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**F.No. 6/42/2017-DGAD
Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Trade Remedies)
4th Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001**

Dated 26th December, 2018

NOTIFICATION

FINAL FINDINGS

Sub: Anti-dumping investigation concerning imports of “Coated Paper” originating in or exported from China PR, European Union and USA.

A. BACKGROUND OF THE CASE

No. 6/42/2017 -DGAD: Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as the Rules) thereof:

1. Whereas, Indian Paper Manufacturers Association on behalf of M/s BILT Graphic Paper Products Ltd., subsidiary of M/s Ballarpur Industries Limited (hereinafter also referred to as the “Petitioner” or “the Applicant”) have filed a petition before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of injury) Rules, 1995 as amended from time to time (hereinafter also referred to as the Rules) for imposition of Anti-dumping duty on imports of “Coated Paper” originating in or exported from China PR, European Union and USA (hereinafter also referred to as the subject countries).
2. And, whereas, the Authority, on the basis of sufficient evidence submitted by the Petitioners, issued a public notice vide Notification No. 6/42/2017 -DGAD dated 23rd January, 2018, published in the Gazette of India, initiating the subject investigation in accordance with Rule 5 of the AD Rules to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from the subject countries, and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the alleged injury to the domestic industry.

B. PROCEDURE

3. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
- a) The Authority notified the Embassies of the Subject Countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
 - b) The Authority issued a public notice dated 23rd January, 2018 published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods.
 - c) The Authority sent a copy of the initiation notification to the Embassies of the Subject Countries in India, known producers/exporters from the subject Countries, known importers/users and the domestic industry as well as other domestic producers as per the addresses made available by the applicants and requested them to make their views known in writing within the prescribed time limit.
 - d) The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassy of the subject countries in India in accordance with Rule 6(3) of the Rules supra.
 - e) The Embassies of the subject countries in India were also requested to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
 - f) The Authority sent questionnaires to elicit relevant information to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the AD Rules:

China PR

- (i) Gold East Paper (Jiangsu) Co. Ltd.
- (ii) Hainan Jinhai Pulp and Paper
- (iii) Chenming Group

European Union

- (iv) Stora Enso Oyj
- (v) UPM Sales Oy
- (vi) Sappi Limited
- (vii) Cham Paper Group Switzerland Inc.

USA

- (viii) New Page, Miamisburg, Ohio, USA

g) In response, the following exporters/producers from the subject countries filed exporter's questionnaire response in the prescribed format:

- (i) M/s. Gold Huasheng Paper (Sozhou) Industrial Park) Co. Ltd. (GHS)

- (ii) M/s. Hainan Jinhai Pulp & Paper Co. Ltd. (JHPP) and
- (iii) M/s. Gold East Trading (Hong Kong) Company Limited (GEHK)
- (iv) M/s. Gold East Paper (Jiangsu) Co. Ltd. (GE)
- (v) M/s. Upm Gmbh, Germany
- (vi) M/s. Upm Paper Ena Oy, Finland
- (vii) M/s. Upm Specialty Papers Oy, Finland
- (viii) M/s. Upm Sales Oy, Finland
- (ix) M/s. Shandong Chenming Paper Holdings Limited
- (x) M/s. Shandong Chenming Paper Sales Ltd.
- (xi) M/s. Shouguang Meilun Paper Co. Ltd., China PR
- (xii) M/s. Chenming (HK) Limited, Hong Kong
- (xiii) M/s. PG Paper Company Ltd.
- (xiv) M/s. Sappi Alfeld GmbH
- (xv) M/s. Sappi Enningen GmbH
- (xvi) M/s. Sappi Gratkorn GmbH
- (xvii) M/s. Sappi Finland Operations Oy (Kirkniemi)
- (xviii) M/s. Sappi Lanaken NV
- (xix) M/s. Sappi Maastricht B.V.
- (xx) M/s. Sappi Stockstadt GmbH
- (xxi) M/s. Sappi Europe SA

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

- (i) Allied Speciality Papers (India) Pvt. Ltd.
- (ii) Bhagwati Enterprises
- (iii) Excel Enterprise
- (iv) K.C. Exim (P) Ltd.
- (v) Narsingh Dass & Co. (P) Ltd.
- (vi) Paras Papers
- (vii) Nutech Print Services
- (viii) Plus Marketing
- (ix) Shah Devji Shivji and Co.
- (x) Sheth Brothers
- (xi) Shree Balaji Udyog
- (xii) Shree Chamunda Enterprise
- (xiii) Synchem
- (xiv) Standard Paper and Board India Pvt. Ltd.
- (xv) Unique Sales Corporation
- (xvi) Tenny Jose and Associates Ltd.
- (xvii) White Arrow Group of Companies

i) In response, the following importers/users have responded and filed importer's questionnaire response.

- (i) M/s. Avery Dennison (India) Pvt. Ltd.
 - (ii) M/s. Living Media India Ltd.
 - (iii) M/s. Malayala Manorama Company Ltd
 - (iv) M/s. Outlook Publishing (India) Pvt. Ltd
- j) Apart from the respondent exporters and importers mentioned above, some legal submissions have been received on behalf of the following parties during the course of this investigation.
- (i) European Commission
 - (ii) All India Federation of Master Printers
 - (iii) Confederation of European Paper Industries
- k) The Authority made available non-confidential version of the evidence presented / submissions made by various interested parties in the form of a public file kept open for inspection by the interested parties.
- l) Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide the transaction-wise details of imports of subject goods for the past three years, and the period of investigations, which was received by the Authority. The Authority has, relied upon the DGCI&S data for computation of the volume of imports and required analysis after due examination of the transactions.
- m) The Non-Injurious Price (NIP) based on the cost of production and cost to make & sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-Dumping Rules has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.
- n) Physical inspection through on-spot verification of the information provided by the applicant domestic industry, to the extent deemed necessary, was carried out by the Authority. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of final findings.
- o) Verification of the information provided by the producers/exporters, to the extent deemed necessary, was carried out by the Authority and has been relied upon for the purpose of final findings.
- p) The Period of Investigation for the purpose of the present anti-dumping investigation is from April, 2016 to June, 2017 (15 Months). The injury investigation period has however, been considered as the period from 2013-14, 2014-15, 2015-16 and the POI.
- q) In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a hearing held on 5th June, 2018. All the parties who had attended the oral hearing were advised to file written submissions of the views expressed orally. The parties were advised to collect copies of the views expressed by the opposing parties and were advised to offer their rebuttals.
- r) The submissions made by the interested parties during the course of this investigation, wherever found relevant, have been addressed by the Authority, in this final findings.

- s) Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- t) Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has considered such parties as non-cooperative and recorded the final findings on the basis of the facts available.
- u) A Disclosure Statement was issued to interested parties on 28th November, 2018 containing essential facts under consideration of the Designated Authority, giving time up to 10th December, 2018 to furnish comments, if any, on the Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately in the present final findings.
- v) ‘****’ in this final finding represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules.
- w) The exchange rate adopted by the Authority for the subject investigation is US\$1 = ₹67.45.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. At the stage of initiation, the product under consideration is defined as:
 “Paper or Paper Board coated with kaolin (china clay) or calcium carbonate or polymer or other inorganic substance, with or without a binder; and with no other coating, either on one or both sides; whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any sizes; whether or not dull, gloss, matte or high-gloss(cast coated) finish; made generally, but not invariably or exclusively from virgin chemical pulp, properly classifiable under Chapter 4810”.
5. Product under consideration is primarily used for printing of magazines, catalogues, books & manuals, calendars, brochures, labels, flexible packaging etc. The GSM for Coated Paper ranges from 40 GSM to 350 GSM. Specifically excluded from the scope of this petition is multilayered board for packaging purpose which does not form part of the product under consideration

C.1. Submissions made by the Domestic Industry

6. The submissions made by the domestic industry with regard to product under consideration and like article and considered relevant by the Authority are as follows:
 - a) The product under consideration in the present investigation is “Paper or Paper Board coated with kaolin (china clay) or calcium carbonate or polymer or other inorganic substance, with or without a binder; and with no other coating, either on one or both sides; whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any

- sizes; whether or not dull, gloss, matte or high-gloss (cast coated) finish; made generally, but not invariably or exclusively from virgin chemical pulp.
- b) Coated paper and paper board are made primarily from virgin chemical pulp and falls under various heading of chapter 4810 viz. 48101430, 48101320, 48101310, 48101490, 48101910, 48101920, 48101930, 48101990, 48102200, 48102900, 48103100, 48103200, 48103990, 48109200 and 48109900 of HSN at eight digit level. The domestic industry's products are directly competing products with imported products which are similar as far as their technical characteristics, chemical composition and other basic features are concerned. The products of all these headings find similar uses in printing industry.
 - c) PUC is primarily used for printing of magazines, catalogues, books & manuals, calendars, brochures, labels, flexible packaging etc. The grammage for coated paper ranges from 40 GSM to 350 GSM and specifically excluded multi-layered board for packaging purpose which does not form part of the product under consideration.
 - d) Other interested parties have claimed that the entire chapter 4810 at the 4 digit level has been included in the import data which has made the PUC at the 4 digit level uncertain. It is submitted in this regard that the petition clearly listed out the codes which pertain to the product under consideration.
 - e) Considering various arguments and aspects of the present case the domestic industry has revised the product scope and details thereof have been provided in the written submission. On the basis of the revised product under consideration, import methodology has also been clearly annexed with the written submissions filed earlier and the same be relied upon now.
 - f) Product under consideration is not broad and there is no ambiguity. The details of inclusions and exclusions have been brought in clearly by the petitioner.

C.2. Submissions made by the other interested parties

7. The submissions made by the exporters, importers, users and other interested parties with regard to product under consideration and like article, and considered relevant by the Authority, are as follows:
 - a) Domestic Industry has defined the PUC in terms of HS Code 48.10 with some exclusions. The import data has, however, been provided for the entire HS Code 48.10 despite having full knowledge that the import data, by definition, covers more products than what is covered by the description of the PUC.
 - b) As per the petitioner's own admission, there are various exclusions in the product concerned at 4-digit level. In fact, there are products at the 6 and 8-digit level itself which are not a part of the Product under Consideration.
 - c) Domestic Industry did not even present the transaction-wise imports data to the Authority for the purpose of the initiation of the present investigation particularly when the defined PUC is only a subset of the HSN Code at the four-digit level. The Hon'ble Authority may kindly note that unlike all other investigations, no transaction-wise data was procured from the DGCI&S which indeed would have given a clearer picture. Consequently, the import statement furnished by the Domestic Industry is inclusive of the excluded products and therefore could not have been relied upon even for the purpose of initiation of the investigation.

- d) In addition to the above, it is important to note that petitioner has included those varieties of papers like insulating paper, flexible packing paper etc. which are not produced and supplied by the petitioner industry during the period of investigation. As per the established jurisprudence and consistent practice of DGTR also, the goods not produced by the Domestic Industry need to be excluded from the scope of the duties for the simple reason that the same would cause imprudent hardship to the importers.
- e) In the previous final findings dated 15th December 2004 on imports of the same PUC, the Designated Authority therein had noted at para. 5 that “subject goods does not include coated paper below 80 GSM”.
- f) BGPPL was the domestic industry in the previous anti-dumping investigations as well. However, it did not request for imposition of anti-dumping duty on coated paper and paper boards below 80 GSM. If BGPPL is not manufacturing coated paper below 80 GSM, it cannot be included within the scope of the PUC in the present investigation.
- g) At the time of the oral hearing in the subject investigation, the domestic industry agreed that coated paper weighing less than 80GSM can be excluded from the scope of product under consideration. In this regard, we request the Designated Authority to take the submission of domestic industry on record and exclude coated paper weighing less than 80 GSM from the scope of product under consideration.
- h) It seems that the Domestic Industry has included products falling under HS code 48102200 within the product scope. HS code 48102200 covers “Light-weight coated paper”. However, in the import methodology, the Domestic Industry specifically notes that Light-weight coated paper is non-PUC and is outside the product scope.
- i) Similarly, in the updated import data provided by the domestic industry, there are a number of import transactions of ‘multi layered board’ which are considered as PUC. As provided in the notice of initiation, multi-layered board is specifically excluded from the scope of product under investigation. Thus, the Respondents request the Authority to discard the updated import data provided by the Domestic Industry.

C.3. Examination by the Authority

8. The Authority has noted submissions made by various interested parties with regard to scope of the product under consideration and like article offered by the domestic industry. With respect to the product under consideration, the Authority notes as follows:
 - a) On the basis of submissions including post- disclosure comments made by various interested parties and the examination of records of Domestic Industry, the Authority excludes double sided coated paper below 75 GSM, light-weight coated paper, Electrical Kraft insulation paper, Kraft paper, Kraft insulation paper and insulating paper from the scope of product under consideration.
 - b) Accordingly, the product under consideration in the present investigation is “Paper or Paper Board coated with kaolin (china clay) or calcium carbonate or polymer or other inorganic substance, with or without a binder; and with no other coating, either on one or both sides;

whether or not surface-coloured, surface-decorated or printed, in rolls or rectangular (including square) sheets, of any sizes; whether or not dull, gloss, matte or high-gloss (cast coated) finish; made generally, but not invariably or exclusively from virgin chemical pulp. The product under consideration covers coated paper having GSM ranging between 40 GSM to 350 GSM. Specifically excluded from the scope of PUC are the following;

- i. Multi-layered board for packing purpose.
 - ii. Double sided coated paper below 75 GSM
 - iii. Light-weight coated paper
 - iv. Electrical Kraft insulation paper
 - v. Kraft paper
 - vi. Kraft insulation paper
 - vii. Insulating paper
- c) Product under consideration is classified under chapter 48 of the Customs Tariff Act, 1975, under customs sub-heading 4810. The customs classification is indicative only and in no way binding upon the product scope.

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

D.1. Submissions made by the Domestic Industry

9. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing are as follows:
- a) Application was filed by Indian Paper Manufacturers Association on behalf of domestic industry, M/s BILT Graphic Paper Products Ltd, which is a producer of the subject goods in India. There is one more known domestic producer of the product under consideration, namely, JK Paper Limited.
 - b) Applicant has not imported the product under consideration and is not related to any importer in India or exporter from subject countries and has not imported the product under consideration.
 - c) With respect to the claims of the other interested parties that the domestic industry has been incorrectly defined by the non-inclusion of other alleged producers of the subject goods in the country which has ultimately led to a skewed analysis of the injury parameters the domestic industry reiterates that the this claim is not based on any credible evidence. In fact, interested parties themselves contradicted inter-se by arguing that there are a large number of producers but there are only two major producers. In any case, interested parties have not provided any evidence to prove that the production of the petitioner does not constitute a major proportion in Indian production.
 - d) Imports made by JK Paper are quite significant in volumes, quite comparable to its own production volumes. JK Paper should not be treated as eligible domestic industry under the Rules. Notwithstanding, JK Paper has not opposed the present petition and has requested for imposition of ADD despite their imports.

