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No.21/29/2011-DGAD  
GOVERNMENT OF INDIA  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES  
UDYOG BHAWAN, NEW DELHI

Date: 4<sup>th</sup> April, 2014

Final Finding

**Subject:** Sunset Review Investigation of anti-dumping duty imposed against imports of Polyvinyl Chloride (PVC) Suspension Grade originating in or exported from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA – Final findings

WHEREAS, having regard to under the Customs Tariff Act, 1975, as amended from time to time, (hereinafter referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time, the Designated Authority (hereinafter referred to as Authority) initiated an antidumping investigation on 28th June, 2006 into alleged dumping of Polyvinyl Chloride (PVC) Suspension Grade originating in or exported from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA and definitive anti-dumping duty was imposed on imports of Polyvinyl Chloride (PVC) Suspension Grade from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA vide Customs Notification No. 11/2008-Customs dated 23rd January, 2008 on the basis of the final findings of the Authority issued via Notification No. 14/8/2006-DGAD dated 26th December, 2007.

2. AND WHEREAS M/s DCW Limited (DCW), Chemplast Sanmar Limited (Chemplast), Reliance Industries Ltd (RIL) and DCM Shriram Consolidated Ltd. (DCM) (hereinafter referred to as the “petitioners”) filed a duly substantiated application in accordance with the Act and the AD Rules before the Authority alleging continued dumping of PVC Suspension Grade Resin originating in or exported from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA and requested for review, continuation and enhancement of the anti-dumping duties. Having satisfied that the petitioners have substantiated the need for a review, the Designated Authority considered it appropriate to initiate sunset review vide Notification No.21/29/2011-DGAD dated 5<sup>th</sup> October, 2012 published in the Gazette of India, Extraordinary, to examine whether the expiry of anti dumping duty would lead to continuation or recurrence of dumping or injury.
3. The procedure described below has been followed with regard to the investigation:
  - a. The Authority issued public notification No.21/29/2011-DGAD dated 5<sup>th</sup> October,

2012 initiating sunset review investigations, which was published in the Extraordinary Gazette of India.

- b. The Authority sent copies of initiation notification dated 5<sup>th</sup> October 2012 to the Embassy of the subject countries, known exporters/producers from the subject countries, known importers and other interested parties. Parties to this investigation were requested to file the responses to the questionnaire and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters/producers were also sent to the Embassy of the subject countries along with a list of known exporters/producers with a request to advise the exporters/ producers from the subject countries to respond to the questionnaires within the prescribed time.
- c. The Authority provided copies of the non-confidential version of the application to the known producers and/or exporters and the Embassy of the subject countries in accordance with Rules 6(3) supra. A copy of the non-confidential application was also made available for other interested parties, on request.
- d. The Authority forwarded a copy of the public notice to all the known importers and/or consumers of subject goods in India and advised them to provide relevant information and make their views known in writing within forty days from the date of issue of the letter in accordance with the Rule 6(2).
- e. The Authority sent questionnaires to elicit relevant information to the Governments of subject countries, including known exporters/producers in accordance with the Rule 6(4).
- f. Due to the large number of requests for participation in the sunset review, a letter was issued to all known producers and exporters of subject goods in China PR (in terms of Article 6.10 of WTO Anti-Dumping Agreement and proviso to Rule 17 (3) of the AD rules) asking for basic information (sampling questionnaire) regarding the volume and value of the subject goods exported by them to India for limiting the number of respondents selected for review. In selecting the respondents for individual review, it was intended to select the largest exporters/producers in terms of export volumes to India during the POI. The response to the letter was received from following producers/exporters from China PR
  - i. Xinjiang Tianye Foreign Trade Co. Ltd
  - ii. Yibin Tianyuan Group Co., Ltd.
  - iii. Qingdao Haijing Chemical (Group) Co., Ltd.
  - iv. Inner Mongolia Sanlian Chemical Corporation Limited.
  - v. Tianjin LG Dagu Chemical Co., Ltd.
  - vi. Tianjin Dagu Chemical Co., Ltd.
  - vii. Shandong Ocean Imp & Exp Co., Ltd.
  - viii. Xinjiang Zhongtai Chemical Co., Ltd
  - ix. Tangshan SanyouChlor-Alkali Co., Ltd.
  - x. ChipingXinfa PVC Co., Ltd.
- g. The data was examined to ascertain the largest %age of the volume of exports that can be reasonably be investigated. It was found that the top 4 exporters by volume account for 82% of the total volume of the exports made by the exporters who have filed the response to the sampling questionnaire. Thus, considering the top 4 producers/exporters by volume will be reflective of the total population of exports from China PR, it was proposed to include the following exporters/ producers in the sample:

- i. Xinjiang Tianye Foreign Trade Co Ltd
  - ii. Yibin Tianyuan Group Co Ltd
  - iii. Qingdao Haijing Chemical (Group) Co
  - iv. Inner Mangolia Sanlian Chem Corp Ltd
- h. As no comments to the sampling procedure proposed by the Authority was received till the stipulated time given by the Authority from the interested parties, the 4 sampled producers and exporters mentioned were requested to submit the response to questionnaire in the form and manner of exporter's questionnaire, MET questionnaire as well as additional sunset questionnaire within the stipulated time period.
- i. The following producers/exporters also submitted responses to the Questionnaire.
    - i. Tricon Overseas, Inc., USA (exporter)
    - ii. Tricon Dry Chemicals LLC., USA (exporter)
    - iii. Westlake Vinyl Corporation, USA, USA (producer and exporter)
    - iv. Westlake Chemical Corporation, USA (producer and exporter)
    - v. M/S. Formosa Plastics Corporation, U.S.A., (producer)
    - vi. Formosa Plastics Corporation, Taiwan (producer)
    - vii. Ocean Plastics Co., Ltd., Taiwan (producer)
    - viii. Tricon Energy UK Ltd., UK (exporter)
    - ix. LG Chem Ltd., Korea (producer and exporter)
    - x. Hanwha Chemical Corporation, Korea (producer and exporter)
    - xi. M/s Powell International Trading Co., Ltd., Taiwan
    - xii. M/s Shintech Incorporated.
    - xiii. CGPC Polymer Corporation ("CGPC Polymer"), Taiwan
    - xiv.** China General Plastics Corporation, ("CGPC") Taiwan,
    - xv.** Taipei economic and cultural centre, Delhi
    - xvi.** ICC Chemical Corporation (exporter)
- j. Questionnaire was sent to known importers or users for providing necessary information in accordance with Rule 6(4).
- k. Questionnaires were sent to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:

