

**MINISTRY OF COMMERCE AND INDUSTRY****(Department of Commerce)****(DIRECTORATE GENERAL OF TRADE REMEDIES)****NOTIFICATION****FINAL FINDINGS**

New Delhi, the 15th May, 2023

**Case No. – (SG) – 02/2022****Subject : Safeguard investigation concerning imports of Polyvinyl Chloride (PVC) Suspension Resins with Residual Vinyl Chloride Monomer (RVCM) Content above 2 PPM into India****F. No. 22/2/2022-DGTR.**—Final Findings – Proceeding under Foreign Trade (Development and Regulation) Act, 1992 and the Safeguard Measures (Quantitative Restrictions) Rules, 2012**A. INTRODUCTION**

1. An application dated 15<sup>th</sup> July 2022 was filed before the Authorised Officer under Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 (hereinafter also referred to as the “Act”) read with the Safeguard Measures (Quantitative Restrictions) Rules, 2012 (hereinafter also referred to as the “Rules”) by Chemplast Cuddalore Vinyls Limited and DCW Limited (hereinafter also referred to as the “applicants” or the “domestic industry”) seeking imposition of safeguard measure in the form of quantitative restrictions on imports of Polyvinyl Chloride (PVC) Suspension Resins with Residual Vinyl Chloride Monomer (RVCM) Content above 2 PPM (hereinafter also referred to as the “product under consideration” or “PUC”) into India. The applicants have alleged that the product under consideration is being imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that is producing “like or directly competitive goods” in India.
2. And whereas, in view of the duly substantiated petition filed by the applicants and sufficient *prima facie* evidence submitted regarding the recent, sudden, sharp and significant increase in imports of the subject goods and consequent injury in the form of serious injury and threat of serious injury to the domestic industry, the Authorised Officer initiated the safeguard (quantitative restrictions) investigation vide Notification No. 22/2/2022-DGTR dated 16<sup>th</sup> September 2022, published in the Gazette of India, Extraordinary, to examine the alleged increase in imports and consequent injury to the domestic industry, and the need for imposition of safeguard measures in the form of quantitative restrictions to address such injury.

**B. PROCEDURE**

3. The procedure described below has been followed by the Authorised Officer with regard to the subject investigation:
  - a. In accordance with sub-rules (2) and (3) of Rule 6 of the Rules, a copy of the initiation notification dated 16<sup>th</sup> September 2022 and a copy of the non-confidential version of the application filed by the applicants was forwarded to the Central Government, i.e., the Ministry of Commerce & Industry, Government of India, the Governments of major exporting countries through their Embassies in India and the interested parties.
  - b. The questionnaire to be answered by the exporters/importers / domestic producers was forwarded to the known interested parties with a request to make their views known in writing within 30 days from the date of issue of the Public Notice of Initiation, as prescribed under Rule 6(4) of the said Rules.
  - c. In response to the initiation notification, the following interested parties registered themselves with the Authorised Officer
    - i. Taipei Economic and Cultural Center in India, Taiwan
    - ii. Trade and Economic Section, Delegation of the European Union to India
    - iii. Trade Interests and Remedies Division, Department of Foreign Trade, Thailand,
    - iv. General Authority of Foreign Trade, The Government of the Kingdom of Saudi Arabia
    - v. Director of Trade Defense, Directorate General of Foreign Trade, Ministry of Trade Indonesia
    - vi. The Ministry of International Trade & Industry, Government of Malaysia
    - vii. Embassy of Mexico in India, New Delhi
    - viii. Pt. Nas Barakah International

- ix. AGC Vinythai Public Company Limited
  - x. LGC Petrochemical India Pvt. Ltd (LGCPIN)
  - xi. LG Chem Ltd
  - xii. China General Plastics Corporation
  - xiii. CGPC Polymer Corporation
  - xiv. Chiping Xinfra Polyvinyl Chloride Co., Ltd,
  - xv. CNSIG Inner Mongolia Sodium Industry Co., Ltd.
  - xvi. CNSIG Jilantai Chlor-Alkali Chemical Co., Ltd.
  - xvii. Formosa Plastics Corporation
  - xviii. Inner Mongolia Erdos Electric Power and Metallurgy Group Co., Ltd.
  - xix. Inner Mongolia Junzheng Chemical Industry Co., Ltd.
  - xx. Ordos Junzheng Energy & Chemical Co., Ltd.
  - xxi. Shaanxi Beiyuan Chemical Industry Group Co., Ltd.
  - xxii. Shandong Xinfra Import & Export Co., Ltd.
  - xxiii. Tianjin Bohua Chemical Development Co., Ltd.
  - xxiv. Tianjin LG Bohai Chemical Company Limited
  - xxv. XINJIANG ZHONGTAI Import and Export Co., Ltd.
  - xxvi. Yibin Tianyuan Group Co., Ltd.
  - xxvii. Xinjiang Zhongtai Chemical Co., Ltd.
  - xxviii. PT. Rajha Cemerlang Berkarya
  - xxix. KEM ONE - Siège social
  - xxx. China Chlor-Alkali Industry Association
  - xxxi. Tianjin LG Bohai Chemical Company Limited
  - xxxii. Hanwha Solutions Corporation
  - xxxiii. CV Aurora Impex
  - xxxiv. M/s Sankhla Industries
  - xxxv. Sandeep Organics Pvt. Ltd.
  - xxxvi. Midas Polychem LLP”
  - xxxvii. Canadian Speciality Vinyls
  - xxxviii. The Plastics Export Promotion Council
  - xxxix. Organization of Plastic Processor of India
  - xl. The All India Plastics Manufacturers’ Association
  - xli. Sree Exim
  - xlii. Indian Vinyl Council
- d. In response to the initiation notification, the following producers / exporters filed a response to exporters’ questionnaire
- i. CGPC Polymers Corporation
  - ii. China General Plastics Corporation
  - iii. Chiping Xinfra Polyvinyl Chloride Co., Ltd.
  - iv. CNSIG Inner Mongolia Sodium Industry Co., Ltd.
  - v. CNSIG Jilantai Chlor-Alkali Chemical Co., Ltd.

- vi. Farmosa Plastics Corporation
  - vii. Inner Mongolia Erdos Electric Power and Metallurgy Group Co., Ltd.
  - viii. Inner Mongolia Junzheng Chemical Industry Co., Ltd.
  - ix. Ordos Junzheng Energy & Chemical Co., Ltd.
  - x. Shaanxi Beiyuan Chemical Industry Group Co., Ltd.
  - xi. Shandong Zinfa Import & Export Co., Ltd.
  - xii. Tianjin Bohua Chemical Development Co., Ltd.
  - xiii. Tianjin LG Bohai Chemical Company Limited
  - xiv. Xinjiang Zhongtai Import & Export Co., Ltd.
  - xv. Yibin Tianyuan Group Co., Ltd.
  - xvi. PT. Rajha Cemerlang Berkarya, Indonesia
  - xvii. Hanwha Solutions Corporation, Republic of Korea (South Korea)
- e. Further, the following parties have made submissions in response to the initiation notification:
- i. Taipei Economic and Cultural Center in India, Taiwan
  - ii. The Government of the Kingdom of Saudi Arabia
  - iii. Trade and Economic Section, Delegation of the European Union to India
  - iv. Trade Interests and Remedies Division, Department of Foreign Trade, Thailand,
  - v. General Authority of Foreign Trade, The Government of the Kingdom of Saudi Arabia
  - vi. Director of Trade Defense, Directorate General of Foreign Trade, Ministry of Trade Indonesia
  - vii. The Ministry of International Trade & Industry, Government of Malaysia
  - viii. Embassy of Mexico in India, New Delhi
  - ix. AGC Vinythai Public Company Limited
  - x. Pt. Nas Barakah International
  - xi. CV Aurora Impex
  - xii. Indian Vinyl Council
  - xiii. China Chlor-Alkali Industry Association
  - xiv. Organization of Plastics Processors of India
  - xv. The All India Plastics Manufacturers' Association
  - xvi. The Plastics Export Promotion Council
- f. Two importers, namely Sree Exim and Sankhla Industries have filed submissions or response to importers' questionnaire issued by the Authorised Officer.
- g. The Authorised Officer has considered the most recent period as 1st January 2022 – 30th June 2022 and the period of investigation covered 1st April 2019 – 30th June 2022.
- h. A list of interested parties was published on the DGTR website to enable access of all non-confidential version (NCV) submissions made by all interested parties. All interested parties were advised to exchange the non-confidential version of their submissions with each other through email.
- i. In accordance with Rule 6(6) of the Rules, the Authorised Officer provided an opportunity to the interested parties to present their views orally in a public hearing held on 31<sup>st</sup> October 2022 through Digital Video Conferencing. The parties, which presented their views in the oral hearing, were requested to file written submissions of the views expressed orally, followed by rejoinder submissions. The following interested parties had filed written submissions and rejoinder submissions post the oral hearing
- i. China Chlor-Alkali Industry Association
  - ii. CNSIG Jilantai Chlor-Alkali Chemical Co., Ltd.
  - iii. Inner Mongolia Junzheng Chemical Industry Co., Ltd.

- iv. Ministry of Trade Republic of Indonesia
  - v. Ordos Junzheng Energy & Chemical Co., Ltd.
  - vi. Organization of Plastic Processor of India
  - vii. Shaanxi Beiyun Chemical Industry Group Co., Ltd.
  - viii. Taipei Economic and Cultural Center in India
  - ix. The All India Plastics Manufacturers' Association
  - x. The Plastics Export Promotion Council
  - xi. Trade and Economic Section, EU
  - xii. Xinjiang Zhongtai Import & Export Co., Ltd.
  - xiii. Yibin Tianyuan Group Co., Ltd.
- j. The submissions made by the interested parties, arguments raised and the information provided by the various interested parties during the course of the investigation, to the extent the same are substantiated with evidence and considered relevant to the present investigation, have been appropriately considered by the Authorised Officer in these final findings.
  - k. The Authorised Officer, during the course of the investigation, satisfied itself as to the accuracy of the information supplied by the interested parties, which forms the basis of these final findings, to the extent deemed necessary and possible.
  - l. The information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authorised Officer has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to the other interested parties. Wherever possible, the parties providing the information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
  - m. 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 Authorised Officer has considered such party as non-cooperative and has recorded these final findings on the basis of the facts available.
  - n. \*\*\* in the non-confidential version of the final findings represents information furnished by an interested party on confidential basis and so considered by the Authorised Officer under the Rules.
  - o. The exchange rates adopted by the Authorised Officer for the subject investigation is US\$ 1 = ₹ 76.92
  - p. Request was made to the Director General (Systems) to provide the transaction-wise details of imports of subject goods for the injury period and the period of investigation.
  - q. The recommendations of the Authorised Officer may be imposed by the Central Government through Ministry of Commerce & Industry vide notification in the official gazette under sub-section (1) of Section 9A of the Foreign Trade (Development and Regulation) Act, 1992.

### **C. APPLICABLE LEGAL PROVISIONS**

4. Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 provides for the imposition of safeguard measures in the form of quantitative restrictions if goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry.
5. The Safeguard Measures (Quantitative Restrictions) Rules, 2012 have been notified under powers conferred by Section 9A(3) to provide for the manner in which goods, the import of which shall be subject to quantitative restrictions, may be identified and the manner in which serious injury or threat of serious injury due to surge in imports in relation to such goods may be determined.
6. Article XIX of the General Agreement on Tariffs and Trade and the WTO Agreement on Safeguards establishes the rules for the application of safeguard measures by the WTO Members.
7. The investigation has been conducted in accordance with the said provisions of the Act and the Rules and the final findings are recorded through this notification.

### **D. SOURCE OF INFORMATION**

8. At the time of the initiation of investigation, the applicants had submitted information regarding increased imports and injury to the domestic industry for the period April 2018 to March 2022. However, the Authorised

Officer decided – while issuing the initiation notification – that the period of investigation will be from 1<sup>st</sup> April, 2019 to 30<sup>th</sup> June 2022. The domestic industry has provided relevant information (imports and injury data) for the period April 2019 to June 2022 in response to the initiation notification. The domestic industry has also provided injury information for the period July-September 2022 vide email dated 18<sup>th</sup> January 2023; a non-confidential version of the same was circulated to all interested parties vide their email dated 19<sup>th</sup> January 2023. Since the applicants claimed that increased imports of the product during the present surge period were threatening serious injury to the domestic industry, the Authorised Officer has considered it appropriate to analyse the injury information for the period July-September 2022 in order to evaluate the effect of increased imports on the performance of the domestic industry.

9. The Authorised Officer called import data from Director General (Systems) data in order to verify the data submitted by the domestic industry for the period 01.04.2018 to 30.06.2022. The Director General (Systems) data was received and considered. The Authorised Officer has relied on the import data received from the Director General (Systems) for the purpose of the present investigation.

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

### **E.1. Submissions by the other interested parties**

10. The following submissions were made by the other interested parties with regard to the scope of the product under consideration and the like article.
- a. The Authorised Officer must clarify the scope of the product under consideration since the initiation notification and the application create a confusion regarding the same.
  - b. Segregation of subject goods based on RVCM content is incorrect as PVC Suspension Grade is not categorized based on RVCM content globally.
  - c. Different countries have different standards for RVCM content. Chinese and American goods have the same standard, which is fixed at 5 PPM.
  - d. PVC Suspension Resins with more than 2 PPM and less than 2 PPM of RVCM are directly competing and have been treated as like article.
  - e. Exclusion of PVC Resins manufactured through bulk mass polymerization, emulsion polymerization and micro suspension polymerization process, based on technology cannot be a factor for exclusion of a product, as held in past investigations.
  - f. RVCM content should be assessed based on test report or certificate of analysis submitted by importers with the Indian Customs.
  - g. The applicants have made contradictory statements, wherein they have relied on certificate of analysis to identify RVCM content in goods, while also claiming that such certificate should not be considered.
  - h. Responding exporters have not produced or exported PVC Suspension above 2 PPM of RVCM, as can be seen from the certificate of analysis filed.
  - i. The Authorised Officer may conduct onsite verification to verify actual RVCM content in goods produced by Chinese producers.
  - j. VCM content should not be assessed based on national standard fixed by China but should be assessed based on test report or certificate of analysis submitted by importers with Indian Customs.
  - k. While countries have fixed benchmark for RVCM content, including China which has fixed benchmark of 5 PPM, the goods produced and exported by Chinese and other producers is usually less than 2 PPM.
  - l. Merely because the specification sheet says less than 5 PPM, it does not automatically mean that the imported product is of more than 2 PPM.
  - m. It was also submitted that upon reviewing the DG Systems data provided by the Authorised Officer for all the above cited producers/exporters, it is noted that the HS Code (CTH) is 39041020 only. Whereas, we understand that PVC Suspension Resin is imported under multiple HS Codes such as 39041090, 39042110, 39042190, 39042200, etc. Sample screenshots from various publicly available data are being provided.

### **E.2. Submissions by the domestic industry**

11. The following submissions were made by the applicants with regard to the scope of the product under consideration and like article.

