

- ii. Since the domestic industry has not followed Trade Notice 03/2021 dated 12.04.2021, current investigation needs to be terminated.
- iii. The domestic industry has claimed supporting evidence for normal value, export price as confidential, which ought to be provided for comments from the interested parties.
- iv. Exporters have filed their data as per the applicable Trade Notices and as per the practice of the DGTR.

Submissions made by the domestic industry

25. The domestic industry has made the following submissions:

- i. The applicant has claimed that as far as their submissions / information are concerned, confidentiality has been claimed in accordance with the provisions of Rule 7 of the Anti-dumping Rules and the Trade Notices issued in this regard.
- ii. All the economic parameters considered by the Authority for the purpose of arriving at the determination of injury have been provided in compliance with trade notice 10/2018 dated 7.09.2018.
- iii. Responses filed by the participating producers fail to comply with requirements laid down by the Authority with regard to confidentiality. Response to most of the questions in questionnaire have been claimed completely confidential with no meaningful summary provided.
- iv. Respondents have made mockery of the system by not providing proper non-confidential version of their responses fully complying with the requirements of the Trade Notice 10/2018 dated 7.09.2018.
- v. The domestic industry has fulfilled the obligation of providing import data in manner stated in Trade Notice 07/2018. The interested parties are free to obtain data from DGCI&S or from the Authority.

Examination by the Authority

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

(1) "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."

27. Submissions made by the domestic industry and the other interested parties with regard to confidentiality, to the extent considered relevant, were examined by the Authority and addressed accordingly. The Authority notes that the information provided by all the interested parties on confidential basis was examined with regard to the 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. All interested parties have claimed their business-related sensitive information as confidential.
28. The Authority notes that the domestic industry and the other interested parties have provided non-confidential version of all the information that is relevant for the purpose of the present investigation.

F. MISCELLANEOUS SUBMISSIONS

Submissions made by foreign producers/exporters/importers and other interested parties

29. Following miscellaneous submissions have been made by the other interested parties:
- i. Continuation of duty under Section 9A(5) is an exception and not a norm and in the instant sunset review investigation there does not exist any exceptional circumstances calling for the continuance of anti-dumping duty.
 - ii. Performance of the domestic industry is dependent on the performance of the solar module manufacturers. Even if the imports are NIL, the domestic industry would be impacted as many producers in the downstream industry have shut down their operations.

- iii. The levy of anti-dumping duties on the Textured Tempered Glass will create a situation wherein the applicant will establish monopoly. Therefore, the Authority should not extend the duty.
- iv. The application filed by the domestic industry in the present case failed to show any positive evidence to support the initiation and therefore, it was not necessary to initiate the investigation at all.
- v. The imports in SEZ should be excluded.
- vi. The petitioner has already been enjoying the protection in the form of anti-dumping duty for the past 6 years. The earlier imposition of anti-dumping duty has served its purpose and is not further required to be extended. Any further extension of existing duty will be in violation of Article 11 of the Anti-Dumping Agreement.
- vii. Since only few exporters have established their production in Malaysia, there is no merit in the submission of the domestic industry that post imposition, imports have shifted from China PR to Malaysia, as majority of the exporters are still exporting from China PR only.

Submissions made by the domestic industry

30. Following miscellaneous submissions have been made by the domestic industry:

- i. As regards the contention that continuation of duties will lead to a situation of monopoly, it is submitted that this argument is completely devoid of any merit and has been rejected in the original investigation itself. It is further submitted by the domestic industry that it has been held by the Authority time and again that the objective of trade remedial investigation is not to block any imports but only to address the situation created by unfairly priced imports. Anti-dumping duties being country specific duties, the importers are free to import the subject goods at fair prices from the subject country as well as from other countries. Therefore, there is no question of monopoly by the domestic industry or causing shortage as the fairly priced imports can still come after the imposition of duties. A monopoly can exist only if there is a single supplier in the market which is not the case. A single producer does not create any monopoly as the goods continue to reach the marketplace from other suppliers around the world.
- ii. In relation to the submissions of the interested parties that the performance of the domestic industry is linked to the performance of the solar module manufacturers, it is submitted by the domestic industry that the said argument purported by the interested parties is without any basis. While it is true that certain manufacturers

in solar industry have shut down their operations, the same has not impacted the demand of the subject goods in the country as can be seen from the data on record.