1.	SHALIMAR REXINE INDIA LTD. 1st Floor, Gumam Chambers 67, Ganesh Peth, Pune - 411 002 Maharashtra	2.	FINOLEX GROUP Finolex Group, D-1/10, MIDC, Chinchwad, Pune
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3.	THE SUPREME INDUSTRIES 17/18, Shah Industrial Estate, Veera Desai Road, Andheri (W), Mumbai - 400 053	4.	KRISHNA VINYL GROUP Belagaon Village, Boisar (East), Mumbai
5.	JAIN IRRIGATION SYSTEMS Jain House, Police Court Lane, Fort, Mumbai - 400 001	6.	PRINCE GROUP Prince Arcade, C-10, Century Road, Marol MDC, Andheri Mumbai - 400 093
7.	KALPANA INDUSTRIES 2/B, Prictona St. Kolkata - 700 071	8.	COSMOS CORPORATION Jai Gurudeo Complex, Shop No.C-4, Ground Floor., Bhiwandi
9.	POLYTRUSIONS PRIVATE LTD. 1-B, Gleneden Place, 813, Poonamallee High Road, Killpauk, Chennai - 600010	10	POLYCAB CABLES PVT. LTD. Hicco House, North Wing, 1ST Floor, 771, Pandit Satawalekar Marg, Mahim, Mumbai - 400 016
11.	CHANDUBAI GROUP No.58, Bharathisan Street, Muthlalpet, Chennai	12	J P GROUP 4314/5, Jai Mata Marg, Tri Nagar, New Delhi - 110 035
13.	Royal Cushion Vinyl Product Plot No.9, Behind National Avenue, Akruti Road, Mandivali (East), Mumbai -400 001	14	KISAN GROUP TEX Centre, K Wing, 3rd Floor, 26-A Chandiwal Road, Andheri (East), Mumbai -400 059
15.	GOLDEN GROUP E-5, Mayapuri Indl. Area, Phase II, New Delhi - 110 064	16	PREMIER POLYFILM LTD. 40/1A, Site IV, Industrial Area Sahibabad, Ghaziabad (U.P.)
17.	V.K.GANDHI GROUP 10/60, Industrial Area, Kirti Nagar, New Delhi	18	OMEGA UDYOG 605, Krishna Apartment, Sector 18, Noida, UP
19.	FINE FLOW PLASTIC INDUSTRIES 403 Steel Centre, Ahmedabad Road, Karnak Bunder, Masjid, Mumbai - 400 009	20	KRITI INDUSTRIES (INDIA) LTD. Chetak Chambers, 14, R.N.T. Marg, Indore M.P. - 452 001
21.	SIGNET OVERSEAS LTD. 114-116, Trade House 14/3, South Tukoganj,	22	VEEKAY POLYCOATS LTD. Flat No.70, 7th Floor, Hansalaya Building,

	Indore, M.P.		15, Barakhamba Road, New Delhi - 110 001
23.	AVON PLASTICS GROUP No.7/1, 4th Cross, Padarayanpura, Mysore Road Cross, Bangalore - 560 026	24	KLJ GROUP KLJ House, Rana Marg, Near Kirti Nagar, New Delhi - 110 015
25.	CAPRIHANS INDIA LTD. D Block, Shiovsagar, Dr.Annie Besant Rd, Worli, Mumbai - 400 018	26	PAR PETROCHEM LTD. Petro House, 1206, 1st Floor, Bahadur Garh Road, Delhi
27.	SUDHARKAR GROUP Balaram Thanda, Near Industrial Estate, Surya Pet, Dist. Naigonda, Andhra Pradesh - 500 001	28	SURENDER COMMERCIAL 14, Royd Street, Kolkata
29.	MM Plastics Building No.26/779, Pant Nagar, Ghatpokar (East), Mumbai	30	K S PLASTICS 22A, Sardar Bazar, New Delhi
31.	DELUXE KAARAN IMORT PVT. LTD. 321, Siddhivinayak Housing Society, Bhiwandi	32	AASU CHEMPOPLAST Shop No.907, Netaji Subhash Place, P.P.Tower, Pitampura, New Delhi - 110 034
33.	DUTRON PLASTICS Dutron House, Mithakhali Underbridge, Navrangpura, Ahmedabad, Gujarat - 380 006	34	PRFINTCRAFTS 16-A/19, WEA, Ajmal Khan Road, Karol Bagh, New Delhi
35.	ADITYA INDUSTRIES 5, Khosla Corss Lane, 1st Floor, Near Paydhoni, Masjid Buder, Mumbai - 400 003	36	JEWEL POLYMERS C-636, DSIDC Industrial Area, Narela, Delhi
37.	FANCY POLYMERS PVT LTD C-3, Local Shopping Centre, Paschimi Marg, Vasant Vihar, New Delhi - 110 057	38	VARSHA CORPORATION LTD. A/3-G, Malad Industrial Estate, Malad, Mumbai
39.	MAXX IMPEX 30/44, Gali No.7, Vishwas Nagar, Shahadara, Delhi	40	ORIPLAST LTD. 9/A, Wood Street, Kolkata - 700 016

41.	AMISHA VINYL PVT LTD A-21, Sitaram Building, Kolkata - 700 016	42	NOUVELLE CREDITS PVT.LTD. 4316/17, 3rd Floor, Saini Market, New Delhi
43.	D.R.POLYMERS LTD C-24, Mansarovar Garden, DR Complex, New Delhi - 110 015	44	SINTEX INDUSTRIES LTD. Plastic Division, Kalok (NG), Kalol, Mehsana, Gujarat
45.	SANKHLA INDUSTRIES 1st Floor, Race Course Road, Banalore, Karnataka - 560 001	46	SHANTILAL MAHENDRAKUMAR 23, Gurukrupa Apartments, H.C. Kelkar Road, Dadar, Mumbai
47.	SAM POLYMERS 115/4A, Vidyut, Near RBI Colony, Shalimar Baug, New Delhi	48	PRAKASH INDUSTRIES Near IOCL Depot, Brijwasan, New Delhi - 110 061
49.	R.S. OVERSEAS PVT.LTD. F-31, 1st Floor, Bhagwant Singh Market, 3003, Bahadurgarh Road, New Delhi	50	INCOM CABLES PVT LTD C-46, Mayapuri Industrial Area, Phase II, New Delhi
51.	DIAMOND PIPES & TUBES 7th Cross Wilson Garden, Bangalore , Karnataka - 560 027	52	CHAITANYA IMPOGENEX Chikal House, 146-B, Princes Street, Mumbai
53.	TIRUPATI GROUP Plot No.81, Function Industrial Estate, Patparganj, New Delhi - 110 092	54	APOLLO PIPES A-90, Naraina Industrial Area, Delhi - 110 052
55.	HAVELLS INDIA Havells India, E-1, Sector 59, Noida (U.P.)	56	OSWAI CABIE PRODUCTS LTD A-93/1, Wazirpur Group Industrial Area, Delhi - 110 052
57.	MEGHA INDUSTRY Shop No.9/96, Shaasin Gali, Vishwas Nagar, Delhi - 110 052	58	ASSOCIATED CAPSULES LTD Kalpatru Society, 289-2, Mahatma Phule Peth, Timber Market Road, Pune

1. The Authority provided opportunity to the industrial users of the product under consideration, to furnish information considered relevant to the investigation regarding dumping, injury and causality. None of the importers have submitted

response to the importers questionnaire and hence they are considered non cooperative in this investigation. However, the following importers/ users have submitted comments to the subject review investigation which have been examined by the Authority.

- a. Sankhala Industries.
  - b. Manish Packaging Pvt Ltd
  - c. Dhabriya Agglomerates Pvt Ltd.
  - d. AVI Global Plast.
  - e. Sudhakar PVC Products Pvt Ltd.
  - f. Kalpena Industries
  - g. Oswal cable products
  - h. All India Plastic manufactures Association (AIPMA)
  - i. Prince Pipes and fittings Pvt Ltd, Mumbai
  - j. Dutron plastics Ltd
  - k. Cooldeck Aqua solutions Pvt Ltd
  - l. Jain Irrigation systems Pvt Ltd
  - m. Kisan Mouldings Ltd.
  - n. Sandeep Organics Pvt Ltd
- m. A letter was received from M/s Tianjin Dagu Chemical Co, China PR for accepting the response from Chinese producer and exporter. It was submitted in that letter that the applicant was a cooperating party in the original investigation and obtained individual dumping margin. The letter was examined and it was noted that the Authority had issued a public notice dated 5th October 2012 initiating SSR anti-dumping investigation concerning imports of PVC Suspension Resin from China PR, Taiwan, USA, etc and since there were requests from large number of producers/exporters from China PR to participate in the investigation, sampling was conducted by the Authority. It was thus noted that the Authority had already selected a sample and that did not include M/s Tianjin Dagu Chemical Co. Ltd. After the Authority had made the sample, the list of sampled producers/exporters were communicated to all those who had responded to sampling questionnaire for their comments. However, it is noted from the records that Tianjin Dagu Chemical Co. Ltd., has not submitted any comments at that stage. Thus, the application filed by M/s Tianjin Dagu Chemical Co. Ltd, a non-sampled producer/exporter from China PR was not entertained.
- n. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, and the period of investigations. Information received from the DGCI&S, has been relied upon in the present final finding.
- o. The Authority held a public hearing on 1<sup>st</sup> May, 2013 to provide an opportunity to the interested parties to present relevant information orally, which was attended by the domestic industry and other interested parties. The parties attending the public hearing were advised to file written submissions of the information presented orally. Interested parties were also provided opportunity for rejoinder submissions on the views expressed by opposing interested parties. The Authority has considered the written submissions and rejoinders received from the interested parties, wherever found relevant, in this final findings.

