic industry;

(iii) a causal link between imports and the alleged serious injury or threat of serious injury; and

(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to import competition.

(3) The Director General shall not initiate an investigation pursuant to an application made under sub-rule (1) unless he examines the accuracy and adequacy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding-

(a) increased imports;

(b) serious injury or threat of serious injury; and

(c) a causal link between increased imports and alleged injury or threat of serious Injury.

(4) Notwithstanding anything contained in sub-rule (I), the Director General may initiate an investigation *suo moto* if he is satisfied with the information received from any Commissioner of Customs appointed under the Customs Act, 1962 *(52* of 1962) or any other source that sufficient evidence exists as referred to in clause (a), clause (b) and clause (c) of sub-rule (3).

6. **Principles Governing Investigations**

(1) The Director General shall, after he has decided to initiate investigation to determine the serious injury or threat of serious injury to domestic industry, consequent upon the increased import of an article into India, issue a public notice notifying his decision there to. The public notice shall, *inter alia*, contain adequate information on the following namely: -

(i) the name of the exporting countries and the article involved;

(ii) the date of initiation of the investigation;

(iii) a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based;

(iv) reasons for initiation of investigation.

(v) the address to which representations by interested parties should be directed; and

(vi) the time-limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the Director General to the Central Government in the Ministry of Commerce and other Ministries concerned, known exporters of the article the increased import of which has been alleged to causeor threaten to cause serious injury to the domestic industry, the governments of the exporting countries concerned and other interested parties.

(3) The Director General shall also provide a copy of the application referred to in sub-rule (1) of rule *5* to:

(i) the known exporters, or the concerned trade association,

(ii) the governments of the exporting countries; and

(iii) the Central Government in the Ministry of Commerce;

Provided that the Director General shall also make available a copy of the application, upon request in writing, to any other interested party.

(4) The Director General may issue a notice-calling for any information in such form as may be specified by him from the exporters, foreign producers and governments of interested countries and such information shall be furnished by such persons and governments in writing within thirty days from the date of receipt of the notice or within such extended period as the Director General may allow on sufficient cause being shown.

***Explanation*:** For the purpose of this rule the public notice and other documents shall be deemed to have been received one week after the date on which these documents were sent by the Director General by registered post or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The Director General shall also provide opportunity to the industrial user of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at retail level to furnish information which is relevant to the investigation.

(6) The Director General may allow an interested party or its representative to present the information relevant to investigation orally but such oral information shall be taken into consideration by the Director General only when it is subsequently submitted in writing.

(7) The Director General shall make available the evidence presented to him by one interested party to the other interested parties, participating in the investigation.

(8) In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Director General may record his findings on the basis of the facts available to him and make

such recommendations to the Central Government as he deems fit under such circumstances.

7. **Confidential Information**

(1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, sub-rule (2) of rule 9 and sub-rule (5) of rule 11**,** any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Director General and shall not be disclosed without specific authorisation of the party providing such information.

(2) The Director General may require the parties providing information on confidential basis to furnish non confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarised, such party may submit to the Director General a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the Director General is satisfied that the request for confidentiality is not warranted or the supplier of the information is unwilling either to make the information public or to authorise its disclosure in a generalized or summary form, he may disregard such information unless it is demonstrated to his satisfaction from appropriate sources that such information is correct.

8. **Determination of Serious Injury or Threat of Serious Injury**

The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account*, inter alia,* the principles laid down in Annex to these rules.

9. **Preliminary Findings**

(1) The Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary finding regarding serious injury or threat of serious injury.

(2) The Director General shall issue a public notice regarding his preliminary findings.

(3) The Director General shall send a copy of the public notice to the Central Government in the Ministry of Commerce and in the Ministry of Finance.

10. **Levy of Provisional Duty**

The Central Government may in accordance with the provisions of sub-section (2) of section 8B of the Act, impose a provisional duty on the basis of the preliminary findings of the Director General:

Provided that such duty shall remain in force only for a period not exceeding two hundred days from the date on which it was imposed.

11. **Final Findings**

(1) The Director General shall, within 8 months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether,

(a) the increased imports of the article under investigation has caused or threatened to cause serious injury to the domestic industry, and

(b) a causal link exists between the increased imports and serious injury or threat of serious injury.

(2) The Director General shall also give its recommendation regarding amount of duty which, if levied, would be adequate to prevent or remedy 'serious injury' and to facilitate positive adjustment.

(3) The Director General shall also make his recommendations regarding the duration of levy of duty:

Provided that where the period recommended is more than one year, the Director General shall also recommend progressive liberalization adequate to facilitate positive adjustment.

(4) The final findings if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion.

(5) The Director General shall issue a public notice recording his final findings.

(6) The Director General shall send a copy of the public notice regarding his final findings to the Central Government in the Ministry of Commerce and in the Ministry of Finance.

**12. Levy of Duty**

(1) The Central Government may, impose by a notification in the Official Gazette**,** upon importation into India of the product covered under the final finding, a safeguard duty not exceeding the amount which has been found adequate to prevent or remedy serious injury and to facilitate positive adjustment.

(2) If the final finding of the Director General is negative, that is contrary to the prima facie evidence on whose basis the investigation was initiated, the Central Government shall within thirty days of the publication of final findings by the Director General under rule 11, withdraw the provisional duty imposed, if any.

13. **Imposition of Duty on Non-discriminatory Basis**

Any safeguard duty imposed under rule 10 or rule 12 shall be on a non-discriminatory basis and applicable to all imports of such article, irrespective of its source.

14. **Date of Commencement of Duty**

(1) The Safeguard duty levied under rule 10 or rule 12 shall take effect from the date of publication of the notification, in the Official Gazette imposing such duty.

(2) Notwithstanding anything contained in sub-rule (1), where a provisional duty has been levied and where the Director General has recorded a finding that increased imports have caused or threaten to cause serious injury to domestic industry, it shall be specified in the notification under sub-rule (1) that such safeguard duty shall take effect from the date of levy of provisional duty.

15. **Refund of Duty**

If the safeguard duty imposed after the conclusions of the investigations is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

16. **Duration**

(1) The duty levied under rule 12 shall be only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate positive adjustment.

(2) Notwithstanding anything contained in sub-rule (1) of this rule duty levied under rule 12 shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard duty should continue to be imposed, it may extend the period of such imposition;

Provided further that in no case the safeguard duty shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

17. **Liberalization of Duty**

If the duration of the duty levied under rule 12 exceeds one year, the duty shall be progressively liberalized at regular intervals during the period of its imposition.

18. **Review**

(1) The Director General shall, from time to time, review the need for continued imposition of the safeguard duty and shall, if he is satisfied on the basis of information received to him that,

(i) safeguard duty is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of duty;

(ii) there is no justification for the continued imposition of such duty; recommend to the central Government for its withdrawal:

Provided that where the period of imposition of safeguard duty exceeds three years the Director General shall review the situation not later than the mid-term of such imposition, and,

if appropriate, recommend for withdrawal of such safeguard duty or for the increase of the liberalization of duty.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding 8 months from the date of initiation of such review or within such extended period as the Central Government may allow.

(3) The provisions of rules *5,* 6, 7 and 11 shall mutates mutandis apply in the case of review.

***ANNEXURE***

**(See rule 8)**

1. In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a demonstrate industry, the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the article concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

2. The determination referred to in paragraph (1) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the article concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports. In such cases, the Director General may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.

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**TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]**

Government of India
Ministry of Finance
(Department of Revenue)
(Central Board of Excise and Customs)
Notification
No. 19/2016 - Customs (N.T.)

New Delhi, 5th February, 2016

G.S.R.…….(E).- In pursuance of clause (a) of sub-section (6) of section 8B of the Customs Tariff Act, 1975 (51 of 1975) and in supersession of notification of the Government of India in the Ministry of Finance, Department of Revenue, No. 103/98 – Cus, dated the 14th December, 1998, published in the Gazette of India, Extraordinary vide number G.S.R. 737(E), dated the 14th December, 1998, except as respects things done or omitted to be done before such supersession, the Central Government, hereby notifies the following countries as developing countries for the purposes of the said section, namely :-

| | |
|---|---|
| 1. | Afghanistan |
| 2. | Albania |
| 3. | Algeria |
| 4. | Angola |
| 5. | Armenia |
| 6. | Azerbaijan |
| 7. | Bangladesh |
| 8. | Belarus |
| 9. | Belize |
| 10. | Benin |
| 11. | Bhutan |
| 12. | Bolivia (Plurinational State of) |
| 13. | Bosnia and Herzegovina |
| 14. | Botswana |

| | |
|---|---|
| 15. | Brazil |
| 16. | Bulgaria |
| 17. | Burkina Faso |
| 18. | Burundi |
| 19. | Cabo Verde |
| 20. | Cambodia |
| 21. | Cameroon |
| 22. | Central African Republic |
| 23. | Chad |
| 24. | China |
| 25. | Colombia |
| 26. | Comoros |
| 27. | Congo |
| 28. | Costa Rica |
| 29. | Côte D'Ivoire |
| 30. | Cuba |
| 31. | Democratic People's Republic of Korea |
| 32. | Democratic Republic of the Congo |
| 33. | Djibouti |
| 34. | Dominica |
| 35. | Dominican Republic |
| 36. | Ecuador |
| 37. | Egypt |
| 38. | El Salvador |
| 39. | Eritrea |
| 40. | Ethiopia |
| 41. | Fiji |
| 42. | Gabon |
| 43. | Gambia |
| 44. | Georgia |
| 45. | Ghana |
| 46. | Grenada |
| 47. | Guatemala |

| | |
|---|---|
| 48. | Guinea |
| 49. | Guinea Bissau |
| 50. | Guyana |
| 51. | Haiti |
| 52. | Honduras |
| 53. | Indonesia |
| 54. | Iran (Islamic Republic of) |
| 55. | Iraq |
| 56. | Jamaica |
| 57. | Jordan |
| 58. | Kazakhstan |
| 59. | Kenya |
| 60. | Kiribati |
| 61. | Kyrgyzstan |
| 62. | Lao People's Democratic Republic |
| 63. | Lebanon |
| 64. | Lesotho |
| 65. | Liberia |
| 66. | Libya |
| 67. | Madagascar |
| 68. | Malawi |
| 69. | Malaysia |
| 70. | Maldives |
| 71. | Mali |
| 72. | Marshall Islands |
| 73. | Mauritania |
| 74. | Mauritius |
| 75. | Mexico |
| 76. | Micronesia (Federal State of) |
| 77. | Mongolia |
| 78. | Montenegro |
| 79. | Morocco |
| 80. | Mozambique |

| | |
|---|---|
| 81. | Myanmar |
| 82. | Namibia |
| 83. | Nepal |
| 84. | Nicaragua |
| 85. | Niger |
| 86. | Nigeria |
| 87. | Pakistan |
| 88. | Palau |
| 89. | Palestine |
| 90. | Panama |
| 91. | Papua New Guinea |
| 92. | Paraguay |
| 93. | Peru |
| 94. | Philippines |
| 95. | Republic of Moldova |
| 96. | Romania |
| 97. | Rwanda |
| 98. | Saint Lucia |
| 99. | Saint Vincent and the Grenadines |
| 100. | Samoa |
| 101. | Sao Tome and Principe |
| 102. | Senegal |
| 103. | Serbia |
| 104. | Sierra Leone |
| 105. | Solomon Islands |
| 106. | Somalia |
| 107. | South Africa |
| 108. | South Sudan |
| 109. | Sri Lanka |
| 110. | Sudan |
| 111. | Suriname |
| 112. | Swaziland |
| 113. | Syrian Arab Republic |

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|---|---|
| 114. | Tajikistan |
| 115. | Thailand |
| 116. | The former Yugoslav Republic of Macedonia |
| 117. | Timor-Leste |
| 118. | Togo |
| 119. | Tonga |
| 120. | Tunisia |
| 121. | Turkey |
| 122. | Turkmenistan |
| 123. | Tuvalu |
| 124. | Uganda |
| 125. | Ukraine |
| 126. | United Republic of Tanzania |
| 127. | Uzbekistan |
| 128. | Vanuatu |
| 129. | Viet Nam |
| 130. | Yemen |
| 131. | Zambia |
| 132. | Zimbabwe |

[F. No.21000/22/2015-OSD(ICD)]
(Satyajit Mohanty)
Director to the Government of India

Appendix-63

## Trade Notice on Safeguard Applications Issued by Director General

**(SG/TN/1/97 DT:06/09/1997)**

Rule 5(2) of the Safeguard Duty Rules requires an application for safeguard investigation to be in the form as specified by the Director General. The Director General has issued a Trade Notice in this behalf prescribing the information to be provided in an application for safeguard investigation and the supporting documents required to be submitted therewith. The Trade Notice having been issued under the authority of the Rules, has the force of law. The applicants need to abide by the provisions contained in the Trade Notice.

### Trade Notice on Safeguard Applications

1. Attention of the Trade and Industry is invited to Section 8B of the Customs Tariff Act of 1975 and the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 framed thereunder (hereinafter referred to as the Safeguard Rules). In exercise of the powers conferred by sub-rule (1) of Rule 3 of the Safeguard Rules, the Central Govt. has appointed the undersigned as the Director General (Safeguards), for the purpose of the said rules.

2. In accordance with the provisions of the Safeguard Rules, safeguard duty can be imposed on any product imported into the country, in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten serious injury to the domestic producers of like or directly competitive products, irrespective of the source of origin of the imported products.

3. The safeguard duties can be imposed for a short duration with the immediate intention of preventing or remedying serious injury to the domestic industry. Such a measure would, however, also require the industry to adjust itself to the new situation of the competition offered by the increased imports. A safeguard measure can be imposed only after the Director General arrives at a finding, after due investigation, that the increased imports of particular product(s) are causing or are threatening to cause serious injury to the domestic producers of like or directly competitive articles.

4. An application for initiation of a safeguard investigation can be made by any aggrieved producer/manufacturer, trade representative body, firm or institution,

which is representative of domestic industry. This application should be in the format and should include information as detailed in Annex to this Trade Notice along with all supportive evidence/data/annexes.

5. The following further requirements need to be fulfilled by all parties concerned.

i. Information should be provided for the most recent period of three years (or longer) for which data is available.

ii. The details of the source of information must be provided along with copies of source document wherever practicable.

iii. Information provided on a confidential basis, on cause being shown, be treated as Confidential Information. Confidential Information should be provided separately and not mixed up with the non-confidential information. Each page of the confidential information should be clearly and distinctly marked "Confidential" in bold letters both at the top right hand and bottom right hand side of the page. Non-confidential summary of confidential information may be provided by the supplier of the information. If the confidential information cannot be provided in a summarized or generalized form or non-confidential basis, such information may be disregarded unless it is demonstrated by the supplier of the information to the satisfaction of the investigating authorities from appropriate sources that the information is correct.

iv. Applicant(s) shall submit initial two copies of the application together with all supportive enclosures, data and annexes. Once the application is found to be properly documented and complete in all respects, applicants will be required to provide sufficient number (number of interested parties + seven) of copies of the application alongwith all enclosures/annexes etc.

v. If any application is found to be incomplete or deficient in any manner, it may be returned (after retaining one copy) to the applicant(s) for necessary action.

vi. Documents which are not clearly legible and/or which are not authenticated by the submitter thereof, may be disregarded.

vii. Subject to the provisions of rules in this regard, on cause being shown, a party to the investigation may be considered as an interested party.

viii. Request received within 15 days of publication of a notice of initiation of investigation for inclusion of any party to the investigation as an interested party, may be considered by the Director General (Safeguards) and a list of interested parties shall be established by the Director General within 21 days of the publication of notice of initiation, a copy of which shall be sent to all interested parties.

ix. A public file containing all relevant material (non-confidential) shall be available for inspection by all interested parties in the office of the Director General (Safeguards).

x. Information presented orally by any interested party in a public hearing shall be submitted in writing by such party to the Director General within 5 days of the hearing or within such period as allowed by the Director General. Interested Parties may collect copies of such submissions on a day indicated by the Director General and submit rebuttals, if any, within such period as allowed by the Director General.

xi. Any evidence or any other submissions made by any party shall be provided in sufficient number of copies (number of interested parties + seven) to the Director General.

xii. All notices shall be displayed on the notice board of the Directorate General for a period of 10 days from the date of the notice.

xiii. An English translation of any information provided in a language other than Hindi or English would need to be supplied simultaneously by the submitter of the information, failing which the information may be disregarded.

xiv. All information/material should also preferably be provided on 3-1/2" (three and a half inch) floppy in Word for Windows compatible format. All the Trade Associations and Chambers of Commerce and Industry are requested to bring the contents of this Trade Notice to the notice of their Members/ Constituents.

**Annexes to Trade Notice**

## Information to be provided in an Application for Safeguard Investigation

### Section 1: General Information

1. Date of Application
2. Applicant(s): Provide name(s) and address(es) of the applicant(s).
3. Domestic Producers of the like or directly competitive products on whose behalf the application is filed (Give details of all domestic producers who support the application).
4. Information on production accounted for by the domestic producers of the like or directly competitive products (in respect of those domestic producers who support the application).
5. Information on the total domestic production of the product concerned of the like or directly competitive products (in respect of all producers whether they support the application or not).

### Section 2: Product in respect of which increase in imports alleged

1. Name of the product.
2. Description: Provide full description of the product including chemical formula, grade constituent materials/Components, process of manufacture in brief, uses and inter-changeability of various grades, etc.
3. Tariff classification: Provide the classification of the product under the HS classification as well as Indian Customs Tariff Classification at 6/8/10 digit level.
4. Import Duty: Provide information relating to rates of import duty levied during the past three years. If the product enjoys any concessional or preferential treatment, provide details.
5. Country(ies) of Origin: Provide name(s) of country(ies) where the product has originated (where the country of origin is different than the country of export, the name of the country of origin should also be provided).
6. Provide a list of all known foreign producers, exporters & importers of the imported product, country-wise, together with names and addresses of concerned trade associations and user associations etc.

7. Information on major industrial users, organization of industrial users and representative consumer organisations (in case the product is commonly sold at retail level).

8. Export Price: Details of export price of the imported Product exporter/ country-wise and the basis thereof (provide the f.o.b. / c.i.f. price at which the goods enter into India).

**Section 3: Increased Imports**

1. Provide full and detailed information regarding the imports of the said product in terms of quantity and value year wise for the last three years (or longer).

2. Provide break up of Point 1 above country wise in absolute terms as well as percentage of the total imports of the said product.

3. Provide full and detailed information on the share of the imported products and the share of the domestic production of the like product and the directly competitive products in the total domestic consumption for the last three years (or longer) both in terms of quantity and value.

4. Provide information on factors that may be attributing to increased imports.

**Section 4: Domestic Production**

1. Details of the like product and directly competitive products produced by the domestic producers. Information similar to Section 2 above, i.e.

    i. Name

    ii. Description

    iii. Tariff classification both under the Central Excise Tariff as well as under the Customs Tariff.

    iv. Details of domestic producers

2. Names and addresses of all known domestic producers and concerned trade associations and users associations etc.

3. Details of production accounted for by each of the producers listed in Point 2 above.

4. Details of total domestic production.

5. Installed capacity, capacity utilization and fall in capacity utilization etc.

**Section 5: Injury or Threat of Injury**

1. Impact of increased imports on Domestic Industry: Detailed information on how the increased imports are causing serious injury or threat of serious injury to the domestic industry. This should, *inter alia*, include information on

    a. Sale volumes, total domestic consumption and how the market share of domestic production has been affected.

    b. Price undercutting/price depression/prevention of rise in prices. Information on costs of production and how the increased imports have affected the prices of domestic production needs to be provided.

    c. Any significant idling of production facilities in the industry including data indicating plant closure or fall in normal production capacity utilization.

    d. Loss of employment.

    e. Financial situation: Full information on the financial situation of the domestic industry including information on decline in sales, growing inventory, downward trend in production, profits, productivity or increasing unemployment needs to be provided.

2. Other Factors of Injury: Provide details of any other factors that may be attributing the injury caused to the domestic industry and an explanation that injury caused by these other factors is not attributed to injury caused by increased imports. (Information on injury caused due to dumping or subsidization, if any, needs to be specifically provided here. Also mention if any application for anti-dumping or countervailing duty investigation has been filed).

**Section 6: Cause of Injury:**

Please provide an analysis of data presented above bringing out a nexus between the increased imports, either actual or relative to domestic production, and the injury or threat of injury caused to the domestic industry and the basis for a request for initiation of safeguards investigation under Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997.

**Section 7: Submission**

a. A statement describing the measure requested including:

- Nature and quantum of safeguard duty requested.
- Purpose of seeking the relief and how such objective will be achieved.
- Duration for which imposition of safeguard duty is requested and the reasons therefore.

b. If a request is made for provisional safeguard measures, full and detailed information regarding existence of critical circumstances and how delay would cause damage which it would be difficult to repair.

c. If the safeguard measures are requested to be imposed for more than one year, details on efforts being taken and planned to be taken or both to make a positive adjustment to import competition with details of progressive liberalization adequate to facilitate positive adjustment of the industry.