D.2. Submission of other interested parties

10. The submissions made by various other interested parties with regard to the scope of domestic industry & standing are as under:

- a) The applicants in the instant case stated that there are only two producers namely M/s. BILT Graphic Paper Products Ltd. and M/s. JK Paper Limited of the subject goods in India who are engaged in the production of Product under Consideration. However, there are other producers of the subject goods in India. This information provided by the applicant therefore appears to be factually incorrect.
- b) It is important to note that despite the fact that JK paper is a part of IPMA (petitioner), it has not been made an applicant in the present application. It is noteworthy that the petition is completely silent on the issue as to why JK paper has not formed part of the Domestic Industry. Without prejudice, it is humbly requested that the Authority may kindly take into consideration the performance and production parameters of JK paper to ensure that the exclusion of JK paper is not done to wilfully distort the performance indices of the Domestic Industry.
- c) As per NCV petition, it is to be noted that while calculating total demand in India, the petitioner has not considered the sale made by JK Paper and simply calculated the same by adding imports and captive consumption & sale made by domestic industry. It was submitted that apart from JK Paper, there are other producers in India namely West Coast Paper Mills Ltd., Shree Krishna Papers Mills Ltd, Century Papers, and others. The Authority is hereby requested to ask the domestic industry to provide revised and complete information.
- d) IPMA should clarify (i) whether any of its members apart from BGPPL and JK Paper are producing coated paper & (ii) whether the information regarding production in the petition is of total production of coated paper in India or is based on information available to IPMA.
- e) If all the producers in India are not included while calculating total production then it cannot be definitively determined if the Petitioner constitutes major proportion of total domestic production for the purposes of standing as required under Rule 2(b) of the AD Rules. The Designated Authority should request specific information from the Domestic Industry regarding the producers of subject goods in India and their respective production before proceeding any further with the investigation.
- f) JK Paper is one of the constituents of domestic industry in the anti-dumping investigation on uncoated paper. However, it is not part of domestic industry in the present anti-dumping investigation. Petitioner has submitted during the hearing that JK paper has imported the product and therefore is excluded from the scope of domestic industry.
- g) Respondent submits that there is no automatic exclusion of domestic producer who is also an importer of the subject product. Designated Authority has the discretion to decide regarding the exclusion of the domestic industry. We request the Authority to examine the claim of domestic industry regarding exclusion of JK Paper from the scope of domestic industry. Respondent submits that JK Paper should also be included as a constituent of domestic industry to properly assess the production information of JK paper and also to arrive at a more representative determination of material injury.

- h) The Domestic Industry has ignored the claim of interested parties about existence of other coated paper producers by merely stating that no credible evidence is provided by the interested parties to substantiate the claim.

D.3. Examination by the Authority

11. Rule 2(b) of the AD Rules provides as follows:

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

12. The petition was filed by Indian Paper Manufacturers Association on behalf of domestic industry, M/s. BILT Graphic Paper Products Ltd, which is a producer of the subject goods in India. In the petition it was stated that there is one more known domestic producer of the product under consideration, namely, JK Paper Limited.
13. Other interested parties have raised an issue that apart from M/s. BILT Graphic Paper Products Ltd. and M/s. JK Paper Limited there are other domestic producers of the product under consideration in India.
14. The Authority has verified the information submitted by the domestic industry regarding total production in India and total production of the domestic industry and requested other known domestic producers as pointed out by various interested parties in their submissions regarding manufacturing of subject goods. M/s. Century Pulp and Paper, M/s. Star Paper Mills Ltd., M/s. Pudumjee Paper Products Ltd, M/s. West Coast Paper Mills Ltd. and M/s. Shree Krishna Paper Mills & Industries Ltd. stated that they are not the manufacturers of the subject goods. However, one domestic producer namely M/s. Seshasayee Paper and Boards Limited has submitted that they are a domestic producer of the subject goods having capacity of *** MT during POI. Therefore, the Authority notes that based on the information available with the Authority, Domestic industry accounts for ***% share in total production of the subject goods during period of investigation.
15. The Authority notes that petitioner company has neither imported the subject goods, nor it is related to an importer or exporter of the subject goods. Therefore, the Authority holds that the Petitioner commands a major proportion of the production of the subject goods in India. Therefore, for the purpose of this investigation the Petitioner Company satisfies the standing requirement and constitutes the domestic industry in terms of Rule 2(b) and Rule 5(3) of the AD Rules.

E. ISSUES RELATING TO CONFIDENTIALITY

E.1. Submissions by domestic industry

16. The following submissions have been made by the domestic industry with regard to confidentiality issues:

- a) Responding exporters/producers have claimed excessive confidentiality by not providing meaningful information in the public version of their questionnaire responses such as name of the shareholders, related party details, Indian channel of distribution etc. The respondents have not established and justified their confidentiality claims. If the Designated Authority is of the opinion that 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 a generalized form, then the Authority may elect to disregard such information.
- b) Responding exporters/producers in their responses have claimed confidentiality on their “related parties” information. The public search reveals that apart from Shouguang Meilun Paper Co., Ltd there is one more producer of the goods that is related to Shandong Chenming Paper Holdings Ltd namely, Jiangxi Chenming Paper Co. Ltd. Further, apart from Shandong Chenming Paper Sales Company Limited and Chenming (HK) Limited there is another related company that is engaged in the trade of the subject goods, namely, Qingdao Chenming International Logistics Co., Ltd. It is submitted that these two companies have not filed response in the present investigation. There is no clarity on the specific number of subsidiary companies and their names. The veracity of the claims with regard to related parties needs to be verified. The EQR has three subsidiary companies responding, i.e., Shougang Meilun Paper Co., Ltd, Chenming HK Ltd and Shandong Chenming Paper Sales Co. Ltd out of the five subsidiary companies involved in the business of production or sale of coated paper.
- c) Domestic industry submitted that disclosure of actual information with regard to domestic industry can jeopardize the future business in the product. As regards the volume information, petitioner information being the sole petitioner, the same have been legitimately treated as confidential. The said information is not available in public and thus they are not bound to disclose them.
- d) However, it is surprising to note that the exporters have claimed complete confidentiality on its data including information about exports, sales, production etc but are demanding the same information from the domestic industry. The yardsticks of claiming confidentiality cannot be different for domestic producers and exporters. Even the importer questionnaire response has absolutely no information disclosed.

E.2. Submissions by other interested parties

17. The following submissions have been made by other interested parties with regard to confidentiality issues:

- a) The Domestic Industry has provided a non-confidential version of the petition which involves data and information relating to five countries whereas the present investigation has been restricted only to three of those five countries. The data contained in the petition provided by the Domestic Industry is with respect to 5 countries and the cumulative analysis has also been done vis-a-vis 5 countries. Clearly, the non-confidential version of the petition provided by the Domestic Industry does not relate to the information/data contained in the

initiation notification and which presumably formed the basis of the Hon'ble Authority to initiate the present investigation.

- b) In the absence of a proper non-confidential version, the rights of the responding interested parties are severely prejudiced.
- c) Further, the non-confidential version filed by the Domestic Industry is also improper on account of the arbitrary claims of confidentiality on the basic information relating to the investigation. It was incumbent upon the applicant Domestic Industry to provide a proper non-confidential version of the application in terms of Rule 6(3) and the claim of confidentiality had to be allowed or disallowed by the Designated Authority in terms of Rule 7.
- d) Domestic industry has kept several key economic parameters as confidential in the petition. Without such information, the Respondents are not able to fully undertake a meaningful examination of injury parameters of the applicant industry. This claim of excessive confidentiality has significantly impaired the ability of the Respondents to defend their interests. It is submitted that the Designated Authority must evaluate the claims for confidentiality of information and not designate information as confidential without a proper examination.
- e) The party providing the information on a confidential basis may be of the opinion that such information is not susceptible to summarization and not furnish the non-confidential summary of such information. However, in such a case, Rule 7(2) of the AD Rules requires the party to submit a statement of reasons as to why summarization is not possible. A mere statement that "the summarization of the information is not possible" cannot fulfill the legal requirement to make a statement of reasons as to why summarization is not possible.
- f) The Designated Authority is also required to evaluate the claims of confidentiality and determine whether the information in question can be kept confidential or not. In the present matter, the claim for confidentiality has been granted automatically without a thorough evaluation of the information to which the confidentiality claim pertains.
- g) Petitioner has claimed confidentiality over actual figures of (i) capacity (ii) sales (iii) capacity utilization (iv) export sale (v) market share (vi) employees & (vi) demand. Actual figures for these parameters are disclosed in all the final findings issued by the Designated Authority. In relation to net sales realization, domestic industry has not even disclosed indexed numbers. These figures are disclosed in the final findings issued by the Authority in all anti-dumping investigations. For example, in the recently concluded anti-dumping investigation on *Sodium Dichromate from Russia, Kazakhstan, Turkey & South Africa*, Designated Authority disclosed actual figures for capacity, capacity utilization, sales, demand, & market share in its final findings. In fact, the actual figures were disclosed even though domestic industry comprised of single producer even in this anti-dumping investigation.
- h) In fact, in the previous anti-dumping investigation concerning coated paper, actual figures regarding total demand, capacity, capacity utilization, total number of employees and net selling price (net sales realization) of domestic industry in indexed form was also provided:

Particulars	Unit	2000	2001	2002
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Demand	MT	83,194	90,597	110,721
Market Share of BILT (domestic industry)	%	76.57	75.97	62.95

Source: Final Findings No. 14/7/2003 dt.15th December 2004, paras. 28 & 40

- i) Thus, there is no basis to claim confidentiality over these figures in the present anti-dumping investigation.

E.3. Examination by the Authority

18. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows:
- “Confidential information: (1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule(2) of rule 12, sub-rule(4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.*
- (2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.*
- (3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.”*
19. The Authority made available non-confidential version of the information provided by various interested parties to all interested parties through the public file containing non- confidential version of evidences submitted by various interested parties for inspection.
20. Submissions made by the domestic industry and other opposing interested parties with regard to confidentiality to the extent considered relevant were examined by the Authority and addressed accordingly. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority also notes that all interested parties have claimed their business-related sensitive information as confidential.

F. MISCELLANEOUS SUBMISSIONS

F.1. Submissions made by domestic industry

21. The following miscellaneous submissions have been made by the domestic industry:
- a) Some of the questions in the questionnaire seek information with regard to subsidies that are provided by the Govt. of the exporting country.
 - b) It would be seen that the responding exporters have claimed absence of any subsidies by their Govt. As per petitioner's understanding, many programs are being run by the Govt. of China wherein benefits are being provided to the exporters. The Indian Authority has also held that all the schemes are in operation and after detailed examination countervailed those subsidies. Under the circumstances, the statement of the exporters that there are no subsidy schemes of Government of China in operation is highly misleading and factually incorrect. The exporters are expected to report about the subsidy schemes in operation whether they have availed any benefits or not. We request the Authority to reject the questionnaire response considering the serious nature of the misleading, incomplete or otherwise deficient questionnaire response.
 - c) Regarding claims of the import volumes being unreliable as they include imports from 2 non subject countries, Korea and Indonesia, the domestic industry states that the confidential version of the application was filed considering the injury being caused from 5 countries and hence the petition contains import volumes of the 5 proposed subject countries. The investigating authority considered it appropriate to initiate and proceed with the investigation against the current set of subject countries. The requirement is that the interested parties should get a copy of the petition relied upon by the Designated Authority, i.e., the information considered by the Authority for initiation which is what the domestic industry had provided upon initiation of investigation. Moreover, the annexures and petition filed after initiation also has separate volume for each of the subject country and the interested party can analyse the share of the volume of subject imports. However, as was stated at the time of the hearing, the domestic industry has already filed the revised information along with the post hearing written submissions.

F.2. Submissions made by other interested parties

22. The following miscellaneous submissions have been made by other interested parties:
- a) Domestic industry has stated that IPMA maintains production data of paper producers but domestic industry has not disclosed source of sales data of other producers.
 - b) There is no information at all in the petition regarding cash flow, productivity, wages, profit before interest and tax (PBIT), depreciation cost and interest cost. Productivity, cash flow, wages are mandatory injury parameters specified in para (iv) of Annexure II of the Anti-Dumping Rules.

F.3. Examination by the Authority

23. Various submissions made by the interested parties with regard to miscellaneous issues and considered relevant by the Authority are examined and addressed as follows:

As regards the issue of subsidies provided by the Government of China, it is noted that the present investigation is an anti-dumping investigation and therefore, the Authority is not examining the subsidies provided by the Government of China.

G. MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE & DETERMINATION OF DUMPING MARGIN

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

- (i) *the comparable price, in the ordinary course of trade, for the like article when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6); or*
- (ii) *When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:*
 - (a) *Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (b) *the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

G.1. Submissions by the Domestic Industry

25. The following submissions have been made by the domestic industry:

- a) It is submitted that the respondents from China PR should not be granted market economy treatment unless the responding exporters satisfy each & every of the following conditions.

- i. Market economy status cannot be given in a situation where one of the major shareholders is a State owned/controlled entity –It needs to be ascertained whether there is any shareholder which is a state owned entity. The Designated Authority and the EC has consistently held that possibilities of State interference cannot be ruled out in such cases. It is being held that it is not only the question of past interferences alone, but also possibilities of potential State interference in the future after the imposition of anti-dumping duties that is relevant for market economy treatment.
- ii. Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values – “substantially reflect market values” has been widely interpreted to mean that the price of these inputs must be comparable to the prices prevailing in the international market.
- iii. Market economy status cannot be given unless the responding exporter establish that their books are audited in line with international accounting standards – market economy treatment must be rejected in such situations where Chinese exporters are unable to establish that their books are consistent with International Accounting Standards (IAS). The requirement on insisting compliance with International Accounting Standards is to ensure accuracy and adequacy of revenues and expenses, assets and liabilities expressed in the annual report.
- iv. Market economy status cannot be granted even if one of the parameters is not satisfied – market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules. This situation is just the opposite of the test required for material injury. It is well acknowledged position that a positive finding of injury can be recorded even if one single parameter establishes injury. Thus, while one parameter is sufficient to establish existence of injury, failure to pass one single parameter is sufficient to reject the claim of market economy status.
- v. Onus/obligations – it is not for the Authority to establish that the responding companies are indeed operating under market economy environment and is entitled for market economy treatment. On the contrary, it is for the responding Chinese exporters to establish that they are operating under market economy conditions.
- vi. Response from group as a whole – Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group have not filed the response, market economy status must be rejected.
- vii. Transformation – In a situation where the current shareholders have not set up their production facilities themselves but have acquired the same from some

other party, market economy status cannot be granted unless process of transformation has been completely established through documentary evidence

- b) The authority should investigate and ascertain all the changes in the ownership since setting up the initial plant in China, if any, that can have an impact. The history of development forms the basis of giving/denying market economy treatment. The exporter is required to establish that prices of inputs substantially reflect the market values. Further, the Designated Authority has earlier held that “substantially reflect market value” is not with reference to Chinese market price. The same is with reference to international prices. The exporter has provided no evidence to establish that prices of inputs substantially reflected market value. The possibility of material being supplied to some other related/unrelated company and exported to India by such related/unrelated entity cannot be ruled out from the present response. There are past determination of Designated Authority where the Designated Authority refused individual dumping margins and duties whenever the Designated Authority found that the value chain was incomplete.
- c) Normal value in case of the European Union and the USA has been determined on the basis of the import prices in the respective countries. The other interested parties have contended that there is no legal basis to determine normal value on the basis of the prices of worldwide imports into the European Union. On the contrary, when information with regard to consumption price in the domestic market of the exporting country is available, it is that information that needs to be correlated. Imports of subject goods into EU and USA are significant. The import price into these countries shows the price prevailing in the domestic market of these subject countries. Thus the petitioner has determined normal value at the stage of initiation in accordance with law.
- d) The petitioner had relied upon DGCI&S published data, to assess the volume and value of subject imports into India, at the stage of initiation of investigations. The export price was calculated at the CIF level, while the normal values were at ex-factory level. The export prices were adjusted for expenses on Ocean Freight, Marine insurance, Commission, Inland Freight, Port expenses, Bank charges and VAT adjustment (for China PR). Since the petitioner has provided transaction wise import data, the petitioner has provided revised calculations of normal value, export price and dumping margin.

G.2. Submissions by the other interested parties

26. The following submissions have been made by other interested parties:

- a) Determination of normal value and dumping margin should be based on the information provided by the exporters/producers from subject countries.
- b) It must be noted that in the present case, the Hon’ble Designated Authority has deemed it appropriate to exclude Korea RP and Indonesia from the scope of this investigation on the grounds that the import prices evidenced an absence of dumping. It is submitted that this approach of the Designated Authority is discriminatory by initiating the investigation against China PR, EU and USA while excluding Korea RP and Indonesia. It is submitted

that this exclusion is inconsistent with regards to Rule 14(d), Rule 5(2) and Rule 5(3)(b) of the AD Rules.