- p. Arguments raised and information/evidence provided by the interested parties, including domestic industry, during the course of the investigation, to the extent that the same are considered relevant to the present investigation, have been appropriately considered by the Authority.
- q. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied upon which this final finding is based. For that purpose, the Authority conducted on-the-spot verification of the domestic industry and the co-operating producer/exporter to the extent considered relevant and necessary.
- r. The Authority made available non-confidential version of the evidence presented by the interested parties through a public file maintained by the Authority and kept open for inspection by all interested parties as per Rule 6(7).
- s. Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry. The Non-injurious Price has been worked out in accordance with Annexure III of the anti-dumping rules.
- t. Investigation was carried out for the period starting from 1<sup>st</sup> April 2011 – 31<sup>st</sup> March 2012 (12 months and has been referred to as the period of investigation or POI). The examination of trends in the context of injury analysis covered the periods 2008-09, 2009-10, 2010-11 and POI.
- u. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigations, or has significantly impeded the investigation, the Authority has recorded findings on the basis of the facts available.
- v. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has granted confidentiality, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non confidential version of the information filed on confidential basis.
- w. In accordance with Rule 16 of the Rules *supra*, the essential facts/basis considered for the decision of the Authority were disclosed to known interested parties in the form of disclosure statement and comments received on the same have been considered in Final Findings. The comments to the disclosure statement have been received from the following interested parties.
  - i. The domestic industry
  - ii. M/s CPMA
  - iii. All India Plastic Manufacturer Association (AIPMA).
  - iv. Embassy of Republic of Korea RP.
  - v. Tricon Overseas, Inc., USA (exporter)

- vi. Tricon Dry Chemicals LLC., USA (exporter)
- vii. Westlake Vinyl Corporation, USA, USA (producer and exporter)
- viii. Westlake Chemical Corporation, USA (producer and exporter)
- ix. M/S. Formosa Plastics Corporation, U.S.A., (producer)
- x. Formosa Plastics Corporation, Taiwan (producer)
- xi. Tricon Energy UK Ltd., UK (exporter)
- xii. LG Chem Ltd., Korea (producer and exporter)
- xiii. Hanwha Chemical Corporation and Hanwha corporation, Korea RP (producer and exporter)
- xiv. CGPC Polymer Corporation (“CGPC Polymer”),Taiwan
- xv. China General Plastics Corporation, (‘CGPC’) Taiwan,
- xvi. Taipei economic and cultural centre, Delhi
- xvii. China Chlor-Alkali Industry Association, China PR (hereinafter also referred as “CCAIA”).
- xviii. Embassy of the Republic of Korea RP

- x. \*\*\* represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits.
- y. The Central Government upon the request of the DGAD extended the time period to complete the investigation and notify the final findings till 4th April, 2014.
- z. The exchange rate for conversion of US\$ to INR in the POI has been considered at Rs.48.14 as per customs data.

**A. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE:**

- 4. The product under consideration in the present review investigation is homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification subheading 3904, known as PVC suspension resin. The product under consideration excludes specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAC), PVC paste resin and PVC blending resin. The product under consideration has been referred to as “Poly Vinyl Chloride (PVC) Resin Suspension Grade” or “PVC Suspension Resin” or “the subject goods”. Since the current investigation is a Sunset Review investigation into anti-dumping duties currently in force, the scope of the product under consideration is the same as that in the original investigation. The product under consideration does not have dedicated HS Code and the imports are cleared under different HS Codes falling under 3904. The customs classification is indicative only and in no way binding on the scope of the present investigation and proposed measures.

### **Views of the domestic industry**

5. Domestic industry has made following submissions.
  - a. The Authority has, in the Final Findings of the original investigations, dealt with issues raised with respect to the scope of the product under consideration.
  - b. Since the current investigation is a sunset review of existing anti dumping duty, the scope of the product under consideration is required to be kept the same as that of original investigations.
  - c. The goods produced by the domestic industry are like article to the subject goods exported to India.

### **Views of the Importers, Consumers, Exporters and Other Interested Parties**

6. None of the other interested parties raised any issues with respect to the scope of the product under consideration.

### **Examination by the Authority**

7. The product under consideration in the present investigation is “homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification no. 3904.21. The product under consideration however, excludes the specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin”. The product under consideration is the same as considered in the original investigation.
8. The product under consideration does not have dedicated HS Code and the imports are cleared under different HS Codes falling under 3904. The customs classification is indicative only and in no way binding on the scope of the present investigation and proposed measures.
9. In the initiation notification, the scope of the product under consideration was specified as follows –

*“Product under consideration in the present review investigation is homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification no. 3904, known as PVC suspension resin. The product under consideration excludes specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin. The product under consideration has been referred to as “Poly Vinyl Chloride (PVC) Resin Suspension Grade” or “PVC Suspension Resin” or “the subject goods”.”*

10. Having regard to the evidence on record and initiation notification, the Authority considers it appropriate to keep the scope of the product under consideration to the same as was considered in the original findings..
11. In order to determine whether goods produced by the domestic industry can be considered like article to the goods produced and/or exported from the subject countries, it is noted that the issue has been examined by the Authority and no submissions has been received by the Authority, opposing previous determination of the Authority. There is no known difference in the subject goods produced by the Indian industry and exported from subject countries. Subject goods produced by the petitioners and imported from the subject countries are comparable in terms of physical & technical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. The Authority has come to the same conclusion in the final findings of the original investigation. The Authority, on the basis of the examination, holds that the subject goods produced by the domestic industry is like article to the goods imported or produced in subject countries within the meaning of the Rules. Further, none of the interested parties have raised any objections with respect to the scope of the product under consideration or the like article.

## **B. DOMESTIC INDUSTRY:**

### **Views of the domestic industry**

12. The Domestic industry made following submissions regarding domestic industry.
  - a. The petitioners are DCW Limited (“DCW”), Chemplast Sanmar Limited (“Chemplast”), Reliance Industries Ltd (“Reliance”) and DCM Shriram Consolidated Ltd. (“DCM”). There is one other producer of the product under consideration, namely, Finolex Industries Limited (hereinafter referred to as “Finolex”). Finolex has supported the petition and is a regular importer of the product under consideration.
  - b. The production of the petitioners constitutes a major proportion in the total production of the like product in India and the petitioners have the necessary standing in the present investigation.
  - c. The use of the word ‘may’ in Rule 2(b) suggests that two types of producers, i.e. related producers and producers importing the dumped product are not automatically excluded from being part of the domestic industry.
  - d. Further, the Chennai High Court in the matter of Nirma Ltd. vs. Saint Gobain Glass India Ltd. and Calcutta High Court in the matter of State of Gujarat Fertilizers & Chemicals Limited vs. Designated Authority has held that the Designated Authority has discretion under Rule 2(b) and the amendment dated 27<sup>th</sup> Feb., 2010 has not taken away the discretionary power of the Designated Authority.
  - e. None of the petitioner companies except DCM Shriram Consolidated Ltd have imported from the subject countries during the POI. Imports made by DCM Shriram Consolidated are made during their low production months to cater to their regular customers or for their captive use.