- a. The product produced by the domestic industry is like article to the product under consideration imported into India as they both compete in the same market, are used to manufacture the same products, and are used by customers interchangeably.
- b. Even if the product produced by the domestic industry is not considered as like product, it is still a 'directly competitive product' which closely resembles the characteristics of the product under consideration.
- c. Contrary to the submissions of the other interested parties, the scope of the product under consideration needs no clarification. None of the producers from the European Union have asked for clarification of the scope and the submission has been made only by the Trade and Economic Section, European Union.
- d. The product under consideration is mainly imported from China PR, whereas PVC Suspension Resins with residual VCM upto 2 PPM is imported from other countries and produced in India.
- e. Contrary to the submissions of the other interested parties, PVC Suspension Resins have been classified by the Government of India by forming BIS Standards IS 17658:2021. The standards notified by other countries are not important as the product has been defined with regard to the Indian standards.
- f. As per the specification sheets, some producers from China PR have RVCM content upto 2 PPM but most of the producers have RVCM content above 2 PPM.
- g. Categorization based on RVCM content is justified as it plays an important role for the product, as evident from the fact that standards of various countries, as well as websites, specification sheets and certificate of analysis contain it.
- h. The other interested parties have made contradictory submissions as they have stated that the product under consideration cannot be categorized based on RVCM content. However, they have also stated that the different countries have prescribed different standards for RVCM content.
- i. Contrary to the submissions of the other interested parties, specification sheets show the products produced by the company and not the standards established by the Government.
- j. Certificate of analysis is not relevant as it is issued for only one lot or batch produced or consignment shipped, and not the product generally produced by the producer. In case a certificate of analysis shows RVCM above 2 PPM, it is definitive evidence of production of product under consideration. However, a certificate of analysis showing RVCM upto 2 PPM cannot imply that the producer has always produced PVC with RVCM upto 2 PPM.
- k. Contrary to the submissions of the other interested parties, PVC Suspension Resins with RVCM upto 2 PPM is a product with lower impurity as compared to PVC Suspension Resins with RVCM above 2 PPM or between 2 PPM and 5 PPM. Since most of the countries require PVC Suspension Resins with RVCM upto 2 PPM, any producer manufacturing a product with lower impurity is likely to mention the same in its specification sheet / certificate of analysis.
- l. Only a handful of Chinese producers which account for 6.46% of total imports of PVC Suspension Resins from China PR and 7.78% of imports of the product under consideration have claimed that they produce PVC with RVCM upto 2 PPM.
- m. While Tianjin LG Bohai Chemical Co. has filed a sample certificate of analysis wherein it exported PVC Suspension Resins with RVCM upto 2 PPM, a sample is not enough to establish that it always exports PVC with RVCM upto 2 PPM. In any case, the exporter has exported miniscule volumes which will not impact the total imports of product under consideration in India.
- n. Xinjiang Zhongtai Chemical Co., Limited, which produces the product under consideration (above 2 PPM), has not participated in the present investigation while its subsidiary which has exported negligible volumes has participated.
- o. Contrary to the submissions of other interested parties, the applicants have provided the information reasonably available to them in order to prove that a number of producers are exporting PVC suspension resins with RVCM above 2 PPM and such imports have surged.
- p. PVC produced through bulk mass polymerization, emulsion polymerization and micro suspension polymerization process are not PVC suspension resins and were treated as different products in previous investigation. As regards exclusion of bulk mass polymerization, the domestic industry has submitted that the Authorised Officer for Advance Rulings vide its order dated 01.04.2016 decided that the PVC Mass Resin Polymerization Grade will not attract anti -dumping duties imposed of PVC-SR vide Customs Notification dated 13.06.2014 which is based on the recommendations of the Designated Authorised Officer issued vide notification no.14/1012/2012-DGAD dated 04.04.2014.

### E.3. Examination of the Authorised Officer

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

“The product under consideration in the present investigation is “Polyvinyl Chloride (PVC) Suspension Resins with Residual Vinyl Chloride Monomer (RVCM) above 2 PPM”.

The petitioners have categorized PVC suspension resin into two categories - (a) PVC suspension resin with residual VCM above 2 PPM and (b) PVC suspension resin with residual VCM below 2 PPM. The petitioners have justified the definition of the product under consideration on the basis of Residual VCM content by referring to the BIS standards. The BIS standard IS 1765 8: 2021 states as follows:

“RVCM content of PVC-SR and PVC-PR shall not exceed 2 PPM, However, RVCM content of PVC-SR shall not exceed 5 PPM when manufactured by mass/bulk polymerization process. RVCM content shall be tested in accordance with IS 10151 /ISO 24538.”

PVC Resins manufactured through bulk mass polymerization, emulsion polymerization and micro suspension polymerization process are excluded from the scope of the product under consideration. The following types of PVC resins are specifically excluded from the scope of the product under consideration:

- a. PVC Suspension Resins with Residual VCM below 2 PPM
- b. Cross-linked Poly Vinyl Chloride
- c. Chlorinated Poly Vinyl Chloride (CPVC)
- d. Vinyl Chloride Vinyl Acetate Copolymer (VC-Vac)
- e. Poly Vinyl Chloride Paste Resin
- f. Poly Vinyl Chloride Blending Resin”

13. The Authorised Officer notes that the applicants have requested classification of PVC Suspension Resin into two categories - (a) PVC Suspension Resin with residual VCM **above** 2 PPM and (b) PVC suspension resin with residual VCM **upto** 2 PPM. At the stage of the initiation of the investigation, the Authorised Officer examined the import trends of PVC Suspension Resins with residual VCM **upto** 2 PPM and **above** 2 PPM separately. The Authorised Officer noticed that there was no sudden, sharp and significant increase in imports of PVC Suspension Resins with residual VCM **upto** 2 PPM. Therefore, it was noticed that imports of PVC Suspension Resins with residual VCM **upto** 2 PPM did not *prima facie* satisfy the requirements necessary for the initiation of a safeguard investigation and subsequent imposition measure under the Rules. The Authorised Officer therefore decided to exclude PVC Suspension Resins with Residual VCM **upto** 2 PPM from the scope of the PUC.
14. On the other hand, the Authorised Officer noticed that imports of PVC Suspension Resins with residual VCM **above** 2 PPM were recent enough, sudden enough, sharp enough and significant enough<sup>1</sup> to warrant the initiation of the current investigation. Therefore, having *prima facie* satisfied himself regarding the existence of sudden, sharp and significant surge in imports of PVC Suspension Resins with RVCM **above** 2 PPM, the Authorised Officer has initiated the present investigation pursuant to Rule 5 of the Rules with respect to PVC Suspension Resins with residual VCM **above** 2 PPM only.

### E.3.1. Legal Standard for the defining scope of the product under consideration

15. The Authorised Officer notes that the Agreement on Safeguards, the Foreign Trade Development Act and the Safeguards (Quantitative Restrictions) Rules do not provide any guidance on the manner in which the ‘product under consideration’ for any investigation must be defined. Section 9A of the Foreign Trade (Development and Regulation) Act, 1992 only refers to “*any goods*” that are imported into India in increased quantities. Similarly, the Safeguards Agreement refers only to “*a product*” and stipulates that the safeguard measures must be applied to the “product being imported” irrespective of its source.<sup>2</sup> In the WTO dispute of Dominican Republic –Safeguard Measures,<sup>3</sup> the investigating Authorised Officer therein had defined the product under consideration as polypropylene bags (the end product) and polypropylene tubular fabric (the input product for polypropylene bags). Although two different product segments were included within the definition of the product under consideration, the Panel held that there are no irregularities in the definition of the product under

<sup>1</sup> See Paragraph 131, Appellate Body Report, *Argentina – Safeguard Measures on Imports of Footwear*, [WT/DS121/AB/R](#), adopted 12 January 2000, (hereinafter *Argentina – Footwear (EC)*). The Appellate Body observed that a pre-requisite for the imposition of the safeguard measure is that the increase in imports must be “*recent enough, sudden enough, sharp enough, and significant enough*”.

<sup>2</sup> Paragraph 7.177, Panel Report, *Dominican Republic – Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric*, [WT/DS415/R](#), [WT/DS416/R](#), [WT/DS417/R](#), [WT/DS418/R](#), and Add.1, adopted 22 February 2012 (hereinafter “*Dominican Republic – Safeguard Measures*”)

<sup>3</sup> *Ibid.*

consideration since there “is no provision in the Agreement on Safeguards that governs the selection, description, analysis or determination of this “product””<sup>4</sup> and “the Agreement on Safeguards does not impose specific obligations with respect to the definition or the scope of the product under investigation.”<sup>5</sup>

16. The observations of the Panel in Dominican Republic – Safeguard Measures were re-iterated by the Panel in EU – Safeguard Measures on Steel (Turkey),<sup>6</sup> wherein the European Union imposed safeguard measures on a range of different product categories through a single investigation. The Panel in this dispute noted that there were no inconsistencies with the wide definition of the scope of the product under consideration adopted by the European Commission. The Panel observed:

*7.34. It is also worth noting what the provisions considered in this section do not discipline, namely the choice of the product under investigation, in itself. These provisions do not set out rules for selecting the product under investigation, and for example they do not prevent a Member from including a range of products in a single investigation. We thus agree with the panel in Dominican Republic – Safeguard Measures that while the Agreement on Safeguards requires the authority to define the product under investigation, it does not set out requirements such as restricting the product under investigation “solely to those products that are like or directly competitive with each other”.*

17. The above WTO panel reports make it clear that an investigating authority has the discretion to define the product under consideration, and the Agreement on Safeguards does not discipline the choice of the product under consideration adopted by the Authority. In the above two WTO disputes, the Panel held that the Agreement on Safeguards does not prohibit the adoption of a wide definition of a product under consideration. Therefore, by logical extension, the Authorised Officer considers that there are no restrictions in adopting a narrow definition of a product under consideration.
18. In view of the above decisions and legislation, the Authorised Officer has a discretion while defining the PUC. The Authorised Officer notes that RVCM content classification is one of the criteria since BIS standards in India including other country’s specifications distinguishes based on this criteria. The purpose of the safeguard measures is to put a check on surge of imports which are injuring the domestic producers. In the facts of the present investigation, the Authorised Officer has distinguished the product based on RVCM content and has defined the PUC as PVC Suspension Resins with RVCM content above 2PPM as it was only this product category in which a sudden, sharp and significant surge of imports was observed. Therefore, the contention that the PUC cannot exclude PVC Suspension Resins with RVCM content upto 2PPM cannot be accepted.
19. The Authorised Officer believes that including PVC Suspension Resin with RVCM **upto 2** PPM would result in granting unnecessary protection to that segment of the Indian industry that is not suffering serious injury on account of a sudden, sharp and significant surge in imports. Therefore, the Authorised Officer proposes to consider that adopting a narrow scope of the product under consideration by restricting the PUC to PVC Suspension Resin with RVCM **above 2** PPM ensures that no excessive protection is granted to a segment which is outside the scope of the investigation.

### E.3.2. “Like and directly competitive products” under the Agreement on Safeguards and “like goods” under the Safeguard Measures (QR) Rules 2012

20. Having defined the scope of the product under consideration, the Authorised Officer now turns its examination towards the examination of the goods produced by the domestic industry and whether it can be covered within the scope of the present investigation. The Authorised Officer notes that the PUC excludes PVC Suspension Resin with RVCM **upto 2** PPM, whereas the domestic industry manufactures PVC Suspension Resin with RVCM **upto 2** PPM but not **above 2** PPM.
21. As per Article 2.1 of the Agreement on Safeguards, the ‘domestic industry’ in a safeguard investigation need not be the producer of the product under consideration, but may be the producer of ‘like and directly competitive products’. Article 2.1 of the Agreement on Safeguards reads as under:

*A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that **such product** is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces **like or directly competitive products**.*

<sup>4</sup> *Ibid.*, paragraph 7.177

<sup>5</sup> *Ibid.*, paragraph 7.181

<sup>6</sup> Panel Report, *European Union – Safeguard Measures on Certain Steel Products*, [WT/DS595/R](#) and Add.1, adopted 31 May 2022 (hereinafter “*EU – Safeguard Measures on Steel (Turkey)*”).



22. The above provision uses the terms ‘*such products*’ while referring to the imported goods (i.e. the product under consideration), but uses the words ‘*like and directly competitive products*’ while referring to the goods produced by the domestic industry. In other words, a safeguard measure may be imposed on products, if a surge in imports of *such product* causes serious injury to the domestic industry that is producing ‘*like and directly competitive products*.’ The WTO Panel, in the dispute of US – Safeguard Measure on Washers,<sup>7</sup> has observed that there need not be a match between the ‘product under consideration’ and ‘like and directly competitive products.’ The Agreement on Safeguards does not mandate that the domestic industry must be the producers of the product under consideration only, but may include the producers that are producing ‘like and directly competitive products’:

*We agree with Korea that the definition of the domestic industry affects subsequent stages of an investigating authority's determination (such as the serious injury and causation determinations). However, the Agreement on Safeguards provides a specific definition of the domestic industry in Article 4.1(c), and requires that the subsequent stages of the investigation be conducted based on a domestic industry defined in accordance with this provision. Neither Article 4.1(c) nor any other provision of the Agreement on Safeguards (including the provisions governing the subsequent conduct of the investigation, such as Articles 4.2(b) and 4.2(c)), impose any additional requirements precluding what Korea describes as a 'mismatch' between the PUC and the domestically produced good. Article 4.1(c) requires that the domestic industry be defined on the basis of producers of goods that are 'like or directly competitive' with the PUC. To the extent the domestic industry is defined based on the producers of like or directly competitive products, there is no additional requirement under Article 4.1(c) for a 'match' between the PUC and the domestically produced good. Indeed, accepting Korea's position would mean that the investigating authority would have to exclude a producer of like or directly competitive goods from the scope of the domestic industry because the domestic product, while like or directly competitive, is essentially not the same as (or to use Korea's words, does not 'match') the goods included in the PUC. This is at odds with the text of Article 4.1(c). We consider that if Article 4.1(c) were intended to preclude investigating authorities from defining the domestic industry on the basis of goods that are like or directly competitive but not a 'match', the provision would have been drafted differently.<sup>18</sup>*

23. The above legal proposition is also recognised in Section 9A(4) of the Foreign Trade (Development and Regulation) Act, 1992, wherein the domestic industry is defined as:

*"domestic industry" means the producers of goods (including producers of agricultural goods*

*(i) as a whole of the like goods or directly competitive goods in India; or*

*(ii) whose collective output of the like goods or directly competitive goods in India constitutes a major share of the total production of the said goods in India;*

24. The Authorised Officer notes that as per Section 9(A)(4) of the Act, read with the Agreement on Safeguards, the domestic industry must be the producers of ‘*like goods or directly competitive goods*’ in India (either whole of the production or major share of production). The product under consideration is PVC Suspension Resin with RVC content **above 2 PPM** and like article manufactured by the domestic industry is PVC Suspension Resin with RVC content **upto 2 PPM**.

### **E.3.3. Products produced by the domestic industry are directly competitive and substitutable with the product under consideration**

25. The Authorised Officer notes that the determination of whether products are ‘like’ is fundamentally ‘a determination about the nature and extent of a competitive relationship between and among products.’<sup>9</sup> The domestic industry has stated that the subject goods are commonly used in manufacturing various products like pipes and fittings, flexible hoses, films/sheets, bottles, profiles, wire and cables, footwears, etc. PVC with residual VCM below and above 2 PPM are interchangeably used by the consumers in different segments. The Indian industry is not aware of any segment which cannot use PVC with residual VCM below and above 2 PPM interchangeably. Similarly, the questionnaire response filed by the exporters from China PR also mentions that there is no known difference in the subject goods produced by China PR (above 2 ppm) and PVC Suspension Resin produced by the Indian Industry and exported from other countries (upto 2PPM). PVC Suspension Resin produced by the domestic industry and imported from China PR and other countries are

<sup>7</sup> Panel Report, *United States – Safeguard Measure on Imports of Large Residential Washers*, [WT/DS546/R](#) and Add.1, adopted 28 April 2023 (hereinafter “*US – Safeguard Measure on Washers*”).

<sup>8</sup> *Ibid.*, paragraph 7.51.

<sup>9</sup> Panel Report, *US – Safeguard Measure on Washers*, paragraph 7.55.

comparable in terms of physical and technical characteristics, manufacturing process and technology, function and uses, product specifications etc. PVC Suspension Resins with less than 2 PPM of residual VCM and with more than 2 PPM of residual VCM contents are technically and commercially substitutable.

26. The Authorised Officer notes that the domestic industry and other interested parties are in agreement on the fact that PVC Suspension Resin with residual VCM upto 2 PPM and above 2 PPM are technically and commercially substitutable. The Authorised Officer notes that PVC Suspension Resin upto 2 PPM produced by the domestic producers and supplied from various countries are comparable to the product under consideration, despite a difference in the residual VCM content. The other interested parties contended that resin upto 2 PPM goods produced by the domestic producers and supplied from various countries and resin above 2 PPM are used in the same manner, for the same purpose and consumed interchangeably by the consumers. Barring the RVCM content, there is no known difference in the resin upto 2 PPM and resin above 2 PPM. The two product categories are comparable in terms of physical characteristics, functions and uses, distribution and marketing, and tariff classifications of the goods.
27. While PVC Suspension Resins upto 2 PPM and above 2 PPM are used interchangeably and for the same purpose, there was a difference in pricing behaviour of both the products during the present surge period, leading to surge in imports of PVC Suspension Resins with RVCM content *above* 2 PPM only. Considering that the Resin with RVCM up to and above 2 PPM are technically and commercially interchangeable and the consumers have used and are using the two interchangeably, the Authorised Officer holds that resin with RVCM upto 2 PPM manufactured by the domestic producers and imported into India constitutes '*like goods*' (and directly competitive) to the PVC suspension resin with RVCM above 2 PPM being imported into India in terms of Rule 2(e) of the Rules.
28. The All India Plastics Manufacturers' Association (AIPMA) stated that since the products upto 2 PPM and above 2 PPM are like articles, the economic analysis may be done in relation to PVC Suspension Resin as a whole, without any bifurcation of residual VCM. The Authorised Officer notes that the surge in imports has been found only in case of PVC Suspension Resin with RVCM above 2 PPM. The Authorised Officer has therefore excluded PVC Suspension Resin with RVCM upto 2PPM from the definition of the product under consideration. The Authorised Officer has examined the increase in imports of the product under consideration, and its impact on the domestic industry. Wherever necessary, the Authorised Officer has examined the import trends of PVC Suspension Resin with RVCM upto 2PPM, and its impact on the domestic industry also.