- c) If the Hon'ble Designated Authority does discriminate between the countries for the purposes of imposing an anti-dumping duty, it would be in violation to the Most Favoured Nation (MFN) treatment as enshrined under Article 1 of the GATT 1947.
- d) It is further submitted that the volume of the imports from Korea RP and Indonesia is above the 3% de minimis threshold as laid out under Rule 14(d) of the AD rules. The exclusion of Korea RP and Indonesia even when their import volumes are above the threshold is unjustified. This exclusion is even more erroneous as the calculation of dumping to justify this exclusion has not been made available to the interested parties.
- e) Indian Investigating Authority has issued a separate questionnaire to exporters from China PR seeking voluminous information from exporters from China PR with regard to claims of Market Economy status. China PR had been treated as a Non-Market Economy country by India in the past. It is hereby submitted that in accordance with relevant provisions of the Protocol on China's accession to the WTO, the "surrogate country" practice in Anti-Dumping actions should be lacking in multilateral legal basis since 11th Dec, 2016. Such practice is bound to expire from then on. It is requested to the Authority not to use "surrogate country" methodology in calculating the normal value for this case, regardless of whether treating China as a market economy country or not.
- f) Domestic Industry has incorrectly stressed the relevance of import price of PUC in EU and USA for the purpose of determination of normal value. EU is a market economy territory. The normal value in case of market economy countries is determined in accordance with Section 9A (c) of the Customs Tariff Act. Section 9A (c) provides that normal value shall be based on (i) domestic sales of like article in such country or when such information is not available or reliable (ii) comparable price of like article when exported from such exporting country to an appropriate third country or (iii) 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.
- g) There is no legal requirement to further correlate the normal value determined in this manner with the import price of the PUC in the concerned market economy country.
- h) Respondents have filed the questionnaire response and have furnished all the relevant information. The Domestic Industry has wrongly claimed that information is not provided regarding the complete value chain. Related entities of the Respondents noted by the Domestic Industry are not involved in the production or exports of the PUC to India. Thus, there is no requirement to file response for related entities.
- i) In the petition filed by the Domestic Industry, CIF price/export price per unit from the EU was much higher. However, in the updated data, for reasons best known to the Domestic Industry, the CIF price/export price from the EU has reduced drastically.

Particulars	Unit	2013-14	2014-15	2015-16	POI (A)	POI
CIF Price as per petition	MT	52,476	52,391	51,338	49,796	49,796
CIF Price as per updated data	Rs/MT	44,714	42,571	42,205	41,286	41,286

- j) There are substantial variations in the import price (CIF) without any further explanation. This adds to the already highlighted inaccuracies, contradictions and unreliability of import data provided by the Domestic Industry.
- k) In any case, determination of normal value & dumping margin is required to be made based on the information provided by the Respondents in the questionnaire response. Thus, claim regarding increased dumping margin and lower export price is inconsequential.

G.3. Examination by the Authority

27. Under section 9A (1) (c) normal value in relation to an article means:

- a) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or
- b) 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:
 - (i) *comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or*
 - (ii) *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);*
- c) The Authority sent questionnaires to the known exporters from the subject countries, advising them to provide information in the form and manner prescribed. However, barring the following producers and exporters, none of the other producers/ exporters from subject countries co-operated in this investigation by filing the prescribed questionnaire responses:
 - (i) M/s. Gold Huasheng Paper (Sozhou) Industrial Park) Co. Ltd. (GHS)
 - (ii) M/s. Hainan Jinhai Pulp & Paper Co. Ltd. (JHPP) and
 - (iii) M/s. Gold East Trading (Hong Kong) Company Limited (GEHK)
 - (iv) M/s. Gold East Paper (Jiangsu) Co. Ltd. (GE)
 - (v) M/s. Upm Gmbh, Germany
 - (vi) M/s. Upm Paper Ena Oy, Finland
 - (vii) M/s. Upm Specialty Papers Oy, Finland
 - (viii) M/s. Upm Sales Oy, Finland
 - (ix) M/s. Shandong Chenming Paper Holdings Limited
 - (x) M/s. Shandong Chenming Paper Sales Ltd.
 - (xi) M/s. Shouguang Meilun Paper Co. Ltd., China PR
 - (xii) M/s. Chenming (HK) Limited, Hong Kong

- (xiii) M/s. PG Paper Company Ltd.
- (xiv) M/s. Sappi Alfeld GmbH,
- (xv) M/s. Sappi Enningen GmbH,
- (xvi) M/s. Sappi Gratkorn GmbH,
- (xvii) M/s. Sappi Finland Operations Oy (Kirkniemi),
- (xviii) M/s. Sappi Lanaken NV,
- (xix) M/s. Sappi Maastricht B.V.,
- (xx) M/s. Sappi Stockstadt GmbH
- (xxi) M/s. Sappi Europe SA

28. Article 15 of China's Accession Protocol provides as follows:

"Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

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

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

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

(b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.

(c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.

(d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.”

29. At the stage of initiation, the Authority proceeded with the presumption that there are significant distortions prevailing in the industry producing the subject goods in China PR. Upon initiation, the Authority advised the producers/exporters in China PR to respond to the notice of initiation and provide relevant information to demonstrate prevalence of market conditions related to manufacture, production and sales of the subject goods in the domestic market and in exports to India and other countries. The Authority sent copies of supplementary questionnaire to all the known producers/ exporters for providing information in regard to the criteria laid down in Para 8(3) of Annexure-I to the Rules. The Authority also requested the Government of China PR to advise the producers/ exporters in China PR to provide the relevant information.
30. Article 15 implies that provisions of one of the subparagraph shall expire 15 years from date of China's Accession. The provisions of this paragraph expired on 11th December, 2016. Since the factum of dumping causing injury to the domestic industry is established based on investigation period, the conditions prevalent during the investigation period is relevant, appropriate and necessary for the purpose of present investigation. The Period of Investigation (POI) for the purpose of the present investigation is April, 2016 to June, 2017. Since the subparagraph of Article 15 was in existence during the major part of the period of investigation, the Authority shall use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
31. The Authority notes that in the past three years, China PR has been treated as non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules.

Examination of Market economy claims

32. As per Paragraph 8 of Annexure I of the Anti-Dumping Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to

enable the Designated Authority to consider the following criteria as to whether:

- i. The decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and 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;
- ii. The production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- iii. Such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- iv. The exchange rate conversions are carried out at the market rate.

G.4. Determination of Normal Value and Export Price for cooperating producers and exporters in China PR

G.4.1. Determination of Normal Value for producers and exporters in China PR

33. It is noted that one Chinese group consisting of Gold East Paper (Jiangsu) Co. Ltd. Gold Hua Sheng Paper (Suzhou Industrial Park) Co. Ltd., Hainan Jinhai Pulp & Paper Co. Ltd and Gold East Trading (Hong Kong) Co. Ltd claimed market-economy treatment. However, they withdrew their claim during the course of the investigation. No other Chinese producer/exporter has claimed market economy treatment. Therefore, the Authority has determined the normal value on the basis of best facts available and the same is shown in the Dumping Margin Table at para 52.

G.4.2. Export Price for China PR

A. Export price for case of M/s Shouguang Meilun Paper Co., Ltd. & M/s Shandong Chenming Paper Holdings Ltd., (Producers) along with its trader M/s Chenming (HK) Limited (Exporter) Hong Kong

34. From the response filed by producers/exporters, Authority notes that M/s Shouguang Meilun Paper Co., Ltd. and M/s Shandong Chenming Paper Holdings Ltd., China PR are related and have exported the subject goods to India during the POI through related trader namely M/s Chenming (HK) Limited (Exporter), Hong Kong. The producers have claimed adjustments on account of inland freight, handling charges, overseas freight, credit cost, bank charges, etc. and the same have been allowed by the Authority for computation of the export price at ex-factory. It is also noted by the authority that trader has exported the subject goods at loss and therefore appropriate adjustment has been made for loss incurred by the trader. Further, Authority has made appropriate adjustment on

account of Non-Refundable VAT. Accordingly, ex-factory export price for the participating producers has been determined as USD *** per MT.

B. Export Price for Gold East Trading (Hong Kong) Company Limited (“GEHK”)

35. From the response filed by Gold East Trading (Hong Kong) Co. Ltd (“GEHK”), Authority notes that GEHK gets the goods manufactured by its three related producers namely Gold East Paper (Jiangsu) Co. Ltd. (GE), Gold Hua Sheng Paper (Suzhou Industrial Park) Co. Ltd. (GHS) and Hainan Jinhai Pulp & Paper Co. Ltd. (JHPP). GEHK supplies the raw materials (pulp and some chemicals), which are imported into China under the Processing Trade procedure, for toll manufacturing by above three producers. The subject goods manufactured by these producers are exported by GEHK to India and other countries. GEHK retains the ownership of the raw materials as well as that of the final products manufactured by these producers. Accordingly, GEHK is the exporter of the subject goods to India.
36. It is noted that GEHK has claimed adjustment on account of ocean freight, clearance & handling charges, overseas insurance, inland freight, commission, bank charges and credit cost. Further, Authority has made appropriate adjustment on account of Non Refundable VAT. Accordingly, ex-factory export price for GEHK has been determined as USD *** per MT.

C. Export Price for non-cooperating producers and exporters from China PR

37. The Authority notes that no other producer/exporter from China PR has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in China PR, the Authority has determined the export price on the basis of facts available and the same is shown in the Dumping Margin Table at para 52.

G.5. Determination of Normal Value and Export Price for cooperating producers and exporters in European Union

G.5.1. Determination of Normal Value for producers and exporters in European Union

A. Normal Value for M/s. UPM Communication Papers Oy (formerly known as UPM Paper ENA Oy), (b) M/s. UPM Specialty Papers Oy, (c) M/s. UPM GmbH and exporter/trader M/s. UPM Sales Oy (“UPM Group”)

38. From the response filed by producers in UPM Group i.e. M/s. UPM Communication Papers Oy, M/s. UPM Specialty Papers Oy and M/s. UPM GmbH, authority notes that all companies have made sales of product under consideration in domestic market during the POI through their related company M/s. UPM Sales Oy. It is noted that all the producer companies in UPM Group sell the entire production to M/s. UPM Sales Oy and M/s. UPM Sales Oy carries out domestic sales as well as exports to India and other countries. It was also noted that domestic sales were made to related as well unrelated customers in EU. However, the prices to related customers were higher than the prices to unrelated customers.

39. To determine the normal value, the authority conducted the ordinary course of trade test to determine profit making domestic sales transactions with reference to cost of production and SGA expenses of product under consideration. If profit making transactions are more than 80% then the Authority has considered all the transactions in the domestic market for the determination of the normal value and in case, profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value.
40. In this case, based on the ordinary course of trade test, all domestic sales have been taken for determination of normal value, since the profitable sales were more than 80%. M/s. UPM Sales Oy has claimed adjustments for inland transportation, ocean freight, insurance, handling and other expenses, credit cost, commission & rebate/discount and the same have been allowed by the authority. While arriving at ex-factory normal value, Authority has also deducted the SGA expenses incurred by M/s. UPM Sales Oy. Accordingly, normal value at ex-factory level for the participating producers has been determined as USD *** per MT for UPM Group.

B. Normal Value for M/s. Sappi Alfeld GmbH, M/s. Sappi Enningen GmbH, M/s. Sappi Gratkorn GmbH, M/s. Sappi Finland Operations Oy (Kirkniemi), M/s. Sappi Lanaken NV, M/s. Sappi Maastricht B.V., M/s. Sappi Stockstadt GmbH and M/s. Sappi Europe SA (“SAPPI Group”)

41. From the response filed by the above-mentioned producers in SAPPI Group, the Authority notes that all companies have made sales of subject goods in domestic market during the POI. The Authority examined the domestic sales made by the SAPPI Group and noted that the sales in the domestic market are representative when compared to exports of the product under consideration to India.
42. The Authority has, therefore, decided to determine the normal value based on domestic sales of the SAPPI Group. To determine the normal value, the Authority conducted the ordinary course of trade test to determine profit-making domestic sales transactions with reference to cost of production of product under consideration for each company in the group. If profit making transactions are more than 80% then the Authority has considered all the transactions in the domestic market for the determination of the normal value and in case, profitable transactions are less than 80%, only profitable domestic sales are taken into consideration for the determination of normal value.
43. The companies in SAPPI Group have claimed adjustments for commission, claims, inland freight, delivery charges and inland insurance and the same have been allowed by the Authority. Accordingly, normal value at ex-factory level for the participating producers has been determined as USD *** per MT.

C. Normal Value for non-cooperating producers and exporters from European Union

44. The Authority notes that no other producer/exporter from EU has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in EU, the Authority has determined the normal value at ex-factory level on the basis of best available information and the same is shown in the Dumping Margin Table at para 52.

G.5.2. Export Price for European Union

A. Export Price for M/s. UPM Communication Papers Oy (formerly known as UPM Paper ENA Oy), (b) M/s. UPM Specialty Papers Oy, (c) M/s. UPM GmbH and exporter/trader M/s. UPM Sales Oy (“UPM Group”)

45. From the response filed by producers in UPM Group i.e. M/s. UPM Communication Papers Oy, M/s. UPM Specialty Papers Oy and M/s. UPM GmbH, authority notes that all companies have exported the product under consideration to India during the POI through their related company M/s. UPM Sales Oy. All exports to India have been made to unrelated customers.
46. Accordingly, the Authority has worked out the ex-factory export price taking the export price to unrelated Indian customers and making adjustments on account of inland transportation, ocean freight, insurance, handling and other expenses, credit cost, sales commission & rebate/discount. While arriving at ex-factory export price, Authority has also deducted the SGA expenses incurred by UPM Sales Oy. Accordingly, ex-factory export price for the participating producers has been determined as USD *** per MT for UPM Group.

B. Export price for M/s. Sappi Alfeld GmbH, M/s. Sappi Enningen GmbH, M/s. Sappi Gratkorn GmbH, M/s. Sappi Finland Operations Oy (Kirkniemi), M/s. Sappi Lanaken NV, M/s. Sappi Maastricht B.V., M/s. Sappi Stockstadt GmbH and M/s. Sappi Europe SA (“SAPPI Group”) and M/s. PG Paper Company Ltd (“PGCPL”)

47. From the response filed by producers and exporters involved in the sales to India, the authority notes that during the POI sales to India were made by the producers in the SAPPI Group, through a related trader i.e. Sappi Europe SA as well as the unrelated trader PGCPL. The Authority notes that both traders have filed their questionnaire responses, and their respective responses have been duly verified. All exports to India have been made to unrelated customers.
48. Accordingly, the Authority has worked out the ex-factory export price taking price to unrelated Indian customers and making adjustments on account of commission, claims, shipping cost, insurance and bank charges, along with SG&A expenses of the traders involved. It is also noted by the authority that PGCPL has exported the subject goods at loss, therefore, appropriate adjustment has been made for loss incurred by PGCPL and the ex-factory export price has been determined as USD *** per MT for SAPPI Group.

C. Export Price for non-cooperating producers and exporters from EU

49. The Authority notes that no other producer/exporter from EU has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in EU, the Authority has determined the export price on the basis of best available information and the same is shown in the Dumping Margin Table at para 52.

G.6. Determination of Normal Value and Export Price for cooperating producers and exporters in USA

G.6.1. Determination of Normal Value for producers and exporters in USA

50. The Authority notes that no producer/exporter from USA has responded to and cooperated with the Authority in the present investigation. For all the non-cooperative producers/exporters in USA, the Authority has determined normal value at ex-factory level for the subject goods on the basis of best available information and the same is shown in the Dumping Margin Table at para 52.

G.6.2. Export Price for other producers and exporters in USA

51. The Authority notes that no other producer/exporter from USA has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in USA, the Authority has determined the export price for the subject goods on the basis of best available information and the same is shown in the Dumping Margin Table at para 52.