- f. Chemplast has not imported the subject goods from subject countries since 2009-10. They have, however, imported small volumes of subject goods from subject countries during 2008-09 for their captive use.
- g. DCM Shriram Consolidated Ltd. (DSCL) has imported the subject goods. The company has a number of divisions including Shriram Vinyl & Chemical Industries and Shriram Polytech. The subject goods are produced in Shriram Vinyl & Chemical Industries and Shriram Polytech consumes the product for making compounds out of it. Shriram Polytech keeps importing small quantity of general grades for smooth running of its plant and certain grades which are not being produced by M/s Shriram Vinyl & Chemical Industries. The volume of imports by DSCL is quite low looking at the overall import of product under consideration in India, consumption in India and production by the company.
- h. Finolex is a regular importer of the product under consideration. However, the imports are for captive consumption. The company is not a trader of the imported product.
- i. Reliance has imported prior to investigation period. There is no imports during the investigation period. However, the imports were for trading purposes.
- j. The petitioner companies are not related (either directly or indirectly) to any exporter or importer of product under consideration in the subject countries.
- k. The petitioner companies who are importing the subject goods are not resorting to imports in order to benefit from dumping. The focus of the petitioner companies has not turned to imports. Their focus continues to be on their own production.
- l. The petitioner companies have exported the subject goods.

### **Views Of The Exporter, Importers, Consumers and other Interested Parties**

- 13. One of the petitioners had imported the subject goods during the POI, and therefore initiation of this investigation was void as there is no justification for including importer companies in the definition of domestic industry. None of the interested parties have raised any fresh issues regarding the domestic industry status.

### **Examination By The Authority**

- 14. According to the Rule 2 (b), *“domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers.*
- 15. The Authority has examined the submissions made by interested parties and has also carried out onsite verification of records of the domestic industry and on the basis of examination, it is noted that

- a. Dhrangadhra Chemicals & Works (DCW) has not imported the subject goods from subject countries during the injury period or in period of investigation
  - b. Reliance Industries Ltd and Chemplast Sanmar Limited have not imported the subject goods during period of investigation but have imported prior to it.
  - c. One of the divisions of DCM Shriram Consolidated Ltd i.e. Shriram Polytech has imported the subject goods during the POI.
  - d. It is noted that the imports made by DCM Shriram Consolidated Ltd constitutes insignificant in relation to its production, total imports in India and consumption in India during the POI
16. With respect to the contention that there can be no justification for the inclusion of a company in the scope of domestic industry if it has imported the product under consideration, the Authority notes that it is an established position of law that the Authority has discretion to either include or exclude a producer who has imported the subject goods, within the scope of domestic industry based on sound reasons..
17. The Hon'ble division bench of Madras High Court in Nirma Limited v. Saint Gobain Glass India Ltd (2012 (281) E.L.T. 321 (Mad.) held, with respect to the effect of the amendment on Rule 2(b):
50. *Moreover, as correctly submitted by the Senior Counsel and counsel appearing for various domestic producers, if the term "only" has been included anywhere else, there would have been scope for such restrictive interpretation. Furthermore, the Rule has been consistent in giving discretion to the Designated Authority for nearly 11 years from 1999 to 2010 and the Government having realized the difficulty has also reverted back to the period between 1999 to 2010 by taking away the term "only" and therefore it is patently clear that the intent of the law-makers is not to restrict the discretionary power of the Designated Authority so as to take cognizance of the application regarding anti-dumping.*

*"62.....(ii) the term 'domestic industry', as it was amended on 27.02.2010, has not taken away the discretionary power of the Designated Authority....."*

18. The Hon'ble High Court of Kolkata in the matter of *State of Gujarat Fertilizers & Chem. Ltd. v. Addl. Secy. & Designated Authority* [2012 (286) E.L.T. 348 (Cal.)] held:
- "13. *Bearing aforesaid legal position it is incumbent for this Court to see what could be real and rational object for employing the definition of 'domestic industry' and this could be gathered upon reading the object of the said Rule. The Supreme Court has explained why the aforesaid rule has been framed by the legislature. In case of Reliance Industries Ltd. v. Designated Authority and Others reported in (2006) 10 SCC 368 = 2006 (202) E.L.T. 23 (S.C.) in paragraph 48 it is clearly mentioned the object of framing this Rule. We cannot do better than to reproduce the paragraph 48 of the said report:-*

*“The anti-dumping law is, therefore, a salutary measure which prevents destruction of our industries which were built up after independence under the guidance of our patriotic, modern-minded leaders at that time and it is the task of everyone today to see to it that there is further rapid industrialisation in our country, to make India a modern, powerful, highly industrialised nation.”*

14. *Thus it is very clear that the definition of the importer as mentioned in Rule 2(b) has to be understood in the context of protecting indigenous industry producing same material. Here we notice on fact ‘of course going by the statement made in the complaint of the appellant made to the appropriate authority’ that nearly 15% of its total production is imported by it and that too casually and to meet customer’s demand during the time when the production was disrupted, and this quantity of import is very insignificant portion of the total import from the same exporting countries. According to us realistic and logical meaning should be the person who is carrying on business of import exclusively for trading purpose is the importer under the said Rule. We have examined the object clause of the Memorandum of Association of the appellant and nowhere we find that it carries on business principally, of import of Melamine. It is carrying on business amongst other of manufacturing of heavy chemicals of every description, whether required for civil, commercial or military defence purposes. We record the learned Trial Judge did not decide with examination of object clause of Memorandum of Association. We think this exercise is paramount and without the same the appellant could not be held to be importer in the sense as it is intended by the said Rule.”*

19. The Authority notes that there were no imports of the product under consideration in the period of investigation by Reliance Industries Ltd, DCW and Chemplast, and therefore they are not liable to be excluded from the scope of domestic industry. With respect to M/s DSCL, the Authority finds that the company is primarily a producer and the focus of its activities have not shifted to imports and trading. Hence, all the petitioners are considered to constitute domestic industry in terms of Rule 2(b) of the Anti-dumping Rules.

20. The production of the product under consideration by the petitioners is 79.46% of total Indian production and hence constitutes a major proportion in Indian production. Therefore, the petitioners are considered to constitute domestic industry within the meaning of Anti Dumping Rules.

#### **C. OTHER ISSUES:**

##### **Views of the domestic industry**

21. The domestic industry has claimed as under:-

a. The responses to the Exporter Questionnaires filed by many of the producers/exporters from the subject countries were deficient and misleading:

i. LG Chem has stated that ‘there is duty drawback available in which system import duty is refunded on export’. However, on page 21 of the response, LG Chem has stated “No grant, subsidy or other consideration on manufacturing, export or transportation of goods are received directly or indirectly.”

ii. Similarly, Hanwha Chemical Corporation has stated that customs duties levied on imported raw materials used to manufacture export goods may be refunded. It has made the duty refund in the case of PVC Suspension Resin confidential. However, on page 26, it has implied that it does not receive any grant, subsidy or other consideration.

iii. Ocean Plastics (“OCP”) has not mentioned the legal form of their company, the statute under which it was established, or if there has been any change in its structure over the last three years. OCP has failed to provide its normal corporate financial accounting period, audited accounts for the last three years along with those of related companies involved with the product, and financial statements, management reports, or standard cost reviews. In answer to the later part of question G 1 (e), that is, “[f]or materials purchased, explain the nature of arrangements with the supplier and whether the same is related to you”, OCP has not provided an answer. It is clear that OCP sources its VCM from Taiwan VMC Corporation, in which it holds 12.46% stake, but the arrangement has not been explained. Further, OCP has not answered questions H, I and J of the exporter questionnaire.

iv. It is not clear whether it is Westlake Vinyl Corporation or Westlake Chemical Corporation that has filed the response. The organizational chart of the group has not been provided in the non-confidential version. Question A.6 requires a detailed explanation any “financial or contractual links and joint ventures with any other company concerning Research and Development, production, sales, licensing, technical and patent agreements for the product concerned”. Westlake has stated that it does not have any such links or joint ventures “[w]ith the exception of its Huasu joint venture discussed in response to questions A.3”. Westlake has not specified the details of the arrangement in either of these questions.

v. In order to be considered a cooperating exporter in this investigation, Shintech Incorporated is required to submit a full response to the Exporter Questionnaire sent by the Designated Authority. Shintech is not at liberty to submit partial information.

vi. The fact that Shintech shows profitability does not prove that it has not resorted to dumping. It should have submitted an Exporter Questionnaire Response.