**Section 8: Annexes**

All supporting information can be provided as annexes to the application. (The main information must be provided at the appropriate places. The details of the information can be provided in annexes).

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**Post Initiation**
**Questionnaire for Domestic Producers**

**Section 1: General Information:**

i. Complete details about identity

   a. Name of the enterprise, location of works:

   b. Address of the registered, marketing and head office:

   c. Telephone No. / Fax No.:

   d. Contact Person, address & tel. No. / fax no.:

ii. Corporate structure:

iii. Commodities manufactured:

iv. Distribution and marketing system:

**Section 2: Like or Directly Competitive Product**

i. Details of like or directly competitive product(s) produced by you

   a. Name of the product:

   b. Description of the product, including various grades, sizes, models or type etc. Basis for classification:

   c. Qualities and the characteristics of the product:

   d. Uses of the product: Whether different grades/off-specs can be used interchangeably:

   e. Substitutability of the product giving details of perception of the consumer and the manufacturer and commercial channels:

   f. Raw materials and components and other input used for the production:

   g. Process of production / manufacture: Complete flow chart with description to be given:

   h. Tariff classification (under Central Excise Tariff Act, 1985);

i. Rates of Central Excise duty during last 3 years;

ii. (a) Description of imported product as in (i) above with Tariff classification: (b) Narrate how your product can be considered as 'like or directly competitive product' to (a) above;

iii. Details of industrial users / consumers of your product: Please furnish Segment wise list of major consumers;

iv. Details of industrial users/consumers of imported product;

v. Details of cost of production showing variable and fixed costs separately.

The variable costs to include Raw Material, Chemicals and Consumables (Stores), Water, Power & Fuel charges, Direct labour etc. and the Fixed cost to include Finance cost (Interest), Depreciation, Repairs & Maintenance, Administrative overheads etc.:

**Section 3: Injury**

i. Production line-wise details of plant and machinery installed. Expenses incurred in installing the same. Additions made During the last three years. Further investments committed:

ii. Information on further plans of Capital Investment.

iii. Source of funds.

iv. Installed capacity and capacity utilization for the last three years, variety wise, for each product.

v. Details of production, sales and stocks for the last three years financial years (month wise) both in terms of quantity and value for each product. (Please do not include imports, if any, made by you here).

vi. Details of sales in the domestic market, both in terms of quantity and value. (Please do not include sale of imported material here). Give separately any quantities used captively for the last three financial years (month wise).

vii. Details of country wise export both in terms of quantity and value. (Please do not include any imported material, if re-exported, here), to whom exported and what price. Please explain difference in export price vis-A-vis domestic price. Details of deemed exports if any may also be furnished.

viii. Information regarding sales prices. (For the last three years). Realisation for bulk and packed form separately. Please also indicate Separately quantities sold in bulk and in packed form.

ix. Major raw materials used and their prices for the last three years. Also indicate the ratio of consumption to the finished product.

x. Effect of changes in prices of raw materials on cost of production and selling prices for the last three years.

xi. Information on fair market price which you expect to receive and basis thereof i.e. cost of production, giving details of cost of raw materials, labor, overheads, etc. for the last three years. (Give details separately for fixed and variable costs at different capacity utilization).

xii. Information of rebates/discounts offered on domestic sales during the last three years month wise.

xiii. Please give details of any subsidy including freight subsidy received by you - nature and amount - who gives the subsidy and why.

xiv. Information on profit and loss on sales for the last three years separately for each product variety wise.

xv. Details of persons employed and loss of employment, if any, during last three years.

xvi. Copies of Balance Sheets or other statements of accounts for the last three years.

xvii. Details of information on assets and financial position of the enterprise.

xviii. Cause of injury or threat of injury to your unit and basis thereof:

a. Please provide details of the impact of reduction in import duties/ removal of import restrictions on the product for which protection is sought.

b. Please provide details of other circumstances that have contributed to the increase in imports.

c. Please provide information in respect of circumstances that have helped the exporters in the international market in sending increased quantities to India.

d. Please provide details of demand for the product for the past three years and anticipated growth, if any. Reasons for decline or increase may also be furnished.

**Section 4: Information on Adjustment Plan**

i. How do you think injury can be removed?

ii. Please specify the quantum and duration of safeguard duty that can help you in adjusting to the new situations of competition offered by increased imports.

iii. Please specify the progressive liberalization of the safeguard duty.

iv. Please specify the restructuring plan of your unit to adjust to the new situation of competition offered by the increased imports. What steps have been taken so far for enhancing the capacities?

v. How can the further proposed restructuring plan be implemented?

vi. Please provide an estimate of year wise reduction in cost of Production (or quantum of other benefits - separately) that may be achieved as a result of readjustment. A non-confidential summary of your restructuring plan may be furnished. Unless the same is provided, the information provided on confidential basis may not be taken on record.

vii. A non-confidential summary of your restructuring plan may be furnished. Unless the same is provided, the information provided on confidential basis may not be taken on record.

**Section 5: Information on imports, if any**

i. Are you importing the product (or similar product) as described in Section II (ii).

ii. If yes, please list all imports made during the last three years giving details of products imported, quantity, value, duty paid, etc.

iii. Explain reasons for imports.

iv. Give details of marketing and distribution channel and disposal of imported goods.

v. Provide a list of end users to whom the imported product has been sold by you.

vi. Effect of these imports on your domestic sales.

vii. Details of month wise imports into India as a whole and its CIF price for the last three years.

viii. Why the price of imports to India is lower compared to other countries.

ix. Names and addresses of exporters to India.

**Section 6: Miscellaneous Information**

a. Details of shutdown and reasons therefore during the last three years along with stock position during the shutdown.

b. Details of orders placed by consumers which could not be executed or were considerably delayed during the last three years along with reasons.

Appendix-65

**Post Initiation**
**Questionnaire for Importers**

**Section 1: General Information:**

i. Complete details about identity
   a. Name of the enterprise
   b. Address
   c. Telephone No. / Fax No.
   d. Contact person, address and Tel. No.

ii. Corporate Structure.

iii. Distribution and marketing channel.

**Section 2: Details of Imported Product**

a. Name of the product imported by you.

b. Description of the product including various grades, sizes, models or type etc.

c. Quality and characteristics of the product.

d. Uses of the product.

e. Raw materials and components and other inputs used for the production.

f. Tariff classification under The Customs Tariff Act, 1975 and under ITC.

g. Rates of Customs duty during last three years paid on imports. Please give break up and copies of supporting documents (e.g. Bill of entry, Invoice etc.)

h. Details of industrial users / consumers of imported product.

**Section 3: Volume and Prices of Imports**

i. Please list all imports (for each product variety wise) giving details of country of export, quantity imported, CIF value, currency conversion ratio etc. for the last three years, (April to March) month wise / quarterly, quantities imported during the said period separately for duty free imports and duty paid imports.

ii. Terms of payment.

iii. Details of import licenses / import policy governing the imports.

**Section 4: Information about Suppliers**

a. Name of the exporter

b. Address

c. Telephone, Fax Nos.

d. Contact person, address & Telephone No.

e. Whether the exporter is producer / merchant or exporter / trader.

f. What is the annual capacity of the exporter (if he is a producer)

g. What are your relations with the exporter

h. What are your terms of business with the exporters i.e. terms of payment, further commitment of imports etc.

Appendix-66

**Post Initiation**
**Questionnaire for Exporters**

**Section 1: General Information:**

i. Complete details about identity
   a. Name of the enterprise
   b. Address
   c. Telephone No. / Fax No.
   d. Contact person, address and telephone no.

ii. Distribution and marketing channel

**Section 2: Details of Exported Product**

a. Name of the product exported by you

b. Description of the product including various grades, sizes, models or types

c. Quality and characteristics of the product

d. Raw materials and components and other inputs used for production

e. Details of industrial users / consumers of exported product.

**Section 3: Capacity, Production, Volume and Price of Exports**

(Preferably for financial year April - March)

a. Capacity

   Last year Current year

b. Production

   Last year Current Year Next year

c. Cost of production during the above periods.

d. Selling price per unit in domestic market during the above periods.

e. Export / Selling price per unit in India during the above periods.

f. Whether you have any agent or office in India, if yes their names and address, Tel. No., Fax No.

g. Quantity exported to India during the last three years and current year (April-March)

h. Your commitment to supply the product in different markets including India.

# QUANTITATIVE RESTRICTION INVESTIGATIONS

## LEGAL PROVISIONS

22.1. Article XI of the GATT prohibits quantitative restrictions on the importation or exportation of any product, by stipulating that "no prohibition or restrictions other than duties and taxes or other charges shall be instituted or maintained by any member…". The quantitative restrictions are considered to have greater impact on trade than tariffs and hence, their prohibition is one of the fundamental principles of the GATT. However, GATT permits quantitative restrictions under certain conditions. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

22.2. In India, the provisions of Quantitative restrictions are provided in Foreign Trade (Development and Regulation) Act, 1992, introduced vide amendment in 2010. The relevant provisions of Foreign Trade (Development and Regulation) Act, 1992 are as follows:

**CHAPTER IIIA :Quantitative Restrictions:**

***Power of Central Government to impose quantitative restrictions***

*9A. (1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, impose such quantitative restrictions on the import of such goods as it may deem fit:*

*Provided that no such quantitative restrictions shall be imposed on any goods originating from a developing country so long as the share of imports of such goods from that country does not exceed three per cent, or where such goods originate from more than one developing country, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine per cent of the total imports of such goods into India.*

*(2) The quantitative restrictions imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition:*

*Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the quantitative restrictions should continue to be imposed to prevent such injury or threat and to facilitate the adjustments, it may extend the said period beyond four years:*

*Provided further that in no case the quantitative restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.*

*(3) The Central Government may, by rules provide for the manner in which goods, the import of which shall be subject to quantitative restrictions under this section, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury in relation to such goods may be determined.*

*(4) For the purposes of this section-*

a) *"developing country" means a country notified by the Central Government in the Official Gazette, in this regard;*

b) *"domestic industry" means the producers of goods (including producers of agricultural goods)-*
   (i) *as a whole of the like goods or directly competitive goods in India; or*
   (ii) *whose collective output of the like goods or directly competitive goods in India constitutes a major share of the 'total production of the said goods in India';*

c) *"serious injury" means an injury causing significant overall impairment in the position of a domestic industry;*

d) *"threat of serious injury" means a clear and imminent danger of serious injury.*

22.3. The Department of Commerce has notified the Rules called the Safeguard Measures (Quantitative Restrictions) Rules, 2012 detailing the process for conducting investigation for quantitative restrictions, wherein the "Authorised Officer" is designated under sub-rule(1) of rule 3 for conducting investigations as per the details provided in the QR Rules (text attached at the end of the chapter). The application format has also been prescribed therein.

**SIGNIFICANCE**

22.4. The rules provide that the Authorised Officer can investigate serious injury or threat of serious injury to Domestic Industry caused by increased quantity of imports, in absolute terms or relative to domestic production, and recommend quantitative restrictions (any specific limit on quantity of imports) on import of such goods from specified countries under investigation.

**OPERATING PRACTICES**

22.5. The rules governing the procedure for investigation are contained in Safeguard Measures (Quantitative Restrictions) Rules, 2012 notified on May 24, 2012.

22.6. In the Rules, the Directorate General of Foreign Trade is required to provide secretarial support and the services for conducting investigation to impose quantitative restriction. However, the work relating to all trade defence instruments has been assigned to Directorate General of Trade Remedies vide Notification No.I-34(7)/2018-O&M dated 17 May, 2018. Therefore, the investigation team and the secretarial assistance are now centralised in DGTR. The DG has been designated as the "Authorised Officer" for QR investigations under the said notification.

22.7. The application has to be in writing by or on behalf of the domestic producer(s) of like goods or directly competitive goods, in the prescribed format, supported with:

22.7.1. The evidence of:

(i) increased imports as a result of unforeseen development;

(ii) serious injury or threat of serious injury to the domestic industry; and

(iii) a causal link between imports and the alleged serious injury or threat of serious injury;

22.7.2. A statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to increase in competition due to imports; and

22.7.3. A statement mentioning whether an application for the initiation of a safeguard action on the goods under investigation has also been submitted to the Director General of Safeguards.

22.7.4. The application seeking initiation of quantitative restrictions investigations should be inter-alia accompanied by the following information for at least latest available three years and supporting documents in addition to the application in the prescribed format:

| S.N. | Documents / Information |
|---|---|
| 1 | Soft Copy of the application |
| 2 | D.G.C.I &S import data segregated year-wise and county wise |
| 3 | Total Indian Production and basis for the estimation |
| 4 | Year-wise production of applicant and Installed Capacity of PUC with supporting documents like Pollution Control Board Certificate |
| 5 | Total sales (separately for domestic /captive/exports) of the applicant and other Indian producer(s) along with total year wise demand in the country. |
| 6 | Workings of Cost of production along with Excel files |
| 7 | Submissions and Workings in support of claimed serious injury/threat of injury |
| 8 | Evidence in support of causal link |
| 9 | Statement of adjustment and period thereof |
| 10 | Evidence regarding unforeseen developments |
| 10 | Confirmation from the DI/consultants that the complete cost data for all the units of the domestic industry manufacturing or selling PUC has been furnished in the petition. |
| 11 | Audited financial statements and cost audit reports |

22.8. The principles followed for determination of PUC in AD cases may also be applied for QR cases for determination of "like goods or directly competitive goods", which are the subject matter for investigation.

22.9. Similarly, for determination of injury, COP needs to be determined. Though Annexure-III in anti-dumping Rules is not specifically applicable to the quantitative

restrictions investigations, broad costing principles as contained therein may be followed like allocation of expenses and disallowance of expenses. A decision may need to be taken on a case-to-case basis.

22.10. The audited accounts must be furnished along with the application for initiation. In case the audited accounts are not available for the latest period then the Profit & Loss Account figures duly signed by the senior company officials (with name, designation and contact number clearly mentioned) should be submitted for the initiation purposes. This is subject to subsequent submission of duly audited/ certified accounts within the stipulated period as per the initiation notification.

22.11. The "Goods" in QR investigation include like goods or directly competitive goods to the goods under investigation, or in the absence of such goods, other goods which have characteristics closely resembling those of the goods under investigation;

22.12. The team is required to examine the accuracy and adequacy of the evidence provided in the application and satisfy itself that there is sufficient evidence regarding:

(i) increased imports;

(ii) serious injury or threat of serious injury; and

(iii) a causal link between increased imports and alleged serious injury or threat of serious injury.

22.13. After examination of the application and evidence, an investigation may be initiated to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by the import of goods in such increased quantities; absolute or relative to domestic production.

22.14. The Authorised Officer (DG) also has the power to initiate an investigation *suo motu,* if it is satisfied with the information received from any source that sufficient evidence exists.

22.15. The updated data of imports should be called from DGCI&S, for the goods alleged to be causing serious injury, during the course of investigation.

22.16. The /Investigation Team is required to issue a public notice notifying its decision to initiate investigation to determine serious injury or threat of serious

injury to the domestic industry, consequent upon the increased import of goods into India. The notification *inter alia* should contain information on the following, namely:

(i) the name of the exporting countries, the goods involved and the volume of import;

(ii) the date of initiation of the investigation;

(iii) a summary of statement of facts on which the allegation of serious injury or threat of serious injury is based;

(iv) reasons for initiation of the investigation;

(v) the address to which representations by interested parties should be directed; and

(vi) the time-limits allowed to interested parties for making their views known.

22.17. A copy of the public notice is to be forwarded to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, known exporters of the goods, the Governments of the exporting countries concerned and other interested parties. The DGFT is the concerned administrative department in Department of Commerce responsible for implementing the QR measures as per the recommendations of DGTR.

22.18 A copy of the application is to be provided to:

(i) the known exporters, or the concerned trade association;

(ii) the Governments of the exporting countries; and

(iii) the Central Government in the Ministry of Commerce and Industry;

(iv) a copy of the application, may be made available upon request in writing to any other interested person.

22.19. A notice may be issued calling for information from the exporters, foreign producers and governments of exporting countries in writing within 40 days from the date of initiation notification as per Trade Notice No. 11/2018 dated 10.09.2018 or within such extended period as may be allowed on sufficient cause being shown.

22.20. The interested party for QR investigation include:

(i) an exporter or foreign producer of the subject goods

(ii) an importer of subject goods

(iii) a trade or business association, majority of the members of which are producers, exporters or importers of such goods;

(iv) the Government of the exporting country; and

(v) a producer of the like goods or directly competitive goods in India

(vi) a trade or business association in India, a majority of members of which produce or trade the like goods or directly competitive goods in India.

(vii) the industrial user(s) of the goods under investigation

(viii) The representative consumer organisations in cases where the goods are commonly sold at retail level to furnish information which is relevant to the investigation including inter *alia* their views on whether the imposition of safeguard quantitative restrictions is in public interest or not.

22.21. Any other party who wishes to be considered as an interested party may submit their request within 40 days from the date of initiation notification as per the Trade Notice No. 11/2018 dated 10.09.2018.

22.22. An interested party or its representative may be allowed to present the information relevant to the investigation during the oral hearing but such oral information shall be taken into consideration only when it is subsequently submitted in writing.

22.23. The evidence presented by one interested party has to be made available to all other interested parties, participating in the investigation. In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Authorised Officer/ Investigation Team may record its findings on the basis of the facts available and make such recommendations tot he Central Government as it deems fit under such circumstances.

22.24. **Confidential information:** Application and responses are to be submitted in confidential and non-confidential versions, as detailed under Rule 7 of the said Rules. Further, the Trade Notice No.10/2018 dated 7th September 2018 may be referred to for detailed guidelines on this issue.

22.25. During the course of investigation, the team is required to undertake due verification and detailed analysis to arrive at its determinations.

22.26. **Determination of serious injury or threat of serious injury:** The Investigation Team shall determine serious injury or threat of serious injury to the domestic industry taking into account, *interalia*, the following principles, namely:

(i) The investigation should evaluate all relevant factors, of an objective and quantifiable nature, having a bearing on the situation of that industry. The particular emphasis is given to the rate and amount of the increase in imports of the goods concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales,production, productivity, capacity utilisation, cost per unit, profits and losses, and employment.

(ii) The above determination should be on the basis of objective evidence, the existence of the causal link between increased imports of the goods concerned and serious injury or threat thereof.

(iii) The factors other than increased imports causing injury to the domestic industry at the same time should be examined and such injury shall not be attributed to increased imports.

(iv) In case of injury caused by other factors, the Team may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.

22.27. **Final findings:** The findings shall be issued within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow. It will determine whether, as a result of unforeseen developments, the increased imports of the goods under investigation have caused or threatened to cause serious injury to the domestic industry, and whether or not a causal link exists between the increased imports and serious injury or threat of serious injury.

22.28. The final findings shall be issued with the approval of Authorised Officer (DG) by way of a public notice.

22.29. The final findings, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion. The recommendations should include:

(i) the extent and nature of quantitative restrictions which, if imposed, would be adequate to prevent or remedy 'serious injury' and to facilitate positive adjustment, as the case may be;

(ii) the extent of quantitative restrictions so that the volume of imports in future is not reduced toa level below the average level of imports in the recent period, which is the last three representative years for which statistics are available. In case a different level is necessary to prevent or remedy serious injury then a detailed justification needs to be provided;

(iii) the quota to be allocated among the supplying countries, and the allocation of shares in the quota for such specified countries which have a substantial interest in supplying the goods; The process of quota allocation and monitoring thereof will be done by the Directorate General of Foreign Trade, Department of Commerce;

(iv) the duration of imposition of quantitative restrictions: in case where the duration of imposition of quantitative restrictions is more than one year, there will be progressive liberal is at ion adequate to facilitate positive adjustment. In any case, the quantitative restriction would cease to have effect on the expiry of 4 years from the date of its imposition.

22.30. A copy of the public notice of the final findings is to be sent to the Central Government in the Ministry of Commerce and Industry and a copy is to be sent to the interested parties. The DGFT is the concerned administrative department in Department of Commerce responsible for implementing the QR measures as per the recommendations of DGTR

22.31. **Imposition of safeguard quantitative restrictions:** The Central Government, based on the recommendation of the Authorised Officer (DG),may impose a safeguard quantitative restriction by way of a notification in the Official Gazette, which will be the date of imposition of such quantitative restriction.

22.32. **Imposition of safeguard quantitative restrictions on non-discriminatory basis:** Any safeguard quantitative restrictions imposed on goods under these rules shall be applied on a non-discriminatory basis

22.33. Duration: The safeguard quantitative restrictions may be imposed for four years from the date of its imposition on case to case basis on merits. Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such serious injury or threat thereof and it is necessary that the safeguard quantitative restrictions should continue to be imposed, to prevent such serious injury or threat and to facilitate adjustments, it may extend the period beyond four years. Provided further that in no case the safeguard quantitative

restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.

22.34. **Liberalization of safeguard quantitative restrictions:** If the duration of the safeguard quantitative restrictions exceeds one year, the restriction shall be progressively liberalised at regular intervals during the period of its imposition.