G.7. Dumping Margin Table

52. The dumping margin during the POI for all exporters/producers from the respective subject countries have been determined as provided in the table below:

S.No	Country	Producer	Exporter	Constructed Normal Value/ Normal Value	Net Export Price	Dumping Margin	Dumping Margin	Dumping Margin
				(USD/MT)	(USD/MT)	(USD/MT)	(%)	(Range)
1	China PR	a. M/s Shouguang Meilun Paper Co., Ltd. b. M/s Shandong Chenming Paper Holdings Ltd.,	M/s Chenmin g (HK) Limited	***	***	***	***	60-70

S.No	Country	Producer	Exporter	Constructed Normal Value/ Normal Value	Net Export Price	Dumping Margin	Dumping Margin	Dumping Margin
2	China PR	Gold East Trading (Hong Kong) Company Limited	Gold East Trading (Hong Kong) Company Limited	***	***	***	***	60-70
3	China PR	All Others	All Others	***	***	***	***	90-100
4	European Union	a. Sappi Alfeld GmbH b. Sappi Enhingen GmbH c. Sappi Gratkorn GmbH d. Sappi Finland Operations Oy (Kirkniemi) e. Sappi Lanaken NV f. Sappi Maastricht B.V g. Sappi Stockstadt GmbH	a. Sappi Europe SA b. PG per Company Ltd	***	***	***	***	25-35
5	European Union	a. M/s. UPM Communication Papers Oy b. M/s. UPM Specialty Papers Oy, c. UPM GmbH	M/s. UPM Sales Oy	***	***	***	***	(5)-0
6	European Union	All Others	All Others	***	***	***	***	70-80
7	USA	All	All	***	***	***	***	140- 150

H. INJURY ASSESSMENT AND CAUSAL LINK

H.1. Submission made by the Domestic Industry

53. The submissions made by domestic industry are as follows:

- a) It has been contended by some interested parties that the period of investigation does not end as close to the initiation. It is submitted that April 2016-June 2017 was a recent period, as the notice of initiation was issued in January, 2018. There have been several past cases wherein the POI was marginally more than 6 months old. In any case, the performance of the domestic industry for post POI can also be evaluated, if considered relevant by the Authority. The performance of the domestic industry will continue to be adverse on account of dumped imports.
- b) It has been argued that prices of import from EU is higher than that from China and US. The domestic industry states that, the imports from EU are competing with goods exported from China and USA as well as goods produced and sold by the domestic industry and thus cumulative assessment is justified.
- c) The assessment of demand can be seen as the sum of domestic industry sales, other Indian producers' sales and imports from all sources. The demand for the product under consideration, as can be seen from the petition, has increased throughout the injury period and shows a positive trend.
- d) It has been argued that the demand in the country has increased and considering the shutdown of the domestic industry operations for a major period in the POI, the lack of availability of the PUC resulted in increase in import volumes. The domestic industry agrees that the domestic industry went through shut down for a major period of the POI. However, the domestic industry states that despite making adjustments for the shutdown suffered by the domestic industry by same considering the maximum capacity utilization achieved by the domestic industry in 2015-16, imports would still show increase in absolute as well as relative terms.
- e) Import price from subject countries declined significantly in the POI without corresponding decline in the raw material costs. This has been the primary reason for the injury caused to the domestic industry.
- f) The landed price of imports from subject countries as a whole as well as individually from each subject country has been below the net sales realization of the domestic industry over the injury period. Thus, the imports are undercutting the prices of the domestic industry in the market. The extent of undercutting has increased in the POI.
- g) If adjusted data at optimum level is considered, it would be seen that whereas the optimized cost of sales increased, selling price increased over the injury period however the increase in selling price is much less than the increase in costs. The landed prices of the subject imports remained much below the optimized cost of sales too throughout the injury investigation period. Thus, it can be seen that the imports have had a suppressing and depressing effect on the prices of the domestic industry.
- h) The petitioner has also compared the landed price of the subject goods with the optimized non-injurious price of the domestic industry. A comparison of the two clearly shows that the landed

price of the subject goods is much below the non-injurious price, resulting in positive underselling and/or injury margin from all the subject countries.

- i) There has been significant increase in imports in absolute terms as well as in relative terms. Further, imports are undercutting the domestic price and the price undercutting led to depressing effect on the prices of domestic industry in the market and the effect of such dumped imports is likely to further suppress and depress the prices to a significant degree.
- j) The production and sales of the domestic industry has declined over the injury period. While it is accepted that the decrease in production and sales is also attributed to the shutdown that the domestic industry had to undertake, petitioner submits that significant low priced imports from subject countries have led to the decline in the prices in the market even when the domestic industry was having much lower volumes to sell.
- k) The market share of the domestic industry has declined over the injury period, even after adjusting the production for the effect of shutdown suffered and appropriately adjusting the sales. However, despite such low volumes and market share with the domestic industry, the foreign producers reduced their prices significantly.
- l) The profits of the petitioner company increased in 2014-15 after which they show a decline in 2015-16 and turned negative in the period of investigation. The cash profits also show the same trend as that of profits and turned negative in the period of investigation. The ROCE of the petitioner company shows a continual decline throughout the injury investigation period. While petitioner considers that their operations were impacted both by low priced imports and consequent financial constraints faced by industry; in order to clearly establish that the domestic industry would have suffered injury in this period even if they would have produced to the extent of optimum production in the past, the petitioner has determined the profitability of domestic industry considering the production achieved in the past. Further, in view of the fact that the number of different product types were sold during the relevant period, the product mix of the industry as maintained in 2015-16 was considered in order to determine the profitability of the domestic industry as would have been prevalent during the POI. The relevant profitability statement is enclosed on confidential basis. Accordingly, petitioner has updated the injury statement showing the position as would have prevailed, had the domestic industry produced at the level of optimum production. It would be seen that the domestic industry would have still suffered financial losses. Evidently, the domestic industry has suffered because of low price dumped imports of the PUC from subject countries. The landed price of imports is below the level of selling price and cost of sales of the domestic industry. The significant increase in low priced imports are likely to lead to losses to the domestic industry.
- m) The inventories of the domestic industry increased till 2015-16 but declined in the period of investigation. It is also to be noted that despite undertaking shut down and having to produce and sell reduced quantities, the level of inventory remained significant. The employment levels of the domestic industry and wages paid too show a continuous decline throughout the investigation period.
- n) The existing capacity with the petitioner is largely unutilized. With current capacity being unutilized and losses being incurred by the domestic industry, the ability of the petitioner to raise capital has weakened.

- o) The impact of dumping of the subject goods from the subject countries has been adverse on the domestic industry. The petitioner has calculated dumping margin which is positive and significant.
- p) The imports of the subject goods from the subject countries have increased throughout the injury investigation period. There was a continuous increase in the volumes of the subject imports. Imports even after adjustment for the shutdown that the domestic industry had to undertake, shows an increasing trend, which clearly shows that the increase in imports was not solely because of suspension of production by the petitioner. This clearly shows threat of further increase in imports to the already existing high volumes of the dumped imports. Such rise in the import volumes coupled with unfair prices will decimate the domestic industry.
- q) There has been a decline in the production as well as the demand of the PUC in China. However, the decline in demand is much more than the decline in capacity and production. It can be seen that the demand is almost half of the total capacity in China in the year 2017. This alone signifies the extent of unused capacities and inventory levels in China.
- r) The development of Coated Paper in China was done in two phases, from 2009 to 2011 and from 2011 to 2015. During 2009-2011, the main objective of the Chinese producers was to go into an expansion mode and set up huge capacities for the product concerned. This led to a rise in the capacity levels from 5.79 million tons in 2009 to 7.99 million tons in 2011. This eventually led to an increase in the production levels of the product concerned. The same increased from 5 million tons in 2009 to 6.71 million tons in 2011.
- s) The second phase of the Coated Paper industry in China PR was from 2011 to 2015. The Chinese producers faced the problem of over capacities in this phase that emerged from the massive expansion steps taken in the first phase. It was more so impacted because of the rise in the usage of electronic media and the reduction in the print media advertising along with the decline in demand and idle capacities because of the first phase expansion.
- t) The level of inventories available with the producers in subject countries could not be ascertained by the domestic industry. However, in view of the fact of significant capacity available with the producers in the subject countries and the decline in demand of the PUC in the subject countries, it can be fairly assumed that the foreign producers can scale up production in a short period and still do hold significant inventory levels.
- u) Petitioner has presented an elaborate non-attribution analysis in the petition and established that (a) the listed known factors have not caused claimed injury to the domestic industry, (b) there are no factors other than dumped imports that are causing injury to the domestic industry. At the same time, it is not a legal mandate that the dumping of the product under consideration should be the sole cause of injury to the domestic industry. So long as dumping is one of the causes of injury to the domestic industry, it must be concluded that causal link requirements are met.
- v) The imports of product under consideration from other countries are either negligible in volume or are at higher prices; the claimed injury is on account of domestic operations and not on account of export sales as is evident from costing and injury information provided for domestic sales separately; the technology as also the production process for producing subject goods has not undergone any significant development/change; performance of other products being produced and sold by the petitioner is not a possible cause of injury to the domestic industry as the information provided is only for the subject goods; there is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

- w) Petitioner Company is a part of an established responsible corporate Ballarpur Industries Limited (BILT) which is India's largest manufacturer of writing and printing (W&P) paper and has a good investor relationship. All the information is regularly published on the website of the companies. The fact of shut down has been specifically mentioned in the annual report which is a part of the petition filed. Thus, it was not the intention of the domestic industry to mislead or hide facts from the Authority.
- x) Petitioner has two plants, at some time one plant was shut and for some time the other plant. Thus, there was reduction in the production level of the petitioner; however there was production for most of the months. Further, petitioner sold the subject goods during all the months covered in the POI as would be seen from the Q-15 filed by the petitioner along with the petition filed earlier. Further, even for those months when the domestic industry had significant production, imports show positive dumping and injury margin. The level of margins is also similar. Thus, there is no change in the behaviour of the exporters irrespective of the fact of the quantity of domestic industry's production. Thus, even if the domestic industry had been producing continuously the fact of dumping and injury would have remained true.
- y) Domestic industry has also supplied the information relating to the shutdown. The information still shows increase in imports causing injury to the Domestic Industry at the optimum costs of the domestic industry which were based on the capacity utilization levels as were achieved in 2015-16 and the same would evidence that despite considering those costs, the domestic industry has been a victim of the injury caused by unfairly priced imports from the subject countries. The data clearly shows even at those optimum levels the domestic industry would and is suffering injury and the imports by the subject countries are being dumped.
- z) Production by the domestic industry declined during the POI because of the shutdown faced by the domestic industry. But despite that shutdown, it can be seen that the landed prices of the subject imports declined significantly during the POI. The revised information attached with the written submission would show that even if the production during POI was adjusted on the basis of the capacity utilization levels achieved by the Domestic Industry in 2015-16, there was an increase in import volumes throughout the injury investigation period, the imports increased significantly in the POI with a decline in prices. Even at those adjusted levels, the imports are being dumped into the country leading to an increase in the already existing injury to the domestic industry. In any case, demand supply gap does not justify dumping.
- aa) The contention of various interested parties that the injury is due to other factors and not because of the imports is incorrect. As stated earlier, while petitioner considers that their operations were impacted both by low priced imports and consequent financial constraints faced by industry; in order to clearly establish that the domestic industry would have suffered injury in this period even if they had produced to the extent of optimum production in the past, petitioner has determined the profitability of domestic industry considering the production achieved in the past. Further, in view of the fact that the number of different product types were sold during the relevant period, the product mix of the industry as maintained in 2015-16 was considered in order to determine the profitability of the domestic industry as would have prevailed during the POI. It would be seen that the domestic industry would have still suffered financial losses. Evidently, the domestic industry has suffered because of low price dumped imports of the PUC from subject countries.

- bb) All the conditions for cumulative assessment are fulfilled in the present case. In particular, the imports from EU is competing with goods exported from China and USA as well as goods produced and sold by the domestic industry and thus cumulative assessment is justified. Further, if the prices are higher from EU then it will get a lower injury margin and thereby lower quantum of duty.

H.2. Submission by other interested parties

54. The submissions made by the exporters, importers, users and other interested parties with regard to injury and causal link, considered relevant by the Authority, are as follows:

- a) The performance of BILT deteriorated due the phenomenal increase in their cost which is mainly on account of sudden increase in their finance cost and selling expenses. Therefore, it is submitted that the Domestic Industry has not suffered any injury on account of the allegedly dumped imports but the injury to them is on account of factors other than the imports.
- b) The petitioner company is suffering injury because of bad investment decisions and other liquidity issues. There is no relationship between the imports from subject countries and performance of the Domestic Industry.
- c) Anti-dumping duties on the raw material (Sodium Chlorate) has impacted the business relating to the Product under Consideration.
- d) Other player in the market namely J K Paper is doing exceedingly well. They achieved the highest production of paper in their history - 4.70 lakh MT in 2016-17 against 4.50 lakh MT in the previous year. Their output during the year under review corresponded to a capacity utilization of 103 per cent as against 99 per cent in 2015-16. The company also produced 2.82 Lakh MT of pulp.
- e) There is no causal link between the allegedly dumped imports and the injury to the Domestic Industry. Therefore, the Authority is requested to terminate the present investigation in view of the fact that any injury suffered by the Domestic Industry is caused by factors other than imports and the same is not at all linked to the allegedly dumped imports. It may be noted that it is for the first time that the petitioner has provided revised injury information taking into consideration the three subject countries in its written submissions and the evidence relating to the threat of material injury to the Domestic Industry. It may kindly be noted that neither the petition filed by the Domestic Industry nor the initiation notification even remotely indicates that the investigation proposes to examine the "threat of material injury" also. Clearly, the "threat of material injury" being inherently different from material injury in terms of rule 11, such a claim cannot be entertained at this stage of the investigation. In this regard, the responding parties submit that such new information cannot be taken into consideration at this stage of the investigation. Effectively, the petitioner, by way of the said additional information has revised the entire application which is not only against the express provisions of law but are also grossly violative of the basic principles of natural justice. Acceptance of additional information from the Domestic Industry, which de facto amounts to a new application, is not envisaged in law and completely undermines the very purpose of the oral hearing.

- f) Further, it has been the consistent practice of the Authority to reject the data and evidence filed after the public hearing. The Authority has been consistently rejecting the data and information filed at the belated stage of the investigation for the reason that other parties do not get an opportunity to present their view on such data. Therefore, it is requested that the Authority may kindly reject the new information submitted by the petitioner after the hearing and disregard such information while making the determination in the present case.
- g) The Domestic Industry has suffered injury on account of its prolonged shut down, inefficient management, financial turmoil and unviable investment decisions. It is a matter of record that the Domestic Industry has been facing financial constraints for past few years and their costs have skyrocketed.
- h) The conditions of competition between EU products, imports from the US and China and the domestic products do not support a cumulative assessment. Imports from EU have not caused any injury to the domestic industry and therefore no measures should be imposed against imports from the EU.
- i) There is a lack of causality, as the injury allegedly suffered by the domestic industry is not related to the increase in imports but is in fact self-inflicted.
- j) The facts on the record reveal that, the petitioner has exaggerated the increased imports of the subject product, and deliberately invented material injury to the domestic industry. If the investigating authority continues the investigation, it shall be determined that there is no increase in imports of the subject product which has caused injury to the petitioner.
- k) Initially, the application for initiation of present anti-dumping investigation was filed against five subject countries namely China PR, EU, Indonesia, South Korea and USA. However, the Designated Authority vide its initiation notification excluded Indonesia and Korea RP from the scope of present investigation. With the exclusion of Indonesia and Korea RP, import volumes as represented in the petition have changed, however, the petitioner has not provided the revised information to the interested parties.
- l) The capacity remains unchanged during the injury period and POI. The production and capacity utilization have declined during the POI substantially. The reasons for such decline are working capital and raw material constraints faced by M/s. BILT Graphic Paper Products Limited. Annual report of Ballarpur Industries Limited (holding company of BILT) for the financial year 2016-17 states that BILT has a large debt position, which is causing injury to the Domestic Industry and certainly not the imports from subject countries. It was also submitted by the petitioner that the production in their plant was suspended for 12 months i.e. from July 2016 to June 2017. Out of the total 15 months of period of investigation, the production in the plant was suspended for 12 months.
- m) As shown in Proforma IVA, enclosed with the petition, inventories have reduced during the POI as compared to the base year 2013-14. Due to working capital constraints and shortage of raw material, Domestic Industry is not able to produce enough quantity to satisfy the demand of Indian users. In such a situation, imports tend to increase to fill the demand and supply gap in India, and surely not cause injury to the Domestic Industry. Thus, imports are nowhere causing injury to the Domestic Industry.
- n) The cost of sale of Domestic Industry has increased substantially during the POI, from 100 during the base year 2013-14 to 154 during the POI. However, there was no such increase in the cost of

raw material in the prevailing market. Price undercutting has remained unchanged during the entire injury period and POI.