- b. Exporters which were awarded zero duty in the original investigation should not be excluded from the sunset review for the following reasons.
  - i. India by practice conducts full midterm and full sunset reviews which focus on existence, degree and effect of dumping. The Authority determines dumping margin in respect of actual exports and dumping margin and injury margin are calculated on the same lines as is done in the original investigations. The duty is varied depending on dumping margin and injury margin in the review period.
  - ii. The petition in case of Korea and Taiwan is based on actual dumping and actual material injury and further since the authority is undertaking full investigation in respect of these imports consistent with requirements of Article 2 & 3 of the Agreement, it follows that the Authority is fully entitled to recommend duties in respect of these companies.
  - iii. The argument that the import data should be segregated between imports from the exporters whose imports are (i) subject to Anti-Dumping Duty and (ii) not subject to Anti-Dumping Duty has no legal basis. Entirety of imports during the present POI is dumped imports.
  - iv. With respect to the suggestion that the Authority may provide the import data by substituting the names of the exporters with the terms “subject importer” or “non-subject importer” without stating the name of the subject country, thereby preserving confidentiality, there is no obligation on the Authority to provide the data in such a manner. What is relevant is the volume of imports, the price at which they are entering into India during the injury period of the current investigation, whether the exports are at dumped prices.
  - v. There is no substance to the claim that LG Chem and Hanwha are the only exporters from Korea RP. In any case, the investigation has not yet established that the dumping margin by these exporters is de minimis and the information submitted shows that they are dumping. The findings issued by the Authority clearly establish that the dumping margin in respect of other known exporter was more than de minimis. Authority has not exempted any exporter. The Designated Authority has merely specified nil or zero duty on some exporters and a residual duty on “any other exporter”.
  - vi. With respect to assertions of excessive confidentiality, the domestic industry has claimed confidentiality only on business sensitive data that cannot be disclosed in the interests of the petitioners.
- 22. The following comments have been submitted by the domestic industry after the issuance of disclosure statement
  - a. It has been requested that the Designated Authority should specify “3904” HS code for the purpose of the anti dumping duty in the duty table.
  - b. LG Chem, Formosa Plastics and Hanwha Chemicals have been awarded de minimis dumping margin based on incomplete questionnaire response. They have

not even provided invoice by invoice details of their exports to third countries. It is not even clear whether information in Appendix 2A has been filed by these companies. It is not clear how the authority is satisfied that (a) all sales of PVC Suspension Resin have been disclosed by the exporters and; (b) how the segregation of sales by the exporters into domestic, third countries and exports to India is accurate and adequate.

- c. PVC Suspension Resin is a pure commodity product and in a geographically small country like Taiwan, it is impossible that the selling price of two producers be materially different. However, dumping margin in case of China General Plastics (CGPC) was found to be significantly positive, and that of Formosa Plastics negative. Dumping margin in case of CGPC is based on domestic selling price. Thus, the disclosure statement establishes that export price of CGPC to India during the period of investigation was lower than normal value. Export prices, as well as domestic selling prices, of CGPC and Formosa on month by month basis should be compared. Claims of Formosa regarding domestic sales and third country sales transactions are required to be verified by an independent audit and cross verification of responses.
- d. There are only three producers of the product under consideration in Taiwan and therefore the combined data of the three producers should largely reconcile to the Taiwan customs data.
- e. Formosa has incorrectly projected before the Authority that their selling price is lower than that of CGPC since it has lower costs.
- f. The disclosure statement is in contravention to Reliance Industries Limited v. DA since it did not accept that captive inputs are required to be considered at their market values where a domestic/foreign producer is captively producing the input. Further, it appears that information on cost of production of these captive inputs has not been demanded by the Authority.
- g. Ocean Plastics and CGPC have purchased VCM whereas Hanwha Chemicals, LG Chem and Formosa Plastics have captive VCM. Though this affects cost of production, it should not affect normal value to such a degree.
- h. Cost of production of the exporter should reasonably reflect the cost associated with production and sale of the product under consideration.
- i. The exporters/producers have provided incomplete information with respect to valuation of VCM.
- j. Since both VCM and PVC are tradable commodities, petitioners request that market price of VCM be considered while determining elements of cost for computing normal value.
- k. Australia has imposed anti dumping duties on imports of PVC Suspension Resin from Republic of Korea and there is considerable overlap in POI of that case and present case. Positive dumping margin was found for LG Chem. As per statements submitted by the petitioners, export price from Korea to Australia were higher than

export price to India (month by month basis). The credibility of LG Chem's information was questioned in that case. Price adjustments have been claimed on account of rebates by Formosa Plastics and CGPC but not by LG Chem or Hanwa Chemicals. If there is a significant difference when adjustments are allowed and not allowed, there is a possibility of manipulation.

- l. No verification report has been placed in the public file. The names of the documents relied on cannot be kept confidential. The domestic industry has become aware that price adjustments were claimed only in the disclosure statement.
- m. The public file does not contain supplementary questionnaires or deficiencies issued by the Authority to the responding exporters.
- n. It is not clear from questionnaire response whether the 80:20 tests has been applied on selling price after deducting rebates or 80:20 test has been applied on the gross selling price. 80:20 tests are required to be applied after deducting expenses such as rebate and freight.
- o. The US considers (a) transfer price, (b) market value and (c) cost of production of such inputs and considers higher of the three. The exporters have however claimed transfer price materially below the market value. As regards cost of production of captive inputs, the disclosure statement doesn't state whether this information has been provided by the exporters.
- p. The EC in Potassium Permanganate stated that the adjustment can only be made for costs incurred for conveying the product concerned from the premises to an independent buyer. The EC further considered that plant and depot are part of same economic and legal entity and the depot is an extended factory gate. If freight cost from factory to depot is inadmissible for adjustment, storage expenses incurred at such warehouse/depot outside factory gate are clearly inadmissible.
- q. If storage expenses have been claimed on account of storage cost within factory gate, such adjustment is impermissible as storage of goods within the factory cannot be claimed solely for domestic market. Further, the rules have not listed storage cost as an item of price adjustments. A price adjustment can be allowed if it is demonstrated to have affected price comparability. Storage cost is in the nature of indirect overhead expenses.
- r. As per the independent study which the domestic industry got done, domestic selling price in Korea and Taiwan are significantly higher than the export price to India.
- s. China had earlier investigated Taiwanese producers and found that dumping margin in respect of Formosa was positive.
- t. Sales made to related parties have been included in determination of normal value. If the contention of the exporters is that there is no material difference in the prices to related and unrelated parties, excluding all these sales should not alter the dumping margin.