22.35. Review.(1) The DGTR shall from time to time, review the need for continued imposition of the safeguard quantitative restrictions and if it is satisfied on the basis of information received that:

(i) safeguard quantitative restrictions are necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of quantitative restrictions;

(ii) there is no justification for the continued imposition of such restriction; recommend to the central Government for its withdrawal;

(iii) where the period of imposition of safeguard quantitative restrictions exceeds three years, the Investigation Team shall review the situation not later than the midterm of such imposition with the approval of Authorised Officer and if appropriate, recommend for withdrawal of such safeguard quantitative restrictions or for the further liberalisation of quantitative restrictions.

22.36. Any review initiated under sub-rule (1), shall be concluded within a period not exceeding eight months from the date of initiation of such review or within such extended period as the Central Government may allow.

**QR INVESTIGATION CASES:**

22.37. US – Import Restrictions on Yellow fin Tuna (BISD 39S/155) (unadopted) To reduce the incidental taking of dolphins by yellow fin tuna fisheries, the United States implemented the Marine Mammal Protection Act of 1972 to ban imports of yellow fin tuna and their processed products from Mexico and other countries whose fishing methods result in the incidental taking of dolphins in the Eastern Tropical Pacific. A GATT panel established pursuant to a request by Mexico in February 1991 found that the US measures violate the GATT. The panel report concluded that the US measures violate Article XI as quantitative restrictions and that such restrictions are not justified by Article XX(b) and (g) because:

(i) the US measures may not be a necessary and appropriate means of protecting dolphins, and

(ii) allowing countries to apply conservation measures that protect objects outside their territory and thus to determine unilaterally the necessity of the regulation and its degree would jeopardize the rights of other countries.

22.38. Subsequently, in September 1992, a GATT panel was established to examine the issue again at the request of the European Communities and the Netherlands (representing the Dutch Antilles). In May 1994, the panel found that the US measures violate GATT obligations. The report noted that the US import prohibitions are designed to force policy changes in other countries, and were neither measures necessary to protect the life and health of animals nor primarily aimed at the conservation of exhaustible natural resources. As such, the panel concluded that the US measures violated Article XI and were not covered by the exceptions in Articles XX(b) or (g). This report was submitted, however, to the GATT Council for adoption in July 1994, but was never adopted as a result of opposition from the United States.

22.39. US – Import Restrictions on Shrimp and Shrimp Products (DS 58) Under Section 609 of Public Law 101-162 of 1989, the United States began requiring shrimp fishers on May 1, 1991, to provide a certificate showing that their governments maintain a regulatory program comparable to that of the United States for protecting sea turtles from shrimp nets, and banned imports of shrimp from countries that cannot provide such certification. In response to this, India, Malaysia, Pakistan and Thailand initiated WTO dispute-settlement procedures, claiming that the US measures violate Article XI and were not justified under any GATT regulation Article XX exception. The panel found that the US measures regarding shrimp imports violated GATT Article XI, and that measures attempting to influence the policies of other countries by threatening to undermine the multilateral trading system were not justified, under GATT Article XX. The Appellate Body subsequently reversed some of the panel's findings, but it nonetheless agreed with the panel's decision.

Appendix-67

## SAFEGUARD MEASURES (QUANTITATIVE RESTRICTIONS) RULES, 2012

*G.S.R. 381(E).--- In exercise of the powers conferred by sub-section (3) of section 9A of the Foreign Trade (Development and Regulation) Act 1992 (22 of 1992), the Central Government hereby makes the following rules, namely:*

***1. Short title and commencement**. (1) These rules may be called the Safeguard Measures (Quantitative Restrictions) Rules, 2012.*

(2) They shall come into force on the date of their publication in the Official Gazette.

*2.* ***Definitions**. (1) In these rules, unless the context otherwise requires:*

(a) "Act" means the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(b) "Authorised Officer" means the Authorised Officer designated as such under sub-rule(1) of rule 3;

(c) "increased quantity" includes increase in import whether in absolute terms or relative to domestic production;

(d) "interested party" includes

*(i) an exporter or foreign producer or the importer of goods (which is subject to investigation for purposes of imposition of safeguard quantitative restrictions) or a trade or business association, majority of the members of which are producers, exporters or importers of such goods;*

*(ii) the Government of the exporting country; and*

*(iii) a producer of the like goods or directly competitive goods in India or a trade or business association, a majority of members of which produce or trade the like goods or directly competitive goods in India;*

(e) "like goods" means goods which is identical or alike in all respects to the goods under investigation, or in the absence of such goods, other goods which has characteristics closely resembling those of the goods under investigation;

(f) "quantitative restrictions" means any specific limit on quantity of goods imposed as a safeguard measure under the Act;

(g) "specified country" means a country or territory which is a member of the World Trade Organization and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

*(2) The words and expressions used herein and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.*

*3.* ***Responsibility of Authorised Officer for making enquiry in respect to safeguard quantitative restrictions.*** *(1) The Central Government shall, by notification in the Official Gazette, designate an officer not below the rank of Additional Director General of Foreign Trade as an Authorised officer for making investigation for the purpose of these rules.*

*(2) The Authorised Officer shall be responsible for conducting investigation, under subsection (1) of section 9A, for the purpose of imposition of safeguard quantitative restrictions and making necessary recommendation therein to the Central Government.*

*(3) The Directorate General of Foreign Trade shall provide secretarial support and the services of such other persons and such other facilities as it deems fit.*

*4.* ***Duties of Authorised Officer.*** *It shall be the duty of the Authorised Officer;*

*(a) to investigate the existence of serious injury or threat of serious injury to domestic industry as a consequence of increased import of a goods into India;*

*(b) to identify the goods liable for quantitative restrictions as a safeguard measure;*

*(c) to submit its findings, to the Central Government as to the serious injury or threat of serious injury to domestic industry consequent upon increased import of goods into India from the specified country;*

*(d) to recommend:*

*(i) the nature and extent of quantitative restrictions which, if imposed, shall be adequate to remove the serious injury or threat of serious injury to the domestic industry; and*

*(ii) the duration of imposition of safeguard quantitative restrictions and where the period so recommended is more than one year, to recommend progressive liberalisation adequate to facilitate positive adjustment; and*

*(e) to review the need for continuance of the safeguard quantitative restrictions.*

5. ***Initiation of investigation.*** *(1) The Authorised Officer shall, on receipt of a written application by or on behalf of the domestic producer of like goods or directly competitive goods, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by the import of a goods in such increased quantities, absolute or relative to domestic production.*

*(2) The application referred to in sub-rule (1) shall be made in Form appended to these rules and be supported with:*

*(a) the evidence of:*

*(i) increased imports as a result of unforeseen development;*

*(ii) serious injury or threat of serious injury to the domestic industry; and*

(iii) *a causal link between imports and the alleged serious injury or threat of serious injury;*

*(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to increase in competition due to imports; and*

*(c) a statement mentioning whether an application for the initiation of a safeguard action on the goods under investigation has also been submitted to the Director General of Safeguards, Department of Revenue.*

*(3) The Authorised Officer shall not initiate an investigation pursuant to an application made under sub-rule (1), unless, it examines the accuracy and adequacy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding:*

*(a) increased imports;*

*(b) serious injury or threat of serious injury; and*

(c) *a causal link between increased imports and alleged serious injury or threat of serious Injury.*

*(4) Notwithstanding anything contained in sub-rule (1), the Authorised Officer may initiate an investigation suo moto, if, it is satisfied with the information received from any source that sufficient evidence exists as referred to in clause (a), clause (b) or clause (c) of sub-rule (3).*

6. ***Principles governing investigations.*** *(1) The Authorised Officer shall, after it has decided to initiate investigation to determine serious injury or threat of serious injury to domestic industry, consequent upon the increased import of a goods into India, issue a public notice notifying its decision which, inter alia, contain information on the following, namely:*

(a) *the name of the exporting countries, the goods involved and the volume of import;*

(b) *the date of initiation of the investigation;*

(c) *a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based;*

(d) *reasons for initiation of the investigation;*

(e) *the address to which representations by interested parties should be directed; and*

(f) *the time-limits allowed to interested parties for making their views known.*

*(2) The Authorised Officer shall forward a copy of the public notice to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, known exporters of the goods, the Governments of the exporting countries concerned and other interested parties.*

*(3) The Authorised Officer shall also provide a copy of the application referred to in sub-rule (1) of rule 5, to:*

(a) *the known exporters, or the concerned trade association;*

(b) *the Governments of the exporting countries; and*

(c) *the Central Government in the Ministry of Commerce and Industry:*

*Provided that the Authorised Officer shall also make available a copy of the application, upon request in writing, to any other interested person.*

*(4) The Authorised Officer may issue a notice calling for any information in such form as may be specified in the notice from the exporters, foreign producers and governments of exporting countries and such information shall be furnished by such persons and governments in writing within thirty days from the date of receipt of the notice or within such extended period as the Authorised Officer may allow on sufficient cause being shown.*

***Explanation.*** *For the purpose of this rule, the public notice and other documents shall be deemed to have been received one week after the date on which these documents were put in the course of transmission to the interested parties by the Authorised Officer.*

*(5) The Authorised Officer shall provide opportunity to the industrial user of the goods under investigation and to representative consumer organisations in cases where the goods is commonly sold at retail level to furnish information which is relevant to the investigation including inter alia, their views if imposition of safeguard quantitative restrictions is in public interest or not.*

*(6) The Authorised Officer may allow an interested party or its representative to present the information relevant to investigation orally but such oral information shall be taken into consideration by the Authorised Officer only when it is subsequently submitted in writing.*

*(7) The Authorised Officer shall make available the evidence presented to it by one interested party to all other interested parties, participating in the investigation.*

*(8) In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Authorised Officer may record its findings on the basis of the facts available and make such recommendations to the Central Government as it deems fit under such circumstances.*

7. ***Confidential information.*** *(1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, and sub-rule (5) of rule 9, any information which is by nature confidential or which is provided on a confidential basis*

*shall, upon cause being shown, be treated as such by the Authorised Officer and not be disclosed without specific authorisation of the party providing such information.*

(2) The Authorised Officer may require the parties providing information on confidential basis to furnish non confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarised, such party may submit to the Authorised Officer a statement of reasons why summarisation of such information is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the Authorised Officer is satisfied that the request for confidentiality is not warranted or the supplier of the information is unwilling either to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information unless it is demonstrated to its satisfaction from appropriate sources that such information is correct.

8. ***Determination of serious injury or threat of serious injury.*** *The Authorised Officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely:*

*(a) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Authorised Officer shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the goods concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment; and*

*(b) the determination referred to in clause (a) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the goods concerned and serious injury or threat thereof:*

*Provided that when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports and in such cases, the Authorised*

*Officer may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.*

9. ***Final findings**. (1) The Authorised Officer shall, within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, as a result of unforeseen developments the increased imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a causal link exists between the increased imports and serious injury or threat of serious injury and recommend:*

*(i) the extent and nature of quantitative restrictions which, if imposed, would be adequate to prevent or remedy 'serious injury' and to facilitate positive adjustment, as the case may be;*

*(ii) the extent of quantitative restrictions so that the quantity of imports is not reduced to the quantity of imports below the level of a recent period which shall be the average of import in the last three representative years for which statistics are available and justification if a different level is necessary to prevent or remedy serious injury;*

*(iii) the quota to be allocated among the supplying countries, and the allocation of shares in the quota for such specified countries which have a substantial interest in supplying the goods;*

*(iv) the duration of imposition of quantitative restrictions and where the duration of imposition of quantitative restrictions is more than one year, the progressive liberalisation adequate to facilitate positive adjustment.*

*(2) The final findings if affirmative shall contain all information on the matter of facts and law and reasons which have led to the conclusion.*

*(3) The Authorised Officer shall issue a public notice recording his final findings.*

*(4) The Authorised Officer shall send a copy of the public notice regarding his final findings to the Central Government in the Ministry of Commerce and Industry and a copy thereof to the interested parties*

10. ***Imposition of safeguard quantitative restrictions.** The Central Government may based on the recommendation of the Authorised Officer,*

*by a notification in the Official Gazette, under subsection (l) of section 9A of the Act, impose upon importation into India of the goods covered under the final determination, a safeguard quantitative restrictions not exceeding the amount or quantity which has been found adequate to prevent or remedy serious injury and to facilitate adjustment.*

11. ***Imposition of safeguard quantitative restrictions on non-discriminatory basis.*** *Any safeguard quantitative restrictions imposed on goods under these rules shall be applied on a non-discriminatory basis to all imports of the goods irrespective of its source.*

12. ***Date of commencement of safeguard quantitative restrictions****. The safeguard quantitative restrictions levied under these rules shall take effect from the date of publication of the notification in the Official Gazette, imposing such quantitative restrictions.*

13. ***Duration****. (1) The safeguard quantitative restrictions imposed under rule 10 shall be for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.*

*(2) Notwithstanding anything contained in sub-rule (1), safeguard quantitative restrictions imposed under rule 10 shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition:*

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such serious injury or threat thereof and it is necessary that the safeguard quantitative restrictions should continue to be imposed, to prevent such serious injury or threat and to facilitate adjustments, it may extend the period beyond four years:

Provided further that in no case the safeguard quantitative restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.

14. ***Liberalization of safeguard quantitative restrictions.*** *-- If the duration of the safeguard quantitative restrictions imposed under rule 10 exceeds one year, the restriction shall be progressively liberalised at regular intervals during the period of its imposition.*

*15.* ***Review.*** *(1) The Authorised Officer shall, from time to time, review the need for continued imposition of the safeguard quantitative restrictions and shall, if, it is satisfied on the basis of information received that*

*(a) safeguard quantitative restrictions is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of quantitative restrictions;*

*(b) there is no justification for the continued imposition of such restriction; recommend to the central Government for its withdrawal:*

*Provided that where the period of imposition of safeguard quantitative restrictions exceeds three years, the Authorised Officer shall review the situation not later than the midterm of such imposition, and, if appropriate, recommend for withdrawal of such safeguard quantitative restrictions or for the increase of the liberalisation of quantitative restrictions.*

(2) Any review initiated under sub-rule (1), shall be concluded within a period not exceeding eight months from the date of initiation of such review or within such extended period as the Central Government may allow.

*(3) The provisions of rules 5, 6, 7 and 9 shall, mutatis mutandis, apply in the case of review under this rule.*

*Appendix-68*

***FORM***

***(See rule 5(2))***

***Information to be provided by Applicant for Safeguard Investigation***

***Section 1*** *General Information*

***Section 2*** *Product in respect of which Increase in Imports Noticed*

***Section 3*** *Increased Imports*

***Section 4*** *Domestic Production*

***Section 5*** *Injury*

***Section 6*** *Cause of Injury*

***Section 7*** *Submissions*

***Section 8*** *Annexes*

*(1):* ***General Information***

1. *Date of Application*
2. *Applicant(s) Provide name(s) and address (es) of the applicant(s)*
3. *Domestic Producers of the like or directly competitive products on whose behalf the application is filed (Give details of all domestic producers who support the application) along with their IEC, where applicable)*
4. *Information on production accounted for by the domestic producers of the like or directly competitive products (in respect of those domestic producers who support the application).*
5. *Information on the total domestic production of the product concerned of the like or directly competitive products (in respect of all producers whether they support the application or not).*

*(2):* ***Product in respect of which increase in imports alleged***

1. *Name of the product*
2. *Description: Provide full description of the product including chemical formula, grade constituent materials / Components, process of manufacture in brief, uses and inter-changeability of various grades, etc.*

3. *Tariff classification: Provide the classification of the product under the HS classification as well as Indian customs Tariff Classification at 6/8/10 digit level*

4. *Import Duty: Provide information relating to rates of import duty levied during the past three years. If the product enjoys any concessional or preferential treatment, provide details.*

5. *Country(ies) of Origin: Provide name(s) of country(ies) where the product has originated (where the country of origin is different then the country of export, the name of the country of origin should also be provided).*

6. *Provide a list of all known foreign producers, exporters & importers of the imported product, country-wise, together with names and addresses of concerned trade associations and user associations etc.*

7. *Information on major industrial users, organization of industrial users and representative consumer organisations. (In case the product is commonly sold at retail level).*

8. *Export Price: Details of export price of the imported Product exporter / country-wise and the basis thereof (provide the f.o.b. / c.i.f. price at which the goods enter into India).*

*(3):* ***Increased Imports***

1. *Provide full and detailed information regarding the imports of the said product in terms of quantity and value year wise for the last three years (or longer).*

2. *Provide break up of (1) above country wise in absolute terms as well as a percentage of the total imports of the said product.*

3. *Provide full and detailed information on the share of the imported products and the share of the domestic production of the like product and the directly competitive products in the total domestic consumption for the last three years (or longer) both in terms of quantity and value.*

4. *Provide information on factors that may be attributing to increased imports.*

*(4):* ***Domestic Production***

1. *Details of the like product end directly competitive products produced by the domestic producers. Information similar to II above i.e.*
   - *i. Name*
   - *ii. Description*
   - *iii. Tariff classification both under the Central Excise Tariff as well as under the Customs Tariff.*
   - *iv. Details of domestic producers*
2. *Names and addresses of all known domestic producers and concerned trade associations and users associations etc.*
3. *Details of production accounted for by each of the producers at 2 above.*
4. *Details of total domestic production.*
5. *Installed capacity, capacity utilization and fall in capacity utilization etc.*

*(5):* ***Injury or Threat of Injury***

1. *Impact of increased imports on Domestic Industry: Detailed information on how the increased imports are causing serious injury or threat of serious injury to the domestic industry. This should, inter alia, include information on*
   - *a. Sale volumes, total domestic consumption and how the market share of domestic production has been affected.*
   - *b. Price undercutting / price depression / prevention of rise in prices. Information on costs of production and how the increased imports have affected the prices of domestic production needs to be provided.*
   - *c. Any significant idling of production facilities in the industry including data indicating plant closure or fall in normal production capacity utilization.*
   - *d. Loss of employment*
   - *e. Financial situation*

*Full information on the financial situation of the domestic industry including information on decline in sales, growing inventory, downward trend in production, profits, productivity or increasing unemployment needs to be provided.*

2. *Other Factors of Injury: Provide details of any other factors that may be attributing to the injury to the domestic industry and an explanation that injury caused by these other factors is not attributed to injury caused by increased imports. (Information on injury caused due to dumping or subsidization, if any, needs to be specifically provided here. Also mention if any application for anti-dumping or countervailing duty investigation has been filed).*

*(6):* ***Cause of Injury***

*Please provide an analysis of data presented above bringing out a nexus between the increased imports, either actual or relative to domestic production, and the injury or threat of injury caused to the domestic industry and the basis for a request for initiation of safeguards investigation under Safeguard Measures (Quantitative Restrictions) Rules, 2012.*

*(7):* ***Submission***

*a. A statement describing the measure requested including:*

- *Nature and quantum of safeguard quantitative restriction requested.*
- Purpose of seeking the relief and how such objective will be achieved.
- Duration for which imposition of safeguard quantitative restriction is requested and the reasons therefore.

*b. If the safeguard measures are requested to be imposed for more than one year, details on efforts being taken and planned to be taken or both to make a positive adjustment to import competition with details of progressive liberalization adequate to facilitate positive adjustment of the industry.*

**Section 8: Annexes**

*All supporting information can be provided as annexes to the application. (The main information must be provided at the appropriate places. The details of the information can be provided in annexes).*

# NOTIFICATIONS TO WTO COMMITTEE

## LEGAL PROVISIONS

23.1 Article 16 of the ADA empowers WTO Members to establish a Committee on Anti-Dumping Practices composed of representatives from each of the Member Countries. The Committee shall carry out the responsibilities as assigned to it under the Agreement or by the Members and it shall afford the Members, an opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the Secretariat to the Committee.

23.2 Article 16.4 of WTO Anti-Dumping Agreement makes it mandatory on Member Countries to report all preliminary or final anti-dumping actions taken to the Committee without delay. Such reports shall be available in the Secretariat for inspection by other WTO Members, who shall also submit, reports of any anti-dumping actions taken within the preceding six months on a semi-annual basis. The semi-annual reports shall be submitted on an agreed standard form.

23.3 Article 16.5 of the ADA envisages that each Member shall notify the Committee:

(i) which of its authorities are competent to initiate and conduct investigations referred to in Article 5; and

(ii) its domestic procedures governing the initiation and conduct of such investigations.

23.4 Article 18.4 of ADA states that each WTO Member shall take all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the

provisions of theADA as they may apply for the Member in question not later than the date of its entry into ADA.

23.5 Article 18.5 of ADA makes it mandatory for each Member Country to inform the Committee on Anti-Dumping practices of any changes in its laws and regulations relevant to the ADA and in the administration of such laws and regulations.

**SIGNIFICANCE**

23.6 The ADA obliges WTO Members to submit several types of notifications to the Committee on Anti-Dumping Practices ("ADP Committee"). Except where a notifying Member specifically requests the contrary, all notifications are issued as unrestricted documents and are fully accessible to the public. These notifications are available from Documents online link- https://www.wto.org/english/tratop_e/adp_e/adp_e.htm#dol.