#### **E.3.4. Claims regarding the RVCM content reported by the exporters**

29. Certain other interested parties have contended that the RVCM content should not be verified based on the national standards but on the certificate of analysis. The Authorised Officer notes that various countries have prescribed different standards of RVCM content for PVC Suspension Resins. However, the producers have created and maintained their production facilities based on their own internal standards and needs. It is noted that the Government of China has notified RVCM below 5 PPM as the relevant standard. However, it is to be noted that this standard is not mandatory. While some Chinese producers have notified their product as resin with RVCM upto 2 PPM, some have notified as resin with RVCM below 5 PPM. A producer is free to adopt specifications (within the mandatory range prescribed by the government) as deemed appropriate by the producer.
30. The Authorised Officer has considered whether the certificate of analysis could be adopted as a relevant document to establish RVCM contents in the imports reported during the injury period in order to segregate imports of the product into two categories. The Authorised Officer had initiated the investigation vide notification dated 16.09.2022. All the concerned exporters in different countries were required to respond to the initiation notification and provide documents in support of their claim of whether they are exporting PVC Suspension Resin with RVCM upto 2 PPM or otherwise. However, only few exporters from China PR have submitted their response.
31. The Authorised Officer notes that specification sheets filed by the cooperating producers/exporters contain pertinent information regarding various relevant technical parameters of the product, as publicly declared by a producer. Specification sheet is a document generally used by producers to communicate to the prospective customers the specifications of the product that a producer produces and sells in the market. The customers buy the material based on the specifications published by the producers in the specification sheet, whereas certificate of analysis is merely a reflection of the product that has actually been supplied. The consumers place the order and negotiate the price based on declared or notified specifications of the product. A non-compliance of a certificate of analysis with specification sheet can allow a buyer to reject the material purchased from the producer. However, a buyer cannot reject receipt of material if the specifications conform to the specification sheets. Certain other interested parties have contended that the specification sheets characterizing PVC Suspension Resin imports with RVCM less than 5 PPM does not necessarily mean that those imports are necessarily of PVC Suspension Resin RVCM above 2 PPM.

32. The Authorised Officer is required to make its determination on the basis of facts on record of the case. While some of the interested parties have contended that less than 5 PPM does not mean above 2 PPM. The exporters which had reported their exports as PVC Suspension Resins with RVCM below 5PPM were given an opportunity to provide evidence to demonstrate that their exporter were in fact of PVC Suspension Resins with RVCM upto 2PPM. The Authorised Officer has accepted this evidence wherever provided.

### E.3.5. Claims regarding the exclusion of PVC Resins manufactured through other processes

33. Some of the interested parties have contended that classification of the PUC is not clear, and exclusion of PVC Resins manufactured through bulk mass polymerization, emulsion polymerization and micro suspension polymerization process, based on technology cannot be a factor for exclusion of a product, as held in past investigations.
34. The Authorised Officer notes that as per the definition of the PUC in the initiation notification, PVC Suspension Resins produced through mass/bulk suspension process were excluded from the scope of the PUC. Subsequent to the initiation of the investigation, the producers/exporters have provided information on the basis of the PUC defined in the initiation notification. However, till such a stage none of the parties contended the exclusion of mass/bulk polymerization PVC from the PUC. It was only at a later stage that the interested party has submitted that exclusion of the PUC on the basis of difference in production process is not permissible. However, these interested parties have not provided any evidence to show that PVC Suspension Resin produced through other processes is one and the same, with the same product characteristics.
35. In view of above, Product Under Consideration (PUC) for the present investigation is rightly defined in the initiation notification as below:

*"The product under consideration in the present investigation is "Polyvinyl Chloride (PVC) Suspension Resins with Residual Vinyl Chloride Monomer (RVCM) above 2 PPM".*

*The petitioners have categorized PVC suspension resin into two categories - (a) PVC suspension resin with residual VCM above 2 PPM and (b) PVC suspension resin with residual VCM below 2 PPM. The petitioners have justified the definition of the product under consideration on the basis of Residual VCM content by referring to the BIS standards. The BIS standard IS 1765 8: 2021 states as follows:*

*"RVCM content of PVC-SR and PVC-PR shall not exceed 2 PPM, However, RVCM content of PVC-SR shall not exceed 5 PPM when manufactured by mass/bulk polymerization process. RVCM content shall be tested in accordance with IS 10151 /ISO 24538."*

*PVC Resins manufactured through bulk mass polymerization, emulsion polymerization and micro suspension polymerization process are excluded from the scope of the product under consideration. The following types of PVC resins are specifically excluded from the scope of the product under consideration:*

- a. PVC Suspension Resins with Residual VCM below 2 PPM*
- b. Cross-linked Poly Vinyl Chloride*
- c. Chlorinated Poly Vinyl Chloride (CPVC)*
- d. Vinyl Chloride Vinyl Acetate Copolymer (VC-Vac)*
- e. Poly Vinyl Chloride Paste Resin*
- f. Poly Vinyl Chloride Blending Resin"*

36. Whereas *PVC Suspension Resin with Residual RVCM above 2PPM* is the product under consideration for the present investigation, *PVC Suspension Resins with Residual VCM upto 2 PPM* constitutes 'like goods' in terms of Rule 2(e) of the Rules and 'like or directly competitive products' in terms of the Agreement on Safeguards.
37. The Authorised Officer has noted that there appears to be a mismatch between the import data reported by certain cooperating exporters/producers, and the DG Systems data. The Authorised Officer vide email dated 28th April 2023, provided an opportunity to the interested parties to explain the reason for mismatch in the data and correlate their data with the DG Systems data. The producers/exporters, vide reply dated 2<sup>nd</sup> May 2023, stated that while the Authorised Officer has considered only one HS Code, the exports have been made under four HS Codes, that is, 39041090, 39042110, 39042190 and 39042200. The submission that imports are made under four HS codes was supplied to the Authorised Officer as late as on 2<sup>nd</sup> May 2023, i.e. almost at the end stage of the investigation. However, the producers/exporters/traders had sufficient opportunity prior to this period as initiation notification mentioned single HS code, NCV of the petition supplied to the interested parties mentioned single HS code. Even neither in oral hearing, nor through written submission or rejoinders, this issue was ever raised. Hence, being the time bound investigation, the Authorised Officer is constrained to not entertain such a claim at such a belated stage of the investigation. It is further noted that the party raising

the above contention had filed in its response earlier that it is only exporting PVC suspension paste resin with RVCM content upto 2PPM, however, later on through its submission, the party contended that the data filed with the Directorate contains information about both the PUC and the Like article. This is self-contradictory and in view of the same the assertions/contentions submitted by the interested party loses its credence.

38. The Authorised Officer notes that these producers/exporters have also stated that they have reported all transactions of PVC Suspension Resins immaterial of RVCM content. The Authorised Officer notes that the exporter had earlier claimed that it produces and exports only PVC Suspension Resins upto 2 PPM which is self-contradictory. In view of the above and due to the mismatch in the data reported by the certain producers/exporters, and in the absence of any justified clarification thereto as to the reasons for the mismatch, the Authorised Officer has considered the import data as per DG Systems.

## F. DOMESTIC INDUSTRY AND STANDING

### F.1. Submissions by the other interested parties

39. The following submissions were made by the other interested parties with regard to the domestic industry and standing.
- The applicants account for only 25-30% share in Indian production during the period of investigation and even less during the injury period, leading to suspicion that such figure may be manipulated for such producers to be considered as domestic industry.
  - It must be considered that while the major share is held by the other Indian producers, they are not there before the Authorised Officer claiming injury.

### F.2. Submissions by the domestic industry

40. The following submissions were made by the applicants with regard to the domestic industry and standing.
- The petition for imposition of safeguard measures was filed by Chemplast Cuddalore Vinyls Limited and DCW Limited which account for [ 27 ]% of the domestic production in India. Since the production by the applicants constitutes a major share in the domestic production, they constitute domestic industry.
  - All other domestic producers, that is, DCM Shriram, Finolex Industries Limited and Reliance Industries Limited have filed support letters.
  - Imposition of measures is also supported by the Chemical and Petrochemical Manufacturers' Association.
  - Since there are no producers of the product under consideration in India, the producers of PVC Suspension Resins with RVCM upto 2 PPM alone can constitute domestic industry.
  - Contrary to the submissions of the other interested parties, the applicants have provided actual information relating to the production of the like article by all domestic producers in India. Such information has been filed by the domestic producers in their support letter.
  - As opposed to the contention of the other interested parties, the applicants cannot force any other domestic producer to participate in the investigation.
  - The injury to other domestic producers is not relevant as the Authorised Officer is required to analyze injury to only the defined domestic industry.

### F.3. Examination of the Authorised Officer

41. The Authorised Officer notes that there is no *per se* 'standing test' under the Agreement on Safeguards, the FT(DR) Act and the Safeguards (QR) Rules. However, the Agreement on Safeguards and the FT(DR) Act defines the domestic industry as the producers as a whole of the like or directly competitive goods or those whose collective output of the like or directly competitive goods constitute a major share of the total domestic production of the said goods in India.<sup>10</sup>
42. According to Section 9A4(b) of the Foreign Trade (Development and Regulation) Act, 1992 –
- “(b) domestic industry means the producers of goods (including producers of agricultural goods) –*
- (i) as a whole of the like goods or directly competitive goods in India; or*
- (ii) whose collective output of the like goods or directly competitive goods in India constitutes a major share of the total production of the said goods in India.”*
43. Similarly, as per Article 4.1(c) of the Agreement on Safeguards, a domestic industry is defined as “*the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.*”

<sup>10</sup> Article 4.1(c), Agreement on Safeguards and Section 9A(4)(b), Foreign Trade (Development and Regulation Act).

**F.3.1. Legal Standard for the definition of the ‘domestic industry’**

44. The Authorised Officer notes that in US – Safeguard Measures on Washers, the WTO Panel observed that the domestic industry may either be the producers as a whole of the like or directly competitive products, or (b) the producers whose collective output of the like or directive competitive product constitutes a major proportion of the total domestic production within the meaning of ‘major proportion’ of the total domestic production of those products.<sup>11</sup>

**F.3.2. ‘Major Proportion’ of the total domestic production in the instant investigation**

45. The present application was filed by Chemplast Cuddalore Vinyls Limited and DCW Limited. Apart from the applicants there are three other domestic producers in India, namely, DCM Shriram Limited, Finolex Industries Limited and Reliance Industries Limited. The other domestic producers as well as the association of domestic producers, namely, Chemicals and Petrochemicals Manufacturers’ Association have supported the request for imposition of safeguard measures on imports of PVC with RVCM above 2 PPM into India. Therefore, the application filed by the applicants has the support of 100% of the producers of the like product in India. At the stage of initiation, the Authorised Officer noted that the applicants account for a major proportion of the production of subject goods in India and thus, constitute domestic industry for the purpose of the present investigation.
46. Some interested parties have contended that the major share of domestic production is held by other producers which are not before the Authorised Officer. The applicants have submitted that their total production constitutes [\*\*\*] of the total domestic product of the like goods in India. It has also been contended that apart from the applicants, there are three other domestic producers of the ‘like goods’, all of who have supported the petition. The Authorised Officer notes that given that the petitioners account for more than [\*\*\*] of the production in India out of a total of 5 producers of the ‘like goods’, their production therefore constitutes a major proportion of the total domestic production of the like article (like goods) in India. Further, the application is supported by all the other Indian producers of the like article (like goods). The application has the support of 100% of the total domestic production in India, and therefore satisfies the standing test.
47. The Authorised Officer issued the notice of initiation and advised all the interested parties to participate in the investigation and provide relevant information. There is no evidence on record to show that the performance of other domestic producers not forming part of the petition has behaved very differently as compared to the performance of the petitioners. The interested parties have not established that non-inclusion of other domestic producers has caused material distortions in the injury claims.
48. In view of the foregoing and having regard to the Rules, the Authorised Officer determines that the production of the petitioners account for a major share in the Indian production, and therefore, petitioners constitute domestic industry within the said Rules.

**G. CONFIDENTIALITY****G.1.Submissions by the other interested parties**

49. The following submissions were made by the other interested parties with regard to the confidentiality.
- a. The applicants have not provided data with respect to various economic parameters, for the most recent period, 1<sup>st</sup> April 2021 to 30<sup>th</sup> June 2022, in the non-confidential version of petition, due to which the interested parties are not able to make submissions.

**G.2.Submissions by the domestic industry**

50. The following submissions were made by the applicants with regard to the confidentiality.
- a. The applicants have provided and circulated the non-confidential version of the application with the most recent data.

**G.3.Examination of the Authorised Officer**

51. In accordance with Rule 7 of the Rules, information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authorised Officer has accepted the confidentiality claims, wherever warranted, and such information has been treated confidential and not disclosed to other interested parties. The parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. In view of Rule 6(7) of the Rules, all the interested parties were advised to circulate the non-confidential version of the submissions made before the Authorised Officer to all the other interested parties participating in the investigation.

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<sup>11</sup> Panel Report, US – Safeguard Measure on Washers, para. 7.75.

52. Some interested parties contended that the petitioners have not provided the data with respect to various economic parameters for the most recent period. The Authorised Officer notes that the domestic industry has circulated the non-confidential version of the data regarding the economic parameters of the domestic industry on 27<sup>th</sup> October 2022. These interested parties were allowed opportunity to comment on the same, and these comments have been appropriately considered in the present determination.

## H. MISCELLANEOUS SUBMISSIONS

### H.1.Submissions by the other interested parties

53. The following submissions were made by the other interested parties with regard to miscellaneous issues.
- a. The initiation of investigation is not appropriate as the applicants did not bring forth substantive evidence, and insufficient scrutiny was conducted by the Authorised Officer.
  - b. Approximately 30% members of OPPI fall under MSME category, and find it difficult to participate individually. Nearly, 45% of the processing of the polymers in India is done by the members of OPPI.
  - c. 90% of the members of AIPMA belong to the MSME sector, and it represents the interests of the users and importers.
  - d. Plexconcil is an association representing the interests of the importers and end-users of the subject goods from China PR and thus, constitutes an interested party in the present investigation.
  - e. CCAIA is participating pursuant to being approached by 11 Chinese producers interested in participating in the investigation.
  - f. The producers/exporters from China PR are mainly exporting the goods less than 2 PPM, and have provided complete technical information in this regard in their response, including the certificate of analysis.
  - g. Since there is no specific HS code for product under consideration, the notation “ex” should be used in front of the HS Code to indicate that only part of such HS Code is covered in the present safeguard investigation.
  - h. The measures, if recommended, should be based on average of imports in the last three years and the adequate impact of increase in demand of the subject goods every year in the Indian market.
  - i. Developing countries including Mexico, Saudi Arabia and Thailand should be excluded from the scope of the proposed measure.

### H.2.Submissions by the domestic industry

54. The following submissions were made by the applicants with regard to miscellaneous issues.
- a. The other interested parties have not highlighted any parameter which is insufficient for initiation of the investigation. The Authorised Officer has initiated the present investigation after *prima facie* satisfaction regarding increased imports, injury and causal link.
  - b. OPPI should not be treated as an interested party as the association has not taken permission from its members to participate in the present investigation. The Authorised Officer may check the minutes of the meeting submitted by OPPI. One of the domestic producers of the product under consideration is also a member of OPPI and does not believe that any such resolution was passed by members of OPPI.
  - c. AIPMA has not established that it has been authorized to participate in the present investigation by a resolution passed by its members. While it has claimed that 90% of its members are MSME, it has not clarified the number of members that are actually users of the subject goods.
  - d. Plexconcil should not be treated as an interested party in the present investigation as it has participated beyond its directive as per MoA, only to fulfil the business interests of some of the key functionaries. The objective of Plexconcil is to promote exports from India and not encourage imports into India. No resolution has been passed by the members of Plexconcil for participation in the present investigation.
  - e. The members of Plexconcil are not importers and traders of the subject goods, but are manufacturers and exporters of the downstream product, thus, it cannot be treated as an interested party in the present investigation.
  - f. Chemplast Sanmar Limited, Reliance Industries Limited and DCM Shriram are members of Plexconcil and confirm that no resolution was passed by the association for participation in the present investigation.
  - g. Plexconcil has not clarified whether its members use the subject goods as a majority input in their production process.