- o) The profitability of the Domestic Industry has improved from 100 during the base year 2013-14 to 102 in 2015-16, net fixed assets and working capital of the petitioner have increased significantly during the POI as compared to the base year 2013-14. Net Fixed Assets have increased from 100 to 130 during the POI as compared to base year, 2013-14. Working Capital has increased from 100 to 163 during the POI as compared to the base year 2013-14. The Director General Trade Remedies is requested to critically examine the same.
- p) The Petition claims that the volume and price injury suffered by the Petitioner is due to the increase in imports from the subject countries. However, this claim is simply the Petitioner characterizing the effect as the cause. The Petition clearly shows that any injury allegedly suffered by the Petitioner was self-inflicted and the Petitioner itself admitted this at the Public Hearing. This is also confirmed by the fact that no other Indian producer has been loss-making. Petitioner's low production created a supply shortage and there was inevitable import substitution due to the local shortage as the demand for the Product under Consideration remained at the same level throughout the injury period.
- q) The Petitioner claims price undercutting of 15-25% for subject imports throughout the POI and injury period. If the price undercutting was causing injury, the Petitioner should have observed losses throughout the period.
- r) The Petition shows an abrupt increase in cost during the POI which was not experienced by the rest of the industry. The Authority is requested to analyse the cost of other co-operating producers which would not reflect the abovementioned increase in cost.
- s) The Petitioner has also been suffering considerable injury due to its production of uncoated paper where in a separate investigation the Petitioner has claimed volume injury. This has led to substantial decline in the Petitioner's production of uncoated paper as well.
- t) The Petitioner has claimed that profitability and cash profits have declined drastically and that there were heavy losses during the POI. Respondent refers to the Annual Reports of the Petitioner which show sharp rises in finance costs which would directly affect their profitability. The Annual reports also show healthy PBIT and Return on Capital Employed.
- u) The Petitioner itself admitted at the Public Hearing that their plant had been shut down for 12 out of 15 months of the POI. It is obvious after such an admission that any injury would be self-inflicted and the entire case for anti-dumping duties is a sham. Dumped imports may cause injury to volume and price parameters but they certainly cannot cause the plant shutdown.
- v) The data available in the Petition only reflects the performance data of one entity in India and is not reflective of the status of the Indian domestic market. Other producers such as JK Paper and ITC Ltd have been performing at adequate levels and it is only the Petitioner that has been suffering adverse economic effects which are self-inflicted.
- w) The Domestic Industry submitted that JK Paper has imported the PUC and has not opposed the investigation in the Public Hearing. It is submitted that regardless of JK Paper's imports it becomes important to consider their performance data as they are one of the largest domestic producers.
- x) The Petitioner acquired a subsidiary in Malaysia that it failed to make profitable in 2007 and had thus tried to sell in 2015. It was only able to divest itself of the failed investment in 2018. This caused delays in the Petitioner's deleveraging and refinancing attempts. Sources close to the

Petitioner also confirm that there were overarching financial problems within the Petitioner's group. In view of the non-attribution factors faced by the Petitioner, it is submitted that the Hon'ble Designated Authority should consider that there is no causal link between the imports and alleged injury and that the, the alleged injury is self-inflicted. The calculation of injury would be illogical due to the fact that it is calculated in context of the plant being shut down for 12 out of 15 months of the POI and that if the injury is still determined then the Hon'ble Designated Authority would have to consider the reworking of the cost to make and sell as well as NIP calculations after segregating the extraordinary expenses incurred during the shutdown period especially during the POI as it was a self-inflicted phenomenon.

- y) It is submitted that in light of the present investigation being an original matter and not a SSR investigation there is no need for the consideration of the Post – POI data. Consideration of the Post – POI data would be inconsistent with the past practice of the Hon'ble Designated Authority.
- z) The volume injury analysis has been conducted in a cumulated manner which would not be equitable considering the EU has not been excluded even though Korea RP and Indonesia have very similar data.
- aa) It is submitted that considering that landed prices have not declined as averred earlier, the alleged injury was caused by self-inflicted adverse business conditions. The Petitioner has not given any reasons as to how the alleged low prices of imports have led to the plant shutdown.
- bb) Domestic industry did not provide any information regarding the shutdown of the production of the domestic industry during the POI in the Petition. Domestic industry also did not provide for any known factors other than alleged dumped imports to be causing injury to the domestic industry. During the public hearing i.e. nearly six months after the initiation of investigation, domestic industry for the first time specifically submitted that there was shutdown of production from July 2016 to June 2017 and admitted that injury is also caused due to working capital constraints which is required to adjusted.
- cc) Period of investigation in the present anti-dumping investigation is from April 2016 to June 2017. Out of this 15 months period, domestic industry was not operational between June 2016 to July 2017 i.e. for total 12 months. Moreover, as admitted by the domestic industry and as also elaborated in the submission subsequently, it is clear that the shut-down of domestic industry was due to working capital constraints faced by the domestic industry. Respondent submits that no proper assessment of dumping, injury or causal link can be made based on the three months operation period. Injury determination based on such short period will not be representative and would present a distorted picture. For a correct assessment of injury, the Designated Authority should select the POI in which the domestic industry was operational for majority of the period.
- dd) Respondent understands that there is no great variance in the manufacturing process of uncoated paper and coated paper. Uncoated paper is coated by a compound or polymer to impart certain qualities to the paper, such as weight, surface gloss, smoothness or reduced ink absorbency. Accordingly, there should be parity between cost of production or cost of sales for uncoated paper and coated paper.
- ee) There is significant variance in trend in the cost of sales of coated paper as compared to the cost of sales of uncoated paper provided by the domestic industry in the ongoing anti-dumping investigation on import of “Uncoated Copier Paper” from Indonesia, Thailand and Singapore.

Cost of Sales	Unit	2013-14	2014-15	2015-16	POI (A)
Uncoated paper*	Rs/MT - Index	100	101	100	99
Coated paper**	Index	100	99	98	154

* Petition of domestic industry in anti-dumping investigation on uncoated paper

** Current Petition

- ff) Annexure II, para (iv) of the Anti-dumping Rules and Article 3.4 of the Anti-dumping Agreement provides for list of mandatory economic parameters, which are required to be examined by the Designated Authority. Productivity, return on investments, cash flow, wages, growth are mandatory parameters prescribed under para (iv), Annexure II of the Anti-dumping Rules. Domestic industry has not provided any information regarding some of these parameters. No claim regarding existence of material injury can be made if no information is provided at all regarding these mandatory injury parameters.
- gg) The raw materials that can be used for manufacture of paper are wood, pulp, agricultural residue (bagasse, wheat straw, rice husk, etc) and waste paper. It is an admitted fact by the paper industry in India that there is a shortfall in the availability of wood-pulp in India which leads to high raw material prices. The paper industry in India has to import most of its raw material requirements from the international market. It is also admitted that due to higher raw material cost, existing capacity of Petitioner has remained underutilized. Therefore, the Respondent submits that it is on account of the shortage of the aforementioned raw materials that the domestic industry is suffering injury.
- hh) The Domestic Industry has provided revised figures of import volume and value from subject countries for the entire injury investigation period without providing any explanation for such change in figures. It has merely stated that updated import data is provided along with detailed import methodology for segregation of product under consideration (PUC) and non-PUC.

H.3. Examination of the Authority

55. The Authority has taken note of the submissions made by the interested parties and has examined various parameters in accordance with the Anti-Dumping Rules after duly considering the submissions made by the interested parties.

Cumulative Assessment

56. Para (iii) of Annexure II of the Anti-Dumping Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti- dumping investigation, the Authority will cumulatively assess the effect of such imports, in case it determines that:
- a) Margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries

is less than three percent, the imports collectively account for more than seven percent of the import of like article; and

- b) Cumulative assessment of the effect of imports is appropriate in the light of the conditions of competition between the imported article and the like domestic articles.

57. The Authority notes that:

- a) The subject goods are being dumped into India from subject countries. The margin of dumping from each of the subject countries is more than the de minimis limits prescribed under the Rules.
- b) The volume of imports from each of the subject countries is individually more than 3% of total volume of imports.
- c) Cumulative assessment of the effects of imports is appropriate as the exports from the subject countries not only directly compete inter se but also with the like articles offered by the domestic industry in the Indian market.

58. In view of the above, the Authority considers that it is appropriate to assess injury to the domestic industry cumulatively from exports of the subject goods from the subject countries.

59. Rule 11 of Antidumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “.... taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles....”. In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, inventory, profitability, net sales realization, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.

60. The Authority notes that BGPPL was not producing the subject goods for a major part of the POI due to its own intrinsic reasons. The Authority in order to arrive at a fair conclusion requested the information from M/s. JK Paper Ltd., a major producer of the subject goods for injury analysis. Accordingly, the Authority considered the data of M/s. JK Paper Ltd. also separately apart from BGPPL data for the injury and causal link assessment in the later part of the final findings.

61. The submissions made by the domestic industry and other interested parties during the course of investigations with regard to injury and causal link, which have been considered relevant by the Authority are examined and addressed as under:

H.4. Volume Effect of Dumped Imports on the Domestic Industry

(a) **Assessment of Demand/Apparent Consumption**

62. The Authority has taken into consideration, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed has increased consistently during the injury investigation period and the POI (A).

Particulars	Unit	2013-14	2014-15	2015-16	POI(A)
Domestic Industry sales	MT	***	***	***	***
Sales – JK Paper Ltd.	MT	***	***	***	***
Sales – Sehasayee Paper	MT	***	***	***	***
Imports from subject countries	MT	4,22,136	4,48,579	4,53,452	6,18,075
Other imports	MT	76,073	1,15,430	1,68,398	1,91,571
Demand/consumption	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	108	116	123

(b) **Import Volumes from subject countries**

63. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports from subject countries, either in absolute terms or relative to production or consumption in India.

Particulars	Unit	2013-14	2014-15	2015-16	POI (A)
Undumped imports from EU	MT	24,755	28,666	26,647	31,611
Dumped imports from EU	MT	88,692	1,05,312	1,24,424	1,41,405
China PR	MT	1,95,124	2,15,054	1,83,540	2,93,269
USA	MT	1,13,566	99,547	1,18,841	1,51,790
Undumped imports from subject countries	MT	24,755	28,666	26,647	31,611

Dumped imports from subject countries	MT	3,97,382	4,19,913	4,26,805	5,86,464
Other Countries	MT	76,073	1,15,430	1,68,398	1,91,571
Total Imports	MT	4,98,210	5,64,009	6,21,850	8,09,646

64. It is seen that dumped imports of the subject goods from the subject countries have increased in absolute terms during the POI (A). The primary reason for significant increase in dumped imports during POI (A) is the shutdown of BGGPL for major part of the POI(A).

(c) **Subject Country Imports in relative terms**

Particular	Unit	2013-14	2014-15	2015-16	POI (A)
Dumped imports from subject Countries in relation to Production in India	%	120-130	130-140	130-140	380-390
Dumped imports from subject Countries in relation to Demand in India	%	40-50	40-50	40-50	50-60

65. It is seen that the subject dumped imports in relation to production and demand increased in the POI (A) as compared to the base year and previous years. The primary reason for significant increase in dumped imports during POI (A) is the shutdown of BGPPL for major part of the POI (A).

(d) **Market Share in Demand**

66. Considering imports from various sources and sales of the domestic industry, market share of subject dumped imports in demand in India was examined. The Authority notes that the market share of the subject imports increased significantly in the POI (A). Market share of the domestic industry has declined significantly during the POI (A). The market share of other Indian producers has more or less remained the same during injury investigation period. However, the market share of all domestic producers including domestic industry has fallen significantly during the POI (A). This is mainly due to fall in production/ sales of BGPPL. The space created by decline in the market share of the domestic industry has been occupied by the imports from subject countries and also imports from other countries.

Particular	Unit	2013-14	2014-15	2015-16	POI (A)
Domestic Industry	%	30-40	20-30	20-30	10-20
Other Indian Producers	%	0-10	0-10	0-10	0-10
Total market share of all domestic producers	%	30-40	30-40	30-40	10-20
Dumped subject imports	%	40-50	40-50	40-50	50-60
Undumped & Other imports	%	10-20	10-20	20-30	20-30
Total	%	100	100	100	100

H.5. Price Effect of Dumped Imports on the Domestic Industry

67. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the dumped imports from subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the cost of production, net sales realization (NSR) and the non-injurious price (NIP) of the domestic industry have been compared with landed price of imports of the subject goods from the subject countries.

(a) Price Undercutting

68. For the purpose of price undercutting analysis, the net selling price of the domestic industry has been compared with the landed value of imports from the subject countries. While computing the net selling price of the domestic industry all taxes, rebates, discounts and commissions have been deducted and sales realization at ex works level has been determined for comparison with the landed value of the dumped imports. Accordingly, the undercutting effects of the dumped imports from the subject countries work out as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI
<u>China PR</u>					
Landed price of imports	Rs/MT	50,910	50,014	50,964	49,138
Net Selling Price	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
	%	***	***	***	***
Range		15 - 25	25 - 35	15 - 25	20 - 30
<u>EU</u>					
Landed price of imports	Rs/MT	57,508	55,844	54,629	52,864
Net Selling Price	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
	%	***	***	***	***
Range		5 - 15	5 - 15	5 - 15	10 - 20
<u>USA</u>					
Landed price of imports	Rs/MT	31,765	32,106	33,948	34,966
Net Selling Price	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
	%	***	***	***	***
Range		85 - 95	95 - 105	75 - 85	70 - 80

From the aforesaid table, it can be seen that the price undercutting from the subject countries during the injury period as well as in POI (A) is positive.

(b) Price Suppression and Depression

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

Particulars	Unit	2013-14	2014-15	2015-16	POI (A)
Cost of Sales	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	98	154
Selling price	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	104	99	102
Landed Value	Rs./MT	47,533	47,781	47,725	46,700
<i>Trend</i>	<i>Indexed</i>	100	101	100	98

70. From the above table, it can be seen that the selling price of BGGPL has been higher than cost of sales till 2015 – 16. However, the selling price is lower than the cost of sales during the POI (A). The cost of sales has increased by 56 indexed points during POI (A) as compared to 2015 – 16.

(c) **Price Underselling**

71. The non-injurious price (NIP) of the domestic industry has been determined and compared with the landed value of the subject goods to arrive at the extent of price underselling. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation on the basis of principles mentioned in Annexure III of the Rules. The NIP has been determined considering optimum level of capacity utilisation that the Petitioners can achieve in the plant. The analysis shows that during the period of investigation, the landed value of subject imports was below the non-injurious price of the domestic industry, as can be seen from the table below, demonstrating positive price underselling effect:

Particulars	Unit	POI (Rs/MT)	POI (USD/MT)
<u>China PR</u>			
Landed Price	Per MT	49,138	728.51
Non-Injurious Price (NIP)	Per MT	***	***
Price underselling	Per MT	***	***

Price underselling	%	***	***
Price underselling	% Range	20 - 30	20 - 30
<u>EU</u>			
Landed Price	Per MT	52,864	781.62
Non-Injurious Price (NIP)	Per MT	***	***
Price underselling	Per MT	***	***
Price underselling	%	***	***
Price underselling	% Range	10 - 20	10 - 20
<u>USA</u>			
Landed Price	Per MT	34,966	516.99
Non-Injurious Price (NIP)	Per MT	***	***
Price underselling	Per MT	***	***
Price underselling	%	***	***
Price underselling	% Range	70 - 80	70 - 80

72. From the aforesaid table, it can be seen that the price underselling from the subject countries during the POI is positive. However, from a combined reading of the table for price undercutting and price underselling, it can be seen that the selling price of the domestic industry during POI is higher than the NIP determined by the Authority. This fact leads to the conclusion that the cost of sales of the domestic industry is exorbitantly high during the POI due to the effect of shutdown for a major part of the POI. It also demonstrates that the dumped imports from the subject countries did not stop the domestic industry from realising a fair price for their product during the POI.