**NOTIFICATIONS TO THE COMMITTEE ON ANTI-DUMPING PRACTICES**

23.7 **Notification of any action by the investigating authority:** (such as initiation, preliminary determination, final determination/findings and imposition of duty) for any investigation such as Original Investigation, Sunset Reviews, Special Circumstances Review, Mid-term review, Anti-Circumvention Investigation etc. Article 16.4 requires the Members to report without delay all preliminary or final actions taken. There is no specific format for these notifications. Even though the notifications are often made by submitting the full text of a respective Member's public notice regarding the action, but in any event, it must contain the information described in the guidelines adopted by the ADP Committee, which can be found in document G/ADP/2. A list of such notifications submitted to the ADP Committee is circulated approximately monthly as a document in the G/ADP/N… series. The actual notifications are generally lengthy and are thus not circulated in full, although they are made available at the WTO Secretariat for consultation by interested delegations.

23.8 **Semi-annual report of actions during last 6 months:** Article 16.4 requires Members to submit a report of all anti-dumping actions they have taken, as well as a list of all anti-dumping measures in force, twice a year. These reports are normally submitted in February, covering the period from 1 July through 31

December of the previous calendar year, and in August, covering the period from 1 January through 30 June of the current calendar year. A format for these reports, with explanations, can be found in document G/ADP/1. Members who have taken no actions are nonetheless required to make a notification, but such nil notifications are frequently in the form of a letter rather than the following the format. Such nil notifications are generally not circulated as documents, but are identified in the summary.

23.9 Semi-annual reports for each six-month period have their own document number, with each Member Countries' report identified with its three-letter ISO country code. For example, the semi-annual reports for the first half of 1998 can be found in document series G/ADP/N/41. Thus, the semi-annual report of Canada for that period would be designated G/ADP/N/41/CAN and for India, the same would be designated as G/ADP/Q1/IND. A summary of the status of semi-annual reports received for that period, regarding which Members countries notified actions taken, which Members notified that no action was taken, and which Member countries have not yet submitted a semi-annual report, would be found in document G/ADP/N/41/ Add.1. Updates to the summary, designated by higher numbers in sequence, are generally issued twice a year, in April and October. Thus, the addendum document with the highest number will contain the most recent information as to the status of these notifications. The format to be used for notification is annexed herewith.

23.10 **Notification on Authorities competent to initiate and conduct Anti-Dumping investigations** referred to in Article 5 of ADA. Article 16.5 requires Members to notify the ADP Committee which of its authorities are competent to initiate and conduct anti-dumping investigations. The list of such notifications includes addresses and contact numbers. It is periodically updated, and can be found in document G/ADP/N/14/Add…. The addendum document with the highest number will contain the most recent information.

23.11 **Notification on domestic procedures governing the initiation and conduct of Anti-Dumping investigations** pursuant to Article 16.5 (b) of the ADA need to be notified to the ADP Committee.

23.12 **Notification to Committee on Anti-Dumping practices of any changes in WTO Members' laws and regulations** relevant to the ADA and in the administration of such laws and regulations. These notifications are in the form of the full texts of the relevant laws and/or regulations, and are available in each

of the three WTO languages (English, French, and Spanish). The notifications can be found in document series G/ADP/N/1/…, with the notifying Member Country identified at the end of the symbol by its three-letter ISO country code, followed by a number. As there may be corrections, revisions, and/or supplements to any given notification, the complete notification of a Member Country may include several documents with the same number, followed by additional letters to indicate the type of additional document in question. Thus, for example, the original legislation notification of Japan would be designated G/ADP/N/1/JPN/1. A correction to that document would be designated G/ADP/N/1/JPN/1/Corr.1.or G/ADP/N/1/IND/1/ Corr in case of India.. If a new legislation or regulation, replacing that originally notified, were to be submitted, the next higher number in sequence would be used to identify the notification as replacing all previous notifications by that Member. Thus, if Japan were to submit a notification of a new legislation, it would be designated G/ADP/N/1/JPN/2. Thus, the document with the highest number, and any corrections, supplements, or revisions to that document, will contain the latest full text notification of a Member's anti-dumping legislation and/or regulations.

23.13 Notifications of legislation by Member Countries are subject to review in the ADP Committee. Such review is reflected in written questions and answers, which can be found in the document series G/ADP/Q1/…, again followed by the three-letter ISO country code and a number indicating the sequence in which the documents were issued. These documents are initially issued as restricted, but are subsequently de-restricted and become fully available to the public, six months after circulation, unless the concerned Member Country specifically requests for the contrary. Thus, for example, questions and answers regarding the notification of legislation of Japan would be designated G/ADP/Q1/JPN/1, G/ADP/Q1/JPN/2, and so on.

**TIMELINES**

23.14 Actions such as initiation, preliminary determination, final determination/ findings and imposition of duty for any investigation: Immediate notification

23.15 Semi-annual report of actions during previous 6 months: to be notified after one month of the preceding six monthly period. (Say for the July-December 2017, it is February 2018).

**PROPOSED ACTION**

23.16 There is a need for institutionalization of the process of communication of Notifications to Trade Policy Division of Department of Commerce.

23.17 So far as semi-annual reports are concerned, , it is being updated at least before the next half yearly meeting of the AD Committee.

23.18 The possible way to reduce the default could be that while forwarding the actions to the NIC for uploading on DGTR website by theconcerned DGTR official a copy may also be endorsed to Trade Policy Division (TPD) of Department of Commerce for notification to PMI Geneva.

**NOTIFICATION UNDER AGREEMENT ON SAFEGUARD.**

23.19 Article 12 of the Agreement on Safeguard mentions about Notification under Safeguard investigations. It states as follows:

"1. *A Member shall immediately notify the Committee on Safeguards upon:*

*(a) Initiating an investigatory process relating to serious injury or threat thereof and the reasons for it-*

*(b) Making a finding of serious injury or threat thereof caused by increased imports; and*

*(c) Taking a decision to apply or extend a safeguard measure.*

*2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of* introduction*, expected duration and timetable for progressive liberalization. In the case of an extension* of *a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.*

*3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members having*

*a substantial interest as exporters of the product concerned, with a view to, inter alia, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.*

4. *A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.*

5. *The results of the consultations referred to in this Article, as well as the results of mid-term reviews referred to in paragraph 4 of Article 7, any form of compensation referred to in paragraph 1 of Article 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Article 8, shall be notified immediately to the Council for Trade in Goods by the Members concerned.*

6. *Members shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.*

7. *Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement.*

8. *Any Member may notify the Committee on Safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this Agreement that have not been notified by other Members that are required by this Agreement to make such notifications.*

9. *Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.*

10. *All notifications to the Council for Trade in Goods referred to in this Agreement shall normally be made through the Committee on Safeguards.*

11. *The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."*

23.20 Article 12 of Agreement on Safeguards which deals with Notification and Consultation imposes an obligation upon a Member to notify the Committee on Safeguards before applying or extending a safeguard measure, to show that all pertinent information with regard to the requirement of serious injury or threat thereof has been met. The member shall also notify the Committee about their laws, regulations, administrative procedures and any measures or actions dealt by them in this Agreement before imposing a measure. Any step being taken in context of provisional duty shall also be notified to the Committee. The member who is about to initiate or extend a Safeguard measure is also further obliged to provide an opportunity for consultation to the other members who have substantial interest in trade and details with regard to the proposed measure. So that affected Members may exercise their opportunity to consult with the member imposing such measure before such measure is actually implemented.

23.21 Section 8(b) of Customs Tariff Act 1975 grants power to the Central Government to apply Safeguard duty on being satisfied that the identified article is being imported in such increased quantities that it causes serious injury and threat thereof. The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section and such rules may provide for the manner in which articles liable for safeguard duty may be identified and also for the manner in which the causes of serious injury or causes of threat of in relation to such articles may be determined for assessment and collection of such safeguard duty. While imposing such duty the central government must follow the criteria of 3 percent and 9 percent in context of the developing country and shall in no case extend or exceed the provisional duty being applied to more than 200 days.

**NOTIFICATION UNDER AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURE:**

23.22 As per Article 25.11 and other WTO Decisions, it was decided that a semi annual report shall be released. A Secretariat note of 31 March 2017 provides a table with a summary of semi-annual reports of countervailing duty actions between 1 January 1995 and 31 December 2016. In 2009, the SCM Committee adopted a format for so-called "one-time" notifications, to be used when a Member has not established an authority competent to initiate and conduct an investigation within the meaning of Article 25.12 and thus has not, to date, taken any countervailing actions within the meaning of Article 25.11 of the Agreement and does not anticipate taking any countervailing actions for the foreseeable future.

23.23 In Practice, at its meeting of 13 June 1995, the SCM Committee issued guidelines for information to be provided in the semi-annual reports. In 2009, the SCM Committee adopted a revised format for semi-annual reports made pursuant to Article 25.11. A Secretariat note of 31 March 2017 provides a table with a summary of semi-annual reports of countervailing duty actions between 1 January 1995 and 31 December 2016.

23.24 The format of such semi-annual notification is provided in document *G/SCM/2/Rev.1* annexed herewith. They are found in the WTO Documents online[1].

> *Article 25.12 Each Member shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in Article 11 and (b) its domestic procedures governing the initiation and conduct of such investigations.*

23.25 In practice, 76 Members have notified the Committee of authorities competent to initiate and conduct countervailing duty investigations, as well as domestic procedures governing the initiation and conduct of such investigations. These notifications are circulated in document G/SCM/N/18 and addenda. As of 15th February 2018, 39 Members have submitted "one-time" notifications. These notifications can be found in the documents series G/SCM/N/202/*.

**WTO NOTIFICATION**

23.26 Following WTO Notifications may be referred to for the description relating to this Chapter:

(i) G/ADP/N/1/IND/2/Suppl.8 and G/SCM/N/1/IND/2/Suppl.8- for Notification of Laws and Regulations under Article 18.5 and 32.6 of the Agreements.

(ii) G/ADP/2/Rev.2-Format for Semi-Annual Reports of Anti-Dumping actions pursuant to Article 16.4 of the Anti-Dumping Agreement.

23.27 **Competent Authorities:** As notified to the respective Committee in terms of obligation under the following Articles:

(i) Articles 16.5 of Anti-Dumping Agreement;and

(ii) Article 25.12 of Agreement on Subsidies and Countervailing Measures.

[1] <https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?DataSource=Cat&Query=%40MeetingId%3d147489&Language=English&Context=ScriptedSearches&languageUIChanged=true>

# RELEVANT WTO JURISPRUDENCE

## I INTRODUCTION

24.1. The Appellate Body in the US – 1916 Act (DS- 136) rejected the argument that, based on the history of Article 1, "the phrase 'anti-dumping measure' refers only to definitive anti-dumping duties, price undertakings and provisional measures."

24.2. The Appellate Body stated the following:

> "*the ordinary meaning of the phrase 'anti-dumping measure' seems to encompass all measures taken against dumping. We do not see in the words 'an anti-dumping measure' any explicit limitation to particular types of measures.*"

## II. APPLICATION

24.3. The WTO Panel in the US- Lumber V, (DS-264) considered that an application need only include such reasonably available information on the relevant matters as the applicant deems necessary to substantiate its allegations of dumping, injury and causality, and not all information available to the applicant:

> "*We note that the words 'such information as is reasonably available to the applicant', indicate that, if information on certain of the matters listed in sub-paragraphs (i) to (iv) is not reasonably available to the applicant in any given case, then the applicant is not obligated to include it in the application. It seems to us that the 'reasonably available' language was intended to avoid putting an undue burden on the applicant to submit information which is not reasonably available to it. It is not, in our view, intended to require an*

*applicant to submit all information that is reasonably available to it. Looking at the purpose of the application, we are of the view that an application need only include such reasonably available information on the relevant matters as the applicant deems necessary to substantiate its allegations of dumping, injury and causality. As the purpose of the application is to provide an evidentiary basis for the initiation of the investigative process, it would seem to us unnecessary to require an applicant to submit all information reasonably available to it to substantiate its allegations. This is particularly true where such information might be redundant or less reliable than, information contained in the application.*"

24.4. Further in Mexico – Corn Syrup, (DS-132) the Panel distinguished, for the purposes of Article 5.2, between information and analysis:

"*Article 5.2 does not require an application to contain analysis, but rather to contain information, in the sense of evidence, in support of allegations. While we recognize that some analysis linking the information and the allegations would be helpful in assessing the merits of an application, we cannot read the text of Article 5.2 as requiring such an analysis in the application itself.*"

## III. PRODUCT UNDER CONSIDERATION & LIKE ARTICLES

24.5. In a WTO dispute EU – Footwear (China) *(DS-405)*, the Panel has interpreted Article 2.1

*"The Panel stated that Article 2.1 does not contains requirements regarding the methodology used to determine normal value, more specifically regarding the selection of the analogue country in investigations involving non-market economy countries".*

24.6. In a WTO dispute US – Orange Juice (Brazil) *(DS-382)*, the Panel has interpreted the term "dumping".

*"The only permissible interpretation of the definition of 'dumping' contained in Article 2.1 of the AD Agreement, is based on an understanding that 'dumping' can only be determined for the 'product as a whole' and not individual transactions."*

24.7. In a WTO dispute *EC – Salmon (Norway) (DS-337)*, the Panel has explained the obligation on part of investigation authority with regards to the PUC.

*"Articles 2.1 and 2.6 did not have to be interpreted to require an investigating authority have defined the product under consideration to include only products that are 'like' ".*

24.8. In a WTO dispute *EC – Fasteners (China) (DS-397)*, the Panel has explained the scope of Article 2.1 and 2.6 with regards to the PUC.

*"The mere fact that a dumping determination is ultimately made with respect to "a product" says nothing about the scope of that product. There is certainly nothing in the text of Article 2.1 that can be understood to require any consideration of 'likeness' in the scope of the exported product investigated. "While Article 2.1 establishes that a dumping determination is to be made for a single 'product under consideration', there is no guidance for determining the parameters of that product, and certainly no requirement of internal homogeneity of that product."*

## IV. DOMESTIC INDUSTRY STANDING

24.9. In a WTO dispute China – Broiler Products *(DS-427)*, the Panel has interpreted Article 4.1 of the AD Agreement.

*"Panel held that there is no hierarchy between the two domestic industry definitions provided for in Article 4.1. However, the Panel stressed that, given the link between the definition of domestic industry and the substantive provisions governing the injury determination, "the investigating authority must establish total domestic production in the same manner it would conduct any other aspect of the investigation, by actively seeking out pertinent information and not remaining passive in the face of possible shortcomings in the evidence submitted."*

24.10. In a WTO dispute Argentina – Poultry *(DS-241)*, the Panel stated that the term domestic industry should be interpreted in a specific manner. The following was an observation of Panel:

*"Article 4.1 provides that the term 'domestic industry' 'shall' be interpreted in a specific manner. This imposes an express obligation on Members to interpret the term 'domestic industry' in that specified manner. Thus, if a Member were to interpret the term differently in the context of an anti-dumping investigation, that Member would violate the obligation set forth in Article 4.1".*

24.11. In a WTO dispute *EC – Bed Linen (DS-141)*, the Panel defined "domestic producer" as per Article 4.1.

> *"Article 4.1 of the Anti-Dumping Agreement defines the domestic industry in terms of 'domestic producers' in the plural. Yet we consider it indisputable that a single domestic producer may constitute the domestic industry under the [Anti-Dumping] Agreement, and that the provisions concerning domestic industry under Article 4 continue to apply in such a factual situation."*

24.12. In a WTO dispute Argentina – Poultry *(DS-241)*, the Panel defined the domestic industry in terms of the "total production" as:

> *"The word "major" is defined in the dictionary as "important, serious, or significant" Accordingly, an interpretation that defines the domestic industry in terms of domestic producers of an important, serious or significant proportion of total domestic production is permissible. The panel stated that the "domestic industry" refers to domestic producers whose collective output constitutes the majority, that is, more than 50 percent, of domestic total production."*

24.13. In a WTO Dispute EC – Fasteners (China) (DS-397), the Appellate Body upheld the panel finding concerning exclusion of domestic producers who did not make themselves known within the stipulated time period. The Appellate Body upheld a Panel finding that the EU authorities (having invited all known producers to come forward and indicate willingness to participate within 15 days after the notice of initiation of the investigation) did not violate Article4.1 by excluding from the definition of domestic industry those producers who did not make themselves known within the 15-day deadline. The Appellate Body observed following:

> *"given the multiple steps that must be carried out in an anti-dumping investigation and the time constraint onan investigation, an investigating authority must be allowed to set various deadlines to ensure an orderly conduct of the investigation."*

24.14. In a WTO dispute China – Broiler Products *(DS-427)*, the Panel has interpreted domestic industry in terms of "total production". The panel observed the following:

*"In investigations where the domestic industry is defined on the basis of producers representing a major proportion of total production, an investigating authority will nevertheless have to assess the situation of domestic producers outside the domestic industry definition in order to understand "whether it is the impact of the subject imports that have explanatory force for the changes in the various economic factors and whether the strength of other domestic producers could be a possible separate cause of injury to the defined 'domestic industry."*

## IV. PERIOD OF INVESTIGATION & INJURY INVESTIGATION PERIOD

24.15. The Appellate Body in Mexico – Anti-Dumping Duties on Rice (DS-295) noted that having agreed with the Panel that more recent data was likely to provide better indications about the current injury, the Appellate Body stated the following:

*"[A] gap of 15 months between the end of the period of investigation and the initiation of the investigation, and another gap of almost three years between the end of the period of investigation and the imposition of the final anti-dumping duties, may raise real doubts about the existence of a sufficiently relevant nexus between the data relating to the period of investigation and current injury".*

24.16. In WTO dispute Guatemala – Cement II (DS-156) the panel by stating the following lines have explained that "data collection should be for at least three years::

*"The Panel explained: "A recent recommendation of the Committee on Anti-Dumping Practices calls on Members to use a data collection period of at least three years. This recommendation reflects the common practice of Members."*

24.17. In WTO dispute Mexico – Steel Pipes and Tubes (DS-331) the panel has in the following case discussed that the more recent the data is, the more accurate the results it gives: –

*"The panel noted that the selection of the period of investigation by an investigating authority was a critical element in the anti-dumping investigative process. The Panel noted further that there were clear textual*

*indications that anti-dumping measures could only be imposed to offset dumping currently causing injury. The data on which such a determination was made could be based on a past period, although given that "historical" data was being used to draw conclusions about the current situation it was likely that more recent data would be "inherently more relevant and thus especially important to the investigation."*

## VI. INITIATION, NOTIFICATION & COMMUNICATION

24.18. In WTO Dispute Mexico – Steel Pipes and Tubes (DS-331) the panel has explained the importance of evidence in initiating the process of investigation in the following manner—

*"Article 5.3, read in light of Article 5.2, made it clear that there needed to be sufficient evidence in the application on dumping, injury, and causation in order to justify initiating an investigation:*

*"Although there is no express reference to evidence of "dumping" or "injury" or "causation" in Article 5.3, evidence on the three elements necessary for the imposition of an anti-dumping measure may be inferred into Article 5.3 by way of Article 5.2. In particular, Article 5.2 requires that the application contain evidence on dumping, injury, and causation, and Article 5.3 requires the investigating authority to satisfy itself as to the accuracy and adequacy of 'the evidence provided in the application' to determine that that evidence is sufficient to justify initiation. Thus, reading Article 5.3 in the context of Article 5.2 makes clear that the evidence to which Article 5.3 refers is the evidence in the application concerning dumping, injury and causation".*

*Pursuant to Article 12.1 of WTO Antidumping Agreement, the investigation authority has to satisfy that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.*

*Further in terms of Article 12.1.1 of WTO Antidumping Agreement, A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the following:*

i. *The name of the exporting country or countries and the product involved;*

ii. *The date of initiation of the investigation;*

iii. *The basis on which dumping is alleged in the application;*

iv. *A summary of the factors on which the allegation of injury is based;*

v. *The address to which representations by interested parties should be directed;*

vi. *The time-limits allowed to interested parties for making their views known.*

24.19. The WTO jurisprudence reproduced below in Guatemala – Cement I (DS-60), the Panel has determined what constitutes "sufficient evidence to justify the initiation of an investigation" under Article 5.3 agreed with the view expressed in US Softwood Lumber II (DS-257) and concluded the following:

> *"The Panel in Guatemala – Cement I applied the standard of review set out in Article 17.6(i), referring, in so doing, to the GATT Panel Report in US – Softwood Lumber II. The Panel also agreed with the view expressed by the Panel in US – Softwood Lumber II that "the quantum and quality of the evidence required at the time of initiation is less than that required for a preliminary, or final, determination of dumping, injury, and causation, made after the investigation".*

24.20. In a WTO dispute Thailand – H-Beams (DS122), the Panel has explained the content of notification/public notice in the following manner-

> *"After receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned. The fact of the receipt of a properly documented application would be an essential element of the contents of the notification."*

24.21. In a WTO dispute Argentina – Poultry Anti-Dumping Duties (DS241), the Panel has explained the obligation of a party with regards to the notification.