- h. CCAIA has not submitted its list of members. While there are 141 known producers in China, CCAIA has submitted that it has been approached by only 11 producers. It has not submitted the resolution passed by the members to participate in the present investigation and hence, should not be treated as an interested party.
- i. Since some of the participating producers have claimed that they do not export product under consideration (that is RVCM above 2 PPM), they are not interested parties under Rule 2(d), since the law allows consideration of only exporters of the product under consideration. Thus, their submissions regarding other aspects cannot be considered. The same applies for Governments of other countries, that have claimed that no PVC with RVCM above 2 PPM is exported therefrom.
- j. Since the participating exporters are not exporting the product under consideration, they cannot claim a direct or indirect impact of the proposed measures on their operations, so as to be interested in the investigation. In case there is no impact on operations, such parties can participate only after seeking permission of the Authorised Officer.
- k. While a number of associations have participated in the present investigation, none of them have proved that there was a resolution passed authorizing such participation or even that the majority of their members are exporters or importers of product under consideration, as required under Rule 2(d).
- l. The Tribunal in *Automotive Tyre Importers Association v. Designated Authority* held that an association must establish itself as an interested party, since the associations failed to discharge the onus, the Tribunal found that it cannot be considered as an interested party.
- m. Rule 6(5) does not permit participation of responding associations as it states that hearing shall be provided to industrial users and consumer associations, where the product is sold at retail level.
- n. In India, any measure is imposed based on a combined reading of the HS code and the product description. If a product, not falling within the product scope is imported under the same HS code it is automatically out of the purview of the measures.
- o. The quotas to be recommended may be based on average of imports in the last three years but excluding the surge period, that is, Q1 of 2021-22 and the most recent period and considering impact of increase in demand.

### **H.3.Examination by the Authorised Officer**

55. Some interested parties contended that the present investigation should not have been initiated, as the conditions laid down under the law for initiation of investigations were not met. The Authorised Officer however holds that the present investigation was initiated based on a duly substantiated application and after *prime facie* satisfaction regarding increased imports, serious injury or threat of serious injury and causal link. A non-confidential version of the application was circulated to the interested parties. The application contained all information relevant for the purpose of initiation of the investigation. Subsequent to the initiation, supporting information/evidence has been sought to the extent deemed necessary, and the same has been adopted for the present determination.
56. The applicants have submitted that the associations have participated in the present investigation without following a procedure expected from associations (such as seeking views from their members, minutes of meeting recording resolution of members for participation in the present investigation, and views expressed by their members with regard to present investigation). The applicants have submitted that views expressed by these associations should therefore not be considered as views of their members and should be considered as views expressed by select few members or persons of these associations. The Authorised Officer notes that considering that these associations have been well recognised in the Government and are known to be participating before various forums, it is expected that these associations have expressed the views as would constitute the views of majority of their members. The Authorised Officer has therefore considered it appropriate to address the views and concerns expressed by these association.
57. The applicants have strongly objected to participation of Plexconcil. The applicants have submitted that Plexconcil has participated in the present investigation without establishing whether their members at large desired the Council to oppose the proposed measures, how their members would be adversely impacted, as far as exports from India are concerned. The applicants also contended that some of the key persons in Plexconcil have their own business interests as consumers of the product and therefore have used the platform of the association available to them to oppose the proposed measure, which, according to the applicants, is inappropriate and should not be allowed. Authorised Officer notes that Plexconcil is an association formed to promote exports of plastic products from India. According to Rule 2(d), an interested party includes an exporter or a foreign producer, the Government of exporting country, a producer of like goods in India and a trade or business association, majority of members of which produce or trade like goods or directly competitive product

in India. Further, consumers of the product are already represented by their associations, viz. Organization of Plastic Processor of India and The All India Plastics Manufacturers' Association.

58. The Authorised Officer also notes that, apart from making broad assertions, Plexconcil has not provided information showing possible adverse effects of proposed measures on exports from India. It is also noted that proposed measures are only in respect of resin with RVCM above 2 PPM and the interested parties themselves contended that resin with RVCM below and above 2 PPM are interchangeably used. If the surge period is excluded, it is seen that about 90% of the imports of the product are of resin upto 2 PPM. Therefore, the measure, if imposed, may not have a significant impact on the members of Plexconcil. However, the Authorised Officer has taken note of all the submissions made by the Council and other associations and have recorded these findings after due consideration of these submissions, in the interest of justice.
59. The interested parties have submitted that the notation "ex" should be used in front of the HS Code to indicate that only part of such HS Code is covered in the present investigation. The Authorised Officer notes that any measures may be imposed considering the product description and the HS Codes. In case a product is imported under the same HS code, which does not fall within the scope of product under consideration in the present investigation, it will automatically be excluded from the scope of the measures imposed. However, in view of the submissions made by the interested parties, and as a matter of abundant precaution, the Authorised Officer clarifies that the proposed measures are only in respect of PVC suspension resin with RVCM above 2 PPM. Resin with RVCM upto 2 PPM is beyond the scope of the proposed measures.
60. With regards to the submissions that majority of Chinese producers export subject goods with RVCM less than 2 PPM and submitted their certificate of analysis, the Authorised Officer notes that the subject goods with RVCM upto 2 PPM is not the subject matter of the present investigation and thus, any producer producing / exporting PVC with RVCM content upto 2 PPM will be excluded from levy of measures in the present investigation.
61. With regards to the quotas for quantitative restrictions, the Authorised Officers has addressed the same in the relevant section of this final findings.

## I. IMPORTS IN INCREASED QUANTITIES

### I.1. Submissions made by the other interested parties

62. The following submissions were made by the other interested parties with regard to the volume of imports into India.
- a. Only imports from China have increased, while the total imports have declined.
  - b. Safeguard measures can be used only in exceptional circumstances and are aimed at combating the overall increase in imports. Since imports from only one country have increased, while overall imports have decreased, the criteria to impose safeguards measures is not met.
  - c. The applicants have exaggerated the increased imports of the subject goods, and deliberately invented serious injury to the domestic industry.
  - d. The claim of surge in imports is based on assumption and is factually incorrect since information submitted by Chinese exporters shows that they have not exported subject goods above 2 PPM.
  - e. The statement of imports of PVC Suspension has been presented by the applicants regardless of the RVCM content which has created ambiguity regarding the product scope considered for volume of imports.
  - f. The imports from China increased on account of shipment delays from Japan and Korea, and lower turnaround time for China. While it took 30 days to source the product from China, it was taking 75-90 days from Japan, and 60-70 days from Taiwan and Korea.
  - g. Since as per the applicants the product under consideration is produced and exported only from China, imports from Indonesia should be excluded.
  - h. The surge shown is only from China PR and thus, imports from Indonesia should be excluded from the purview of the present investigation.
  - i. There were no exports of product under consideration from Taiwan during the investigation period and thus Taiwan should be excluded.

### I.2. Submissions by the domestic industry

63. The following submissions were made by the applicants with regard to volume of imports into India.



- a. The applicants have provided import data for both the product under consideration and the like article. Since both the products can be used interchangeably, the demand has been determined taking into account the imports of the product under consideration, like article and sales of like article by the domestic producers in India. However, import volume is based only on the imports of the product under consideration.
- b. The imports from Indonesia and Taiwan may be excluded in case the producers establish that the product exported by them is PVC Suspension Resins with RVCM upto 2 PPM, or that the imports from these countries are less than 3% of the imports of the subject goods.
- c. There has been a sudden, sharp and significant increase in imports into India in absolute terms as well as in relation to Indian production.
- d. There is an urgent need of imposition of measures as the imports of the product under consideration have increased significantly in the most recent period. In Q1 of 2022-23, the total imports of product under consideration are more than the total imports in 2021-22.
- e. The volume of imports in India have increased in the most recent period as compared to the previous quarters as well as the same period in the previous year.
- f. Imports of the product under consideration has increased significantly in relation to total imports into India, consumption in India, domestic sales of domestic producers and imports of PVC suspension resins with RVCM upto 2 PPM.
- g. Imports of PVC Suspension Resins in totality have also increased substantially in the most recent period.
- h. Contrary to the submissions of the other interested parties, the imports of the product under consideration as well as total imports of PVC Suspension Resins have increased in India.
- i. As opposed to the contention of the other interested parties, only the increase in imports is relevant for imposition of safeguard measures, and not the number of countries from which imports have increased.

### **I.3. Examination of the Authorised Officer**

64. Under the provisions of Section 9A of the Act, safeguard measures may be imposed where a product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. As per Rule 2(c) of the Quantitative Restrictions Rules, “increased quantity” includes increase in import whether in absolute terms or relative to domestic production.

#### **I.3.1. Meaning of “increased quantity”**

65. As per Section 9A(1) of the Foreign Trade (Development and Regulation) Act 1992, safeguard duty may be imposed under the following conditions.

*“(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, impose such quantitative restrictions on the import of such goods as it may deem fit :”*

66. Thus, an increase in imports is the basic prerequisite for the application of a safeguard measure under the FT(DR) Act and the Safeguard (QR) Rules. Further, to determine whether imports of the product under consideration have “increased in such quantities” for purposes of applying a safeguard measure, the rules require an analysis of the increase in imports, in absolute terms or in relation to domestic production. Rule 2(c) of the Quantitative Restrictions Rules defines increased imports as under.

*“(c) “increased quantity” includes increase in import whether in absolute terms or relative to domestic production;”*

67. Article 2.1 of the Agreement on Safeguards permits the application of a safeguard measure only if the imports of the product are in such increased quantities in absolute and relative terms so as to cause injury to the domestic industry. With regard to the nature of the increase in imports, the Appellate Body in Argentina—Footwear (EC), held that the increase in imports must have been recent, sudden, sharp and significant enough to cause or threaten to cause serious injury. Relevant extract therefrom is as follows:

*“131. [T]he determination of whether the requirement of imports ‘in such increased quantities’ is met is not a merely mathematical or technical determination. In other words, it is not enough for an investigation to show simply that imports of the product this year were more than last year — or five years ago. Again, and it bears repeating, not just any increased quantities of imports will suffice. There must be ‘such increased quantities’ as to cause or threaten to cause serious injury to the Domestic Industry in order to fulfill this requirement for applying a Safeguard measure. And this language in both*

*Article 2.1 of the Agreement on Safeguards and Article XIX:1(a) of the GATT 1994, we believe, requires that the increase in imports must have been **recent enough, sudden enough, sharp enough, and significant enough**, both quantitatively and qualitatively, to cause or threaten to cause 'serious injury'."*

68. The Panel on US — Wheat Gluten, interpreted the phrase "in such increased quantities" as follows:

*"8.31 [A]rticle XIX:1(a) of the GATT 1994 and Article 2.1 [of the Agreement on Safeguards ("SA")] do not speak only of an 'increase' in imports. Rather, they contain specific requirements with respect to the quantitative and qualitative nature of the 'increase' in imports of the product concerned. Both Article XIX:1(a) of the GATT 1994 and Article 2.1 SA require that a product is being imported into the territory of the Member concerned in such increased quantities (absolute or relative to domestic production) as to cause or threaten serious injury. Thus, not just any increase in imports will suffice. Rather, we agree with the Appellate Body's finding in Argentina — Footwear Safeguard that the increase must be sufficiently recent, sudden, sharp and significant, both quantitatively and qualitatively, to cause or threaten to cause serious injury."*

69. In US — Line Pipe, the Panel found, in a statement not reviewed by the Appellate Body, that "there is no need for a determination that imports are presently still increasing. Rather, imports could have 'increased' in the recent past, but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination":

*"[T]here remains the question of whether the finding of increased imports can be maintained in light of the decline in absolute imports from the first semester of 1998 to the first semester of 1999. In order to answer this question we recall our discussion regarding the meaning of 'recent', and our finding that 'recent' does not imply an analysis of the present. We are also of the view that the fact that the increase in imports must be 'recent' does not mean that it must continue up to the period immediately preceding the investigating authority's determination, nor up to the very end of the period of investigation. We find support for our view in Article 2.1, which provides 'that such product is being imported ... in such increased quantities'. The Agreement uses the adjective 'increased', as opposed to 'increasing'. The use of the word 'increased' indicates to us that there is no need for a determination that imports are presently still increasing. Rather, imports could have 'increased' in the recent past, but not necessarily be increasing up to the end of the period of investigation or immediately preceding the determination. Provided the investigated product 'is being imported' at such increased quantities at the end of the period of investigation, the requirements of Article 2.1 are met."*

70. The analysis of the increased imports of the product under consideration has been conducted in the light of the above-mentioned law and WTO jurisprudence.

### **I.3.2. Methodology adopted for segregation of import data based on RVC content**

71. The Authorised Officer notes that from the DG Systems import data, it is not possible to identify the RVC content of PVC Suspension Resins from individual entries since the item description of the individual entries does not mention the specific RVC content. Therefore, the Authorised Officer has not been able to segregate the raw import data of PVC Suspension Resins provided by DG Systems into **above** and **upto 2PPM**. The Authorised Officer has therefore relied on the information provided by the interested parties to quantify the volume of imports of PVC Suspension Resins which are above 2PPM and the volumes which are upto 2PPM. The Authorised Officer notes that several interested parties have participated in the investigation by filing responses to the questionnaire and providing the relevant information. The Authorised Officer has accepted claimed volumes of export of PVC Suspension Resins upto 2PPM RVC content only to the extent that such claimed volume of imports of the cooperating producer/exporters are captured by the DG Systems import data.

72. The Authorised Officer has received information from producers/exporters regarding exports to India. The producers/exporters have provided information indicating the volume of PVC Suspension Resins with RVC content upto 2PPM exported to India by them. The producers/exporters have filed 'specification sheets' and 'certificates of analysis' to corroborate their claimed volume of exports of PVC Suspension Resins with RVC content upto 2PPM. Specification sheet is a document generally used by producers to communicate to the prospective customers the specifications of the product that a producer produces and sells in the market. The customers buy the material based on the specifications published by the producers in the specification sheet, whereas certificate of analysis is merely a reflection of the product that has actually been supplied. The consumers place the order and negotiate the price based on declared or notified specifications of the product. A non-compliance of a certificate of analysis with specification sheet can allow a buyer to reject the material purchased from the producer. However, a buyer cannot reject receipt of material if the specifications conform to the specification sheets. The Authorised Officer has relied on the specification sheets and the certificate of analysis to classify import data of PVC Suspension Resin based on RVC content.