- u. Even though the Designated Authority has stated that it has applied viability test, it is not clear whether the normal value is based on all domestic sales or only profitable domestic sales.
- v. Further, it is not clear whether the 80:20 test has been applied on month by month basis or on overall basis for the period of investigation. It should be applied on a month-by-month basis.
- w. The price at which product under consideration has been imported in Korea is far higher than the price at which product has been exported from Korea. This shows that domestic prices are higher and the responding exporters have suppressed this fact.
- x. The Designated Authority has repeatedly found no dumping by Formosa Plastics, LG Chem and Hanwha Chemicals in a number of anti-dumping cases, though other exporters were given significant dumping margins and the products are such that no producer is able to fetch a price materially different from other suppliers in Indian market. This implies that these companies' pricing policy is to sell the product at one price, regardless of the market. Further, this is not for selling price, this is for ex-factory realization to the exporters after making of the adjustments, as have been claimed in the questionnaire responses, and implies grossly manipulated questionnaire responses.
- y. Some of the producers have claimed that part of their exports have been exported through trading companies outside India. The anti-dumping duty was imposed on these companies by specifying the producer and exporter combination. If exports were made by any other company, the residual duty was applicable on such exports. It, however, does not appear that exports have been made to India by these traders which attracted anti dumping duty in India. Thus, if these traders have exported the product to India without imports attracting anti dumping duties, claims made by these traders before the Indian Customs Authorities at the time of exports and claims now made by these traders before the Designated Authority are clearly contradictory.
- z. It is evident from the disclosure statement that all sales made by the producers are not directly invoiced onto Indian importer. Further, all traders who exported goods produced by these producers are not before the authority. In fact, the Designated Authority has rejected questionnaire responses of traders in some of these cases. While it is appropriate to reject the claims of dumping margin made by these traders wherever questionnaire responses are not complete, it is not clear whether dumping margin has been determined by considering all the sales made by the producers, including sales made to these traders which were eventually invoiced on to Indian customers.
- aa. Hanwha Chemicals is not entitled for individual dumping margin for the reason that the exporter in the present case is not Hanwha Chemical Corporation. The exporter in this case is Hanwha Corporation since commercial invoices were issued by it. Individual dumping margin cannot be assigned to Hanwha Chemical Corporation without questionnaire response of Hanwha Corporation.

- bb. Hanwha Chemical Corporation has claimed to have paid commission to Hanwha Corporation. However, commission to Hanwha Corporation could have been paid only when the commercial invoices for exports to India were issued by Hanwha Chemical Corporation and such sales were assisted by Hanwha Corporation. The exporter has claimed commission to Hanwha Corporation when none exists in the records of the producer or exporter.
- cc. It is not clear whether Formosa Plastics gave combined information of cost of production and sales from its three plants or separate information on domestic sales and cost of production. Separate information should have been given. The DA has determined separate NIP for each plant in case of domestic industry.
- dd. Formosa has claimed that it has considered average production cost for VCM and the same is in line with the international market price. If VCM is taken at international market price, Formosa Plastics cannot show de minimis dumping margin.
- ee. The disclosure statement does not state anything with regard to verification of cost of production claims made by the exporters.
- ff. The dumping margin from USA is in the range of 80-90% whereas the injury margin is in the range of (0-10) %. However, there is likelihood of injury considering huge amounts of freely disposable capacities in the US due to the collapse of the US housing market. Also, positive injury margin in respect of imports from USA in post investigation period was calculated.
- gg. It appears that for responding exporters for whom individual dumping margins have been determined, (a) the Authority has considered date of invoice as the relevant date of sales, (b) none of the exporters have provided any information to establish that date of invoice in fact constitutes the relevant date of sale, and (c) none of the exporters have provided any relevant information to establish that the contention of the petitioners with regard to treatment of date of order as the relevant date is inappropriate. In respect of Indonesia, Japan, Thailand, Malaysia and USA, the Designated Authority has considered date of clearance of bill of entry in India. Thus, there is inconsistency in determination of export price for responding and non-cooperating exporters and responding exporters have benefitted to the detriment of the domestic industry.
- hh. The injury margin methodology adopted at present does not constitutes fair comparison:
  - i. The domestic producers are largely selling the goods in the domestic market offering payment terms as “cash against delivery”. As opposed to this, the foreign producers have been offering interest free credit of up to 90 days.
  - ii. The domestic producers have been incurring significant freight cost in transporting the product from their factory warehouses to depot warehouses within the Country. When goods have not been sold ex-factory but from warehouse, the costs are determined up to the point of sale, the expenditure incurred up to the point of sale is required to be considered for determination of non-injurious price.

- iii. The NIP determined is without considering the discounts and commission paid by the domestic industry, while the discounts & commissions paid by the exporters have been included in landed price of imports.
- ii. The NIP determined is grossly low since:
  - i. The working capital in case of Chemplast Sanmar is required to be determined by eliminating interest bearing credit purchase. Since DCW books of accounts shows interest free credit, the amount payable for VCM purchase could be treated as sundry creditors and the amount may be treated as current liabilities and reduced from current assets to determine working capital.
  - ii. The present law itself is against the basic right of domestic industry to seek protection against unfair dumped imports.
  - iii. Capital employed should be determined considering present value of fixed assets, or at the least, gross value of fixed assets. In any case, adoption of net fixed assets is highly inappropriate considering that some of the investments are significantly old and therefore net fixed assets does not represent true value of investments.
  - iv. The authority is required to consider actual raw material and utilities consumption. Difference in consumption factors over the years is different from inefficient utilization of raw materials & utilities.
  - v. The authority is required to determine actual cost of production and not a notional lower cost of production. Capacity utilization over the years may differ due to number of factors and may not mean inefficient utilization of production capacities.
  - vi. The adoption of higher production volumes and same level of expenses is highly inappropriate and in fact unfair to the domestic industry.
- jj. The anti-dumping duty should be imposed only as fixed quantum of anti dumping duty as was done in previous cases.
  - i. Considering fluctuation in basic raw material cost, one benchmark cannot be appropriate.
  - ii. In PVC Paste Resin first case, duties were recommended on variable/benchmark basis, which were modified to fixed quantum at the time of sunset review.
  - iii. It is neither feasible nor practicable for the port authorities to verify the import price.
- kk. The duty should be imposed in terms of US\$. The rupee has depreciated significantly.

- ll. The anti dumping duty was earlier imposed in Indian rupee. The exchange rate prevailing at the time of original investigation is required to be considered for converting the duty from Indian rupee to US\$.
- mm. With regard to the responses submitted by FPC, Taiwan, the domestic industry has stated that the explanation given by FPC is grossly insufficient and highly illogical for the following reasons:
- (i) The demand for product under consideration in Taiwan is far lower than production and capacity forcing the Taiwanese producers to export majority of their material. Thus, it is impossible for a producer in Taiwan (such as CGPC or Ocean Plastics) to sell the product at a price materially higher than the price of market leader i.e. FPC. In a situation of significant excessive capacity, the small players such as CGPC and Ocean Plastics have to simply follow Formosa prices. It is therefore reiterated that Formosa has fabricated its response and has claimed selling price in Taiwan which is materially lower than the price at which company has sold the product in Taiwan.
  - (ii) It is indeed surprising that Formosa has now stated that it has no idea how China calculated 10% dumping margin. This is clearly suppression on the part of Formosa. The rules provide for disclosure of dumping margin to the exporter concerned. China follows a practice where calculations of dumping margin are provided to the exporter concerned. It is therefore not clear how Formosa can claim that it is not aware of how China had determined dumping margin. It is, therefore, evident that FPC wishes to suppress some vital facts from the authority.
  - (iii) With regard to the responses submitted by LG Chem, Korea, the domestic industry has stated that the claim of LG Chem is that the methodology followed by Australia, has resulted in higher dumping margin. If this claim is true then the Indian Authorities may follow the same methodology followed by the Australian and determine a higher dumping margin. The domestic industry has further requested the Authority to verify the claim of LG Chem by working out the dumping margin in respect of the exports made by LG Chem to Australia based on the methodology followed by Australia as this would establish the credibility of the domestic selling prices claimed by LG Chem. The petitioners submit that the price reported in KITA would not have got distorted because of inclusion of paste resin and the reply given by LG Chem is another instance of evading vital facts and attempting to mislead the authority.
  - (iv) With regard to the responses given by Hanwah Chemical Corporation, Korea, the domestic industry has stated that none of the justification given by the exporter justifies consideration of their questionnaire response. Following are relevant in this regard.
    - (a) A joint questionnaire response is impermissible under the law. The Designated Authority has been clearly requiring separate questionnaire

responses. Petitioners have not heard of any other jurisdiction where such combined responses for the producer and exporter when they are two different entities may be admissible.