> *"Just by fulfilling the requirement to publish a notice of initiation of an investigation, a Member has not fulfilled the obligation to notify. Article 12.1 clearly imposes two separate obligations, one to notify and another to*

*give public notice, and it considered that these separate obligations "must both be fulfilled in any given investigation."*

24.22. WTO Panel in the dispute *EC – Bed Linen* observed:

*"The only basis, in our view, on which a panel can determine whether a Member's investigating authority has examined the accuracy and adequacy of the information in the application is by reference to the determination that examination is in aid of - the determination whether there is sufficient evidence to justify initiation. That is, if the investigating authority properly determined that there was sufficient evidence to justify initiation, that determination can only have been made based on an examination of the accuracy and adequacy of the information in the application, and consideration of additional evidence (if any) before it."*

## VII. CONFIDENTIALITY:

24.23. In a WTO dispute Guatemala – Cement II (DS-156), the Panel has explained the two types of confidentiality.

*"The text of Article 6.5 distinguishes between two types of confidential information: (1) 'information which is by nature confidential', and (2) information 'which is provided on a confidential basis'. Article 6.5 then provides that the provision of confidential treatment is conditional on 'good cause' being shown. As per Article 6.5, the requirement to show 'good cause' appears to apply for both types of confidential information, such that even information 'which is by nature confidential' cannot be afforded confidential treatment unless 'good cause' has been shown."*

24.24. In a WTO dispute Korea – Certain Paper (DS-312), the Panel has interpreted article 6.4 and 6.5 stating that the confidential information cannot be denied access to by the party submitting that information.

*"Article 6.4 precludes the Investigation Authority from disclosing confidential information to the interested parties. However, that provision cannot, possibly be interpreted to deny an interested party access to its own confidential information. That is, confidentiality cannot be used as the basis for denying access to information against the company, which submitted the information. The notion of confidentiality, as elaborated upon in Article*

*6.5 of the Agreement, is about preserving confidentiality of information that concerns one interested party vis-à-vis the other interested parties."*

24.25. In a WTO dispute EC – Fasteners (China) (DS-397), the Appellate Body has explained the duty on part of investigating authority to keep any sensitive information as confidential, given by any person if a good cause in this regard is shown by the person for keeping such information as confidential.

*"Article 6.5 does not limit the protection afforded to sensitive information to the 'interested parties' expressly listed under Article 6.11 of the Anti-Dumping Agreement. The term 'parties to an investigation' refer to any person who takes part or is implicated in the investigation. An investigating authority is not relieved of its obligations under Article 6.5 merely because a participant in the investigation does not appear on the list of 'interested parties' in Article 6.11. Rather, once 'good cause' is shown, confidential treatment of sensitive information must be afforded to any party who takes part or is implicated in the investigation or in the provision of information to an authority. Pursuant to Article 6.5 such parties include person's supplying information, persons from whom confidential information is acquired, and parties to an investigation".*

24.26. In a WTO dispute Guatemala – Cement II (DS-156), the Panel stated that there is a violation of Article 6.5.1 by failing to require the domestic producer to provide reasons why certain information could not be made public.

*"Although Article 6.5.1 does not explicitly provide that 'the authorities shall require' interested parties to provide a statement of the reasons as to why summarization is not possible, any meaningful interpretation of Article 6.5.1 must impose such an obligation on the investigating authorities. Article 6.5.1 imposes an obligation on investigating authorities to require parties that indicate that information is not susceptible of summary to provide a statement of the reasons why summarization is not possible".*

24.27. In a WTO dispute Argentina – Ceramic Tiles (DS-189), the Panel enunciated the conditions under which the investigating authorities may resort to facts available:

*"An* investigating *authority may disregard the primary source information and resort to the facts available only under the specific conditions, where a party:*

(i) *refuses access to necessary information;*

(ii) *otherwise fails to provide necessary information within a reasonable period; or*

(iii) *significantly impedes the investigation.*"

24.28. In a WTO dispute EU – Footwear (China) (DS-405), the Panel held that non-confidential summary does not have to be in the same format in which confidential information was presented to the investigating authority:

> *"Article 6.5.1 requires that non-confidential summaries of confidential information must 'permit a reasonable understanding of the substance of the information submitted in confidence'. Nothing in the text of the Article 6.5.1 requires that the summary of the confidential information must correspond exactly to the format in which the information was requested or provided on a confidential basis."*

## VIII. VERIFICATION

24.29 In *Guatemala – Cement-II (*Panel Report, *Guatemala – Definitive Anti-dumping Measures on Grey Portland Cement from Mexico*, WTO Doc. WT/DS156/R - Oct. 24, 2000), the WTO Panel made following observation:

> *[A]nnex II(3) provides that all information which is 'verifiable', and 'appropriately submitted so that it can be used in the investigation without undue difficulties', should be taken into account by the investigating authority when determinations are made. In other words, 'best information available' should not be used when information is 'verifiable', and when 'it can be used in the investigation without undue difficulties.*

24.30. Further, with regard to when should a verification be undertaken, the WTO Panel in *EC – Salmon (Norway)* noted the following:

> *"In our view, this [whether information is verifiable or not] must be a conclusion reached on the basis of a case-by-case assessment of the particular facts at issue, including not only the nature of the information submitted but also the steps, if any, taken by the investigating authority to assess the accuracy and reliability of the information."*

24.31. The Panel in Argentina – Ceramic Tiles, (DS-189) indicated in a footnote that, although a common practice, there is no requirement to carry out on-the-spot verifications:

> *"There does not exist a requirement in the Agreement to carry out investigations in the territory of other Members for verification purposes. Article 6.7 of the AD Agreement merely provides for this possibility. While such on-site verification visits are common practice, the Agreement does not say that this is the only way or even the preferred way for an investigating authority to fulfil its obligation under Article 6.6 to satisfy itself as to the accuracy of the information supplied by interested parties on which its findings are based.*"

24.32. The Panel in EC – Tube or Pipe Fittings, rejected the argument that Article 2.4 required the investigating authority to base the adjustment on a visual/physical inspection of the working activities and practices in the packaging area at the company's premises. The Panel stated that it viewed verification as an essentially "documentary" exercise that may be supplemented by an actual on-site visit, which is not mandated by the Agreement. According to the Panel, "[a]n essentially documentary approach to verification – which focuses upon documented support for claims for adjustment – seems to us to be entirely consistent with the nature of an anti-dumping investigation. (Article 6.7 of the Anti-Dumping Agreement, which deals with verification visits, states that "authorities shall make the results of any such investigations available, or shall provide disclosure thereof … to the firms to which they pertain and may make such results available to the applicants." This supports our view that the nature of verification exercise is primarily documentary)

## IX. NON INJURIOUS PRICE

24.33. In Specific the Agreement on Anti-dumping does not discuss Non- injurious Price. It only determines the principle of Lesser Duty Rule. i.e. Article 9 provides:

> *"…It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry".*

24.34. Panel Report, EC – Salmon (Norway), para. 7.727, the panel found that the investigating authority did not act consistently with the obligation in Article 9.2 to ensure duties were collected in the "*appropriate* amounts"*:*

> "*We recall that the MIPS established by the investigating authority were based on the 'non-injurious' MIPs, because these were found to be lower*

*than the "non-dumped" MIPs. To the extent that we have found that the 'non-dumped' MIPs calculated by the investigating authority were greater than the relevant normal values, greater than what they should have been or derived through the application of a flawed methodology, the investigating authority's finding that the 'non-injurious' MIPs were less than the 'non-dumped' MIPs rested on a flawed factual basis. Thus, in imposing the MIPs on the investigated parties at the level of the 'non-injurious' MIPs, the investigating authority did not act consistently with the obligation to ensure that antidumping duties must be collected in the 'appropriate amounts', within the meaning of Article 9.2 of the AD Agreement."*

## X. INJURY MARGIN

24.35. In WTO Dispute EU – Footwear (China) (DS-405) the panel has laid down the following-

*"while Article 9.1 clarifies that WTO Members may choose to impose anti-dumping duties at levels below the margin of dumping, neither this provision nor Article 3.1 of the Agreement prescribes the basis on which the lesser duty level will be calculated: "We agree with the European Union, and 'of a duty at a level adequate to remove the injury is clearly contemplated by Article 9.1, this does not limit the basis on which an investigating authority may choose to apply a duty less than the full amount of the margin of dumping. Even assuming that, as in this case, an investigating authority's stated basis for application of a lesser duty is to impose a duty at a level adequate to 'eliminate the material injury to the industry caused by the dumped imports without exceeding the dumping margins".*

24.36. In WTO Dispute China – GOES (DS-414): The first paragraph of Article 3 is an 'overarching provision' on the determination of injury and causation, while the subsequent paragraphs of Article 3 stipulate, in detail, an investigating authority's obligations in determining the injury to the domestic industry caused by dumping.

## XI. INJURY ANALYSIS

24.37. In a WTO dispute Thailand – H-Beams (DS-122), the Appellate Body has interpreted Article 3 in the following manner-

> *"Article 3 as a whole deals with obligations of Members with respect to the determination of injury. Article 3.1 is an overarching provision that sets forth a Member's fundamental, substantive obligation in this respect. Article 3.1 informs the more detailed obligations in succeeding paragraphs. These obligations concern the determination of the volume of dumped imports, and their effect on prices (Article 3.2), investigations of imports from more than one country (Article 3.3), the impact of dumped imports on the domestic industry (Article 3.4), causality between dumped imports and injury (Article 3.5), the assessment of the domestic production of the like product (Article 3.6), and the determination of the threat of material injury (Articles 3.7 and 3.8). The focus of Article 3 is thus on substantive obligations that a Member must fulfil in making an injury determination".*

24.38. In a WTO dispute Egypt – Steel Rebar (DS-211), the Panel confirmed the role of Article 3.1 and explained the relationship between paragraph 5 and paragraphs 2 and 4 of Article 3.

> *"It is clear that Article 3.1 provides overarching general guidance as to the nature of the injury investigation and analysis that must be conducted by an investigating authority. Article 3.5 makes clear, through its cross-references, that Articles 3.2 and 3.4 are the provisions containing the specific guidance of the AD Agreement on the examination of the volume and price effects of the dumped imports, and of the consequent impact of the imports on the domestic industry, respectively…."*

24.39. In a WTO dispute Egypt – Steel Rebar (DS-211), Turkey claimed that because the period of investigation for dumping ended on 31 December 1998, and most of the injury found by the investigating authorities occurred in the first quarter of 1999, the investigating authorities had failed to demonstrate that dumping and injury occurred at the same point in time and that there was a link between the imports that were specifically found to be dumped and the injury found, violating Articles 3.5 and 3.1.

> *"The Panel disagreed and stated that-"[N]either of the articles cited in this claim [Articles 3.1 and 3.5], nor any other provision of the AD Agreement, contains any specific rule as to the time periods to be covered by the injury or dumping investigations, or any overlap of those time periods. In fact, the*

*only provisions that provide guidance as to how the price effects and effects on the domestic industry of the dumped imports are to be gauged are Articles 3.2 and Article 3.4. Neither of these provisions specifies particular time periods for these analyses..."*

24.40. In a WTO dispute Argentina – Poultry Anti-Dumping Duties (DS-241), the Panel rejected the argument that the periods of review used for the separate dumping and injury determination must end at the same time.

*"There is nothing in the AD Agreement to suggest that the periods of review for dumping and injury must necessarily end at the same point in time. Indeed, since there may be a time-lag between the entry of dumped imports and the injury caused by them, it may not be appropriate to use identical periods of review for the dumping and injury analyses in all cases."*

24.41. In a WTO dispute the US –DRAMs (DS-296), the Panel has explained the competent authorities duty with regards to the price effect as per Article 15.2:

*"Article 15.2 of the SCM Agreement requires the competent authority to analyse "the effect of the subsidized imports on [domestic] prices." In light of the plain meaning of this text, the competent authority is only required to examine the price effects of subsidized imports. It is not required to also examine the price effects of non-subsidized imports, or pricing on a combined brand basis. Such examinations would extend beyond the price effects of subsidized imports, and therefore are not required by Article 15.2".*

24.42. The Appellate Body in *US-Hot Rolled Steel,* explained the methodology for carrying out the non-attribution analysis as follows:

*"The non-attribution language in Article 3.5 of the Anti-Dumping Agreement applies solely in situations where dumped imports and other known factors are causing injury to the DI at the same time. In order that investigating authorities, applying Article 3.5, are able to ensure that the injurious effects of the other known factors are not "attributed" to dumped imports, they must appropriately assess the injurious effects of those other factors. Logically, such an assessment must involve separating and distinguishing the injurious effects of the other factors from the injurious effects of the dumped imports. If the injurious effects of the dumped imports are not appropriately separated and distinguished from the injurious effects of the*

*other factors, the authorities will be unable to conclude that the injury they ascribe to dumped imports is actually caused by those imports, rather than by the other factors. Thus, in the absence of such separation and distinction of the different injurious effects, the investigating authorities would have no rational basis to conclude that the dumped imports are indeed causing the injury which, under the Anti-Dumping Agreement, justifies the imposition of anti-dumping duties. We emphasize that the particular methods and approaches by which WTO Members choose to carry out the process of separating and distinguishing the injurious effects of dumped imports from the injurious effects of the other known causal factors are not prescribed by the Anti-Dumping Agreement. What the Agreement requires is simply that the obligations in Article 3.5 be respected when a determination of injury is made"*[1].

24.43. In a WTO dispute EC – Countervailing Measures on DRAM Chips (DS-299), the Panel interpreted Article 15.2 concerning the methodology to be adopted.

*"The Panel in EC – Countervailing Measures on DRAM Chips considered that Article 15.2 of the SCM Agreement does not set forth any particular methodology for examining price undercutting, as long as the methodology chosen is reasonable and objective. The Panel stated that "[i]t appears that every methodology has its strengths and weaknesses, but that, in the absence of any prescribed methodology in the SCM Agreement, as long as the methodology used is not unreasonable, the Panel cannot find against it."*

24.44. In a WTO dispute China – Autos (DS-342), the Panel explained that as per Article 3.2 [of the Anti-Dumping Agreement] and Article 15.2 [of the SCM Agreement] there lies no responsibility on the investigation authority to adopt a specific methodology for analyzing the effects of the dumped/ subsidized imports on the domestic industry prices.

*"The Panel in China – Autos noted that "neither Article 3.2 [of the Anti-Dumping Agreement] nor Article 15.2 [of the SCM Agreement] impose a specific methodology on an IA [Investigating Authority] in analysing the effects of subject imports on domestic industry prices. Panels and the Appellate Body have previously recognized the margin of discretion that an IA has in choosing a methodology for such an analysis. However, this*

[1] See Appellate Body Report, *United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan,* (WTO Doc no. WTO/DS184/AB/R) adopted on 24 July 2001.

*discretion is not unlimited. On this basis, the Panel explained that: "Articles 3.2 and 15.2 are informed by the overarching obligation of Articles 3.1 and 15.1 that an IA undertake an 'objective examination' based on 'positive evidence'. Further, the Appellate Body stated, in China – GOES, that in addition to a 'consideration' of the existence of a type of price effect on domestic prices, an IA's price effects analysis requires an IA to determine whether subject imports have an 'explanatory force' for such price effect(s). This calls upon an IA to examine the relationship between subject imports and domestic prices, which cannot be done properly if the IA confines its analysis to what is happening to domestic prices, without consideration of subject imports and their prices. The Appellate Body observed that elements relevant to a consideration of price undercutting may differ from those relevant to a consideration of price depression or price suppression, such that subject imports may still have a price depressing effect, even if they do not significantly undercut domestic prices. In all cases, however, the IA may not disregard evidence that calls into question the explanatory force of subject imports on alleged price effects to domestic industry prices."*

24.45. In a WTO dispute China – Broiler Products (DS-427), the panel explained the duty of an investigation authority to ensure that the products compared are sufficiently similar while analyzing price effect.

*"The Panel in China – Broiler Products held that, in the framework of price undercutting, the investigating authority must ensure that the "like products" compared are sufficiently similar: "Another fundamental determining factor of the price is the physical characteristics of the product. Articles 3.1/15.1 and 3.2/15.2 mandate an analysis of the effects of prices on the domestic market of the 'like product'. Yet, in our view, ensuring that the products being compared are 'like products' will not always suffice to ensure price comparability. Where the products under investigation are not homogenous, and where various models command significantly different prices, the investigating authority must ensure that the product compared on both sides of the comparison are sufficiently similar such that the resulting price difference is informative of the 'price undercutting', if any, by the imported products. For this reason, for the price undercutting analysis to comply with Articles 3.1/15.1 and 3.2/15.2 may well require the investigating authority to perform its price comparison at the level of*

*product models. In a situation in which it performs a price comparison on the basis of a 'basket' of products or sales transactions, the authority must ensure that the groups of products or transactions compared on both sides of the equation are sufficiently similar so that any price differential can reasonably be said to result from 'price undercutting' and not merely from differences in the composition of the two baskets being compared. Alternatively, the authority must make adjustments to control and adjust for relevant differences in the physical or other characteristics of the product."*

24.46. In a WTO dispute US – Hot-Rolled Steel (DS-184), the Appellate Body interpreted "the term 'positive evidence as follows:

*"Positive Evidence relates to the quality of the evidence that authorities may rely upon in making a determination." It further explained that "[t]he word 'positive' means, that the evidence must be of an affirmative, objective and verifiable character, and that it must be credible."*

24.47. In a WTO dispute Mexico – Anti-Dumping Duties on Rice (DS-295), the Appellate Body observed that assumptions by an investigating authority should be based on positive evidence.

*"An investigating authority enjoys certain discretion in adopting a methodology to guide its injury analysis. Within the bounds of this discretion, it may be expected that an investigating authority might have to rely on reasonable assumptions or draw inferences. In doing so, however, the investigating authority must ensure that its determinations are based on "positive evidence". Thus, when, in an investigating authority's methodology, a determination rests upon assumptions, these assumptions should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified."*

24.48. In a WTO dispute US – Hot-Rolled Steel (DS-184), the Appellate Body laid down that Article 3.5 imposes certain requirements on the investigating authorities when performing a causation analysis

*"This provision requires investigating authorities, as part of their causation analysis, first, to examine all 'known factors', 'other than dumped imports', which are causing injury to the domestic industry 'at the same time' as dumped imports. Second, investigating authorities must ensure that injuries*

*which are caused to the domestic industry by known factors, other than dumped imports, are not 'attributed to the dumped imports."*

24.49. In a WTO dispute China – X-Ray Equipment (DS-425), the Panel analyzed the correlation between dumped imports and injury.

*"The Panel acknowledges that an overall correlation between dumped imports and injury to the domestic industry may support a finding of causation. However, such a coincidence analysis is not dispositive of the causation question; causation and correlation are two distinct concepts. In the circumstances of this case, even accepting China's position that the domestic industry experienced injury as the dumped imports entered the market at large volumes and low (albeit increasing) prices, in the Panel's view, the causation question is not resolved by such a general finding of coincidence. Rather, we consider that MOFCOM was required to conduct a more detailed analysis. In our view, MOFCOM's analysis was not adequate, due to its failure to explain why the prices of the domestic scanners could not rise at least to the level of the dumped imports in 2008, in circumstances where MOFCOM found no other causes of injury apart from the dumped imports. Consequently, the Panel concludes that MOFCOM did not provide a reasoned and adequate explanation regarding how the dumped imports caused price suppression in the domestic industry, particularly in 2008 when the prices of the dumped imports were above those of the domestic industry. For this reason, the Panel is of the view that the MOFCOM did not conduct an objective examination of the evidence and concludes that China acted inconsistently with Articles 3.1 and 3.5 of the Anti-Dumping Agreement."*

## XII. DETERMINATION OF NET EXPORT PRICE

24.50. In EC – Tube or Pipe Fittings, (DS-219) the Appellate Body rejected Brazil's argument that the investigating authority was obliged to base its export price determination on data relating to only that part of the period of investigation (POI) that followed a steep devaluation of the Brazilian currency. According to the Appellate Body, "certain anomalous results would flow from Brazil's assertion that when a major change, such as in this case a steep and lasting devaluation, occurs at a late stage of the POI, the dumping determination should be confined to and based on the data following that major change. If such a change were to take place

at the very end of the POI, Brazil's approach would imply that the determination would have to be based on the data of a very short period." The Appellate Body, pointing out that there could also be a revaluation late in the POI, considered as follows:

> "*Permitting such discretionary selection of data from a period of time within the POI would defeat the objectives underlying investigating authorities' reliance on a POI for the purposes of a dumping determination. As the Panel correctly noted, the POI 'form[s] the basis for an objective and unbiased determination by the investigating authority.' Like the Panel and the parties to this dispute, we understand a POI to provide data collected over a sustained period of time, which period can allow the investigating authority to make a dumping determination that is less likely to be subject to market fluctuations or other vagaries that may distort a proper evaluation. We agree with the Panel that the standardized reliance on a POI, although not fixed in duration by the Anti-Dumping Agreement, assures the investigating authority and exporters of 'a consistent and reasonable methodology for determining present dumping', which anti-dumping duties are intended to offset. In contrast to this consistency and reliability, Brazil's approach would introduce a significant level of subjectivity on the part of the investigating authority to determine when data from a subset of the POI may be a reliable indicator of an exporter's future pricing behaviour. As the European Communities points out, the 'broad judgmental role' accorded investigating authorities by Brazil's approach is not consistent with the detailed nature of the rules and obligations of the Anti-Dumping Agreement governing various aspects of the dumping determination.*"

24.51. The same Report found that "the Anti-Dumping Agreement takes into account the possibility of such major changes occurring at a late stage of the POI, or even after the POI, not by allowing investigating authorities to pick and choose a subset of data or sub-periods of a POI according to their subjective considerations, but by review mechanisms."