73. The Authorised Officer has observed that there are broadly two channels of imports of the PVC Suspension Resin to India:
- a. Direct Channel: whereby the foreign producer of the subject merchandise directly sells their goods to customers in India.
  - b. Indirect Channel: whereby producers of the subject merchandise sell their goods to customers in India through merchant exporters/traders.
74. With respect to exports made through direct channels, and for those exports made, the cooperative producers who have filed the exporter's questionnaire response, the Authorised Officer has been able to verify the volume of exports of PVC Suspension Resins with *upto* 2PPM RVCM content from their sample specification sheets or the certificate of analysis submitted thereto and has excluded the same from the total imports of PUC into India. Merchant Exporters/traders who have cooperated and claimed that they are exporting PVC suspension resin upto 2PPM in the said investigation and submitted their export data to this extent with sample specification sheets or certificate of analysis, the Authorised Officer has considered such exports as upto 2PPM and have excluded the same from the imports of PUC to India.
75. However, some of the participating producers/exporters have indicated that they have made sales of PVC Suspension Resin with *upto* 2PPM RVCM content to India through other merchant exporters/traders which accounts for indirect sales channel. However, these traders have not cooperated and on behalf of these traders the producer/exporter is claiming that the exports are of PVC suspension Resin *upto* 2PPM. However, in absence of cooperation from these other traders, the Authorised Officer cannot confirm that the exports made by these traders are of the same product, as traders are free to export products produced by different producers which includes participating and non-participating producers producing the PUC as well as the like article since Chinese national standard for PVC suspension is below 5PPM and therefore the Authorised officer in view of the above facts has considered all such exports through indirect channel as the imports of PUC on the basis of facts available.
76. In order to assess the volume of imports of product under consideration and PVC Suspension Resins with RVCM content upto 2 PPM the Authorised Officer has sorted the data based on the standards established in the country of origin, the specification sheet and on the basis of the evidence of the product actually supplied by the producer / exporter to India. In the case of China and USA, the respective Governments have specified the standard of PVC Suspension Resins with RVCM content of upto 5 PPM. Accordingly, the Authorised Officer has considered all exports from such countries are that of the product under consideration unless a contrary proof has been furnished by any producer/exporter in the form of specification sheets, certificate of analysis or any other relevant document.
77. In case of imports from USA, none of the producers/exporters have participated in the present investigation and since the National standard of USA is same as that of China PR, the Authorised Officer has included these imports from USA in the total imports of PUC basis on the facts available.
78. In case of Taiwan, the Authorised Officer has determined the RVCM content of imports based on the evidence on record. It is noted that the Authorised Officer has accepted the claims of the participating producers/exporters of Taiwan and accordingly has deducted such volume of imports considering it to be PVC suspension resin with RVCM content upto 2PPM while calculating total volume of imports of PUC from Taiwan to India. In case of Russia, the domestic industry has furnished evidence in form of specification sheet of one of the producer based in Russia to claim that the producers of Russia produce PVC suspension resin with RVCM content above 2 PPM and if a producer is mentioning in its specification sheet that it produces PVC suspension resin above 2 PPM that is relatable to the fact that even Russian National standard allows production of PVC Suspension Resin above 2PPM and as none of the producers/exporters have participated in the subject investigation to establish contrary to the facts available, the Authorised Officer has considered such imports from Russia as PVC suspension Resin above 2PPM i.e. the PUC.
79. It is further noted that the quantitative restriction is only against the imports of PVC suspension resin with RVCM content above 2PPM therefore the producers/exporters producing or exporting PVC suspension resin with RVCM content upto 2PPM would not be impacted by the proposed measure.
80. Governments of Saudi Arabia, Thailand and Mexico have stated that as per Article 9.1 of the Safeguard Agreement, "Safeguard measures shall not be applied against a product originating in a developing country member as long as its share of imports of the product concerned in the importing member does not exceed 3 per cent.". The Authorised Officer noted that as per Proviso to Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992, no such quantitative restrictions shall be imposed on any goods originating from a developing country so long as the share of imports of such goods from that country does not exceed three per cent or where such goods originate from more than one developing country, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine per cent of the total

imports of such goods into India. It is noted that since the domestic industry has not been able to provide any evidence contrary to the claim made by the Governments of Saudi Arabia, Thailand and Mexico, therefore the Authorised Officer has accepted the claim of the Governments of the above said countries and considered it as 'like article' and not the PUC.

81. The Authorised Officer has relied on DG system data and accepted the export figures provided by the participating exporters to carry out analysis for this investigation and wherever there was a data mismatch between producer's /exporter's data and the DG System's data, the Authorised Officer has relied and based its examination and analysis on the DG Systems data.

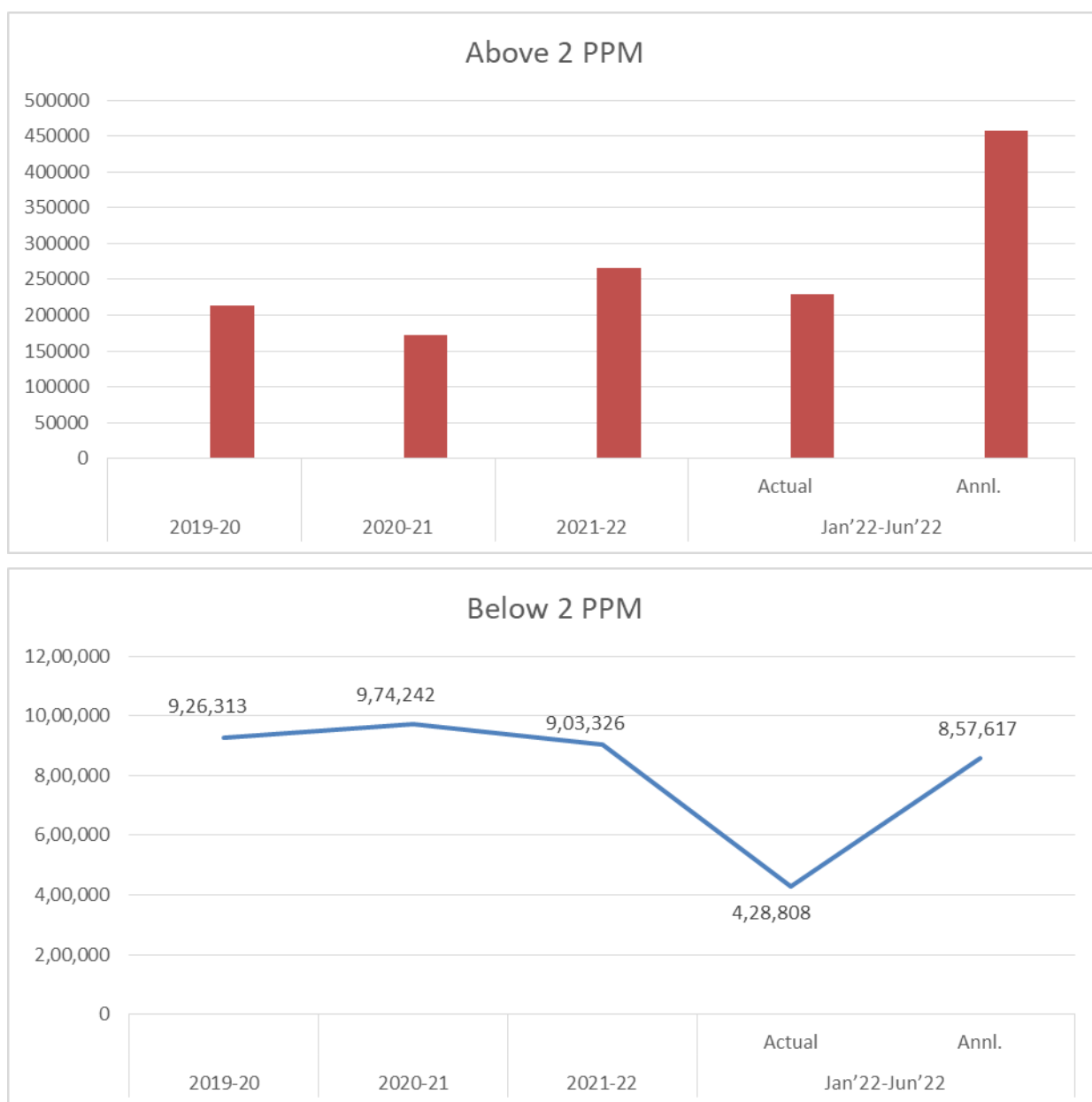
### I.3.3. Increase in imports in absolute terms

82. The applicants have claimed that the product under consideration is being imported into India for several years. However, there has been a sudden, sharp and significant increase in imports in the most recent period.
83. Some interested parties have submitted that the total imports of PVC Suspension Resins in India have not increased. The same has rather declined. The Authorised Officer notes that Article 2 of the Agreement on Safeguards provides for conditions for invoking Safeguard Measures. Article 2.1 of the Agreement explains the increase in imports of product into the territory of the members.

*"1. A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products."*

84. Article 2.1 of the Agreement states that a Member may apply safeguard measures when "such product" is being imported into the territory in increased quantities and under such condition as to cause or threatens to cause serious injury to the domestic industry. Since the product under consideration in the present investigation is only PVC Suspension Resins with RVCM content above 2 PPM, as per the requirements of Article 2.1 of the Agreement on Safeguards, only the volume of imports of the product under consideration has to be examined. However, the Authorised Officer has also examined the total imports of PVC Suspension Resins in India, including upto 2 PPM wherever necessary. Further, the Authorised Officer has examined imports of PVC suspension resin with RVCM both upto and above 2 PPM also individually:

Particulars	Unit	2019-20	2020-21	2021-22	Jan'22-Jun'22	
					Actual	Annl.
PUC (PVC Suspension Resins with RVCM above 2PPM)	MT	2,12,949	1,71,525	2,65,967	2,29,197	4,58,394
Like article (PVC Suspension Resins with RVCM upto 2PPM)	MT	9,26,313	9,74,242	9,03,326	4,28,808	8,57,617
Total Imports	MT	11,39,263	11,45,767	11,69,293	6,58,006	13,16,011
<b>Increase in imports</b>						
PUC	MT		(41,424)	94,442		1,92,427
Like article	MT		47,929	(70,916)		(45,709)
Total Imports	MT		6,505	23,526		1,46,718



85. Imports of the product under consideration (i.e., PVC Suspension Resins with RVC content above 2PPM) has increased substantially in absolute terms over a very short period. The imports of the PUC have shot up suddenly during January to June 2022. Import volumes have doubled in the most recent period as compared to 2019-20 to 2020-21. Overall imports of the PUC have increased by almost 115% from the base year. It is clearly evident that there has been a recent, sudden, sharp and significant increase in imports of the PUC.
86. On the other hand, it is noticed that import volumes PVC Suspension Resins with RVC content upto 2PPM has declined. In fact, the increase in total imports of PVC Suspension Resins is entirely attributable to the sudden, sharp and significant increase in imports of the PUC only. The imports of PVC Suspension Resins with RVC content *upto* 2PPM show no increase in imports, and have therefore been excluded from the scope of the measure.
87. The Authorised Officer also analysed the imports in Jan'2020-Jun'2020, Jan'2021-Jun'2021 period in order to ascertain whether the same shows absence of surge in Jan'2022-Jun'2022 when compared with the previous corresponding period. Table below shows the volume of imports in different periods:

Particulars	UOM	Jan'20-Jun'20	Jan'21-Jun'21	Jan'22-Jun'22
Above 2 PPM	MT	1,13,329	1,99,689	2,29,197
Upto 2 PPM	MT	4,40,445	4,89,983	4,28,808

88. It is seen that the imports of the product under consideration have increased by almost 15% in the most recent period when compared to the same period in the previous year i.e., January 2021-June 2021 and increased by 102% when compared to January 2020-June 2020. Imports of PVC Suspension Resin with RVC content upto 2PPM during the period January 2021-June 2021 have more or less remained the same as compared to the same period in the previous year. There has been a decline in import volumes of these goods in the January 2022-June 2022 period. It is thus concluded that the imports of product the under consideration have increased in absolute terms in the most recent period.

#### I.3.4. Imports in relative terms

89. It was examined whether the imports of product under consideration constitute increased imports in relation to Indian production, demand in India, sales of domestic producers in India, total imports of product under consideration and like article into India.

Particulars	Unit	2019-20	2020-21	2021-22	Jan'22-Jun'22	
					Actual	Annl.
Imports of PUC	MT	2,12,949	1,71,525	2,65,967	2,29,197	4,58,394
Total Indian production (like article)	MT	***	***	***	***	***
Trend	MT	100	95	99	52	105
Demand in India	MT	***	***	***	***	***
Trend	Indexed	100	99	101	56	112
Total Imports in India	MT	11,39,263	11,45,767	11,69,293	6,58,006	13,16,011
Sales of domestic producers	MT	***	***	***	***	***
Trend	Indexed	100	97	100	54	109
Imports of PUC in relation to						
Ø Indian production	%	***	***	***	***	***
Trend	Indexed	100	87	127	207	207
Ø Indian demand	%	***	***	***	***	***
Trend	Indexed	100	78	122	189	189
Ø Total imports	%	***	***	***	***	***
Trend	Indexed	100	79	121	184	184
Ø Sales of domestic producers	%	***	***	***	***	***
Trend	Indexed	100	82	129	200	200

90. It is seen that:

- The subject imports have increased consistently and significantly in relation to gross domestic production, from \*\*\*% in base year to \*\*\*% in the most recent period.
- The subject imports have increased consistently and significantly in relation to gross domestic demand, from \*\*\*% in base year to \*\*\*% in the most recent period.
- The subject imports have increased consistently and significantly in relation to gross imports into India, from \*\*\*% in base year to \*\*\*% in the most recent period.
- The subject imports have increased consistently and significantly in relation to sales of the domestic producers, from \*\*\*% in base year to \*\*\*% in the most recent period.

91. It is thus seen that the subject imports have increased consistently and significantly in relation to imports into India, Indian production, gross domestic consumption and sales of the domestic producers. The interested parties claimed that the imports from China had increased on account of delays and higher turnaround time for shipments from other countries. However, the Authorised Officer notes that the imports of the product under consideration have not only increased in relation to total imports, but also Indian production, demand and sales of domestic producers.

## J. UNFORESEEN DEVELOPMENTS

### J.1. Submissions by the other interested parties

92. The following submissions were made by the other interested parties with regard to the unforeseen developments.
- a. The unforeseen developments leading to increase in imports provided by the applicants relate to China only.
  - b. There is no link between unforeseen developments and surge in imports, which is a requirement affirmed by WTO Panel in India – Iron and Steel products.
  - c. Surge in imports is due to expiry of anti-dumping duties on imports of homopolymer of Vinyl Chloride Monomer (suspension grade) from China PR, USA and Thailand in February 2022 and not on account of unforeseen developments.

### J.2. Submissions by the domestic industry

93. The following submissions were made by the applicants with regard to the unforeseen developments.
- a. Increase in imports is due to unforeseen developments such as Russia-Ukraine conflict, soaring global freight rates and stable Chinese internal freight costs as well as disparity between consumption and production in China PR.
  - b. Russia-Ukraine conflict led to increase in oil prices and cost of production of petrochemicals (including VCM). The cost of production of PVC Suspension Resins using VCM increased. The Chinese producers use coal to manufacture product under consideration, which is available in China at prices below international market price. Accordingly, the cost of production in China PR did not increase.
  - c. While the global freight rates increased leading to increase in cost of procuring imported raw material, the Chinese producers were insulated from such price increase as coal was available to them domestically.
  - d. The major demand of product under consideration is on the eastern part of China PR which faced multiple lockdowns due to which the demand declined. However, the production of product under consideration is on western part which did not face as many lockdowns. This led to increase in exportable surplus in China PR.
  - e. Since most of the producers of the product under consideration are situated in China PR, the unforeseen developments would naturally pertain to China PR. In fact, the applicants have claimed that the product under consideration is only imported from China PR.
  - f. The other interested parties have not disputed the factual aspects of the unforeseen developments relied on by the applicants. While the anti-dumping duty on imports from China, USA and Thailand expired, only imports from China have increased and not from other countries.
  - g. Contrary to the submissions of the other interested parties, increase in imports is not due to expiry of anti-dumping duty but due to unforeseen circumstances which are applicable to a certain set of producers which are engaged in manufacturing PVC with RVCM above 2 PPM. This is evident from the fact that imports of PVC with RVCM upto 2 PPM from China as well as from other countries have reduced.

### J.3. Examination of the Authorised Officer

94. Article XIX of GATT obligates the investigating authorities to examine “unforeseen developments” that led to the increase in imports and the consequent serious injury to the domestic industry. Further, Rule 9(1) of the Rules also provides that increased imports must be as a result of unforeseen developments as under:

*“The Authorised Officer shall, within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, as a result of unforeseen developments the increased imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a causal link exists between the increased imports and serious injury or threat of serious injury.”*

95. The Authorised Officer notes that the increase in imports must be on account of developments that were unforeseen or unexpected. Further, the development must have been unforeseen at the time of incurring the obligations, that is, accession to WTO, resolving to abide by the commitments under various WTO Agreements, and providing tariff concessions.
96. The applicants have submitted that the unforeseen development leading to increase in imports of the product under consideration in India was Russia-Ukraine conflict, increase in global freight rates and excess undisposed production in China. The Authorised Officer has examined the developments identified below.