(b) The accounting of transactions of subject goods exported by HCC in the books of accounts of HCC and HWC is contrary to the generally accepted accounting principles.

(c) The arrangement between HCC and HWC cannot be similar to the “consignment agent sales system” prevalent in India for the following reasons:

(d) Consignment agency type arrangement is not possible for international trade.

(e) Consignment agency type sale would require stock to be moved from the manufacturing facility to another point of sale before being sold to the ultimate buyer. This is not what is happening in HCC-HWC case.

(f) HWC must have title to goods in order to raise invoice.

(g) HCC cannot account the invoice raised by another entity as its sale, even if the other party is its a group entity as it would be against accepted accounting principles.

(v) There are several facts establishing suppression of vital facts by HCC such as their india office and Involvement of “indenters” in exports to India

(vi) The domestic industry further stated that HCC has an office in India and its expenses should have been deducted from the export price in order to work out the dumping margin.

(vii) Since the transactions between HCC and HWC are in the nature of sales, the Authority is required to adjust the SGA expenses and profit of HWC from the export price of the goods exported to India as is the practice being followed in other jurisdiction.

(viii) It has been further stated that certification of data furnished by these exporters at this stage is insufficient justification for accepting the data. The Authority had in earlier occasions rejected the certificates given by the cost accountants in respect of the data submitted by the domestic industry and adopted its own methodology.

#### **Views of the exporter, importers, consumers and other interested parties**

23. The interested parties have raised issues listed below.
- a. In case the dumping and injury does not exist, it cannot continue or recur. In the original investigation carried out by the Authority, it was found that the following Exporters were not dumping or causing injury to the domestic industry:

- i. Hanwha Chemical Corporation Korea RP
  - ii. LG Chem Korea RP
  - iii. Formosa Plastic Corporation Taiwan
  - iv. Ocean Plastics Taiwan
- b. The level of test of likelihood of recurrence of dumping and injury to these exporters should be different from those exporters who were found to be dumping in the original investigation.
- c. Import data from the subject countries should be segregated into imports from the exporters whose imports are (i) subject to Anti-Dumping Duty and (ii) not subject to Anti-Dumping Duty. In the original investigation the DGAD determined de-minimis dumping margin for some of the exporters and hence did not recommend any anti dumping duty on import of the subject goods made from such exporters and as a consequence in terms of rule 14 (C) and article 5.8 of ADA, the designated authority much have terminated the investigation in respect of such exporters. Further, imports with de-minimis dumping margin and un-dumped imports and cannot be included in cumulative assessment to domestic industry in terms of panel reports. It has also be contended that investigation is to be terminated against those exporters whose imports is found de-minimis dumping margin in original investigation and subsequent review, import from such exporters is be to treated as non dumped in terms of appellate body reports.
- d. The Authority may provide the import data by substituting the names of the exporters with the terms “subject importer” or “non-subject importer” without stating the name of the subject country, thereby preserving confidentiality.
- e. In terms of Rule 14(c), the Authority must have terminated the investigation in respect of exporters with de minimis dumping margin. In BASF South East Asia Pte. Ltd vs. Designated Authority, CESTAT held in clear terms that the Authority cannot include the non-dumped imports into the total volume of imports from the subject countries for assessing injury. Appellate Body Report DS/295 provides that the investigation is to be terminated against those exporters whose import is found with de minimis margin of dumping in original investigation and in subsequent reviews import from such exporters is to be treated as non-dumped.
- f. The initiation notice is bad in law since it initiates a Sunset Review investigation to review the need for continued imposition and enhancement of the duties in force, whereas a sunset review is only initiated for the purpose of examining whether the expiry of an anti-dumping duty is likely to lead to the continuation or recurrence of dumping and injury.
- g. Excessive confidentiality has been claimed since the Annual Reports of DCW Ltd and Chemplast Sanmar are not on their websites, certain Costing Information could have been given in indexed form, and the domestic industry has not provided information separately for its captive segment and merchant segment.
- h. There is no requirement for compulsory suo moto initiation of a sunset review without a duly substantiated petition.
- i. Hanwha is not a party to the sunset review investigation based on Section 9A(5) of the Customs Tariff Act, 1975 and the Appellate Body Report in Beef and Rice and

as per United States - Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing) imports from Hanwha, Korea RP cannot be termed dumped.

24. The following comments have been submitted by exporter, importers, consumers and other interested parties after the issuance of disclosure statement

**Submissions by LG Chem, Korea RP**

25. The following submissions have been made.

- a) On the issue of participation of CPMA, it has been submitted by LG Chem, Korea RP and also by FPC, Taiwan that CPMA is not an interested Party as per Rule 2(c) (iii) of AD Rules and therefore submissions filed by them should not be considered by the Authority.
- b) On the issue of positive dumping margin determined by Australia for LG Chem, it has been submitted that Australian Dumping Margin was inappropriate due to effect of inappropriate treatment of Duty Drawback, impact of profit adopted for exports to India through LGI and effect of one grade COP test. It has also been submitted that Dumping margin would have been negative if Australian government adopted reasonable methodology.
- c) It has been submitted that export Price to Australia and India at the same condition such as “FOB” price, is lower than export price to India and therefore, there is no dumping margin in Indian case.
- d) On the issue of consideration of date of sale for export price it has been submitted that the date of sale should be based on the date when the sales terms are established. Since the order date does not have any certain information regarding the export sales, the date of sale should be considered.
- e) With regard to the issue of exclusion of sales to affiliated party in determination of normal value, it is submitted that the price is not significantly different between the sale to affiliated parties and unaffiliated parties.
- f) With regard to valuation of inputs, it is submitted that Section 773 of USA manual is regarding valuation of inputs between affiliated parties. Since LG Chem produces its raw materials such as VCM and EDC at their own plants, the contention of the petitioner is not correct.
- g) Korean customs data on export to Australia cannot be an indicator to show LG’s export price to Australia as customs data includes both PVC straight and PVC paste. The prices of PVC paste are higher than that of PVC straight meaning that the prices reported in customs data are overstated.
- h) The export price to Australia that has reported in the response is actual price at which LG Chem exported to LG International. On the other hand, Export data cited by CPMA is mainly based on the export price that LG International has reported. The export price to Australia is actually lower than the export price to India.

- i) Since there is time lag between the placement of orders of subject goods and its actual arrival comparing the domestic price and import price on monthly basis from IHS data is not correct. Further, both the prices are set based on various factors: delivery term, quantity, channel, distance, etc.
- j) “PVC Resin Price Benchmarking Study in S. Korea & Taiwan’ cited by CPMA regarding prices in Korea is highly exaggerated and not based on facts. A sponsored Report is biased in favour of the sponsor and cannot be of any source of guidance to the Designated Authority.
- k) Investigation against LG Chem is in violation of Article 5.8 of AD Agreement and Appellate Body decision in anti dumping dispute concerning definitive AD measures on Beef & rice (USA & Mexico).