H.6. Economic Parameters of the Domestic Industry

73. Annexure II to the Anti-Dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of dumped imports on domestic producers of such products. With regard to consequent impact of dumped imports on domestic producers of such products, the Anti-dumping Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices,

the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

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

(a) Production, Capacity, Capacity Utilization and Sales

75. Capacity, production, capacity utilization and sales of the domestic industry over the injury period is given in the following table: -

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
Capacity Total	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	100	100
Production- Total	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	101	36
Capacity Utilization	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	101	36
Sales Domestic	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	98	99	42

76. From the above table, it is noted that:

- Capacity of the domestic industry has remained constant since 2013-14.
- Capacity utilisation of domestic industry has improved till 2015 - 16 and declined during the POI (A) due to the fact that the Domestic Industry was not operational for major part of POI.
- Production of the domestic industry improved till 2015-16 and has declined during the POI (A) due to the fact that the Domestic Industry was not operational for major part of POI.

(b) Profitability, return on investment and cash profits

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

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
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Profit/ Loss	Rs/MT	***	***	***	(***)
<i>Trend</i>	<i>Indexed</i>	100	137	102	-256
Profit/ Loss	Rs.Lacs	***	***	***	(***)
<i>Trend</i>	<i>Indexed</i>	100	134	101	-109
Profit before Interest and Tax	Rs.Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	125	106	6
Cash Profit	Rs.Lacs	***	***	***	(***)
<i>Trend</i>	<i>Indexed</i>	100	112	86	-56
Return on Capital Employed	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	92	75	1.4

78. From the above table, it is noted that:

- Profitability of domestic industry has been good till 2015 - 16. However, profitability of domestic industry declined and turned into losses during the POI (A).
- Similarly, profit before interest and cash profits of domestic industry have been good till 2015 – 16 but declined during POI (A). However, return on capital employed witnessed declining trend during entire injury period and reduced drastically during POI (A).

(c) Employment, productivity and wages

79. Employment, productivity and wages of Domestic Industry over the injury period is given in the table below.

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
Employment - DI	Nos	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	98	93
Wages	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	123	117	97

Productivity per employee	MT/Nos	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	102	39
Productivity per day	Mt/Day	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	101	36

80. It is noted that the Productivity per day and productivity per employee of the domestic industry remained constant with negligible change through out the injury investigation period and has declined drastically during the POI (A). This is primarily due to the fact that the Domestic Industry was not operational for a major part of POI.

(d) Inventories

81. Inventory position with the domestic industry over the injury period is given in the table below:

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
Average stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	104	131	72

82. It is noted that the inventories with the domestic industry have declined during the POI (A).

(e) Growth

83. The production, capacity utilisation, domestic sales and profitability of the domestic industry have been stable till 2015-16 and thereafter sharply deteriorated during the POI (A). However, return on capital employed witnessed declining trend during entire injury period and reduced drastically during POI (A).

Particulars (Year on Year)	2013-14	2014-15	2015-16	POI-A
Production		-1%	2%	-64%

Capacity Utilization		-1%	2%	-64%
Domestic Sales		-2%	1%	-57%
Cost of Sales		-1%	-1%	57%
Selling Price		4%	-5%	3%
Profit/ Loss		37%	-25%	-350%
Return on investment		-8%	-19%	-95%

(f) Ability to Raise Capital Investments

84. Domestic Industry claimed that the current state of its financial position does not allow them to raise capital for fresh investment. It is noted that the financial position of the domestic industry has deteriorated due to its own intrinsic reasons and has no relation with the imports coming from subject countries

(g) Factors affecting domestic prices

85. The domestic industry is able to more or less maintain its selling price within a range. However, the cost of production of domestic industry has significantly increased during the POI (A) due to the effect of shutdown for a major part of the POI (A). It can be seen that the selling price of the domestic industry during POI (A) is higher than the NIP determined by the Authority.

I. Threat of Material Injury

86. The provisions relating to threat of material injury are provided in para vii of Annexure II of AD Rules and provide as follows:

- (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, 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.*

87. A threat of material injury is a situation where the domestic industry has not suffered during the injury period but injury to the domestic industry is imminent if the present circumstances continue. A 'threat of material injury' means clear and imminent danger of injury. The determination of threat of material injury should be based on facts, and not merely on allegation, conjectures, imagination, or remote possibilities.

88. With respect to threat of material injury, the Authority notes as under:

- a) There is substantial increase in imports of subject goods from subject countries in absolute terms as well as in relation to production & consumption in India. However, the increase in imports from subject countries was necessitated due to decline in production of the domestic industry.
- b) Further, Authority has examined the capacity details of the co-operative producers/exporters from the subject countries and it is noted that no significant capacity has been added by any of the co-operative producers.
- c) Authority has examined the inventory of the co-operative producers/exporters from subject countries and it is noted that none of them hold any significant inventory.

I.1. Magnitude of Injury and Injury Margin

89. The Authority has determined Non-Injurious Price for the domestic industry on the basis of principles laid down in Anti-Dumping Rules read with Annexure III, as amended. The NIP of the product under consideration has been determined by adopting the verified information/data relating to the cost of production for the period of investigation. The NIP of the domestic industry has been worked out and it has been considered for comparing the landed price from each of the subject countries for calculating injury margin. For determining NIP, the best utilisation of the raw materials by the domestic industry over the injury period has been considered. The same treatment has been done with the utilities. The best utilisation of production capacity over the injury period has been considered. The production in POI has been calculated considering the best capacity utilisation and the same production has been considered for arriving per unit fixed cost. It is ensured that no extraordinary or non-recurring expenses were charged to the cost of production. A reasonable return (pre-tax @ 22%) on average capital employed (i.e. Average Net Fixed Assets plus Average Working Capital) for the product under consideration was allowed to arrive at the NIP as prescribed in Annexure-III of AD Rules. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries to determine the injury margin as follows;

S. No	Producer Country	Producer	Exporter	NIP (USD/MT)	Landed Value (USD/MT)	Injury Margin (USD/MT)	Injury Margin %	Range
1.	China PR	a. M/s Shouguang Meilun Paper Co., Ltd. b. M/s Shandong Chenming Paper Holdings Ltd.,	M/s Chenming (HK) Limited	***	***	***	***	20-30
2.	China PR	Gold East Trading (Hong Kong) Company Limited	Gold East Trading (Hong Kong) Company Limited	***	***	***	***	40-50
3.	China PR	All Others	All Others	***	***	***	***	40-50
4.	European Union	a. Sappi Alfeld GmbH b. Sappi Enningen GmbH c. Sappi Gratkorn GmbH d. Sappi Finland Operations Oy (Kirkniemi) e. Sappi Lanaken NV f. Sappi Maastricht B.V g. Sappi Stockstadt GmbH	a. Sappi Europe SA b. PG per Company Ltd	***	***	***	***	15-25
5.	European Union	a. M/s. UPM Communication Papers Oy	M/s. UPM Sales Oy	***	***	***	***	0-5

		b. M/s. UPM Specialty Papers Oy, c. UPM GmbH						
6.	European Union	All Others	All Others	***	***	***	***	50-60
7.	USA	All	All	***	***	***	***	25-35

J. Non-Attribution Analysis

90. As per the AD Rules, the Authority, inter alia, is required to examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, so that the injury caused by these other factors may not be attributed to the dumped imports. 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 of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry. It has been examined below whether factors other than dumped imports could have contributed to the injury to the domestic industry.

(a) Volume and price of imports from third countries

91. The Authority notes that there were significant imports of the product under consideration from non-subject countries.

(b) Export Performance

92. The Authority has considered the data for domestic operations only for its injury analysis.

(c) Development of Technology

93. None of the interested parties have raised any issue with regard to developments in technology as being the cause of injury to the domestic industry.

(d) Performance of other products of the company

94. The Authority notes that the performance of other products being produced and sold by the Petitioners does not appear to be a possible cause of injury to the domestic industry.

(e) Trade Restrictive Practices and Competition between the Foreign and Domestic producers

95. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. No evidence has been submitted by any interested party to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

(f) Contraction in Demand and Changes in pattern of consumption

96. It is noted that the demand of the subject goods has increased consistently over the entire injury period.
97. The Authority has taken note of the submissions made by various interested parties to analyse the performance of M/s JK Paper Ltd. The Authority therefore requested petitioner to submit relevant information to examine key economic parameters of M/s JK Paper Ltd. to arrive at a fair conclusion regarding the causal link between the dumped imports from the subject countries and injury suffered by the domestic industry. The Authority has analysed key injury parameters based on the information submitted by M/s. JK Paper Ltd. as under:

J.1. Price Effect of Dumped Imports on JK Paper Ltd.

(a) Price Undercutting

98. For the purpose of price undercutting analysis, the net selling price of the JK Paper Ltd. has been compared with the landed value of imports from the subject countries. While computing the net selling price of the JK Paper Ltd. all taxes, rebates, discounts and commissions have been deducted and sales realization at ex works level has been determined for comparison with the landed value of the dumped imports. Accordingly, the undercutting effects of the dumped imports from the subject countries work out as follows:

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
China PR					
Landed price of imports	Rs/MT	50,910	50,014	50,964	49,138
Net Selling Price	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
	%	***	***	***	***

Range		0 – (10)	0 – 10	0 – (10)	0 – 10
EU					
Landed price of imports	Rs/MT	57,508	55,844	54,629	52,864
Net Selling Price	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
	%	***	***	***	***
Range		(10) – (20)	0 – (10)	(10) – (20)	0 – (10)
USA					
Landed price of imports	Rs/MT	31,765	32,106	33,948	34,966
Net Selling Price	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
	%	***	***	***	***
Range		50 - 60	50 - 60	40 - 50	40 - 50

99. From the aforesaid tables, it can be seen that the price undercutting from EU during the injury investigation period as well as in POI (A) is negative whereas price undercutting from China PR and USA is positive during POI (A).

(b) Price Suppression and Depression

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

Particulars	Unit	2013-14	2014-15	2015-16	POI (A)
Cost of Sales	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	95	80	78
Selling price	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	102	98	101

Landed Value	Rs./MT	47,533	47,781	47,725	46,700
<i>Trend</i>	<i>Indexed</i>	100	101	100	98

101. From the above table, it can be seen that the cost of sales has decreased during POI (A) by 22 indexed points as compared to the base year whereas selling price has increased by 1 indexed point during POI (A) as compared to the base year. The landed value has decreased by 2 indexed points during POI (A) as compared to the base year. Thus, the imports from subject countries did not have any price suppressing or depressing effect on the sales of JK Paper Ltd.

J.2. Economic Parameters of M/s. JK Paper Ltd.

a) Production, Capacity, Capacity Utilization and Sales

102. Capacity, production, capacity utilization and sales of the JK Paper Ltd. over the injury period is given in the following table: -

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
Capacity Total	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	100	100
Production- Total	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	116	125
Capacity Utilization	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	116	125
Sales Domestic	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	107	115	122

103. From the above table, it is noted that:

- Capacity of the JK Paper Ltd. has remained constant since 2013-14.
- Capacity utilisation of JK Paper Ltd. has improved throughout the injury investigation period and was at its peak (***%) during the POI (A).

- c) Production & domestic sales of the JK Paper Ltd. significantly increased during the entire injury investigation period and during the POI (A).

b) Profitability, return on investment and cash profits

104. Profitability, return on investment and cash profits of the JK Paper Ltd. over the injury period is given in the table below: -

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
Profit before Interest and Tax	Rs.Lacs	(***)	(***)	***	***
<i>Trend</i>	<i>Indexed</i>	-100	-49	7	31
Profit Before Tax	Rs.Lacs	(***)	(***)	(***)	(***)
<i>Trend</i>	<i>Indexed</i>	-100	-77	-31	-12
Cash Profit	Rs.Lacs	(***)	(***)	(***)	***
<i>Trend</i>	<i>Indexed</i>	-100	-79	-11	19
Return on Capital Employed	%	(***)	(***)	***	***
<i>Trend</i>	<i>Indexed</i>	-100	-63	11	52

105. From the above table, it is noted that:

- a) Profitability of JK Paper Ltd. has improved during the POI (A) as compared to the base year.
b) Similarly, cash profits and ROCE have significantly improved during POI (A) as compared to the base year.

c) Employment and productivity

106. Employment and productivity of JK Paper Ltd. over the injury period is given in the table below.

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
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Employment	Nos	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	98	93
Productivity per employee	MT/Nos	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	112	119	134
Productivity per day	Mt/Day	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	110	116	125

107.It is noted that the Productivity per day and productivity per employee has significantly improved during the POI (A) as compared to the base year.

d) Inventories

108.Inventory position with the JK Paper Ltd. over the injury period is given in the table below:

Particulars	UOM	2013-14	2014-15	2015-16	POI-A
Average stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	147	212	249

109.It is noted that the inventories with the JK Paper Ltd. has increased during the POI (A) as compared to the base year.

J.3. Conclusion on causal link:

110.The Authority notes as under:

- a) There is substantial increase in imports of subject goods from subject countries in absolute terms as well as in relation to production & consumption in India. However, the increase in imports from subject countries was necessitated due to decline in production of the domestic industry.
- b) With regard to BGPPL's volume parameters it is noted that capacity utilisation, production

and domestic sales have improved throughout the injury investigation period and declined during the POI (A) due to shutdown of the plant for a significant period during the POI. On the other hand, capacity utilisation, production and domestic sales of JK Paper Ltd. have improved during the POI (A).

- c) Profit before interest and cash profits of domestic industry have been stable till 2015 – 16 and have declined during the POI (A). On the other hand, profit before interest and cash profits of JK Paper Ltd. have improved during POI (A).
- d) Selling price of BGPPL has been higher than cost of sales till 2015 – 16. However, the selling price is lower than cost of sales during the POI (A). The cost of sales of BGPPL has increased by 56 indexed points during POI (A) as compared to 2015 – 16. On the other hand, the cost of sales of JK paper Ltd. has decreased during the POI (A). This clearly shows that the cost of sales of BGPPL increased exorbitantly during POI (A) due to its shutdown for a major part of the period of investigation.
- e) The price undercutting with regard to BGPPL from the subject countries is positive during period of investigation.
- f) Price undercutting with regard to JK Paper from EU during the injury investigation period as well as in POI is negative and price undercutting from China PR and USA is positive during POI.
- g) The selling price of BGPPL during POI (A) is higher than the NIP determined by the Authority. This clearly demonstrates that the dumped imports from the subject countries did not stop the domestic industry from realising a fair price for their product during the POI.
- h) The fall in production, sales, capacity utilisation and profitability of BGPPL is clearly attributable to its own intrinsic factors and has no co-relation with the dumped imports from the subject countries.

K. POST DISCLOSURE COMMENTS

111. The post disclosure submissions have been received from the interested parties. Most of the issues raised therein have already been addressed by the Authority in the disclosure statement. The post disclosure comments from interested parties which have not been addressed earlier to the extent deemed fit are being examined below:

K.1. Submissions by Domestic Industry

112. Following are the post-disclosure comments made by the domestic industry:

- a) Subject goods below 80 GSM are proposed to be excluded from the scope of the investigation. Petitioner never agreed for such exclusion. This has been done without providing an opportunity to the domestic industry to defend its interests and without having material on record to show that the product range is not produced by the petitioner. A

significant proportion of the production of petitioner is in the product range proposed to be excluded.