### **J.3.1. Russia-Ukraine Conflict**

97. The information provided by the domestic industry shows that due to the Russia-Ukraine conflict, the oil prices increased. Due to the increase in oil prices, the cost of production of petrochemicals increased globally. This resulted in increase in cost of production of PVC Suspension Resins manufactured through ethylene route. The Authorised Officer noted that the crude prices increased during the period January 2022 to June 2022.
98. PVC Suspension Resins can be manufactured either through ethylene route or carbide route. While majority of the producers globally manufacture PVC Suspension Resins through ethylene route, some of the producers in China and a number of countries (including India) manufacture through carbide route as well. While the cost of production of the manufacturers producing through ethylene route increased globally, the cost of production of such manufacturers through carbide route and where the coal was available domestically within the country was not impacted by the Russia-Ukraine conflict. The applicants have submitted that coal is available domestically in China at cost below the international market prices which further led to continued lower cost of production of such manufacturers in China. The claim made by applicants has not been disputed by other interested parties, including the producers in China, Government of China and associations representing such producers.
99. The Authorised Officer notes that PVC Suspension Resin with RVCM content above 2PPM is primarily manufactured through the carbide route (where prices of coal have remained stable), whereas PVC Suspension Resin with RVCM content upto 2PPM is primarily manufactured through the ethylene route (where prices have been impacted by the Russia-Ukraine conflict). As a result of increase in VCM costs, the price of PVC Suspension Resin increased. This led to increase in imports of product under consideration in India, as these producers of resin above 2 PPM did not face these cost increases.

### **J.3.2. Increase in Global Freight Rates**

100. The domestic industry has submitted that there has been a substantial increase in freight rates globally post COVID-19 pandemic. It was claimed that the domestic industry manufactures PVC Suspension Resins through ethylene route. The raw material of the goods manufactured by the domestic industry, i.e. "VCM" is majorly imported. It has been contended that on account of the substantial increase in global freight rates, the cost of the raw materials, i.e. "VCM" into India increased, as a result of which the cost of production of the domestic industry increased. The applicants submitted that the producers of resin above 2 PPM were however insulated from such increase in cost of production, as this product was produced from coal, which was locally availability to the concerned producers at prices much below the international market prices for coal. The Authorised Officer does not however find this claim of the domestic industry convincing since any increase in freight rates, which has allegedly impacted the cost of the applicants' raw material, would have equally impacted the landed value of the product under consideration imported into India – thereby neutralising the injurious effects of such imports on the domestic industry. Therefore, the Authorised Officer is unable to accept the contention of the applicants.

### **J.3.3. Excess undisposed Production in China PR**

101. The applicants submitted that (a) there was a disparity between consumption and production of the product under consideration in China due to COVID-19 related lockdowns, (b) the product is majorly consumed in the eastern part of China which faced significant number of lockdowns due to COVID-19, whereas the product under consideration is majorly produced in the western part of China, which did not face as much lockdowns as was faced in the eastern part. This led to shutdown of the downstream industry, resulting in decline in demand of the product under consideration in China, without proportionate reduction in production.
102. Due to this imbalance, the production of the product did not decline commensurate to decline in demand, resulting in significant material available with these producers at a cost much lower than the cost of producers through ethylene route. Further, manufacturing of PVC Suspension Resins is a continuous process leading to inventory build-up, if not sold in the market. The domestic industry submitted that inventory build-up beyond certain limits is not even an option with any producer and therefore producers have to continuously sell the product.
103. Some interested parties have submitted that the increase in imports of the product under consideration is due to expiry of the anti-dumping duty on PVC Suspension Resins. It is however seen that anti-dumping duty was in



place on imports of PVC Suspension Resins from USA, Thailand and China, and the same was in force on imports of PVC Suspension Resins with RVCM content of both upto and above 2 PPM. However, it is seen that imports of PVC with RVCM content above 2PPM have increased, whereas imports upto 2PPM have declined. If the increase of imports of the PUC were attributable to the expiry of the anti-dumping duty on PVC Suspension Resins, it would imply that there must have also been a corresponding increase in imports of PVC Suspension Resins with RVCM content upto 2PPM, however, this is not the case. In any case, the interested parties have not rebutted the claim of the applicants concerning the unforeseen developments identified by them. Thus, it cannot be considered that the increase in imports is on account of expiry of anti-dumping duty.

104. Having regard to the facts on record, it is concluded that imports of the PUC have increased as a result of unforeseen developments.

## **K. SERIOUS INJURY AND/OR THREAT OF SERIOUS INJURY**

### **K.1.Submissions by the other interested parties**

105. The following submissions were made by the other interested parties with regard to injury to the domestic industry.
- a. The applicants have demonstrated factors which could indicate a threat of serious injury, but the same is limited to imports from China.
  - b. The claim of serious injury of the applicants is contrary to published information and conclusions drawn by the Authorised Officer in recent investigations.
  - c. Economic parameters of the domestic industry, both volume and price, have improved, especially in 2021-22 and 2022-23, demonstrating absence of serious injury or threat of injury. Thus, any finding of injury or threat of injury would not be sustainable as held by Appellate Body in US – Line Pipe.
  - d. Capacity, production, sales, capacity utilization, market share, number of employees and productivity has increased. Inventories have declined and losses have converted to profits.
  - e. Post POI as well, the industry is doing very well and there is no threat of injury to the applicants.
  - f. There is no causal link as there is no increase in imports, and performance of applicants has improved.
  - g. While the investigation period was considered as 1<sup>st</sup> April to 30<sup>th</sup> June 2022, the applicant is trying to mislead the Authorised Officer by relying on quarter-wise data. Period of investigation should be considered as total, and not in segments.
  - h. Since data for July to September 2022 is beyond the period of investigation, it should not be examined. The Authorised Officer is bound to examine injury and causal link for the period of investigation only.
  - i. No request for change in period of investigation can be considered after initiation.
  - j. Information for January to June 2022 as a whole must be relied upon instead of quarterly information.
  - k. The information for July to September 2022 cannot be accepted, as the source, basis or supporting evidence of the same is not clear.

### **K.2.Submissions by the domestic industry**

106. The following submissions were made by the applicants with regard to injury to the domestic industry.
- a. The domestic industry had filed the petition contending threat of serious injury which was imminent and foreseeable and not actual serious injury.
  - b. Post filing application, the domestic industry has already started suffering injury due to imports of the product under consideration.
  - c. While the price of VCM has increased since February 2022, the landed price of the product under consideration has declined. The domestic industry has been forced to compete with low-priced imports by reducing its prices in a situation wherein its cost of production has increased.
  - d. The domestic industry has been forced to reduce its prices in order to maintain its customer base. The average prices to large customers have declined significantly.
  - e. The imports of the product under consideration are significantly undercutting the prices of the domestic industry.
  - f. The price quoted by the Chinese producers is much below the prices of the domestic industry, which would further suppress / depress the prices of the domestic industry.

- g. The landed price of the product under consideration is below the selling price of the domestic industry as well as the landed price of imports of like article. As the difference between the prices of the product under consideration and like article increased, the volume of imports of the product under consideration also increased.
- h. Since there is demand-supply gap in India and global over-capacities, the foreign exporters ship high quantities to the Indian market. The low prices of such imports create a price strain on the Indian producers.
- i. The domestic industry has not suffered injury in terms of volume parameters because of the production process and the compulsions on the industry to run the plants at optimum capacity utilization, on accounts of long-term contractual obligations to lift raw material on a regular basis since VCM cannot be shipped through normal containers and the specially manufactured ships for transporting VCM have to maintain their fixed rotations between ports. In case of default in picking raw material, there will be financial implications as well as uncertainty in procuring raw material in the future and it would create a ripple effect in the global PVC industry as the ships will not be able to maintain regular rotations to other ports. Further, VCM is stored in specialized tanks and there is a limit to inventories that can be held by a producer.
- j. The inventories of the domestic industry have increased substantially.
- k. Had the domestic industry not reduced prices, it would have lost market.
- l. The imports of the product under consideration have also taken away the market of other imports (of like product) in India.
- m. While the profits of the domestic industry improved from losses in 2020-21, they have declined significantly in the most recent period. When seen on a quarterly basis, the profits have declined by \*\*\*% in Q4 of 2021-22 as compared to Q3 of 2021-22 and by \*\*\*% in Q1 of 2022-23 as compared to Q4 of 2021-22.
- n. Contrary to the submissions of the other interested parties, one of the applicants has suffered losses during Q1 of 2022-23 and both the applicants suffered losses in Q2 of 2022-23.
- o. Cash profits as well as profit margins have declined during the most recent period.
- p. The profits as a percentage of selling price have declined from [\*\*\*]% in Q3 of 2021-22 to [\*\*\*]% in Q1 of 2022-23.
- q. The injury to the domestic industry is due to low-priced imports of product under consideration and not due to any other factors.

### K.3.Examination of the Authorised Officer

107. The Authorised Officer is required to examine whether the increased imports of the product have caused or are threatening to cause serious injury to the domestic industry of like or directly competitive products. As per Section 9A(4) of the Act, serious injury means an injury causing significant overall impairment in the situation of a domestic industry, while threat of serious injury means a clear and imminent danger of serious injury. Rule 8(a) of the Quantitative Restrictions Rules provides as under for determination of injury.

*“The Authorised Officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, inter alia, the following principles, namely:*

- (a) *in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Authorised Officer shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the goods concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment;”*

108. In view of the above legal principle, the parameters relating to injury have been analysed hereinbelow.
109. The product under consideration, that is, PVC Suspension Resins with RVCM content above 2 PPM and the like article, that is, PVC Suspension Resins with RVCM content upto 2 PPM are used interchangeably and for the same purposes. Accordingly, the Authorised Officer has taken into consideration, for the purpose of injury assessment, imports of both upto and above 2 PPM, separately and examined whether imports of PVC suspension resin above 2 PPM have caused or threatening to cause serious injury to the domestic industry. Further, the Authorised Officer examined whether imports of resin upto 2 PPM could have been a cause of the claimed injury.

**K.3.1. Assessment of demand/consumption**

110. For the purpose of the present investigation, demand or apparent consumption of the product in India has been determined as the sum of domestic sales of like product produced by the Indian producers, and imports of like product into India and imports of product under consideration into India.

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22	
					Actual	annualised
Domestic industry – Sales	MT	***	***	***	***	***
	Indexed	100	103	116	63	126
Other producers – Sales	MT	***	***	***	***	***
	Indexed	100	95	94	51	102
Imports of PUC	MT	2,12,949	1,71,525	2,65,967	2,29,197	4,58,394
Imports of like article	MT	9,26,313	9,74,242	9,03,326	4,28,808	8,57,617
Demand/ consumption	MT	***	***	***	***	***
Trend	Indexed	100	99%	101%	56%	112%

111. It is seen that the demand for the product has increased throughout and in the most recent period. Further, demand in the most recent period (on annualised basis) was higher as compared to the demand in the base year. However, so significant was the increase in the volume of imports of the subject product that whereas the demand increased by \*\*\* MT in the most recent period as compared to the base year, the subject imports increased by \*\*\* MT, which amounts to around 87% of the increase in demand. Thus, the growth in consumption was largely encapsulated by imports of the subject product.

**K.3.2. Evolution of prices over the period**

112. Import price of the subject and non-subject imports of PVC resin was examined over the entire period. The Table below demonstrates the factual position. It is seen that the difference between the landed price of the PUC and the like article during the most recent period increased as compared to the base year and the previous year. Further, there has been an increase in the price difference between the PUC and the like article since 2021 – 22 and this pattern has continued in the most the recent period.

Landed Price	Unit	2019-20	2020-21	2021-22	Jan'22-Jun'22
PUC	₹/MT	65,754	81,281	1,21,784	1,27,503
Like article	₹/MT	68,504	80,141	1,23,615	1,31,951
Difference	₹/MT	-2,749	1,140	-1,831	-4,448

**K.3.3. Price undercutting**

113. It was examined whether imports of the subject product were priced below the selling price of the domestic industry and causing price undercutting in the market.

Particulars	Unit	PUC	Like article
Net sales realisation	₹/MT	***	***
Landed price	₹/MT	1,27,503	1,31,951
Price undercutting	₹/MT	***	***
Price undercutting	%	***	***
Price undercutting	Range	5-15%	1-5%

114. It is seen that there is positive price undercutting in relation of both the PUC as well as the like article. However, the price undercutting in respect of the PUC is higher than the price undercutting in respect of the like article. Furthermore, the Authorised Officer notes that price undercutting cannot be seen in isolation, and must instead be examined in tandem with other factors. It is noted that despite a small positive price undercutting in relation of the like article, the market share, and the absolute and relative volume of imports of the like article has declined. In addition to the above, as clearly noted, the surge of imports is only in the segment of PVC resin having VCM content above 2 PPM and therefore, when the price undercutting is correlated with volume and other injury parameters, it cannot be said that PVC resin upto 2 PPM is causing an injury on the overall performance of the domestic industry. However, in the case of the PUC, the price

undercutting is significant and surge is already noted and therefore, it is noted that the imports of the PUC is the real cause of injury for the domestic producers.

#### K.3.4. Price suppression / depression

115. The Authorised Officer examined whether imports of the subject products were suppressing or depressing the prices of domestic industry in the market.

Particular	Unit	2019-20	2020-21	2021-22	Jan'22-Jun'22
Cost of Sales	₹/MT	***	***	***	***
	Indexed	100	113	162	166
Landed Price	₹/MT	***	***	***	***
	Indexed	100	124	185	194
Selling Price	₹/MT	***	***	***	***
	Indexed	100	130	185	183

116. It is seen that in the most recent period (January-June, 2022), whereas the cost of sales of the like article manufactured by the domestic industry increased by ₹ \*\*\* per MT, the selling price has declined by ₹ \*\*\* per MT. Although, the landed value of the imported PUC has increased, it is noted that, despite such increase, the landed price of the PUC is below the cost of sales as well as the selling price of the domestic industry. The imports are thus depressing the prices and preventing the price increase that would have otherwise happened in absence of such low-priced imports of the PUC.

117. The applicants have further submitted that the average selling price to large customers have reduced due to low-priced imports of the product under consideration. The Authorised Officer notes that post October 2021, the selling price of both the applicants to its largest customers have declined substantially.

#### K.3.5. Market Share

118. The market share of imports of the product under consideration, imports of like article and domestic producers in India was as follows.

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22
Domestic industry	%	***	***	***	***
Trend	Indexed	100	107	114	114
Other producers	%	***	***	***	***
Trend	Indexed	100	95	92	89
Domestic producers as a whole	%	***	***	***	***
Trend	Indexed	100	98	98	96
Imports of subject product	%	***	***	***	***
Trend	Indexed	100	78	122	189
Imports of like article	%	***	***	***	***
Trend	Indexed	100	108	97	82
Total demand	%	***	***	***	***
Trend	Indexed	100	107	114	114

119. It is seen that the market share of the product under consideration has increased significantly in the most recent period, whereas the market share of domestic producers as a whole and other domestic suppliers of the PUC declined in the most recent period. The domestic industry has maintained its market share by lowering its selling price. The domestic producers have not been able to take advantage of the growth in consumption which has largely been captured by the imports of the PUC.

120. The domestic industry further submitted that the sales and market share of the domestic industry must be seen in the light of the nature of the production process. The domestic industry submitted that procurement of VCM requires very special and different conditions. VCM is transported in special vessels. These are dedicated vessels engaged in transportation of VCM only. Therefore, it is infeasible to stop procurement of VCM. Purchase decisions of VCM are not linked to sales volumes or selling price of PVC. Purchases happen

independent of sales. There are limited suppliers of VCM and a typical purchase is large in volume, whereas the sales of PVC are in small volumes. Given the large volume of individual purchases of VCM, the purchases are well planned and in advance. By contrast, sales volumes are for supplies on immediate basis, most often within the month. Further, any producer has very limited storage facility for both VCM and PVC. Therefore, consumption of VCM and production of PVC is a compulsion. Further, once produced, no producer can hold PVC inventories for a long period. The producers of PVC Suspension Resins have storage facilities for a very limited volumes of both VCM and PVC. Thus, it is not an option for the domestic industry to withhold prices and face inventory pile up either for VCM or PVC. Further, the domestic industry does not have an option to hold purchases of VCM.

### K.3.6. Capacity, Production, Capacity Utilization and Domestic Sales

121. The Authorised Officer has analysed the capacity, production, capacity utilization and sales of the domestic industry.