## XIII. NORMAL VALUE DETERMINATION

24.52. In a WTO dispute US – Hot-Rolled Steel (DS-184), the Appellate Body mentioned the conditions for sale transactions to be used for the calculation of normal vale.

*"[t]he text of Article 2.1 expressly imposes four conditions on sales transactions in order that they may be used to calculate normal value:-*

(i) *the sale must be "in the ordinary course of trade";*

(ii) *it must be of the "like product";*

(iii) *the product must be "destined for consumption in the exporting country"; and,*

(iv) *the price must be "comparable".*

24.53. In a WTO dispute US – Oil Country Tubular Goods Sunset Reviews (Article 21.5 - Argentina) (DS-268), the Panel interpreted Article 2.1 of the Anti-Dumping Agreement.

*"As Article 2.1 makes clear, the starting point for normal value is 'the comparable price, in the ordinary course of trade' for the like product when destined for consumption in the exporting country. Thus, the concept of dumping is, in the first instance, a comparison of home market and export prices. Only in the circumstances set forth in Article 2.2 may an investigating authority look to alternative bases to home market prices, such as costs, when determining normal value."*

24.54. In a WTO Dispute US – Hot-Rolled Steel (DS184), the Appellate Body interpreted Article 2.1 of the Anti-Dumping Agreement.

*"Article 2.1 requires investigating authorities to exclude sales not made 'in the ordinary course of trade', from the calculation of normal value, precisely to ensure that normal value is, indeed, the 'normal' price of the like product, in the home market of the* exporter. *However, where the exclusion of such below-cost sales results in a level of sales that is too low to permit a proper comparison with export price, an alternative method of calculation may be used".*

24.55. In a WTO Dispute US – Hot-Rolled Steel (DS-184), the US authorities, in calculating the normal value, discarded certain sales by exporters to their affiliates because these sales were not "in the ordinary course of trade", and replaced the discarded sales with downstream sales of the product, transacted between the affiliate and the first independent buyer, which had been made "in the ordinary course of trade". Japan objected to the use of these sales in calculating the normal value, arguing that it is implicit in Article 2.1 that a sales transaction may only be

used to calculate normal value if the exporter is the seller. The Appellate Body reversed the Panel finding and stated the following:-

> *"The text of Article 2.1 is, however, silent as to who the parties to relevant sales transactions should be. Thus, Article 2.1 does not expressly mandate that the sale be made by the exporter for whom a margin of dumping is being calculated. Nor does Article 2.1 expressly preclude that relevant sales transactions might be made downstream, between affiliates of the exporter and independent buyers. If all of the explicit conditions in Article 2.1 of the Anti-Dumping Agreement are satisfied, the identity of the seller of the 'like product' is not a ground for precluding the use of a downstream sales transaction when calculating normal value. In short, there seems to be no reason to read into Article 2.1 an additional condition that is not expressed.*
>
> *This interpretation does not suggest that the identity of the seller is irrelevant in calculating normal value under Article 2.1 of the Anti-Dumping Agreement. However, to ensure that prices are 'comparable', the Anti-Dumping Agreement provides a mechanism, in Article 2.4, which allows investigating authorities to take full account of the fact, as appropriate, that a relevant sale was not made by the exporter or producer itself, but was made by another part.*
>
> *The use of downstream sales prices may necessitate the provision of appropriate 'allowances', under Article 2.4, which take into account any differences demonstrated to affect price comparability. We will explore this issue further below."*

24.56. In a WTO Dispute US – Hot-Rolled Steel (DS184), the Appellate Body stated in making a "fair comparison" the mandate given in Article 2.4 needs to be followed by the investigation authority.

> *"Article 2.4 mandates that due account be taken of 'differences which affect price comparability', such as differences in the 'levels of trade' at which normal value and the export price are calculated."*

24.57. In a WTO Dispute EU – Footwear (China) (DS-405), the Panel explained about the methodology for determination of normal value.

> *"Article 2.1 contains no requirements regarding the methodology used to determine normal value, more specifically regarding the selection of the analogue country in investigations involving non-market economy countries.*

*Nothing in Article 2.4 suggests that the fair comparison requirement provides guidance with respect to the determination of the component elements of the comparison to be made, that is, normal value and export price. Indeed, itis clear that the requirement to make a fair comparison in Article 2.4 logically presupposes that normal value and export price, the elements to be compared, have already been established."*

24.58. In a WTO Dispute Argentina – Poultry Anti-Dumping Duties (DS-241), the Panel rejected Brazil's claim that an investigation cannot be initiated based on an application including only normal value data related to sales in one city.

*"It is sufficient for an investigating authority to base its decision to initiate on evidence concerning domestic sales in a major market of the exporting country subject to the investigation, without necessarily having data for sales throughout that country".*

24.59. In a WTO Dispute US – OCTG (Korea) (DS488), the panel explained how the low volume of sales are relevant for construction of normal value.

*"Under Article 2.2, upon the identification of low-volume sales, an investigating authority is required to either construct normal value or use third-country export prices as normal value. Therefore, the identification of low-volume sales serves as a trigger for an investigating authority to use an alternative to the price of those sales for normal value determination but not necessarily to exclude the components of the price pertaining to those sales from that determination. If an investigating authority opts to construct a normal value, nothing in Article 2.2 suggests that it is required to, or may, exclude data derived from the rejected low-volume sales from that construction.*

*Article 2.2.2 requires that only sales that are in the ordinary course of trade be used as a basis for CV profit determination. Thus, only data from such sales, even if in low volumes, can be used in constructing normal value. Therefore, what is discarded for normal value determination under Article 2.2 is the price of low-volume sales but what is accepted for purposes of normal value construction under Article 2.2.2 is the amount for profit and SG&A(selling, general and administrative costs) on those low-volume sales that are in the ordinary course of trade."*

24.60. In a WTO Dispute EC – Salmon (Norway) (DS-337), the investigating authority in the European Communities applied a less-than-10 percent profitable sales test. The Panel determined this was an impermissible means of determining whether domestic sales were in the ordinary course of trade.

> "*The less-than-10 per cent profitable sales test was not a permissible means of determining whether domestic sales were made outside of the ordinary course of trade, and, as such, the investigating authority's* decision *to disregard the profit margin data of three of the ten investigated parties could not be justified under the terms of Article 2.2.2.*"
>
> *The justifications* the EC advances for the less-than-10 per cent profitable sales *test is that it provides a 'complement to the less-then-20 per* cent un *profitable rule' that is set out in footnote 5 to Article 2.2.1, and thereby 'helps to achieve the goal of even-handedness that was identified by the Appellate Body'. In making this statement, the EC wanted to suggest that the application of Article 2.2.1 may result in findings that are not 'even-handed' and 'fair to all parties affected by an anti-dumping investigation'. By agreeing to the rules in footnote 5, it is evident that the drafters of the AD Agreement* recognised *that a minimum volume of below-cost sales is not incompatible with sales being made in the ordinary course of trade. As such, the result achieved through the operation of footnote 5 is, in and of itself, fair and even-handed, and therefore does not require the application of any complementary rule to ensure that normal value is appropriately calculated.* "

24.61. In a WTO Dispute Korea – Certain Paper (DS-312), the Panel accepted that the KTC's decision to disregard the domestic sales data submitted by Indah Kiat and Pindo Deli was not WTO-inconsistent because those data were not verifiable.

> *"It follows that the KTC could not possibly carry out the determinations set out under Article 2.2 of the Agreement before resorting to constructed normal value for Indah Kiat and Pindo Deli. We therefore conclude that the KTC did not act inconsistently with Article 2.2 in basing its normal value determination on constructed value under Article 2.2 for these two companies and reject Indonesia's claim"*

24.62. In a WTO Dispute EC – Tube or Pipe Fittings (DS-219), the Appellate Body explained upon the data to be used for the construction of normal value.

> *"It is "significant that Article 2.2.2 specifies the data to be used by an investigating authority when constructing normal value. The text of that provision excludes actual data outside the ordinary course of trade, but does not exclude data from low-volume sales. The negotiators' express reference to sales outside the ordinary course of trade* and *to low-volume sales in Article 2.2, and the omission of a reference to* low-*volume* sales *in the chapeau of Article 2.2.2, confirms our view that low-volume sales are not excluded from the chapeau of Article 2.2.2 for the calculation of SG&A profits. "Thus, the Appellate Body found that in cases where low-volume sales are in the ordinary course of trade, an investigating authority does not act inconsistently with the chapeau of Article 2.2.2 by including actual data from those sales to derive SG&A and profits for the construction of normal value."*

## XIV. DETERMINATION OF DUMPING MARGIN

24.63. In a WTO dispute US-Zeroing (Japan) (DS-322), the Appellate Body stated that the anti-dumping duty collected shall not exceed the dumping margin:

> *"Under any system of duty collection, the margin of dumping established in accordance with Article 2 operates as a ceiling for the amount of anti-dumping duties that could be collected in respect of the sales made by an exporter. To the extent that duties are paid by an importer, it is open to that importer to claim a refund if such a ceiling is exceeded. Similarly, under its retrospective system of duty collection, the United States is free to assess duty liability on a transaction-specific basis, but the total amount of anti-dumping duties that are levied must not exceed the exporters or foreign producers "margins of dumping". In case the ceiling is exceeded, the Agreement provides for a refund obligation."*

24.64. In a WTO dispute US-Zeroing (EC) (DS-294), the Appellate Body stated DSU places retrospective and prospective duty collection systems on an "equal footing".

> *"The Agreement lays down the 'margin of dumping' as the ceiling for collection of duties regardless of whether the duties are assessed 'retrospectively' or 'prospectively".*

24.65. In a WTO dispute US – Hot-Rolled Steel (DS-184), the Appellate Body defined the term "margin":

*"The word 'margins', which appears in Article 2.4.2 of the AD Agreement, has been interpreted in European Communities – Bed Linen. The Panel found, in that dispute, that "margins" means the individual margin of dumping determined for each of the investigated exporters and producers of the product under investigation, for that particular product. This margin reflects a comparison that is based upon examination of all of the relevant home market and export market transactions. There is no reason in Article 9.4, to interpret the word 'margins' differently from the meaning it has in Article 2.4.2."*

24.66. In a WTO dispute US – Stainless Steel (Mexico) (DS-344) the Appellate Body ruled that zeroing is unacceptable under Article 9.3.

*"A proper determination as to whether an exporter is dumping or not can only be made on the basis of an examination of the exporter's pricing behaviour as reflected in all of its transactions over a period of time.... the determination of dumping with respect to an exporter is properly made not at the level of individual export transactions, but on the basis of the totality of an exporter's transactions of the subject merchandise over the period of investigation."*

24.67. In a WTO dispute US – Hot-Rolled Steel (DS-184), the Appellate Body mentioned the duty of the investigation authority while calculating the margin of dumping

*"The investigating authorities: (1) must not include in this weighted average calculation any dumping margins that are de minimis, zero or based on the 'facts available'; and (2) must calculate an individual margin for any exporter or producer who provides the necessary information during the course of the investigation.*

*Article 9.4 does not prescribe any method that WTO Members must use to establish the 'all others' rate that is actually applied to exporters or producers that are not investigated. Rather, Article 9.4 simply identifies a maximum limit, or ceiling, which investigating authorities 'shall not exceed' in establishing an 'all others' rate. Subparagraph (i) of Article 9.4 states the general rule that the relevant ceiling is to be established by calculating a 'weighted average margin of dumping established' with respect to those exporters or producers who were investigated."*

24.68. In a WTO dispute EC – Fasteners (DS-397), the Appellate Body stated that "Sampling" is the only exception to the determination of individual dumping margins that is expressly provided for in Article 6.10.

> *"The second sentence of Article 6.10 allows investigating authorities to depart from the obligation to determine individual dumping margins in cases where the number of exporters, producers, importers, or types of products is so large as to make such determinations impracticable. In such cases, the authorities may limit their examination either: (i) to a reasonable number of interested parties or products by using samples, which are statistically valid; or (ii) to the largest percentage of the volume of exports from the country in question that can reasonably be investigated. This limited examination is generally referred to as "sampling", even where a statistically valid sample is not used but the second alternative for limiting the examination is used."*

## XV. ORAL HEARING

24.69. In a WTO Dispute Guatemala – Cement II (DS-156), Mexico argued that because Guatemala's authority extended the period of investigation during the investigation procedure and did not respond to requests for information from a Mexican producer concerning the extension, the Mexican producer was not given an opportunity to comment on the applicant's request for extension of the period of investigation contrary to Article 6.2.

24.70. The Panel, agreed with this argument, interpreted the first sentence of Article 6.2 as a fundamental due process procedure:

> *"Article 6.2 of the AD Agreement is a fundamental due process provision. When a request for an extension of the POI comes from one interested party, due process requires that the investigating authority seeks the views of other interested parties before acting on that request. Failure to respect the requirements of due process would conflict with the requirement to provide interested parties with 'a full opportunity for the defence of their interests', consistent with Article 6.2. Clearly, an interested party is not able to defend its interests if it is prevented from commenting on requests made by other interested parties in pursuit of their interests. In the present case, the POI was extended pursuant to a request from Cementos Progreso without seeking the views of other*

*interested parties in respect of that request, hence the Ministry failed to provide Cruz Azul with 'a full opportunity for the defence of [its] interests', contrary to Guatemala's obligations under Article 6.2 of the AD Agreement."*

24.71. In a WTO Dispute Guatemala – Cement II (DS-156), the Panel rejected Mexico's claim that Guatemala's authority was in violation of Articles 6.1, 6.2 and 6.9 by changing its injury determination from a preliminary determination of threat of material injury to a final determination of actual material injury during the course of the investigation, without informing the Mexican producer of that change, and without giving the producer a full and ample opportunity to defend itself.

*"As for Article 6.2, we note that the first sentence of that provision is very general in nature. We are unable to interpret such a general sentence in a way that would impose a specific obligation on investigating authorities to inform interested parties of the legal basis for its final determination on injury during the course of an investigation, when the express wording of Article 12.2 only imposes such a specific obligation on investigating authorities at the end of the investigation."*

24.72. In a WTO Dispute Egypt – Steel Rebar (DS211), the Panel emphasized the liability of investigation authority to Article 6.2 of the Anti-Dumping Agreement.

*"The language of Article 6.2 creates an obligation on the [investigating authorities] to provide opportunities for interested parties to defend their interests." The Panel further considered that the "[f]ailure by respondents to take the initiative to defend their own interests in an investigation cannot be equated, through WTO dispute settlement, with failure by an investigating authority to provide opportunities for interested parties to defend their interests".*

24.73. In a WTO Dispute EU – Footwear (China) (DS-405), the panel elaborated on the right of an interested party to be heard.

*"While interested parties must be provided with liberal opportunities to defend their interests, this right does not entitle them to participate in the investigation as and when they choose".*

24.74. In a WTO Dispute China – Broiler Products (Article 21.5 – US) (DS-427), the Panel explained what constitutes "information".

> *"An investigating authority's request for information from an interested party constitutes "information" within the meaning of Article 6.4, even if made orally."*

24.75. In a WTO Dispute EU – Footwear (China) (DS-405), the panel laid the following analysis:-

> *"Article 6.2 does not establish any specific obligations with respect to disclosure of or access to information. Certainly, one can posit that any failure to provide information to interested parties means that certain arguments may not be made. This does not, however, mean that any failure in this regard establishes a violation of Article 6.2. It would be inappropriate to impose on investigating authorities a standard of perfection in the conduct of investigations."*

24.76. In a WTO Dispute EU – Footwear (China) (DS-405), the panel explained the relationship between Article 6.2 and other paragraphs of Article 6 of the Anti-Dumping Agreement.

> *"There* is *nothing in the text of Article 6.2 that would require investigating authorities to actively disclose information to interested parties. Indeed, there is nothing specific in the text of Article 6.2 that relates to 'information' at all. The only specific proscription concerning the 'full opportunity' for parties' defence of their interests is the obligation for investigating authorities to, on request, provide opportunities for parties to meet other parties with adverse interests. It is clear that the obligation to provide for such* meetings *does not exhaust the scope of parties' rights under Article 6.2. However, while a 'full opportunity' for the defence of a party's interests may well include, conceptually, the notion of access to information, the more specific provisions of Article 6, including Articles 6.1.2, 6.4, and 6.9, establish the obligations on investigating authorities in this regard. Article 6.2 does not add anything specific to the obligations on investigating authorities with respect to interested parties' ability to see or receive information in the hands of the investigating authorities established in other provisions of Article 6. Thus, while a failure to comply with one of the more specific provisions of Article 6 concerning*

*access to or disclosure of information may establish a violation of Article 6.2, we find it difficult to imagine a situation where the more specific provision is complied with, but Article 6.2 is nonetheless violated as a result of an investigating authority's actions in connection with access to or disclosure of information to interested parties."*

## XVI. DISCLOSURE STATEMENT AND FINAL FINDING:

24.77. In WTO Dispute Egypt – Steel Rebar (DS-211), the Panel emphasized that-

"*The language of the provision at issue creates an obligation on the [*investigating *authorities] to provide opportunities for interested parties to defend their interests.*"

24.78. In WTO Dispute Mexico - Olive Oil (DS-341), the Panel's view, with regard to the obligation under Article 6.9 of the Anti-Dumping Agreement requires:

*"The investigating authorities to disclose those facts underlying the final findings and conclusions in respect of the essential elements that must exist for the application of definitive anti-dumping duties."*

24.79. In WTO Dispute Argentina – Ceramic Tiles (DS189), the Panel, further to the noting that Article 6.9 does not prescribe the manner in which the investigating authority is to comply with the disclosure obligation provided some examples of how investigating authorities may comply with this requirement:

*"We agree with Argentina that the requirement to inform all interested parties of the essential facts under consideration may be complied with in a number of ways. Article 6.9 of the AD Agreement does not prescribe the manner in which the authority is to comply with this disclosure obligation. The requirement to disclose the 'essential facts under consideration' may well be met, for example, by disclosing a specially prepared document summarizing the essential facts under consideration by the investigating authority or through the inclusion in the record of documents – such as verification reports, a preliminary determination, or correspondence exchanged between the investigating authorities and individual exporters – which actually disclose to the interested parties the essential facts which, being under consideration, are anticipated by the authorities as being those which will form the basis for the decision whether to apply definitive measures. This view is based on our understanding that Article 6.9*

*anticipates that a final determination will be made and that the authorities have identified and is considering the essential facts on which that decision is to be made. Under Article 6.9, these facts must be disclosed so that parties can defend their interests, for example by commenting on the completeness of the essential facts under consideration.*"

24.80. In WTO Dispute China – Broiler Products (DS-427) (Article 21.5 – US) the Panel noted that:

"*Article 6.9 does not set out rules or any guidance on how all interested parties are to be informed of the essential facts. In these circumstances, the investigating authority has a large margin of discretion.*"

24.81. In WTO Dispute EC - Salmon (Norway) (DS337) the Panel correctly analyzed:-

*"The disclosure must "provide the interested parties with the necessary information to enable them to comment on the completeness and correctness of the facts being considered by the investigating authority, provide additional information or correct perceived errors, and comment on or make arguments as to the proper interpretation of those facts".*

24.82. In WTO Dispute EC – Salmon (Norway) (DS337) the Panel noted that a change in outcome did not trigger a requirement for any additional disclosure under Article 6.9:

"*How an investigating authority undertakes to disclose the essential facts does not change the nature of the obligations under Article 6.9. The second sentence of Article 6.9 makes clear that the disclosure of essential facts must be in sufficient time to allow parties to defend their interests".*

24.83. In WTO Dispute Argentina – Poultry Anti-Dumping Duties (DS-241) the Panel with regard to Article 6.9 stated that-

*"In an anti-dumping investigation, the essential elements include the existence of dumping injury and causation. We agree with those panels that have noted the disclosure obligation does not apply to the reasoning of the investigating authorities, but rather to the "essential facts" underlying the reasoning."*

24.84. In WTO Dispute Guatemala – Cement II (DS-156) stated the following regarding disclosure statement:

> *"The Panel having found that Guatemala's failure to disclose the* "*essential* facts" *forming the basis of its final determination was in violation of Article 6.9."*

24.85. The interested parties submit their response to the disclosure and the final position of the Authority taken therein. The Authority examines these final submissions of the parties and comes out with final findings.

24.86. The Article 5.8 on Anti-Dumping Agreement, prescribes the criteria how an application under Anti-Dumping Agreement shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis,* or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de* minimis if this margin is less than 2 percent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 percent of the imports of the like product in the importing Member collectively account for more than 7 percent of imports of the like product in the importing Member.