- b) The exclusion of the product range has been done on the basis of the previous investigation when the facts of that investigation were entirely different from the present investigation. Such proposed exclusion on the basis of ill-conceived information discreetly placed on record by other interested parties is illegal and has taken away the right of defence of the domestic industry in this regard.
- c) Petitioner company has neither imported the subject goods, nor is it related to an importer or exporter of the subject goods. Petitioner satisfies the standing requirement and constitutes the domestic industry in terms of Rule 2(b) and Rule 5(3) of the AD Rules.
- d) Despite considering complete information of JK Paper, authority remains silent on the status of JK paper as regard to eligibility of being domestic producer. The same may be disclosed.
- e) Excessive confidentiality has been claimed by other interested parties by not providing information in public version of the questionnaire responses. Exporters have even failed to show sufficient justification and/or reasoning for claiming confidentiality.
- f) Normal value for China and USA has been rightly determined on the basis of best available information. However, the authority has ignored submissions made with respect to the non-disclosure of information on related parties and incomplete value chains for Gold East Group, Shandong Paper Group, Sappi and UPM Paper groups. Dumping margins should be re-determined and it should also be considered that a significant part of imports from EU into India are at dumped prices.
- g) Even after segregation of dumped and undumped imports from EU, the volume of dumped imports has risen significantly. Imports from subject countries have risen significantly. Suspension of production necessitated imports but by no chance it meant imports at dumped prices and to the extent done. Because of such imports even after low production DI had to sell at sub-optimal prices.
- h) Import prices declined significantly in the POI without corresponding decline in raw material costs which resulted in injury to the domestic industry.
- i) Market share of subject imports increased while that of domestic industry declined. Revised information submitted shows that even if POI was adjusted on basis of capacity utilization levels achieved by the Domestic Industry in 2015-16, there are an increase in import volumes throughout the injury period with a decline in prices. Demand supply gap does not justify dumping.
- j) Landed prices of the imports declined without decline in raw material costs. While the cost of sales increased, selling prices declined. Level of undercutting has increased over the injury period.
- k) Even if optimized cost of sales is considered, it would be above the selling price of domestic industry. Landed prices of the imports remained much below the optimized cost of sales too. The imports have had a suppressing and depressing effect on the prices of the domestic industry.
- l) The imports are also underselling the prices of the domestic industry by a significant margin.
- m) Production of the domestic industry declined in the POI which resulted in decline in sales and capacity utilization. Even then low priced imports led to decline in prices in the market even when the domestic industry was having much lower volumes to sell.

- n) The petitioner suffered from reduced production level. Products were sold during all months of the POI. Even when production was significant, imports resulted in positive dumping and injury margins and there was no change in behaviour of exporters even if there was production or no production by domestic industry.
- o) Had the domestic industry not produced the product mix which gives higher return during the period, the losses would have been worse.
- p) Inventories declined in the POI but still remained significantly high considering the reduced production by the domestic industry.
- q) Losses were immense in the POI and PBIT declined significantly. Cash profits were negative and the ROI declined to barely positive levels. Even if optimum production levels achieved in the past and the product mix maintained in 2015-16 were considered, there would have still been losses.
- r) Dumping margins determined are more than injury margins, which shows that fair price determined for domestic industry is far higher than selling price of foreign producers.
- s) NIP for domestic industry is not at level of actual production but at level of optimum production. This shows that domestic industry is not less efficient than foreign producers and even then, it is suffering financial losses while foreign producers resort to dumping.
- t) As regards JK Paper performance – JK Paper was making losses in the base year whereas the petitioner was in profits. JK Paper gradually improved its consumption norms and efficiency which is the reason that its cost of sales showed decline.
- u) Cost of production of BILT was lower as compared to the cost of production of JK Paper even when BILT purchases pulp while JK Paper produces its own pulp. When performance of JK Paper is adjusted for losses suffered by JK Paper on account of lower production of pulp, profitability of BILT would remain better than profitability of JK Paper.
- v) With regard to improvement in production, sales and capacity utilization JK Paper has only regained its old position. The company only lost its position because of stabilization issues faced by new pulp mill.
- w) Reliance is placed on the extracts of the annual reports of JK paper which show that new Pulp Mill reduced their costs, difficulties in establishment of such mill. It is only an instance where company took some time to stabilize its costs. Further, annual reports of the company also acknowledge the fact of threat from imports.
- x) Despite suspension of production by petitioner and improvement in paper and sales of JK Paper, it is still incurring losses and earning a return much below the desired level because of dumped imports.
- y) Data provided by JK Paper has been adopted/used on “convenience” basis without seeking any clarifications from the company. Profitability of JK Paper has not increased as much as has been established in the disclosure statement. The ROCE of the company is significantly low and the inventories have increased significantly despite reduction in production by domestic industry.
- z) Authority has considered profit before interest while the relevant parameter is profit before tax. Deviating from its past practice in this regard is inappropriate. Profit before tax of JK Paper shows a declining situation of losses. Such losses reduced as the pulp mill stabilized and effect of such losses due to non-stabilization of pulp mill.
- aa) Authority determined price undercutting for EU negative because it considered much higher

- price in respect of imports from EU as compared to the petition. This is on account of differently adopted data by the authority. Authority is requested to disclose the DGCI&S data adopted. Further, average price undercutting considering JK Paper data is positive.
- bb) Despite considering costing information, NIP has not been determined for JK Paper. Petitioner determined NIP of JK Paper on basis of information adopted in the disclosure statement. It is seen that NIP of JK Paper is far higher than their NSR; Injury margin is quite high and NIP of JK Paper is comparable to NIP of petitioner.
 - cc) In a situation where a major producer suspended production, it is unusual that other producer faced increased inventory levels. Verification of DI data and foreign producer data was done but has not been done for JK paper. The information sought by the authority was provided by JK paper on the basis of the formats.
 - dd) As regards to threat of imports, the import volumes increased significantly with a decline in prices which came in without a decline in raw material costs. Such imports led to price undercutting. Further, demand-supply gap does not warrant unfairly priced imports as is the case in this investigation. NIP of the domestic industry determined is higher than their NSR.
 - ee) Even if the adjustment for shutdown is factored in the imports show an increase. This coupled with the decline in demand in the subject countries shows imminent threat of further material injury. Loss of demand in china alone is much more than entire Indian demand.
 - ff) The authority is required to analyse and examine the capacities of not only the responding exporters but also the non-responding exporters, analyse the additional planned capacities and then make a determination of disposable capacities. The decline in demand in china is much more than the decline in production.
 - gg) Measures imposed by EU and USA against china have further reduced their export market. This coupled with the fact of surplus capacities is likely to increase imports into India.
 - hh) There are significant capacities in EU which is much more than their own demand which results in higher export orientation. Even otherwise EU is a net exporter of the PUC as they export about 21% of their total production even after which they have unutilized capacities.
 - ii) For USA, the capacity is much more than their own demand which has already been facing a decline. About 17% of American paper industry's revenue is generated through export sales which are set to further rise in view of the declining demand.
 - jj) The increasing price undercutting with the decline in domestic industry's production indicates the looming threat of further low-priced imports. In fact, on decline of Indian production, the import prices should have shown declining undercutting. Such prices were below the actual and normated levels of the domestic industry resulting in depressing price effects.
 - kk) Government of China had specifically admitted in the EC finding that India was a more attractive market. The exports of EU and US producers also find the Indian market highly attractive in view of the declining demand in their home country and increasing demand in India.
 - ll) In view of the increased as well as significant import volumes, it would be right to assume that these producers can scale up their production in a short period.
 - mm) Post POI data derived from the anti-subsidy petition filed shows that the petitioner has enhanced production and is able to sell the product in the market but is still facing undercutting levels; it is still suffering from losses; profits, cash flow and the ROI continue

to remain below levels achieved in the past and those considered reasonable by the authority. This evidences that despite increased production it suffers on account of profits, cash flow and ROI and the adverse price effect is only because of imports.

- nn) If authority comes to a conclusion that there is a factor other than dumped import which also caused injury to the domestic industry, it is required to identify such factor and then quantify its impact and segregate the same from the data before analyzing injury information of DI. In the present case, factor brought to notice of the authority is reduction in production by petitioner due to other factors. The Authority has admitted that production of petitioner suffered because of other factors. It is required to consider entire data of petitioner, appropriately adjust the same and thereafter adopt it for injury analysis. Data is required to be adjusted considering loss of production suffered.
- oo) Optimized costs were reported to the authority but the same have not been considered by the authority or injury analysis. Further while computation of NIP Authority has considered alleged inefficiencies of domestic industry and determined normated cost of production.
- pp) Once authority considered the past level of capacity utilization, it is evident that the effects of other factors impacting production of the petitioner get fully addressed. The data presented by considering highest achieved capacity utilization and thereafter determining production, sales, profits, cash flow and ROI has been completely ignored in the disclosure statement and actual information has been considered ignoring the requirements of causal link.
- qq) The WTO ADA provides that that dumping need not be the sole or to that extent even the principle cause of injury. The only legal requirement now is that dumping should be one of the causes of injury to the domestic industry.
- rr) Low priced imports forced the domestic industry to reduce its prices; the imports have been undercutting the prices of the domestic industry and are much below the cost of sales and selling prices of the domestic industry.
- ss) Duties should be imposed only as fixed quantum (fixed form of duty), expressed in US\$/MT. Such imposition of duties should be expressed in USD/MT.

K.2. Submissions by other interested parties

113. Following are the post-disclosure comments made by the other interested parties:

- a) There should be exclusion of Mechanical Coated and Clay Coated Kraft Paper as they are not produced by the Petitioner.
- b) Authority has not clarified as to which companies have been considered for injury determination as part of the “domestic industry”. It is unclear whether the “domestic industry” is only BILT, or now includes JK Paper and Seshasayee Paper also. By virtue of rule 2(b) of the AD rules, BILT does not fall under the purview of domestic industry due to the fact that it did not produce any of the PUC for a significant portion of the POI as stated by the Authority itself.
- c) There is no disclosure or determination made on the excessive claims of confidentiality made by the Petitioner nor is there any detailed explanation as to why Korea RP and Indonesia were excluded from the ambit of Subject Countries.

- d) In light of BILT's low production, which is a part of their self-inflicted injury, the market must rely on imports to ensure that operations continue at optimum levels. The increase in imports is necessitated by the shutdown experienced by BILT as acknowledged by the Authority.
- e) The cost of the Petitioner has inflated substantially due to the plant shutdown experienced by BILT, whereby the cost is not appropriately reflective of the manufacturing cost in India. Since cost in the period of investigation is also a crucial (and biggest) component in the calculation of the NIP, the NIP calculated is in turn bound to be inflated egregiously and therefore would not be accurate or representative of the actual fair price that would remove any alleged injury to the Domestic Industry. It is requested to exclude the administration expenses which have been incurred after the shutdown of operations suffered by BILT as the same is inflated on account of low production and sales volume in the POI.
- f) The co-operating producers do not hold any significant inventory, no significant added capacities and that the increased import volumes are due to decline in production of the Domestic Industry. Thereby conclusively proving that there is no threat of material injury to the Domestic Industry.
- g) The AD rules at Annexure II (v) clearly state that there is an explicit onus on the Authority to consider the effect of "the volume and prices of imports not sold at dumping prices" while determining the extent of alleged injury to the Domestic Industry. This has not been done with regard to BILT.
- h) Economic Parameters of M/s. JK Paper Ltd. viz. Production, Capacity, Capacity utilization, Profitability, ROI, cash profits, Employment, Productivity and Inventories have all shown positive trends thereby showing that there is no existence of injury. Therefore, the injury suffered by the Petitioner (BILT) is self-inflicted and there is no causal link between imports from the EU and the performance of the Domestic Industry. Consequently, the injury margin can only be appropriately determined on the basis of fare selling price of JK Paper Ltd.
- i) The aegis of anti-dumping law cannot be used to protect a company, which suffered injury (on account of a plant shutdown) for reasons entirely unrelated to the subject imports, as confirmed by the fact that other local producers are seen to be doing well.
- j) In the absence of injury caused by dumped imports the imposition of anti-dumping measures cannot be in the overall interest of the Indian industry.
- k) The performance of the other domestic producer i.e. JK Paper clearly indicates that BILT is the only producer injured during the injury period; At Paragraph No. 108 of the Disclosure Statement, the imports of the PUC from the EU did not cause injury to the Indian domestic industry. The injury is only observed for BILT, and any injury of BILT was clearly self-inflicted and not attributable to imports from the EU.
- l) It must be noted that many prominent international publishers only use paper which has been given a Forest Stewardship Council ('FSC') certification. The Petitioner has stopped supplying FSC certified paper post their shutdown and reopening. Hence, there is a need to import this paper when customers request FSC certified paper and make it a mandatory requirement in their requirement specifications.
- m) It is submitted that different product types, all falling within the scope of the PUC, have different uses and different rates especially when comparing GSM specifications or matt/gloss finishing therefore all determinations must be based on appropriate individual

product type comparisons consistent with the past practice of the Hon'ble Designated Authority.

- n) Dee Dee Label, Supertech Papers Pvt. Ltd., Zalak Enterprise, Stiq Labels, Infinity Security Papers Ltd, Stay-On Papers Pvt. Ltd, Sri Industries, Mudra Arts (India) Pvt. Ltd. Chromaprint India Pvt. Ltd, Sai Packaging Company and Janus International Pvt. Ltd. made submissions for the first time after the issuance of the disclosure statement. They have submitted that few of them use CCK-Clay Coated Craft Paper, not for writing, printing or graphic purposes, but as a release base paper and others use wet strength paper, which is a one side coated paper, with special qualities that are specially required for labels for the beer and alcohol bottles. This paper is not domestically produced generally and by BILT in particular. It is imported by them under the HS Codes 48101300 and 48101900. They further submit that the HS codes for the coated papers being considered as PUC under this investigation are products that are beyond the ambit of the papers being considered in this investigation. Considering them as PUC will lead to a lot of difficulties for them and other manufacturers, since they are not produced in India.
- o) UFLEX Limited made submissions for the first time after the issuance of the disclosure statement. They have submitted that there are two specific grade of packaging paper used for Liquid Packaging application viz. 70-75 GSM (uncoated & coated) and 130-170 GSM (uncoated & coated), neither of which is domestically produced.
- p) SMI Coated Products Private Limited and the Newsprint Trading & Distributing Corporation Ltd. made submissions for the first time after the issuance of the disclosure statement. They have submitted that the HSN Codes mentioned in the petition cover products that are not produced or produced in insufficient quantities in India. Since, the domestic manufacturers are incapable of sufficiently meeting the demands the of print industry, imports of the same are required.
- q) Advik enterprises made submissions for the first time after the issuance of the disclosure statement. They have submitted that BILT was shutdown or operational with limited capacity during almost the entire duration of the investigation and it is unjustified to impose anti-dumping duty on other foreign suppliers. As such, doing so would give local manufacturers an opportunity to exploit the local customers and traders. Therefore, keeping the interests of the customers, the authority is requested not to impose the anti-dumping duty.
- r) Shree Ashtavinayak Papers Pvt. Ltd. made submissions for the first time after the issuance of the disclosure statement. They have submitted that the monthly demand of Coated Paper in India is appx. 60,000 MT and that the local capacity of production amounts to around 16,000 to 20,000 MT. As such, the gap in demand and production can to be fulfilled by imports only.
- s) Ganesh Paper Agencies made submissions for the first time after the issuance of the disclosure statement. They have submitted that BILT produced a wide range of products and coated paper and board may have constituted only 15-20% of it. Therefore, its injury cannot be blamed on the imports of paper and board.
- t) Venus Paper Corp. made submissions for the first time after the issuance of the disclosure statement. They have submitted that paper industry in India only produces about 30% of the total paper consumption and the rest is imported. Indian mills, like Ballarpur Industries Ltd, themselves import pulp for their needs. That introduction of the duties will result in the