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22	
					Actual	Annualised
Installed capacity	MT	***	***	***	***	***
	Indexed	100	100	103	52	103
Production	MT	***	***	***	***	***
	Indexed	100	100	115	58	117
Capacity utilization	MT	***	***	***	***	***
	Indexed	100	100	112	113	113
Domestic sales	MT	***	***	***	***	***
	Indexed	100	103	116	63	126

122. It is seen that the domestic industry's performance in respect of these parameters has not deteriorated. The applicants have submitted that the volume parameters of the domestic industry have not been impacted due to the nature of the industry. It is noted that the increase in domestic sales of the domestic industry represents a very insignificant part of the increase in total demand. Whereas the total demand of the PUC and the like article increased by 10 % in the most recent period. The share of the domestic industry's sales in the increase in demand is only about 1% of the increase in total demand. At the same time, the share of increase in imports of the PUC in this growth in demand was almost 80%. Thus, the growth in demand was largely captured by the imports of the PUC due to which the domestic industry was not able to take advantage of the growth in demand.

### K.3.7. Inventory

123. The inventory position of the domestic industry over the period of investigation was as below.

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22	
					Actual	Annualised
Average Inventories	MT	***	***	***	***	***
Trend	Indexed	100	73	35	197	197

124. It is seen that the inventories with the domestic industry increased substantially in the most recent period, showing \*\*\*% increase in the most recent period as compared to the previous year. Even though the sales of domestic industry have slightly increased in the 'most recent period', due to surge in imports of the PUC, the domestic industry was not able to take advantage of the full growth in demand because of which the inventories of the domestic industry have accumulated. The domestic industry submitted that the domestic industry as such cannot hold significant level of inventories.

### K.3.8. Employment and Productivity

125. Employment and productivity situation of the domestic industry was as follows:

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22
No. of employees	No.	***	***	***	***
Trend	Indexed	100	114	118	120
Productivity per employee	MT/No.	***	***	***	***
Trend	Indexed	100	88	97	97
Productivity per day	MT/Day	***	***	***	***

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22
Trend	Indexed	100	100	115	117

126. It is seen that the performance of the domestic industry with regard to number of employees and productivity improved over the period of investigation.

### K.3.9. Profit / Loss

127. The profitability of the domestic industry is as follows:

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22
Profits/Losses	₹/MT	(***)	***	***	***
	Indexed	(100)	288	386	246
Cash profits	₹/MT	(***)	***	***	***
	Indexed	(100)	612	788	546
Profit as a % of selling price	₹/MT	(***)	***	***	***
	Indexed	(100)	221	208	134

128. It is seen that domestic industry was suffering losses in the base year. The domestic industry was incurring losses during the base year, however the domestic industry was making profits from the year 2020-21 till June 2022. However, it is seen that there is a decline in profitability of the domestic industry during the most recent period, which is an indication of imminent injury to the domestic industry. Further, the selling price of the domestic industry was also below the cost of sales in the base year due to which the domestic industry suffered losses in the base year. It is further seen that while the profitability of the domestic industry improved in 2020-21 & 2021-22, the profitability parameters in terms of per unit profits, cash profits per unit and profits as a percentage of selling price declined in the most recent period as compared to 2020-21 and 2021-22.

129. Since the applicants had contended that the surge in imports in the most recent period were threatening serious injury to the domestic industry and the profit parameters of the domestic industry were showing a decline in the most recent period, the profits in the most recent period were examined further by considering performance in the most recent period (January.-June, 2022) on quarterly basis.

### K.4.Parameters showing threat of serious injury

130. It was examined whether increased imports were threatening further serious injury to the domestic industry. The Authorised Officer notes that Section 9A(4) provides that threat of serious injury means a clear and imminent danger of serious injury. The Agreement on Safeguards also provides that “threat of serious injury” shall be understood to mean serious injury that is clearly imminent. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

#### K.4.1. Rate of increase in imports

131. The Authorised Officer notes that the volume of imports of the product under consideration have increased at a very high rate over the period.

Particulars	UOM	2019-20	2020-21	2021-22	Jan'22-Jun'22	
					Actual	Annl.
Subject imports	MT	2,12,949	1,71,525	2,65,967	2,29,197	4,58,394
Rate of increase	%	-	-19%	55%	-	72%
As compared to base year	%	-	-19%	25%	-	115%

132. It is seen that the volume of imports increased substantially in previous year and most recent period. Further, the imports have almost doubled in the most recent period, as compared to 2019-20. Thus, the rate of increase in imports was very high.

#### K.4.2. Decline in prices of product under consideration in comparison to PVC with RVCM content upto 2 PPM.

133. The Authorised Officer examined the trend in the import price of the PUC and like article over the injury period.

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22
<b>Landed Price</b>					
PUC	₹/MT	65,754	81,281	1,21,784	1,27,503
Like article	₹/MT	68,504	80,141	1,23,615	1,31,951
Difference	₹/MT	-2,749	1,140	-1,831	-4,448

Particulars	Unit	2019-20	2020-21	2021-22	Jan-Jun'22
<b>Import volumes</b>					
PUC	MT	2,12,949	1,71,525	2,65,967	2,29,197
Like article	MT	9,26,313	9,74,242	9,03,326	4,28,808
Share of PUC imports in relation to gross imports	%	19%	15%	23%	35%

134. It is seen that the price difference between the like article and product under consideration has increased significantly. While the imports of like article were earlier commanding predominant share in India, due to the increase in difference between the landed price, the imports of the PUC have started commanding the majority of imports into India, when viewed in the light of number of suppliers and supplying countries.

#### K.4.3. Price undercutting

135. As noted in the relevant section of this findings, the price undercutting is positive and significant. The applicants have submitted that due to decline in prices of the product under consideration, the domestic industry has been forced to reduce price to maintain its market share.

136. The above clearly shows that the customers switched to the cheaper subject product, leading to increase in its demand, and decline in non subject imports.

#### K.4.4. Decline in profitability of the domestic industry during the post-POI period.

Particular	Unit	2019-20	2020-21	2021-22	Jan'22-Jun'22	July-Sept 22
Cost of Sales	₹/MT	***	***	***	***	***
	Indexed	100	113	162	166	135
Selling Price	₹/MT	***	***	***	***	***
	Indexed	100	130	185	183	(130)
Profit/Loss	₹/MT	(***)	***	***	***	(***)
		(100)	287	386	246	(266)

137. The Authorised Officer has also examined the performance of the domestic industry in the post-POI period. As seen from the table above, the cost of sales of the domestic industry was above the selling price during the base year. In subsequent years (ie. 2020-21 to June 2022), the cost of sales was below the selling price, and the domestic industry appears to have been profitable. However, it is noticed that during the third quarter of 2022 – which is the period immediately after the surge of imports has taken place – the cost of sales of the domestic industry is higher than the selling price, and hence the domestic industry is incurring losses during the post-POI period examined. These losses have been incurred despite the fact that there has been about a \*\*\*% reduction in cost of sales during the third quarter of 2022 as compared to the cost of sales during the first and second quarters of 2022. It is also noticed that there has been a steady decline in profitability of the domestic industry from January 2022 to September 2022. This is a clear indication that the surge in imports is having an impact on the profitability of the domestic industry. It is therefore seen that there exists a clear and imminent threat of serious injury due to the surge in imports.

#### K.4.5. Global over-supply and exportable surplus in China

138. It is seen that the increase in imports of the product under consideration into India is due to unforeseen developments which includes disparity between production and consumption in China. Due to the onset of COVID-19 pandemic, while the consumption declined in China, the production of product under consideration remained stable. Due to this, the producers in China were faced with significant exportable surplus. Additionally, the PVC Suspension Resins market is such that there is a global oversupply of the product. At the same time, there is significant demand-supply gap in India, and therefore, the Indian market is a huge market opportunity for any PVC producer globally. The Indian market clearly is susceptible to distortion in a situation of significant market fluctuations, posing a threat of serious injury in case low priced goods are diverted to India.

#### K.4.6. Continued existence of unforeseen developments

139. As noted in the relevant section of this findings, the increase in imports of the product under consideration is due to unforeseen developments comprising of disparity in production and consumption in China caused by

Covid-19, conflict between Russia and Ukraine. It is noted that both these factors continue to prevail in the market.

140. From the foregoing, it is evident that the increase in imports has not only caused serious injury to the domestic industry, but is also threatening to cause further injury.
- a. The volume of imports has increased significantly in absolute and relative terms.
  - b. The rate of increase in imports is very high, and the imports have increased by 20 times as compared to the base year.
  - c. There is a global oversupply for the product. The Chinese producers (of subject and non-subject goods) hold significant surplus capacity.
  - d. The imports are undercutting the prices of the domestic industry significantly, and caused a very significant depressing effect on the prices of the domestic industry, and prevented the price increases that would have increased in the market.
  - e. The prices offered by the domestic industry to major customers have declined significantly.
  - f. The price of the subject imports is significantly lower than that of PVC with RVCM content upto 2 PPM.
  - g. The market share of the subject imports has increased over the period, while domestic producers and other imports lost market.
  - h. While capacity utilization, production and sales of the domestic industry did not deteriorate, the domestic industry was facing accumulation of inventories and steep decline in their profitability.
  - i. The profitability of the domestic industry has declined over the period, and further deteriorated into losses in the subsequent period of Jul-Sep'22.

#### **L. CAUSAL LINK**

141. As per Rule 8(b) of the Rules, the Authorised Officer is required to determine whether increased imports were a cause of the serious injury or threat of serious injury to the domestic industry. In this regard, the observations by the WTO Panel in Korea- Dairy which sets forth the basic approach for determining "causation" has been noted. Therefore, for the purpose of causal link assessment, the Authorised Officer evaluated all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry and ascertained whether the increased imports of the subject products were one of the causes of serious injury and threat of serious injury to the domestic industry. In addition, the Authorised Officer ascertained whether factors other than increased imports were a cause of injury to the domestic industry. While there are no laid down "other factors" that are required to be evaluated by the Authorised Officer, the Authorised Officer considered whether factors such as imports of PVC suspension resin upto 2 PPM, developments in technology, export performance, productivity, contraction in demand, possible dumping of the product, were principal cause of injury to the domestic industry.

##### **L.1.1. Volume and value of imports of PVC resin with RVCM upto 2 PPM**

142. It is noted that the volume of imports of like article has slightly declined over the period, along with market share thereof. The price of PUC is lower than the price of imports of like article and the cost of sales of the domestic industry. As noted above, the price undercutting in respect of the PUC is higher than the price undercutting in respect of the like article. Furthermore, the Authorised Officer notes that price undercutting cannot be seen in isolation, and must instead be examined in tandem with other factors. It is noted that despite a small positive price undercutting in relation of the like article, the market share, and the absolute and relative volume of imports of the like article has declined. Therefore, the price undercutting in relation to the like article has not had an impact on the domestic industry's sales. However, in the case of the PUC, the price undercutting is significant since it has resulted in an improvement of its own market share and sales volumes.

##### **L.1.2. Possible dumping of the product**

143. There is no evidence of possible dumping of the product. The domestic industry provided calculations showing that the injury margin for the last one year period (possible investigation period of a dumping case) or even for last six months period (minimum investigation period of a dumping case) was negative. None of the interested parties contended that dumping of the product was a cause of injury to the domestic industry.

##### **L.1.3. Contraction in demand**

144. The Authorised Officer notes that there is no contraction in demand of the subject goods in the country. Thus, the domestic industry has not suffered any injury on this account.

##### **L.1.4. Pattern of consumption**

145. There is no claim that there has been a change in the consumption pattern for the goods.



**L.1.5. Conditions of competition and trade restrictive practices**

146. The Authorised Officer notes that the investigation has not shown that conditions of competition or the trade restrictive practices are responsible for the claimed injury to the domestic industry.

**L.1.6. Developments in technology**

147. The Authorised Officer notes that there was no significant change in technology which could have caused injury to the domestic industry.

**L.1.7. Productivity**

148. The Authorised Officer notes that the productivity of the domestic industry has increased over the injury period. Therefore, the domestic industry has not suffered injury on this account.

**L.1.8. Export performance of the domestic industry**

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

**L.1.9. Performance of other products**

150. The Authorised Officer has only considered the data relating to the performance of the subject goods. Therefore, the performance of other products produced and sold are not a possible cause of the injury to the domestic industry.
151. Keeping in account the Rules and the principles laid down, the Authorised Officer has examined the causal link between imports of the product under consideration in India and threat of serious injury or injury faced by the domestic industry. The Authorised Officer notes as follows.
- a. There has been a significant increase in imports in the most recent period in absolute terms as well as in relation to production, domestic consumption, total imports, domestic sales of domestic industry and imports of like article in India.
  - b. The surge in imports of subject goods was so significant that the overall imports of PVC suspension resin have also shown increase even when imports of resin upto 2 PPM have shown decline in recent period.
  - c. The market share of the product under consideration has increased in India.
  - d. There was steep decline in the prices of the subject resin. The prices declined very significantly even in a period of less than one month. The imports of product under consideration were undercutting the prices of the domestic industry. Resultantly, the domestic industry was forced to reduce the prices despite facing increase in costs.
  - e. While the volume parameters of the domestic industry have not suffered, the profitability parameters have witnessed a decline. The profits, cash profits and profits as a percentage of selling price have declined significantly. The decline in profits was so significant that the domestic industry faced financial losses in July-September 2022 period.
  - f. The inventories of the domestic industry increased significantly.
152. Some interested parties contended that there is no causal link, as imports of the product under consideration have not increased and the performance of the domestic industry has improved. The investigation has however shown that there was significant increase in the imports of the product under consideration, which were priced much lower than non-subject PVC imports. Given significantly higher price of non-subject imports, the Authorised Officer considers that imports of non-subject imports could not have been the principal cause of the steep price decline and consequent deterioration in performance of the domestic industry. The Authorised Officer considers that it is price undercutting by the subject goods which has forced the domestic industry to reduce its prices and margins in the most recent period. Due to reduction in prices, the profitability of the domestic industry declined significantly. Accordingly, the Authorised Officer finds that the injury to the domestic industry is caused by the increase in imports.

**M. ADJUSTMENT PLAN****M.1. Submissions by the other interested parties**

153. The following submissions were made by the other interested parties with regard to the adjustment plan.
- a. The applicants have not submitted a viable adjustment plan along with a project report and the plan is merely of one page, based on hypothetical assumptions.

- b. Safeguard duty cannot be recommended in absence of an appropriate adjustment plan, as has been the practice of the Authorised Officer in the case of Phthalic Anhydride, Cold rolled flat products of stainless steel, Non alloyed ingots of unwrought aluminium and Flexible Slabstock Polyol.

### M.2. Submissions by the domestic industry

154. The following submissions were made by the domestic industry with regard to the adjustment plan.
- Chemplast plans to bring down the cost of production by undertaking various measures such as [\*\*\*].
  - DCW plants to undertake measures to [\*\*\*].
  - Contrary to the submissions of the other interested parties, the applicants have submitted a viable adjustment plan.
  - Since the increase in imports is due to the cost of production in China being lower on account of the unforeseen developments, the adjustment plan provided by the applicants constitutes of measures to reduce cost of production in order to make domestic industry competent viz-a-viz imports of product under consideration.
  - As opposed to the contention of the other interested parties, there is no particular format or length required for an adjustment plan and the legal requirement is for a positive adjustment plan to compete with imports as held by the Panel in Korea- Dairy Products.

### M.3. Examination of the Authorised Officer

155. The WTO Agreement on Safeguards requires an adjustment plan by the domestic industry in order to impose Safeguard Measures. In this regard, the Agreement on Safeguards provides as follows:

*"Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets"*

156. Article 5.1 of the Agreement on Safeguards provides that a Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Article 7.1 of the Agreement on Safeguards mandates a WTO member country to apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. Article 7.4 mandates that in order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. The provisions are *pari materia* with Rule 9(1), Rule 10, Rule 13 and Rule 4(d)(ii) of the Quantitative Restrictions Rules. In addition, Rule 5(2) of the Rules provides as under:

*"(2) The application referred to in sub-rule (1) shall be made in Form appended to these rules and be supported with-*

*(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to increase in competition due to imports"*

157. In the present case, the applicants have submitted adjustment plan to adjust with the unforeseen developments resulting in increased imports. Both the applicants have individually submitted adjustment plans to reduce their cost of production in order to become competitive vis-a-vis the imports of the product under consideration. Since the increase in imports is due to the impact of unforeseen circumstances on the cost of production of producers globally barring those engaged in producing subject PVC resin, the Authorised Officer considers that an adjustment plan aimed at reducing the cost of production should be reasonable and pragmatic. However, the Authorised Officer has considered imposition of safeguard measures only for a period of one year given the fact that the impact of COVID – 19 is fizzling out and the world, including China PR is on the way of restoration of normalcy. Further, countries are also taking measures to adjust to the supply chain issues arising out of Russia – Ukraine conflict. Therefore, the Authorised Officer is recommending imposition of quantitative measures only for a period of one year. Further, given the fact that the measure has been imposed only for a period of one year, it has not been considered necessary to make determination regarding the appropriateness of adjustment plan brought by the applicants.