> *"The Panel in Mexico – Corn Syrup (DS132) found that "Article 5.8 does not impose* additional *substantive obligations beyond those in Article 5.3 on the authority in connection with the initiation of an investigation. That is, if there is sufficient evidence to justify initiation under Article 5.3, there is no violation of Article 5.8 in not rejecting the application."* *The Panel in Mexico –Steel Pipes and Tubes made the same observation regarding the relationship between Article 5.3 and Article 5.8.In Guatemala – Cement II, the Panel rejected the argument that Article 5.8 applies only after an investigation is initiated, stating: "[I]f the drafters intended that Article 5.8 apply only after initiation, the reference to promptly terminating an investigation would have sufficed. By referring to the rejection of an*

*application Article 5.8 addresses the situation where an application has been received but an investigation has not yet been initiated. That the text of Article 5.8 continues after the quoted section to describe situations in which an initiated investigation should be terminated, does not support Guatemala's argument that the whole of Article 5.8 applies only after the investigation has been initiated".*

24.87. How WTO jurisprudence defines "an immediate termination". In Mexico – Anti-Dumping Measures on Rice (DS-295), the Appellate Body, confirming the Panel's finding, held that "the second sentence of Article 5.8 requires the immediate termination of the investigation in respect of exporters for which an individual margin of dumping of zero or de minimis is determined.

24.88. "The Appellate Body noted that" for the purposes of Article 5.8, there is one investigation and not as many investigations as there are exporters or foreign producers", and that the Panel had made the point that Article 5.8 requires "immediate termination" of the investigation in respect of the individual exporter or producer for which a zero or de minimis margin is established.. The Appellate Body further explained: "The issuance of the order that establishes anti-dumping duties—or the decision not to issue an order—is the ultimate step of the 'investigation' contemplated in Article 5.8; in most cases, an investigation is 'terminated' with the issuance of an order or a decision not to issue an order. Given that the issuance of the order establishing antidumping duties necessarily occurs after the final determination is made, the only way to terminate immediately an investigation, in respect of producers or exporters for which a de minimis margin of dumping is determined, is to exclude them from the scope of the order

## XVII. REVIEW INVESTIGATIONS:

24.89. In WTO, Dispute US – DRAMS (DS-296) the panel described the requirement in Article 11.3 and stated-

*"The anti-dumping duties "shall remain in force only as long as and to the extent necessary" to counteract injurious dumping, as "a general necessity requirement."*

24.90. The Appellate Body in WTO Dispute US – Oil Country Tubular Goods Sunset Reviews (DS-268) also viewed the continuation of an anti-dumping duty as "an exception to the otherwise mandated expiry of the duty after five years".

24.91. In WTO Dispute for assessing the essential character of the necessity involved in the continuation of duty under Article 11.3, the Panel in the US – DRAMS (DS-296) stated the following:

> "*We note that the necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances require continued imposition of the anti-dumping duty. That being so such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced.*"

24.92. In WTO Dispute US – Corrosion-Resistant Steel Sunset Review (DS-244) the Appellate Body reached the following general conclusions:

> "*This language in Article 11.3 makes clear that it envisages a process combining both investigatory and adjudicatory aspects. In other words, Article 11.3 assigns an active rather than a passive decision-making role to the authorities. The word 'review' used in the article suggest that authorities conducting a sunset review must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination. In view of the use of the word 'likely' in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated—and not simply if the evidence suggests that such a result might be possible or plausible.*"

24.93. The Appellate Body in a WTO Dispute US – Oil Country Tubular Goods Sunset Reviews (DS-268) while giving a decision interpreted the text of Article 11.3 and stated:

> "*Article 11.3, on its face, does not mention, either explicitly or by way of reference, any evidentiary standard that should or must apply to the self-initiation of sunset reviews. Article 11.3 contemplates initiation of a sunset review in two alternative ways, as is evident through the use of the word 'or'. Either the authorities make their determination in a review initiated 'on their own initiative', or they make their determination in a review initiated 'upon a duly substantiated request made by or on behalf of the domestic industry' ".*

24.94. The Panel in EC – Tube or Pipe Fittings (DS-219) understood the "phrase 'where warranted' in Article 11.2 to denote circumstances furnishing good and sufficient grounds for, or justifying, the self-initiation of a review-

> *"Where an investigating authority determines such circumstances to exist, an investigating authority must self-initiate a review. Such a review, once initiated, will examine whether continued imposition of the duty is necessary to offset dumping, whether the dumping would be likely to continue or recur, or both. This article therefore provides a review mechanism to ensure that Members comply with the rule contained in Article 11.1.*"

24.95. In WTO Dispute US – Corrosion-Resistant Steel Sunset Review (DS-244) the panel underlined the importance of the need for sufficient positive evidence on which to base the likelihood determination:

> "*The requirement to make a 'determination' concerning likelihood, therefore, precludes an investigating authority from simply assuming that likelihood exists. In order to continue the imposition of the measure after the expiry of the five-year application period, it is clear that the investigating authority has to determine, based on positive evidence, that termination of the duty is likely to lead to continuation or recurrence of dumping and injury. An investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence.*"

24.96. In WTO Dispute EU – Footwear (China) (DS-405) the Panel found that dumping and injury if found would make the investigation strong and thus would support the continuation of duty but also said that this could not be the sole basis for extending the continuation of duty:

> "*In our view, a failure to examine relevant factors set out in the substantive provisions of Article 3 in the determination of likelihood of continuation or recurrence of injury could preclude an investigating authority from reaching a 'reasoned conclusion', which would result in a violation of Article 11.3 of the AD Agreement. However, we recall that a determination of injury under Article 3 is not required under Article 11.3. Thus, we do not consider that all factors relevant to an injury determination under Article 3 are necessarily relevant to a determination of likelihood of continuation or recurrence of injury under Article 11.3.*"

24.97. The Panel in WTO Dispute US – Oil Country Tubular Goods Sunset Reviews (DS-268) articulated further the freedom of an investigating authority to choose its own methodology to determine the likelihood of continuation or recurrence of dumping, cautioning that the investigating authority would nevertheless need to act with an appropriate degree of diligence:

> *"Article 11.3 requires investigating authorities to terminate an anti-dumping duty not later than five years from its imposition unless they determine in a review initiated before then that dumping and injury are likely to continue or recur should the duty be revoked. Article 11.3 does not, however, set out a specific methodology for making such determinations. In principle, therefore, investigating authorities are not restricted in the choice of methodology they will follow in making their sunset determinations. In their choice of methodology, however, the investigating authorities should have regard to both "investigatory and adjudicatory aspects" of sunset reviews and make forward-looking determinations on the basis of evidence relating to the past. They must arrive at reasoned conclusions on the basis of positive evidence. In so doing, the investigating authorities may not remain passive. Rather, the authorities have to act with an 'appropriate degree of diligence.*"

24.98. The Panel in a WTO Dispute US – Shrimp II (Viet Nam) (DS429) held that the nature of an investigating authority's determination in a review conducted pursuant to Article 11.2 is the same as in a sunset review conducted pursuant to Article 11.3:

> *"Turning to the nature and character of the obligation imposed on the investigating authority, we note that like Article 11.3, Article 11.2 does not prescribe any specific methodology for or criteria to be considered by the authority in determining whether there is a need for the 'continued imposition of the duty'. However, as noted above, the Appellate Body did indicate that Article 11.3 envisages a process combining both investigatory and adjudicatory aspects and assigns an active rather than a passive decision-making role to the authorities. The same considerations apply, in our view, to the review provided for in Article 11.2, and when the conditions set therein are met, Article 11.2 imposes an obligation on the authority to undertake a review of the need for the continued imposition of the duty and to make a determination in that respect.*"

24.99. In WTO Dispute US DRAMS (DS296), the panel interpreted Article 11.2 in the following manner-

> *"Article 11.2 provides for a review of 'whether the injury would be likely to continue or recur if the duty were removed or varied' (emphasis supplied). In conducting an Article 11.2 injury review, an investigating authority may examine the causal link between injury and dumped imports. If in the context of a review of such a causal link, the only injury under examination is an injury that may recur following revocation (i.e., future rather than present injury), an investigating authority must necessarily be examining whether that future injury would be caused by dumping with a commensurately prospective timeframe. To do so, the investigating authority would first need to have established a status regarding the prospects of dumping. For these reasons, we do not agree that Article 11.2 precludes a priori the justification of continued imposition of anti-dumping duties when there is no present dumping."*

24.100. The Panel in WTO Dispute US – DRAMS (DS296) also rejected the argument that Article 11.2 requires the immediate revocation of an anti-dumping duty in case of a finding of "no dumping".

> *"Furthermore, [the] argument that Article 11.2 requires the immediate revocation of an anti-dumping duty in case of a finding of 'no dumping' (e.g., when a retrospective assessment finds that no duty is to be levied) is also inconsistent with note 22 of the AD Agreement. Note 22 states that, in cases where anti-dumping duties are levied on a retrospective basis, 'a finding in the most recent assessment proceeding … that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty'. If [this] interpretation of Article 11.2 were accurate, then an investigating authority would be obligated under Article 11.2 to terminate an anti-dumping duty upon making such a finding, and note 22 would be meaningless. In our view, this confirms a finding that the absence of present dumping does not in and of itself require the immediate termination of an anti-dumping duty pursuant to Article 11.2."*

24.101. In WTO Dispute Mexico – Anti-Dumping Measures on Rice(DS295), the Panel and the Appellate Body examined Article 89D of Mexico's Foreign Trade Act under Article 9.5 and with Article 19.3 of the SCM Agreement. The Panel found

that Article 89D permitted the investigating authority to conduct an expedited review if, inter alia, the respondent made a showing that its volume of exports during the review period was representative. The Appellate Body summarised the core provisions of Article 9.5 as follows:

> "*Article 9.5 requires that an investigating authority carry out an expedited review of a new shipper for an exporter that (i) did not export the subject merchandise to the importing Member during the period of investigation, and (ii) demonstrated that it was not related to a foreign producer or exporter already subject to anti-dumping duties.*"

**XVIII. ANTI-CIRCUMVENTION:**

24.102. In United States - Imposition of Anti-Dumping Duties on Imports of Colour Television Receivers from Korea ("DS89"), the provision for anti-circumvention investigation by US was challenged, however Korea later withdrew the request.

24.103. In the above dispute Korea pointed out that Article VI.1 of GATT 1994 defines dumping as the introduction of products of one country into the commerce of another country at less than normal value, and Article 2.1 of the Anti-Dumping Agreement defines it as a situation in which the export price of the product exported from one country to another is less than the comparable price for the like product in the exporting country. Thus if another country becomes the exporting country, dumping should be separately determined. Korea argued that by effectively considering exports from Korea and exports from Mexico and Thailand as identical through its circumvention concept, the United States misinterpreted the basic concept of dumping established throughout the GATT and the Anti-Dumping Agreement.

24.104. Further, Korea stated that the US action was a violation of Article VI of GATT 1994 and Article 1 of the Anti-Dumping Agreement to initiate an anti-circumvention investigation as an extension of existing anti-dumping measures without initiating a new dumping (and injury) investigation.

24.105. Korea argued that the US authorities violated Articles 3.1, 3.6, 4.1 and 5.4 of the Anti-Dumping Agreement.

24.106. Finally, Korea took issue with the fact that the United States linked the revocation review with the anti-circumvention investigation. Korea stated

that it was arbitrary and illogical for the United States to respond quickly to the request for an anti-circumvention investigation while delaying for a year its response to Samsung's request for a revocation review. Korea further stated that it was unreasonable for the United States to investigate the alleged circumvention without first verifying the justification of the anti-dumping order. Further, Korea argued that the attempt to link the results of the anti-circumvention investigation with the revocation determination constituted a further breach of the proper procedural sequence. That is, a decision by the US authorities to revoke the anti-dumping order against Korean color televisions would remove the legal basis for the anti-circumvention investigation. Thus extending the review period by making the above-mentioned linkage constituted a violation of Article 11.1 of the Anti-Dumping Agreement which requires the immediate termination of the anti-dumping order in the absence of dumping which is causing injury.

24.107. On the request of the petitioners, the US anti-circumvention inquiry was terminated. Before termination, the US Department of Commerce found that Samsung had substantial production facilities in Mexico, and several feeder plants established and operated by Korean suppliers unrelated to Samsung. From these facilities, Samsung produced color televisions sold throughout North, Central and South America, and these televisions entered the United States duty-free under NAFTA tariff preference provisions, implying that they met NAFTA's rules-of-origin requirements.

24.108. At the DSB meeting on 22 September 1998, Korea announced that it was definitively withdrawing the request for a panel because the imposition of anti-dumping duties was revoked by the US.

## XIX. GENERAL ISSUES

24.109. The issues discussed in this Chapter are clarificatory in nature. Therefore, no jurisprudence has been added.

## XX. COUNTERVAILING DUTY INVESTIGATIONS

24.110. In Brazil – Aircraft, ( DS-46), para 7.26, the WTO Panel considered that the object and purpose of the SCM Agreement are to impose multilateral disciplines on subsidies that distort international trade:

"*In our view, the object and purpose of the SCM Agreement are to impose multilateral disciplines on subsidies which distort international trade. It is for this reason that the SCM Agreement prohibits two categories of subsidies -- subsidies contingent upon exportation and upon the use of domestic over imported goods -- that are specifically designed to affect trade*."

24.111. In the US – Carbon Steel, (DS-436) at para 73 and 74 the Appellate Body offered the following observations on the object and purpose of the SCM Agreement:

"*[W]e turn to the object and purpose of the SCM Agreement. We note, first , tha t the Agreement contains no preamble to guide us in the task of ascertaining its object a nd purpose. In Brazil – Desiccated Coconut, we observed that the 'SCM Agreement contains a set of rights and obligations that go well beyond merely applying and interpreting Articles VI, XVI and XXIII of the GATT 1947.' 5 The SCM Agreement define s the concept of 'subsidy', as well as the conditions under which Members may not employ subsidies. It establishes remedies when Members employ prohibited subsidies, and sets out additional remedies available to Members who se trading interests are harmed by another Member's subsidization practices. Part V of the SCM Agreement deals with one such remedy, permitting Members to levy countervailing duties on imported products to offset the benefits of specific subsidies bestowed on the manufacture, production or export of those goods. However, Part V also conditions the right to apply such duties on the demonstrated existence of three substantive conditions (subsidization, injury, and a causal link between the two) and on compliance with its procedural and substantive rules, notably the requirement that the countervailing duty cannot exceed the amount of the subsidy. Taken as a whole, the main object and purpose of the SCM Agreement is to increase and improve GATT disciplines relating to the use of both subsidies and countervailing measures. We thus believe that the Panel properly identified, as among the objectives of the SCM Agreement, the establishment of a framework of rights and obligations relating to countervailing duties6 , and the creation of a set of rules which WTO Members mu s t respect in the use of such duties. 7 Part V of the Agreement is aimed at striking a balance between the right to impose countervailing duties to offset subsidization that is causing injury, and the obligations that Members must respect in order to do so*."

24.112. In the US – Carbon Steel (India) (DS-436), the Appellate Body noted that "Article 1.1 of the SCM Agreement stipulates that a 'subsidy' shall be deemed to exist if there is a '*financial contribution by a government or any public body*' *and 'a benefit is thereby conferred*'".

24.113. In Panel in the US – Large Civil Aircraft (2nd complaint), (DS-353) observed that "Article 1.1(a)(1) is a definitional provision that sets forth an exhaustive, closed list ('... i.e. where ...') of the types of transactions that constitute financial contributions under the SCM Agreement". The Appellate Body shared the same observation when providing its analysis of the general architecture and structure of that provision:

> "*Article 1.1(a)(1) defines and identifies the government conduct that constitutes a financial contribution for purposes of the SCM Agreement. Subparagraphs (i)- (iv) exhaust the types of government conduct deemed to constitute a financial contribution. This is because the introductory chapeau to the subparagraphs states that 'there is a financial contribution by a government …, i.e. where:' Some of the categories of conduct—for instance those specified in subparagraphs (i) and (ii)—are described in general terms with illustrative examples that provide an indication of the common features that characterize the conduct referred to more generally. Article 1.1(a)(1), however, does not explicitly spell out the intended relationship between the constituent subparagraphs. Finally, the subparagraphs focus primarily on the action taken by the government or a public body*."

24.114. In the US – Export Restraints, (DS-194) the Panel discussed "financial contribution" and observed the following:

> "*The negotiating history of Article 1 confirms our interpretation of the term 'financial contribution'. This negotiating history demonstrates, in the first place, that the requirement of a financial contribution from the outset was intended by its proponents precisely to ensure that not all government measures that conferred benefits could be deemed to be subsidies. This point was extensively discussed during the negotiations, with many participants consistently maintaining that only government actions constituting financial contributions should be subject to the multilateral rules on subsidies and countervailing measures. [T]he negotiating history confirms that the introduction of the two-part definition of subsidy, consisting of 'financial*

*contribution' and 'benefit', was intended specifically to prevent the countervailing of benefits from any sort of (formal, enforceable) government measures, by restricting to a finite list the kinds of government measures that would, if they conferred benefits, constitute subsidies. The negotiating history confirms that items (i)-(iii) of that list limit these kinds of measures to the transfer of economic resources from a government to a private entity. Under subparagraphs (i)- (iii), the government acting on its own behalf is effecting that transfer by directly providing something of value – either money, goods, or services – to a private entity. Subparagraph (iv) ensures that the same kinds of government transfers of economic resources, when undertaken through explicit delegation of those functions to a private entity, do not thereby escape disciplines.*"

24.115. In US – Carbon Steel (India), (DS-436) the Appellate Body referred to its findings in US – Anti-Dumping and Countervailing Duties (China) and recalled that "the mere ownership or control over an entity by a government, without more, is not sufficient to establish that the entity is a public body". The Appellate Body added:

*"In determining whether or not a specific entity is a public body, it may be relevant to consider 'whether the functions or conduct are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member.' The […] classification and functions of entities within WTO Members generally may also bear on the question of what features are normally exhibited by public bodies.*

24.116. In US – Tax Incentives, the Appellate Body elaborated on the role of Article 3 of the SCM Agreement. It clarified that the "granting of subsidies is not, in and of itself, prohibited under the SCM Agreement; nor does the granting of subsidies constitute, without more, an inconsistency with that Agreement". It further added:

"*Only subsidies contingent upon export performance within the meaning of Article 3.1(a) (commonly referred to as export subsidies), or contingent upon the use of domestic over imported goods within the meaning of Article 3.1(b) (commonly referred to as import substitution subsidies), are prohibited per se under Article 3 of the SCM Agreement. In any event, subsidies, if specific, are disciplined under Part III of the SCM Agreement,*

> *but a complaining Member must demonstrate the existence of adverse effects under Article 5 of that Agreement*."

24.117. In Canada – Aircraft Credits and Guarantees, (DS-222) the Panel first recalled the text of Article 3.1(a) and found that to "prove the existence of an export subsidy within the meaning of this provision, a Member must establish *(i) the existence of a subsidy within the meaning of Article 1 of the SCM and (ii) contingency of that subsidy upon export performance*".

24.118. The Panel in Canada – Aircraft found that "the only logical basis" for determining whether the financial contribution places the recipient in a more advantageous position than it otherwise would have been "is the market".144 According to the Panel:

> "*[A] financial contribution will only confer a 'benefit', i.e., an advantage, if it is provided on terms that are more advantageous than those that would have been available to the recipient on the market.*"

24.119. In *Mexico – Olive Oil* (DS341) para 7.35, the European Communities argued that Mexico had acted inconsistently with Article 13.1 because it did not hold consultations between the date it sent the invitation to consult and the date of initiation of the investigation. The Panel rejected the European Communities' argument on the basis that Article 13.1 merely provides that the exporting Member "*shall be invited for consultations*". The Panel stated that:

> "*the provision makes no explicit reference to consultations being held, referring instead to an invitation to consult*" [2]. According to the Panel, "*the ordinary meaning of the obligation on the importing Member that is considering initiating a countervailing duty investigation is to ask the Member, the products of which may be subject to that investigation (the exporting Member), to consultations. It then falls to the latter Member to decide whether or not to accept the invitation*" [3].

24.120. The Panel continued:

> "*We do not see a requirement in the text of Article 13.1 that the Members involved must actually hold the referenced consultations. Indeed, if under Article 13.1, the Member considering whether to initiate an investigation*

[2] Panel Report, Mexico-Olive Oil(DS341) para 7.35

[3] Panel Report, Mexico-Olive Oil(DS341) para 7.35

*were obligated to hold consultations with the exporting Member before it could initiate an investigation, the exporting Member could effectively block initiation simply by declining to consult. … We emphasize, however, that the invitation must be a bona fides one. That is, assuming that the exporting Member accepts the invitation, the Member considering whether to initiate an investigation cannot then refuse to participate in the consultations.*"

24.121. The Appellate Body in the *US – Carbon Steel (India) (DS436)* clarified that the scope of Article 13.1 does not extend to administrative reviews under Article 21.2 of the SCM Agreement. The Appellate Body explained that:

"*Article 13.1 refers expressly to the investigations conducted pursuant to Article 11 and makes it mandatory for an investigating authority to provide an opportunity for consultations with the Member whose products may be subject to the Article 11 investigation. Conversely, neither Article 13 nor Article 21 makes explicit reference to the other. Furthermore, the Appellate Body has emphasized that the use of the word 'investigation' in Article 11 is distinct from the use of the word 'review' in Article 21. In this regard, we observe that, not only does Article 13.1 use the word 'investigation' and make an explicit reference to Article 11, but it also makes no reference to the word 'review' or to Article 21. For these reasons, we consider that the requirements for carrying out consultations, prescribed in Article 13.1 of the SCM Agreement, do not apply to the conduct of administrative reviews, as governed by Article 21.2 of the SCM Agreement. The Appellate Body in US – Carbon Steel also took into account the context of Article 21.3. In particular, the Appellate Body noted that Article 21.4 explicitly states that the detailed evidentiary and procedural rules contained in Article 12 regarding the conduct of an investigation apply to Article 21.3 reviews. As a result, it stated that this explicit cross-reference to Article 12 suggests that evidentiary rules regarding the initiation of an investigation contained in Article 11* "*are not incorporated by reference into Article 21.3.*"

24.122. The Panel in *China – GOES (DS414)* noted that Article 22.3 is procedural in character and requires an investigating authority to disclose in public notices and separate reports its actual reasoning rather than the findings that should reasonably have been reached under an objective standard.