- iii. There is no merit in the submissions of the interested parties that imports in SEZ should be excluded. SEZ is very much a market of the domestic industry and therefore, no separate analysis is required.
- iv. From the data on record, it is clear that post imposition of anti-dumping duties from China PR, imports have gradually shifted to Malaysia. Since most of the exporters have submitted that they have not shifted, this only shows that at fair price they are not able to compete with Indian producers and if duties are not extended, their exports will again increase. Even quantities exported from Malaysia, will also find their way into Indian market through Chinese producers.
- v. The domestic industry has submitted that they have provided all the information which is sufficient for the purpose of initiation of the investigation. Even the Authority also in the initiation mentioned that the information provided by the Domestic Industry is prima-facie sufficient for the purpose of the initiation. Therefore, the submissions of the interested parties that the domestic industry has not provided sufficient information for the initiation is incorrect.
- vi. The domestic industry has submitted that as per the consistent practice of the Authority, the duties should be extended for the period of five more years. Further, Section 9A(5) also supports extension of five years.

Examination by the Authority

- 31. It is noted that the information filed by the domestic industry was found sufficient for the purpose of the initiation of the investigation. It is further noted that none of the interested parties have provided any information / evidence to show how initiation based on the application filed by the domestic industry has violated any rule. It is therefore noted that there is no merit in the submissions of the other interested parties.
- 32. In relation to the period of extension of anti-dumping duties, it is noted that the Authority decides the period of the extension of anti-dumping duties as envisaged in the Section 9A(5) post examination of the data and comments filed by the interested parties.

G. Determination of normal value, export price and dumping margin

- 33. As per section 9A(1)(c) of the Act, the normal value in relation to an article means:

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

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

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

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

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.

Provisions relating to Non-Market Economy countries

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

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

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

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member 16country during the three year period preceding the investigation is a nonmarket economy country

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

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

(a) the decisions of the concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

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

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

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

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

Submissions made by foreign producers/exporters/importers and other interested parties

35. The submissions made by the other interested parties with regard to normal value, export price and dumping margin are as follows:

- i. The domestic industry has failed to provide any reliable information in relation to normal value and export price of subject goods in China PR and therefore, the same should not be considered for final determination.
- ii. The Authority should consider the information filed by the producers / exporters for determining dumping margin.
- iii. The dumping margin claimed in the petition is highly exaggerated as compared to the original investigation and therefore, the Authority should check the same.

Submissions made by the domestic industry

36. The submissions made by the domestic industry with regard to normal value, export price and dumping margin are as follows:

- i. Since none of the exporters have claimed market economy status, their normal value should be based on the paragraph 7 of Annexure I of AD Rules.
- ii. The Chinese exporters continue to dump the subject goods in Indian market despite imposition of anti-dumping duties. In fact, the export price of the Chinese exporters to India has declined post imposition of ADD despite increase in cost.
- iii. Interestingly, none of the cooperating exporters have even claimed that they are not dumping the subject goods in India. Moreover, the domestic industry has calculated dumping margin based on the export price calculated from DGCI&S data and constructed normal value as per the consistent practice of the DGTR. Therefore, computed dumping margin is as per practice of the DGTR and cannot be said to be more.
- iv. The domestic industry has requested the Authority to check whether exporters have claimed SG&A and profit for unrelated exporters or not.

Examination by the Authority

37. The Authority sent questionnaires to the known producers/exporters from China PR, advising them to provide information in the form and manner prescribed by the Authority. The following producers/exporters from China PR have filed exporter's questionnaire response:

- a. Xinyi PV Products (Anhui) Holdings Ltd.

- b. Xinyi Solar (Hong Kong) Limited
- c. Guangxi Xinyi Photovoltaic Industry Co., Ltd
- d. Wujiang CSG Glass Co., Ltd
- e. Dongguan CSG Solar Glass Co., Ltd.
- f. Shaanxi Topray Solar Co. Ltd
- g. Henan Ancai Hi Tech Co., Ltd
- h. Henan Ancai Photovoltaic Advanced Material Co., Ltd
- i. Anhui Flat Solar Glass Co. Ltd
- j. Flat Glass Group Co. Ltd
- k. Flat (Hong Kong) Co. Ltd
- l. Zhejiang Jiafu Glass Co. Ltd

38. The Authority has analyzed the submissions made by the interested parties including domestic industry and has accordingly determined the normal value, export price and dumping margin.

Determination of Normal Value

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

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

- a. In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:*
 - i. If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;*
 - ii. The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*