- increase in the cost of the paper and its products and will affect local and export businesses.
- u) Jana Agencies Paper Corp., Raj Paper Traders, Purnima Distributors and Kaveri International made submissions for the first time after the issuance of the disclosure statement. They have submitted that there is always a short supply of coated paper in our country. Only Ballarpur Industries Ltd. and JK Paper Ltd. manufacture them in India. JK Paper itself imports coated paper on a large scale to satisfy the demand and Ballarpur also had been doing so till a while ago. The domestic production accounts for only 35% of the total market requirement. Though, the market in the country is expanding on a yearly basis and simultaneously no capacity building in production has taken place. That imposition of the duty will result in the monopoly of BILT in the industry. This might result in great loss to the small and medium printers who will not be able to bear the price increase. Many of them depend on this for their livelihood. Therefore, anti-dumping duties will have an adverse effect.
 - v) Juneja Trade Links made submissions for the first time after the issuance of the disclosure statement. They have submitted that the domestic mills are not able to match the quality of the imported products.
 - w) Sumat Pershad & Sons made submissions for the first time after the issuance of the disclosure statement. They have submitted that since paper under chapter 48 covers about 100s of paper family products, BILT has to specifically declare its product mix of 2/s coated paper product mix of 90, 100, 15, 118, 200 130, 150 200, 220, 250 300 various grammage they are producing, separately for Matt and Gloss finish/Reel & Sheets. They have to clearly state production according to HSN codes by them & other domestic producers. Authority should get the exact and clear information from the petition as to what they are having product mix and under different plants and under different HSN code. If BILT specifies their product HSN Code, then JK Paper will be the only member of IPMA left who manufacture the product in question who is the regular importer also? In order to mislead, BILT has only mentioned the 4-digit HSN code as against the 8-digit code. Therefore, imposing the duty will harm a lot of small and local businesses which is against the dream of “Make in India” by not putting machines to meet the domestic demands and adopting a monopolistic approach.
 - x) Federation of Paper Traders’ Association of India made submissions for the first time after the issuance of the disclosure statement. They have submitted that JK Paper has not suffered any injury. The fact that its performance improved consistently despite the increase in imports, clearly indicates that imports are not the cause of the injury to the domestic industry. On the contrary, imports ensured continuous supply of the same. The demand is growing, and the lead time would be abnormal if supplies are to be taken only from the domestic manufacturers. They further submit that Anti-dumping duty cannot be imposed to protect a domestic industry whose economic situation has deteriorated for reasons that are in no way connected to imports, as is clearly the case of the petitioner and its long production shutdown. Therefore, fair-trade practice should be adopted rather than a monopolistic approach.
 - y) Notwithstanding the infirmities with the NIP determination, it is submitted that NIP determined based on information provided by BGPPL is unreliable. In the anti-dumping investigation concerning import of *Uncoated Paper from Indonesia, Thailand & Singapore*,

BGPPL was one of the applicant domestic producer but the Authority excluded BGPPL from the scope of domestic industry. The Authority in paragraph 11 of the final findings determined that:

The Authority notes that BGPPL was not producing the subject goods for a major part of the POI due to its own internal reasons. Therefore, it would not be appropriate to consider BGPPL as a part of the DI for assessment in the present investigation.

- z) The POI in the present investigation is same as the POI in the anti-dumping investigation on uncoated paper. Respondents request the Authority to follow its consistent approach in the present investigation as well and not rely on the cost of sales & non-injurious price determined by the Authority based on the data of BGPPL. Consequent determination of price undercutting, price underselling and price suppression/depression is also not reliable for determining material injury and causal link.
- aa) In any case, it is settled that the Authority cannot rely on existence of injury margin to determine that there is material injury. The Gujarat High Court in the matter of *Nirma Ltd. v. Union of India* [Special Civil Applications No.16426/2016 & 16427/2016] held that:

*34. It may be noted that injury margin is required to be determined when the designated authority comes to the conclusion that there is material injury requiring imposition of anti-dumping duty, whereupon the quantum of anti-dumping duty to be levied is based upon the injury margin. Therefore, **determination of injury margin would come into play only in case the designated authority comes to the conclusion that determinative measures are required to be applied.** Where the designated authority comes to the conclusion that no determinative measures are required to be imposed, as in the present case, the question of determining the injury margin would not arise.*

- bb) The selling price of BGPPL is either equal to or higher than the non-injurious price determined by the Authority. BGPPL is able to maintain its selling price at the level of non-injurious price determined by the Authority and is not suffering any price suppression due to imports from subject countries.
- cc) The economic parameters of JK Paper disclosed in the disclosure statement demonstrate that there is no material injury to JK Paper Ltd. There is no causal link between the decline in performance of BGPPL during the POI and the imports from subject countries. If imports were responsible for decline in performance of the BGPPL, then it would have also affected performance of JK Paper Ltd. The Authority has itself observed that increase in imports from subject countries was necessitated due to decline in production of BGPPL. Thus, Respondents request the Authority to exclude the performance of BGPPL during the POI for assessment of material injury and consider performance of JK Paper for assessment of material injury. In any case, even if the Authority considers the economic parameters of BGPPL for assessment of material injury then the Authority should conclude that there is no causal link between increase in imports and material injury to the domestic industry.
- dd) The authority has issued the disclosure statement without recording the respondents' critical submissions pertaining to domestic industry standing, factors affecting profitability of BGPPL, injury being suffered by the domestic industry and causal link analysis. The respondents submit that the disclosure statement has not given an effective opportunity

granted to the respondents in terms of Rule 16. The respondents rely on *Oil and Natural Gas Corporation Ltd. vs. Western Geco International Ltd.*, (2014) 9 SCC 263, to state that a decision cannot be passed by the authority without hearing all the arguments as it is a quasi-judicial body. This decision would be against the principles of natural justice and would also suffer from the fatal defect of non-application of mind.

- ee) In the disclosure statement, the Authority has made adjustments on account of “Non-Refundable VAT” while calculating the ex- factory exports price of the responding exporter. There is no input VAT on the goods imported under processing trade for the purpose of exports. Therefore, the adjustment made on account of “Non-Refundable VAT” is erroneous and should be corrected.
- ff) The responding parties submit that as per Article 2.2 of the WTO agreement on anti-dumping the normal value and export price are to be compared at the equal level of trade. However, in the present case while adjustments have been made towards “Packing Charges” in NEP “Packing Charges” have been included while calculating the Constructed Normal Value. This would be in violation of the WTO agreement on anti-dumping. Thus, the respondents request the authority to confirm that “Packing Charges” should not be taken in consideration while determining the Constructed Normal Value.
- gg) BGPPL suffered as two strategic asset sales of the Company did not materialize. Consequently, the expected improvements in the balance sheet position did not happen and the financial condition of the Company was put under further stress. Other reasons for stress on BGPPL are that wood prices have gone up steeply, more than doubling in the last three to four years which, in turn, has seriously affected competitiveness of the Indian paper industry, increasing cost of raw material and energy, Government of India’s policy of extending preferential tariff treatment to paper and paperboard under the free trade agreements (FTAs).
- hh) Factors relevant for casual link are, increase in imports from subject countries, which was necessitated due to decline in production of the domestic industry, shutdown of the plant for a significant period during the POI. Due to shut down of BGPPL during the POI, cost of sales increased more than selling price. Thus, there is no causal link between injury and imports from subject countries. The applicant purposefully excluded JK Paper from the purview of domestic industry to distort performance indices. The shutdown of petitioner’s plant coincided with the period of loss. Thus, the entire domestic industry experienced a sudden decline, which had nothing to do with imports.

K.3. Examination by the Authority

114. The Authority notes the submissions made by various parties some of which are repetitive in nature and were addressed in the disclosure statement. To the extent fresh arguments have been made and considered relevant, the specific issues have been dealt at appropriate places in the findings above. The Authority has examined submissions of interested parties herein below to the extent relevant and not addressed elsewhere.

- (i) As regards the submission that the Authority should disclose essential facts that form the basis of its findings and conclusion, it is observed that the Authority had disclosed all essential facts under consideration in terms of Rule 16 of the AD Rules to all the parties concerned.
- (ii) With regard to the submissions concerning clarity for the standing/constitution of the domestic industry, the Authority holds that the petition was filed by Indian Paper Manufacturers Association on behalf of domestic industry, M/s. BILT Graphic Paper Products Ltd, which is a producer of the subject goods in India and constitutes the domestic industry for the purpose of the present investigation. In the petition, it was stated that there is one more known domestic producer of the product under consideration, namely, JK Paper Limited. The data provided by JK Paper Ltd. has been used for the limited purpose of causal link analysis between injury and dumping.
- (iii) As regards the submissions of the domestic industry regarding exclusion of coated paper below 80 GSM the Authority notes that the domestic industry itself excluded lightweight coated paper from the scope of product under consideration. In addition, during the verification of the domestic industry, the Authority had specifically discussed this issue and it was informed that Domestic Industry does not produce double side coated paper below 75 GSM. Accordingly, the Authority excludes double sided coated paper below 75 GSM and lightweight coated paper from the scope of product under consideration.
- (iv) As regards the submission that NIP for the JK Paper has not been determined, the Authority holds that determination of NIP for JK paper is not required as it is not a part of the domestic industry as mentioned at appropriate places in the present findings. The Authority has determined NIP for the domestic industry as per Annexure-III to the AD Rules.
- (v) As regards the contention of the Domestic Industry that JK paper data/information has been used on convenience basis, the Authority notes that the facts of the present case are unique as plant of the Petitioner i.e. M/s. BILT Graphic Paper Products Ltd. was shutdown for a significant period during the period of investigation. In order to conduct a proper causal link analysis, it was necessary to analyse data of JK paper, which is the only other major producer of PUC. At the time of seeking additional information itself from JK Paper, it was informed to them that because of the peculiar facts of the present case (wherein the petitioner was shutdown for a major part of the POI) information was being sought from JK Paper in order to conduct an appropriate injury and causal link analysis.
- (vi) As regards the belated submissions made by several traders/importers/users/association for the first time at post disclosure stage with respect to the scope of product under consideration, the Authority notes that these PUC exclusion related issues have been raised for the first time and that too at this belated stage of post disclosure comments. It is not possible for the Authority to examine all such PUC exclusion related issues afresh at such a belated stage. However, the authority has tried its best to address most of the PUC exclusion issues, to the extent possible, based on the records available with the authority. Accordingly, the authority

excludes Electrical Kraft insulation paper, Kraft paper, Kraft insulation paper and insulating paper from the scope of PUC.

- (vii) As regards the contention of the interested parties that injury margin determined on the basis of data of BGPPL is unreliable and the same should be done on the basis of the data provided by JK Paper Ltd., the Authority notes that the injury margin is to be determined based on the NIP calculated for the domestic industry. As discussed above, BGPPL is the domestic industry in the present case and accordingly NIP has been determined in terms of Annexure III to the AD Rules for BGPPL.
- (viii) As regards the contention of the domestic industry for the verification of information provided by M/s. JK Paper Ltd., the Authority notes that it has considered the data provided by JK Paper Ltd. in the present final findings as such and no changes have been made in the data provided by them. It is not necessary for the Authority to verify the data of each and every interested party so long as the Authority is satisfied with the information provided by an interested party. As regards the contention of the interested parties as to why Korea RP and Indonesia were excluded from the ambit of subject countries, the Authority notes that this issue had been clarified in the initiation notification itself wherein it was clearly mentioned that Authority prima facie found absence of dumping on imports of subject goods from Indonesia and Korea RP for the period of investigation.
- (ix) Some parties have submitted that they import coated paper under tariff items 48101300 and 48101900 and that the domestic industry is not manufacturing the products falling under these tariff items. The Authority notes that under the customs tariff of India no such tariff items (48101300 and 48101900) exists and therefore submissions of the interested parties is devoid of any merits.
- (x) As regards the contention of the interested party that the adjustment made on account of “Non-Refundable VAT” in determining ex-factory export price in case of processing trade is incorrect, the Authority does not agree with the submission made by them. The Authority notes that adjustment for non-refundable VAT is required to be done even in case of processing trade and the formula for the same is $\text{FOB value} \times (17\% - \text{refunded rate}) \times (1 - \text{planned distribution ratio})$ and it was therefore incumbent upon the concerned interested party to provide the requisite details.
- (xi) With regard to the issue raised relating to the adjustment of the packing charges in both normal value and the export price, it is noted that appropriate adjustment has been made for fair comparison as per the consistent practice followed by the authority.
- (xii) With regard to the domestic industry’s contention that imposition of AD/ CV duty on coated paper by EU and USA against imports from China PR has created a threat of significant imports coming from China PR to India, the Authority notes that the imposition of impugned duties by EU and USA is not a recent development and has actually been in force for quite some time (in US since 2010 and in EU since 2011). Accordingly, the submission of the Domestic Industry is devoid of any merit.

- (xiii) As regards the request of the domestic industry for disclosure of DGCI&S data adopted for the investigation, it is noted that the same has been placed in the public file and can be accessed by all the interested parties after following the due procedure.

L. CONCLUSION

115. Keeping in view the mandate of the Customs Tariff Act and AD rules, relevant submissions made by various interested parties and facts available before the Authority; the authority concludes as under:

- i) There is substantial increase in imports of subject goods from subject countries in absolute terms as well as in relation to production & consumption in India. However, the increase in imports from subject countries was necessitated due to decline in production of the domestic industry.
- ii) The selling price of the domestic industry during POI was higher than the NIP determined by the Authority. It demonstrates that the dumped imports from the subject countries did not stop the domestic industry from realising a fair price for their product during the POI.
- iii) Capacity of the domestic industry remained constant since 2013 – 14. Capacity utilisation and production of the domestic industry improved till 2015-16 and have declined during the POI (A) due to the fact that the Domestic Industry was not operational for a major part of POI. On the other hand, capacity utilisation, production and domestic sales of JK Paper Ltd. have improved during the POI (A).
- iv) Profit before interest and cash profits of domestic industry have been stable till 2015 – 16 and have declined during the POI (A). On the other hand, profit before interest and cash profits of JK Paper Ltd. have improved during POI (A).
- v) Having evaluated the threat of material injury, the Authority notes that imports from the subject countries had no price depression/suppression effect on the domestic country. The Authority further notes that no significant capacity has been added by any of the co-operative producers and none of the co-operative producers/exporters from subject countries hold any significant inventory, which consequently does not establish the threat of material injury.
- vi) The fall in production, sales, capacity utilisation and profitability of BGPPL is clearly attributable to its own intrinsic factors and has no co-relation with the dumped imports from the subject countries.
- vii) The consequent impact of dumped imports on the domestic industry performance is therefore absent. It cannot thus be conclusively established that the domestic industry suffered injury during POI as a result of dumped imports from the subject countries.

M. RECOMMENDATIONS

116. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted the investigation into dumping, injury and causal link in terms of the provisions laid down under the Anti-Dumping Rules, the authority notes that there is no causal link between the dumped imports from the subject countries and injury to the domestic industry due to the reasons given above and therefore does not consider it appropriate to recommend levy of Anti-Dumping Duty on the subject goods from China PR, European Union and USA. Therefore, in terms of Section 9A and 9B of the Customs Tariff Act read with Rule 14 (b) and Rule 17(1)(a)(iii), Rule 11(2) and para v of Annexure II of the Anti-Dumping Rules, the Designated Authority decides to terminate the present investigation which was initiated vide Notification No. 6/42/2017 -DGAD dated 23rd January, 2018.

N. FURTHER PROCEDURE

117. An appeal against this notification shall lie before the Customs, Excise, and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act, 1975 and the decision of the Hon'ble High Court of Delhi in M/s Jindal Poly Film Ltd. v. Designated Authority W.P. (Civil) No. 8202/2017.

(Sunil Kumar)
Additional Secretary and Director General