24.123. The Panel in *US – Softwood Lumber III (DS236)* found that "Article 17.3 and 17.4 of the SCM Agreement are unambiguous, clearly specifying that provisional measures shall not be applied sooner than 60 days after initiation and their application shall be limited to maximum 4 months"[4]. The Panel also explained that:

> *"[T]he starting-point for the application of provisional and final measures, Article 20 of the SCM Agreement establishes two exceptions to the general rule of non-retroactivity of final countervailing duties and no exceptions to the general rule of non-retroactivity of provisional measures. Nothing in Article 20 SCM Agreement provides an exception to the rules relating to the minimum period between initiation and application of provisional measures or the maximum period of application of such measures as provided for in Articles 17.3 and 17.4 SCM Agreement[5].*"

24.124. In US – *Carbon Steel,* the Appellate Body noted that Articles 22.1 and 22.7, imposing notification and public notice obligations upon Members in the context of investigations or reviews, do not contain any evidentiary requirements per se.

> *"Article 22.1 imposes notification and public notice obligations upon Members that have decided, in accordance with all the requirements of Article 11, that the initiation of a countervailing duty investigation is justified. Article 22.1 does not itself establish any evidentiary rule, but only refers to a standard established in Article 11.9: Article 22.7 applies the provisions of Article 22 'mutatis mutandis to the initiation and completion of reviews pursuant to Article 21'. To us, in the same way that Article 22.1 imposes notification and public notice requirements on investigating authorities that have decided, in accordance with the standards set out in Article 11, to initiate an investigation, Article 22.1 (by virtue of Article 22.7) also operates to impose notification and public notice requirements on investigating authorities that have decided, in accordance with Article 21, to initiate a review. Similarly, in the same way that Article 22.1 does not itself establish evidentiary standards applicable to the initiation of an investigation, it does*

[4] Panel Report US – Softwood Lumber III, para. 7.100.

[5] Panel Report US – Softwood Lumber III, para. 7.100.

> *not itself establish evidentiary standards applicable to the initiation of sunset reviews. Such standards, if they exist, must be found elsewhere* "[6].

24.125. In the *US – Countervailing and Anti-Dumping Measures (China) (DS449),* the Panel, in the process of interpreting and applying Article X: 3(b) of the GATT 1994, stated that:

> "… The neutral wording of Article 23 confirms that such interested parties may well include domestic interested parties who would seek to challenge a decision by an administrative agency that is beneficial to the exporters in a particular case"[7].

24.126. The Panel in *Mexico – Olive Oil (DS341)* noted that certain provisions of the SCM Agreement leave considerable discretion to Members to define their own procedures:

> "…in general, unless a specific procedure is set forth in the Agreement the precise procedures for how investigating authorities will implement those obligations are left to the Members to decide" [8].

## XXI. SAFEGUARD INVESTIGATIONS

24.127. In the US – Line Pipe, the Appellate Body referred to two basic inquiries that are conducted in interpreting the Agreement on Safeguards: (i) "is there a right to apply a safeguard measure?"; and (ii) "if so, has that right been exercised, through the application of such a measure, within the limits set out in the treaty?". The Appellate Body emphasized that these two inquiries are "separate and distinct" and should not be "confused" by the treaty interpreter: ":

> *[There are] basic inquiries that are conducted in interpreting the Agreement on Safeguards. These two basic inquiries are: first, is there a right to apply a safeguard measure? And, second, if so, has that right been exercized, through the application of such a measure, within the limits set out in the treaty? These two inquiries are separate and distinct. They must not be confused by the treaty interpreter. One necessarily precedes and leads to the other. First, the interpreter must inquire whether there is a right, under the circumstances of a particular case, to apply a safeguard measure. For*

[6] Appellate Body Report, US – Carbon Steel, paras. 111-112.

[7] Panel Report, US – Countervailing and Anti-Dumping Measures (China), para 454.

[8] Panel Report, Mexico – Olive Oil, fn. 63.

*this right to exist, the WTO Member in question must have determined, as required by Article 2.1 of the Agreement on Safeguards and pursuant to the provisions of Articles 3 and 4 of the Agreement on Safeguards, that a product is being imported into its territory in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. Second, if this first inquiry leads to the conclusion that there is a right to apply a safeguard measure in that particular case, then the interpreter must next consider whether the Member has applied that safeguard measure 'only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment', as required by Article 5.1, first sentence, of the Agreement on Safeguards. Thus, the right to apply a safeguard measure—even where it has been found to exist in a particular case and thus can be exercized—is not unlimited. Even when a Member has fulfilled the treaty requirements that establish the right to apply a safeguard measure in a particular case, it must do so 'only to the extent necessary .* "

24.128. In WTO Dispute Dominican Republic – Safeguard Measures (DS417) the Panel interpreted Article 12 and noted following:

*"Article 12 of the Agreement on Safeguards is linked to the obligations to notify and give Members the opportunity to hold consultations provided by Article XIX of the GATT 1994. Therefore, the requirements of Article XIX:2 of the GATT 1994 should be analysed in conjunction with Article 12 of the Agreement on Safeguards.2 These two provisions "have to be interpreted together and giving meaning to the terms in both provisions."*

24.129. The Panel in WTO Dispute Ukraine – Passenger Cars (DS468) pointed out that in some cases it may be difficult to identify the date on which the event that triggered a notification obligation under Article 12.1 occurred:

*"To assess whether or not a notification under Article 12.1 was 'immediate', it is necessary to establish both the date on which the relevant triggering event occurred and the date of the notification. The latter is generally taken to correspond to the date on which the notification was sent to the Committee on Safeguards, but the position is less clear with regard to the former. An issue may arise as to whether the Panel should assess the immediacy of the notifications under Article 12.1 by reference to: (i) the date of adoption of the relevant decision on the action concerned (i.e.*

*the decision to initiate, the decision to make a finding or the decision to apply or extend a safeguard measure), (ii) the date of publication of that decision, or (iii) the entry into force of that decision. We observe in this regard that in some domestic legal systems, for some relevant actions and in some situations, some or all of these dates may coincide, such that there may be no need to distinguish between these dates."*

24.130. The Panel in WTO Dispute Korea – Dairy (DS98) read a notion of "urgency" into the phrase "shall immediately notify ..." in Article 12.1, but acknowledged that there is a need under this provision to balance the requirement for some minimum level of information in a notification against the requirement for "immediate" notification:

*"The ordinary meaning of the term 'immediately' introduces a certain notion of urgency. As discussed above, we believe that the text of Article 12.1, 12.2 and 12.3 makes clear that the notifications on the finding of serious injury and on the proposed measure shall in all cases precede the consultations referred to in Article 12.3. We note finally that no specific number of days is mentioned in Article 12. For us this implies that there is a need under the agreement to balance the requirement for some minimum level of information in a notification against the requirement for 'immediate' notification. The more detail that is required, the less 'instantly' Members will be able to notify. In this context, we are also aware that Members whose official language is not a WTO working language, may encounter further delay in preparing their notifications."*

24.131. The Panel in WTO Dispute US – Wheat Gluten (DS166) quoted the passage from the Panel Report in Korea – Dairy (DS98) and emphasized the need of all Members to be kept informed, in a timely manner, of the different steps in a safeguard investigation:

*"We consider that the text of Article 12.1 of Safeguard Agreement is clear and requires no further interpretation. The ordinary meaning of the requirement for a Member to notify immediately its decisions or findings prohibits a Member from unduly delaying the notification of the decisions or findings mentioned in Article 12.1 (a) through (c) SA. Observance of this requirement is all the more important considering the nature of a safeguards investigation. A safeguard measure is imposed on imports of*

*a product irrespective of its source and potentially affects all Members. All Members are therefore entitled to be kept informed, without delay, of the various steps of the investigation.*"

24.132 In a WTO Dispute India-Iron and Steel Products (WT/DS 518/R), the Panel in their finding dated 6 November 2018, inter-alia observed that the Authority must demonstrate the link between the unforeseen developments and the increase in imports (para 7.105), The Panel mentioned that:

*"We recall that Article XIX:1(a) does not provide any guidance on how the relationship between unforeseen developments and the increase in imports shall be examined. The competent authorities enjoy certain discretion in choosing the appropriate method for examining the relationship between unforeseen developments and the increase in imports, taking into account the facts and circumstances of the particular case. At the same time, a competent authority must provide in its published report a reasoned and adequate explanation supporting its conclusions on unforeseen developments."*

## XXII. QR INVESTIGATIONS

24.133. The Panel in Turkey – Textiles (DS-34) elaborated on the systemic significance of Article XI in the GATT framework:

"*The prohibition against quantitative restrictions is a reflection that tariffs are GATT's border protection 'of choice'. Quantitative restrictions impose absolute limits on imports, while tariffs do not. In contrast to MFN tariffs which permit the most efficient competitor to supply imports, quantitative restrictions usually have a trade distorting effect, their allocation can be problematic and their administration may not be transparent. Notwithstanding this broad prohibition against quantitative restrictions, GATT contracting parties over many years failed to respect completely this obligation. From early in the GATT, in sectors such as agriculture, quantitative restrictions were maintained and even increased to the extent that the need to restrict their use became central to the Uruguay Round negotiations. In the sector of textiles and clothing, quantitative restrictions were maintained under the Multifibre Agreement (further discussed below). Certain contracting parties were even of the view that quantitative restrictions had gradually been tolerated and accepted as negotiable and that Article XI could not be and*

*had never been considered to be, a provision prohibiting such restrictions irrespective of the circumstances specific to each case. This argument was, however, rejected in an adopted panel report EEC – Imports from Hong Kong.*

*Participants in the Uruguay Round recognized the overall detrimental effects of nontariff border restrictions (whether applied to imports or exports) and the need to favour more transparent price-based, i.e. tariff-based, measures; to this end they devised mechanisms to phase-out quantitative restrictions in the sectors of agriculture and textiles and clothing. This recognition is reflected in the GATT 1994 Understanding on Balance-of-Payments Provisions1 , the Agreement on Safeguards 2 , the Agreement on Agriculture where quantitative restrictions were eliminated3 and the Agreement on Textiles and Clothing (further discussed below) where MFA derived restrictions are to be completely eliminated by 2005*.

## CHAPTER WISE LIST OF TRADE NOTICES/INSTRUCTIONS

| Chapters No. | Subject | Trade Notice No. |
|---|---|---|
| 1 | Institutional Mechanism & Process Flow chart | • Circular No. 4/07/2018-DGAD dated 12.04.18 & Gazette No. I-34(7)/2018-O&M dated 17.5.18 |
| 2 | Application | • 2/2012 dated 30.03.2012<br>• 2/2009 dated 03.11.2009<br>• 2/2017 dated 12.12.2017<br>• 7/2018 dated 15.03.2018<br>• Note No.16/AS&DGAD/2017 dated 12.07.2017<br>• 15/2018 dated 22.11.2018 |
| 3 | Domestic Industry Standing | • E-mail 14/44/2016-DGAD<br>• 13/2018 dated 27.09.2018 |
| 4 | Period of Investigation | • 2/2004 dated 12.05.2004 |
| 5 | Initiation, Notification & Public File | • 1/2012 dated 09.01.2012<br>• Note No. 06/AS&DG/2016 dated 22.11.2016<br>• 11/2018 dated 10.09.2018<br>• Circular 06/2018 dated 26.09.2018<br>• Supplementary Questionnaire on Market Economy Conditions<br>• Part-II - SSR |
| 6 | Confidentiality | • 2/2000 dated 28.08.2000<br>• 1/2009 dated 25.03.2009<br>• 1/2011 dated 25.05.2011<br>• 1/2013 dated 09.12.2013<br>• 1/2017 dated 08.12.2017<br>• 1/2018 dated 02.01.2018<br>• 10/2018 dated 07.09.2018<br>• 14/2018 dated 01.10.2018 |
| 7 | Verification | • 2/2015 dated 03.08.2015<br>• Instructions 4/1/2018 dated 23.01.2018<br>• Note No.1/Dir.(Admin)2018 dated 6.7.18 |
| 8 | NIP | • Note No.9/DGAD/2016 dated 14.12.2016 |

| | | |
|---|---|---|
| 9 | Oral Hearing | • 1/2007 dated 22.10.2007<br>• 1/2011 dated 25.05.2011<br>• 3/2012 dated 02.04.2012<br>• 4/2012 dated 23.05.2012 |
| 10 | Disclosure and Final Finding | • 12/2018 dated 17.09.2018<br>• Note No.19/AS&DGAD/2017 dated 31.07.2017 |
| 11 | Review Investigations | • 1/2004 dated 15.03.2004<br>• 1/2008 dated 10.03.2008<br>• 1/2010 dated 17.05.2010<br>• 2/2011 dated 06.06.2011<br>• 2/2017 dated 12.12.2017<br>• Note No.15/AS&DGAD/2017 dated 14.06.2017 |
| 12 | General Issues | • 9/2018 dated 10.05.2018 |
| 13 | Countervailing Investigations | • 7/2018 dated 15.03.2018 |
| 14 | Safeguard | • SG/TN/I/97 dated 06/09/1997<br>• Notification 19/2016 dated 05.02.2016 |

# LIST OF TRADE NOTICES (in chronological order)

| S. No. | Trade Notice/ Instructions/ Circulars | Subject | Status | New T.N | Chapters | Page No. |
|---|---|---|---|---|---|---|
| 1. | TN SG/TN/I/97 06.09.1997 | Safeguard Application | Valid | N.A. | 21 | 510 |
| 2. | TN No. 2/2000 28.08.2000 | Requirements to be followed while submitting information that has to be treated as confidential | Superseded | 01/2009 | 7 | 162 |
| 3. | TN No 1/2004 15.03.2004 | Clarification regarding Initiation of Mid-term Reviews in terms of Rule 23 of Anti-dumping Rules. | Superseded | 01/2010 | 17 | 416 |
| 4. | TN No 2/2004 12.05.2004 | Requirements to be followed while making applications for anti-dumping investigations | Valid | N.A. | 5 | 74 |
| 5. | TN No 1/2007 22.10.2007 | Procedural requirements while making written submissions subsequent to Public Hearing and while filing rejoinders thereto | Valid | N.A. | 15 | 353 |
| 6. | TN No 1/2008 10.03.2008 | Procedure to be followed by DGAD for initiating SSR | Superseded | 02/2011 | 17 | 417 |
| 7. | TN No 1/2009 25.03.2009 | Requirements while submitting confidential information in anti-dumping investigation | Partly Valid | 01/2011 01/ 2013 | 7 | 164 |
| 8. | TN No 2/2009 03.11.2009 | Procedure for making application for anti-dumping investigations | Superseded | 02/2012 | 2 | 17 |
| 9. | TN No 1/2010 17.05.2010 | Clarification regarding Initiation of Mid-term Reviews in terms of Rule 23 of Anti-dumping Rules. | Valid | N.A | 17 | 418 |
| 10. | TN No 1/2011 25.05.2011 | Presentation of documents to all participants in public hearing | Valid | N.A | 15 | 354 |
| 11. | TN No 2/2011 06.06.2011 | Regarding 'Reasonable time period' for the purpose of sub-rule 23 (1B) for SSR applications | Superseded | 02/2017 | 17 | 420 |

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|---|---|---|---|---|---|---|
| 12. | TN No 1/2012<br>09.01.12 | Timelines for submission of data/information during the course of investigation | Partly Valid | 11/2018<br>03/2012<br>04/2012 | 6 | 87 |
| 13. | TN No 2/2012<br>30.03.2012 | Submission of Soft copy of CV and NCV along with the Hard copy of Petition | Superseded | 01/2013 | 2 | 18 |
| 14. | TN No 3/2012<br>02.04.2012 | Presentation of documents to all participants in public hearing through e-mail also | Valid | NA | 15 | 355 |
| 15. | TN No 4/2012<br>23.05.2012 | Presentation of documents to all participants in public hearing | Valid | NA | 15 | 356 |
| 16. | TN No 1/2013<br>09.12.2013 | Requirements for submission of Confidential/Non-confidential information by stakeholders | Valid | NA | 7 | 166 |
| 17. | TN No 2/2015<br>03.08.2015 | Authenticity of supporting documents/information receiving during the processing of anti-dumping case | Valid | NA | 8 | 216 |
| 18. | Notification 19/2016<br>05.02.2016 | List of Developing Countries | Valid | NA | 21 | 505 |
| 19. | TN No 1/2017<br>08.12.2017 | Non -confidential transaction wise data in Anti-dumping investigation wise | Partly<br>Amended | 01/2018<br>07/2018 | 7 | 171 |
| 20. | TN No 2/2017<br>12.12.2017 | Guidelines and procedures for filing application for SSR | Valid | Valid | 2 | 20 |
| 21. | TN No 1/2018<br>02.01.2018 | Non -confidential transaction wise data in Anti-dumping investigation wise | Valid | Valid | 7 | 173 |
| 22. | TN No 7/2018<br>15.03.2018 | Streamlining of Anti-Dumping / Counter Vailing Duty Investigation process - Obtaining and sharing of import data pertaining to investigation with interested parties regarding | Valid | Valid | 2,20 | 28 |
| 23. | TN No 9/2018<br>10.05.2018 | Streamlining of the Anti-Dumping Investigations Process - Clarification regarding related parties in case of questionnaire for Anti-Dumping investigations for Producer/Exporter/Related Importer. | Valid | Valid | 19 | 447 |

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| 24. | TN No 10/2018 07.09.2018 | Streamlining of Anti-Dumping Investigations- Clarification regarding Disclosure of Information in Confidential Version / Non-Confidential Version of Responses filed by the Domestic Industry and Other Interested Parties | Valid | Valid | 7 | 174 |
| 25. | TN No 11/2018 10.09.2018 | Streamlining of Investigation Process- Registration of Interested Parties Regarding | Valid | Valid | 6 | 91 |
| 26. | TN No 12/2018 17.09.2018 | Streamlining request for change in name of producer(s) / exporters in Anti-Dumping and Countervailing Duty investigations | Valid | Valid | 16 | 391 |
| 27. | TN No 13/2018 27.09.2018 | Requirements for companies expressing support for any anti-dumping duty/ countervailing duty petition/ application | Valid | Valid | 4 | 61 |
| 28. | TN No 14/2018 01.10.2018 | Streamlining of Anti-Dumping Investigations- Additional clarification regarding Disclosure of Information in Confidential Version / Non-Confidential Version of Responses filed by the Supporting Producers. | Valid | Valid | 7 | 187 |
| 29. | TN No. 15/2018 22.11.2018 | Check List For Acceptance Of Anti-Dumping Application | Valid | Valid | 2 | 24 |

| ADDENDUM of ENCLOSURES (APPENDICES) | | |
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## ACKNOWLEDGEMENTS

There has been a long standing need to have a set of guidelines, which would not only streamline the investigations undertaken by the Directorate but would also bring in uniformity and transparency. Therefore, a Working Group was constituted in DGTR for the first time in its history, vide order no.4/9/2018-DGAD dated 16.04.2018. The assigned goal was to formulate written guidelines for each stage of investigation, which would fill the operational gaps in the processes and procedures laid down through various trade notices/ instructions/ guidelines issued from time to time.

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- Administration team of DGTR for standing beside us in pursuit of this first-ever Manual of Operating Practices..

3. We also take this opportunity to acknowledge the leadership of the Designated Authorities of erstwhile DGAD, who have contributed in strengthening of the organization. In particular, we are grateful to Mr. J. S. Deepak, Mr. J.K. Dadoo, Mr. A.K. Bhalla and Dr. InderJit Singh, who initiated the process of restructuring of the organisation and simplification of the investigation procedures.

4. We would like to submit that we have tried our best in the short period available to us. Therefore, your indulgence is requested for overlooking inadvertent errors, if any, which might be there in this publication.

**Mr. I.P. Singh**
Principal Advisor

**Ms. Shubhra**
Additional Director General


DIRECTORATE GENERAL OF TRADE REMEDIES
DEPARTMENT OF COMMERCE
JEEVAN TARA, PARLIAMENT STREET
NEW DELHI-110001
www.dgtr.gov.in