## N. PUBLIC INTEREST

### N.1. Submissions by the other interested parties

158. The following submissions were made by the other interested parties with regard to the public interest.
- OPPI, which is an association of plastic processors and plastic raw material manufacturers in India, strongly opposes the imposition of safeguard measures on PVC Suspension Resins as it will result in finished goods manufactured by small units expensive and uncompetitive.

- b. There exists a demand-supply gap and imposition of measures would distort market, giving monopolistic advantage to domestic producers who can only meet 50% of the total demand.
- c. If the safeguard measures are imposed, the imbalance in demand and supply would increase the prices of end product, reducing their demand and sales of end users.
- d. Imposition of measures would be against public interest as it would allow domestic producers to form cartel, dominate the market and create barriers for market entry, it will cut the regular supply to the users, allow to inflate prices and lead to market asymmetry.
- e. Imposition of measures would adversely impact thousands of end-users which are MSMEs and are a major employment generator. It will lead to increase in raw material prices for the fragmented small-scale industry.
- f. The value chain of raw material for PVC is inverted and imposition of measures will have an adverse impact. There are a few producers of PVC and thousands of end-users.
- g. The anti-competitive practices of the applicants have made the condition of the end users more critical. The applicants are misusing the trade remedial measures by seeking measures for several products.
- h. Since imposition of measures is not in the public interest, the investigation must be terminated, as done by the Authorised Officer in Methyl Acetoacetate.
- i. The imposition of measures would result in an increase in prices.
- j. The pipe demand in construction and agricultural sector was slowly increasing after Covid, which would be impacted by any measures imposed.

## **N.2.Submissions by the domestic industry**

159. The following submissions were made by the domestic industry with regard to the public interest.
- a. Public interest must be seen in light of the interests of producers, consumers and public at large.
  - b. Contrary to the submissions of the other interested parties, the imposition of measures will not impact the prices of the downstream industry as the measures are for imposition of quantitative restrictions and not safeguard duties.
  - c. As opposed to the contentions of the other interested parties, the downstream industry remained competitive in the past, that is, prior to the surge in imports, when it was procuring the subject goods at a much higher price.
  - d. Anti-dumping duty in force till February 2022 did not adversely impact the downstream industry, or the exports by the downstream industry.
  - e. Contrary to the contentions of the other interested parties, there cannot be a monopolistic advantage to the domestic industry as there are five producers in India and a number of exporters competing in the Indian market.
  - f. Imposition of safeguard measures will not hamper the availability of the subject goods in India as the measures will be applied only on imports of PVC Suspension Resins with RVCM above 2 PPM and the like article will be freely imported in India. Prior to the most recent period and April-June 2021, 96% imports were that of PVC Suspension Resins with RVCM upto 2 PPM, which will continue.
  - g. The producers of PVC Suspension Resins with RVCM upto 2 PPM even from China PR will be able to export freely post recommendation of measures.
  - h. Recommendation of quantitative restrictions can take into account the present as well as the future demand in India.
  - i. Contrary to the submissions of the other interested parties, there was no imbalance of demand-supply in India prior to the surge period. The measures will ensure a situation similar to that prior to the surge period.
  - j. The other interested parties have not submitted any evidence regarding any anti-competitive practices by the applicants.
  - k. The users have not suffered due to unavailability of raw material prior to the surge in imports of product under consideration. Hence, there can be no adverse impact of imposition of safeguard measures.
  - l. The value chain of most products subject to trade remedial measures is inverted, since the number of users is invariably greater than the number of producers. However, this cannot deny the producers genuine remedy.

- m. Any measures recommended by the Authorised Officer, are post a detailed investigation and not just on request of the domestic industry. Thus, there can be no misuse of trade remedial measures.
- n. Since imports of PVC Suspension Resins with RVCM above 2 PPM is harmful for the environment, imposition of measures will regulate such imports and protect the environment from unnecessary harm.

### N.3.Examination of the Authorised Officer

160. Article 3.1 of the Agreement on Safeguards states as follows:

*“A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, inter alia, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.”*

161. In view of the aforesaid, there is a need to examine whether imposition of safeguard measures shall be in public interest. Though Article 3.1 does not provide any guidance on the manner of evaluation, the same, however, requires, inter alia, evaluation of impact of the safeguard measures on various stakeholders, and taking a balanced view keeping in view competing interests of different interested parties.
162. With regards to the submissions of the other interested parties that the imposition of safeguard measures will render the users uncompetitive, the Authorised Officer notes that the present investigation is with regard to imposition of Quantitative Restrictions measures and that too only on certain PVC Suspension Resins, that is PVC with RVCM content of above 2 PPM. Thus, the imports of PVC with RVCM content upto 2 PPM would continue to be freely imported. Since no safeguard duties will be recommended pursuant to the present investigation, the prices of the users will not be hampered. In any case, the Authorised Officer notes that there was an anti-dumping duty in place on imports of PVC Suspension Resins from China PR, Thailand and USA till February 2022. There is no evidence adduced by any party that the users of the subject goods were adversely impacted during such period of anti-dumping duty. Thus, any increase in prices is not likely to render the users uncompetitive.
163. With respect to the demand-supply gap in India, the Authorised Officer notes that the measures will be imposed only on those producers which export PVC Suspension Resins with RVCM above 2 PPM, and the no measures will be imposed on imports of like article in India. The Authorised Officer notes that prior to the surge period, about 77% imports were that of the like article, and thus any demand-supply gap can be fulfilled by such imports. In any case, the measures recommended will take into the account the current demand-supply gap as well as the anticipated growth in future demand. Thus, imposition of safeguard measures will not hamper the availability of subject goods in India.
164. Some of the interested parties have submitted that imposition of measures would allow the domestic industry to form a cartel and create a monopolistic competition in India. The Authorised Officer notes that there are a number of producers of like articles in India. Further, the domestic producers are competing not just with each other but also with imports of like article in India. In a situation where 35 – 45 % of the consumption was being met by non-subject imports and no measures are being recommended for imports of these like article, a healthy competition between the domestic producers and imports will continue to prevail in India.
165. With regards to alleged anti-competitive practices of the domestic industry in India, the Authorised Officer notes that no evidence has been placed on record regarding such practices. Furthermore, considering that the present domestic industry met only 10-20% of the demand in India during the relevant period. It is also noted that there are three other domestic producers besides the two applicants. Thus, there is sufficient competition in the domestic market and issues of creation of monopoly by the domestic industry is unlikely.

### O. CONCLUSION

166. On the basis of the examination and analysis made above, the Authorised Officer concludes the following:

- (i) There has been a significant increase in imports of the product under consideration in absolute as well as relative terms.
- (ii) The increase in imports of the product under consideration is due to unforeseen developments.
- (iii) The imports of product under consideration were undercutting the prices of the domestic industry and caused a strain on the selling price of the domestic industry in the domestic market. The domestic industry has been forced to reduce its prices to maintain its customer base.

- (iv) The market share of imports of the product under consideration has increased in India.
- (v) The domestic industry has started suffering serious injury in the most recent period, as profits, cash profits and profits as a percentage of selling price of the domestic industry declined significantly. Further, the inventories of the domestic industry increased significantly in the most recent period.
- (vi) The serious injury to the domestic industry is due to imports of product under consideration.
- (vii) Imposition of safeguard measures, in the form of quantitative restrictions, would be in public interest. It will prevent serious injury to the domestic industry, while having an insignificant and bearable impact on the downstream industry as the demand of the subject goods would continue to be met by way of imports of like article in India.
- (viii) The total domestic demand of PVC Suspension Resins in India during the most recent period is [\*\*\*] MT. The sales of the domestic industry and other Indian producers amounted to about [\*\*\*] of the total domestic demand of PVC Suspension Resins in India during the most recent period, whereas the imports of PVC Suspension Resins with RVC content upto 2PPM have amounted to about [\*\*\*] of the total domestic demand of PVC Suspension Resins in India during the most recent period. The Authorised Officer notes that any potential demand-supply gap of PVC Suspension Resins in India may be filled by imports from countries which have been excluded from the application of the measure, or from imports of PVC suspension resins with RVC content upto 2PPM.

#### P. RECOMMENDATION

167. In view of the aforementioned analysis, it is concluded that;

- (i) The product under consideration, that is, PVC Suspension Resins with RVC above 2 PPM, has been imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry manufacturing like or directly competitive products.
- (ii) The domestic industry has started suffering serious injury in the most recent period.
- (iii) The existing circumstances justify imposition of quantitative restrictions in order to prevent the domestic industry from further serious injury.

168. Accordingly, the Authorised Officer recommends the following measures:

- (i) The imports of the product under consideration are regulated and permitted not beyond the levels as mentioned in the Table below. This quantum has been derived in terms of Rule 9(1) of the Safeguard Measures (Quantitative Restriction) Rules, based on an average of imports in the three representative years during the period of investigation, that is, 2019-20, 2020-21 and 2021-22. Further, the quotas recommended in the table below are after keeping in view the demand-supply gap in India and the demand growth during the period from April 2019 to June 2022 (39 months).
- (ii) The product under consideration, if produced in other developing countries (barring that mentioned in Table below), shall not be subject to the measures recommended since the investigation has not revealed any imports from other developing countries. The product produced in developed countries shall not be subject to the recommended measures, subject to evidence provided in the form of certificate of analysis or otherwise, that the RVC content of the product imported is less than 2 PPM.
- (iii) The Directorate General of Foreign Trade (“DGFT”) had issued a Notification bearing file no. 01/92/180/106/AM-11/PC-VI/PRA dated 31<sup>st</sup> January 2013 wherein it had notified a list of developing countries under Section 9A(4)(a) of the FTDR Act, 1992. This notification was based on the Notification issued by Department of Revenue. However, the Authorised Officer has noted that the list of developing countries has been subsequently revised by the Department of Revenue vide Notification No.19/2016-Custom (NT), dated 5<sup>th</sup> February 2016. As the imports from the developing countries listed in the said Notification No. 19/2016-Custom (NT), dated 5<sup>th</sup> February 2016, other than China PR do not exceed 3% individually and 9% collectively, the imports of “PVC Suspension Resins with RVC above 2 PPM” originating from such developing countries (other than China PR) will not attract Quantitative Restrictions in terms of Section 9A(1) of the Foreign Trade (Development and Regulation) Act, 1992.
- (iv) The Authorised Officer recommends imposition of Quantitative Restrictions only on imports of PVC Suspension Resins with RVC *above* 2 PPM. The producers / exporters manufacturing PVC Suspension Resins with RVC upto 2 PPM will not be subject to any restrictions. While the Authorised Officer has relied upon the specification sheets, COA and submissions made by the parties in order to evaluate whether the producer had exported the product under consideration (i.e., *above* 2 PPM resin) or the directly competitive article (i.e., *upto* 2 PPM resin), for the reasons specified above, for the purposes of implementation, it would be appropriate to consider the specifications of the product on the basis of

certificate of analysis, which may be presented with each import consignment to decide whether the import is of the product under consideration or the directly competitive article.

- (v) The imports would be permitted through the EDI ports only to facilitate electronic/ real-time monitoring of the allocated quota. The quota would be monitored on quarterly basis. The total imports allowed in any quarter shall not exceed the total of that quarter and the next quarter. Any unutilized quota for a quarter shall be added to next quarter. Further, any excessively utilized quota for a quarter shall be deducted from the quota for the next quarter. This would ensure that the exporters and the associated importers would be able to regulate the volumes smoothly. Thus, allocation of quota in such a manner would ensure that users, importers and exporters do not suffer any undue hardships. If necessary, further modalities for governing such Quantitative Restrictions may be notified, in accordance with relevant legal provisions.
- (vi) Accordingly, the Authorised Officer, in accordance with Section 9A(l) of the Foreign Trade (Development and Regulation) Act, 1992, recommends imposition of quantitative restrictions on the imports of the subject goods for a period of one year from the date of the notification under the FTDR Act.

#### Quotas (in MT)\*\*

Quarter	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>
Total PUC*	54,203	54,920	55,646	56,382
Imports from China	20,494	20,765	21,039	21,317
Imports from Taiwan	15,100	15,299	15,502	15,707
Imports from USA	9,690	9,818	9,948	10,079
Imports from Russia	8,920	9,038	9,157	9,279
Imports from other developing countries	Countries as per list below are exempt from imposition of safeguard measures**			
Imports from other developed countries	No known imports of the product under consideration above 2 PPM			

\*Based on imports during 2019-20, 2020-21 and 2021-22 and as defined in para 12 (j) of this report

\*\*The Authorised Officer has determined the quota by taking an average of import volumes of the PUC in India for three years preceding the most recent period. The figure arrived has been apportioned on a quarterly basis by considering the growth of demand over the period.

169. The total domestic demand of PVC Suspension Resins in India during the most recent period is [\*\*\*] MT. The sales of the domestic industry and other Indian producers amounted to about [\*\*\*] of the total domestic demand of PVC Suspension Resins in India during the most recent period, whereas the imports of PVC Suspension Resins with RVC content upto 2 PPM have amounted to about [\*\*\*] of the total domestic demand of PVC Suspension Resins in India during the most recent period and have varied in the range of [35% – 45 %] in the previous years. The Authorised Officer notes that any potential demand-supply gap of PVC Suspension Resins in India can be fulfilled by imports from countries which have been excluded from the application of the measure, or from imports of PVC suspension resins with RVC content upto 2 PPM.

#### List of developing countries, in accordance with Notification No. 19/2016-Custom (NT) dated 5<sup>th</sup> February 2016

1. Afghanistan
2. Albania
3. Algeria
4. Angola
5. Armenia
6. Azerbaijan
7. Bangladesh
8. Belarus
9. Belize
10. Benin
11. Bhutan
12. Bolivia (Plurinational State of)

13. Bosnia and Herzegovina
14. Botswana
15. Brazil
16. Bulgaria
17. Burkina Faso
18. Burundi
19. Cabo Verde
20. Cambodia
21. Cameroon
22. Central African Republic
23. Chad
24. Colombia
25. Comoros
26. Congo
27. Costa Rica
28. Côte D'Ivoire
29. Cuba
30. Democratic People's Republic of Korea
31. Democratic Republic of the Congo
32. Djibouti
33. Dominica
34. Dominican Republic
35. Ecuador
36. Egypt
37. El Salvador
38. Eritrea
39. Ethiopia
40. Fiji
41. Gabon
42. Gambia
43. Georgia
44. Ghana
45. Grenada
46. Guatemala
47. Guinea
48. Guinea Bissau
49. Guyana
50. Haiti
51. Honduras
52. Indonesia
53. Iran (Islamic Republic of)
54. Iraq

55. Jamaica
56. Jordan
57. Kazakhstan
58. Kenya
59. Kiribati
60. Kyrgyzstan
61. Lao People's Democratic Republic
62. Lebanon
63. Lesotho
64. Liberia
65. Libya
66. Madagascar
67. Malawi
68. Malaysia
69. Maldives
70. Mali
71. Marshall Islands
72. Mauritania
73. Mauritius
74. Mexico
75. Micronesia (Federal State of)
76. Mongolia
77. Montenegro
78. Morocco
79. Mozambique
80. Myanmar
81. Namibia
82. Nepal
83. Nicaragua
84. Niger
85. Nigeria
86. Pakistan
87. Palau
88. Palestine
89. Panama
90. Papua New Guinea
91. Paraguay
92. Peru
93. Philippines
94. Republic of Moldova
95. Romania
96. Rwanda



97. Saint Lucia
98. Saint Vincent and the Grenadines
99. Samoa
100. Sao Tome and Principe
101. Senegal
102. Serbia
103. Sierra Leone
104. Solomon Islands
105. Somalia
106. South Africa
107. South Sudan
108. Sri Lanka
109. Sudan
110. Suriname
111. Swaziland
112. Syrian Arab Republic
113. Tajikistan
114. Thailand
115. The former Yugoslav Republic of Macedonia
116. Timor-Leste
117. Togo
118. Tonga
119. Tunisia
120. Turkey
121. Turkmenistan
122. Tuvalu
123. Uganda
124. Ukraine
125. United Republic of Tanzania
126. Uzbekistan
127. Vanuatu
128. Viet Nam
129. Yemen
130. Zambia
131. Zimbabwe

ANANT SWARUP, Authorised Officer