### **Submissions of FPC, Taiwan to other issues raised by CPMA & Domestic industry**

26. The following submissions have been made.

- a) On the issue raised by the domestic industry that prices in domestic market in Taiwan cannot be materially different for different buyers, FPC has stated that its domestic sales volume is 10 times of CGPC. While FPC sells to large buyers, CGPC caters to the small buyers. FPC is providing considerable incentives to them keeping in view the volume and the need for them to compete in export market. FPC is selling the subject goods to a few key customers at most competitive prices due to their cost of production is lower due to backward integration.
- b) It has been stated that similar trends of price difference exist in Indian markets between Reliance and other producers.
- c) Price charged by FPC in international market including India is lower than CGPC.
- d) FPC has submitted duly certified copies of Annexure 1 & 2 by external Auditors.
- e) FPC has claimed discounts and rebates wherever the same are applicable.
- f) On the issue of considering market price of the VCM while determining elements of costs for computing normal value, it is submitted that the Domestic Industry has misinterpreted the US practice. If the raw material is captively produced its full cost should be adopted.
- g) The domestic transport cost incurred by FPC is for moving the goods from the plant to the destination instructed by the domestic customers, rather than from the plant to depot, and FPC did not claim storage cost.
- h) FPC has submitted that the claims of the CPMA that FPC has manipulated the response is not correct and the prices charged from related customers in domestic market is comparable to the prices charged to the unaffiliated customers.
- i) FPC did not participate in the sunset review investigation initiated by China due to various reasons including setting up of plant in China by Formosa Group.

- j) On the issue of Independent study by a Third Party on behalf of the Domestic Industry, FPC has stated that the report submitted by the domestic industry is merely the contention of the domestic industry and should not be accepted by the Authority as an "expert opinion" as these reports are often biased and inaccurate. Further, the domestic industry has kept the report confidential.
- k) With regard to anti dumping investigations by China PR against Taiwan, it has been submitted that the China verification team was not allowed to conduct verification by Taiwanese Government due to political stand-off at that time. In view of such situation China worked out a positive dumping. Due to non-participation of Taiwanese producers, China has extended the duty in the expiry review investigation.
- l) Claims of the DI with regard to various parameters of NIP are not correct and are against Annexure III of AD Rules.
- m) On the issue of Exclusion of Interest bearing credit purchase from Working Capital and consideration of Gross fixed assets, it has been submitted that the claim of the DI is against the principles adopted by DGAD. Further provision of 22% ROCE to arrive at NIP is against AD Rules.
- n) Initiation and imposition of ADD, if any, on FPC will be in against the provisions of Article 5.8 of the Anti Dumping Agreement.

**Submissions by Hanwha chemical corporation (HCC) and Hanwha corporation (HWH)**

27. The following submissions have been made.

- a) With regard to availing services from HWC by HCC and to pay \*\*\* USD per MT, HCC has stated that HWC does this activity of handling of invoices not only for HCC but also for other group companies in order to bring effectiveness, economies of scale, cost saving and other huge benefits to HCC. Further, HCC wants to focus on the activities such as overseas market development and negotiation with the customer rather than handling the export documentation.
- b) With regard to handling of the invoices and receiving payments from the Indian importers by HWC it has been submitted that HWC and HCC have entered into handling/commission agreement for undertaking this work.
- c) With regard to the issue that Import price (from outside Korea) of subject goods in Korea is consistently high but at the same time domestic price of subject goods sold by LG and Hanwha is relatively less, it has been mentioned that the import data provided by the domestic industry is for both PVC suspension grade and PVC paste resin. It has also been submitted that the price of PVC paste resin product is much higher than the price of PVC suspension grade. Therefore, it cannot be compared either with the average import price or the domestic sales price of PUI.
- d) It has been stated that HCC and HWC have entered into commission/handling agreement not only for PVC Suspension but for other few products.
- e) HCC has submitted that Exporter's Questionnaire along with the Sunset Review

Questionnaire was jointly filed by Hanwha Chemical Corporation (HCC) as producer and Hanwha Corporation (HWC) on 11.12.2012 all subsequent correspondences with the Authority was done on behalf of both the companies. On Site/Spot verification was conducted by the Authority on 26.11.2013 at Hanwha office at Seoul, Korea wherein beside other documents sample documents for domestic and export transactions, proves of adjustment, audited balance sheets of HCC and HWC, service agreement between HCC and HWC etc were collected from the Hanwha. Thereafter, verification report was issued on 30.12.2013 jointly for HCC and HWC. At last, response to disclosure statement was also jointly filed by HCC and HWC on 20.02.2014

- f) HCC has further stated that they had provided the information on the same lines as provided in the original investigation of PVC. The same modus operandi was accepted by the Authority in the original investigation of Polypropylene from Saudi Arabia, Oman and Singapore in 2010, wherein one joint response was filed by three parties.
- g) On the issue that since there was no sale and purchase transaction between HCC and HWC, no separate dumping margin should be determined for exports to India by HCC through HWC, HCC has submitted that the transaction of exports by HCC through HWC were made as per the commission/handling agreement. It was further stated that HWC does not purchase the PUC under investigation from any other producer including HCC and HWC does not resell the subject goods. HWC handles and issues the sales invoices and the export permits issued by the Custom Authorities of Korea, permits the HWC to export goods as exporter and HCC as producer. Further, M/s Samjong KMPG, Statutory Auditor of M/s HWC has issued a certificate to the above effect.
- h) On the issue of incomplete questionnaire response, it has been stated that Hanwha has submitted it has provided the detailed transaction wise information of exports to third countries.
- i) On the issue that the exporter has not provided the complete cost of production specially the costing details of captively produced raw material i.e. VCM, HWC has stated that it is maintaining all the books of records in accordance with the GAAP of Korea RP and submitted detailed COP of the product under consideration as well as the raw material captively produced.
- j) On the issue of US practice mentioned by DI regarding "major input rule" for valuation of inputs, it has been mentioned that the same is applicable for raw materials provided by the affiliated supplier and not for captively produced raw materials.
- k) On the issue of price adjustment on account of storage costs, it has been stated that they have not claimed any adjustment on account of storage cost.
- l) On the issue that independent study shows higher prices in Korea RP, it has been stated that source adopted by the petitioners is not reliable source because even HCC/HWC does not know LG Chemical's selling price in the domestic market.
- m) On the issue of sales to affiliated parties, HWC has computed Dumping Margin after eliminating the domestic sales to affiliates.

## **Submissions by China Chlor-Alkali Industry Association, China PR (CCAIA)**

28. The following comments have been submitted by China Chlor-Alkali Industry Association, China PR (CCAIA) after the issuance of disclosure statement
- a. On the issue of grant of separate dumping margin to the sampled producers and exporters from China PR, it has been submitted that following the issuance of the disclosure statement, it has been submitted by China Chlor-Alkali Industry Association, China PR (CCAIA) that out of 4 producers/exporters sampled by DGAD, separate dumping margin has not been determined for 2 producers/exporters – (i) Inner Mongolia Sanlian Chemical Corporation Ltd and (ii) Xinjiang Tianye Foreign Co Ltd (exporter) and Xinjiang Shihezi Zhongfa Chemical Co Ltd (producer) and Xinjiang Tianye Co Ltd and they have requested that both the producers/exporters had given details of producers producing the product as required in the sampling questionnaire format and further more separate rate of dumping margin was determined for combination of Ms/ Xinjiang Shihezi Zhongfa Chemical Co Ltd as producer and M/s Xinjiang Tianye Co Ltd as the exporter in the original investigation as well. They have requested DGAD to treat all the sampled producers/exporters as cooperating since all relevant information was provided to DGAD in the sampling as well as exporters' questionnaire response. It has also been submitted that in their sampling questionnaire as well as exporters' questionnaire, Xinjiang Tianye had furnished the name of the producer as "Xinjiang Shihezi Zhongfa Chemical Co Ltd". However, in the dumping margin table as well as injury margin table, DGAD has considered the producer's name as "Xinjiang Tianye Foreign Trade Co Ltd". They have requested DGAD to correct the same in the final findings. It has also been submitted that DGAD has made available the dumping margin calculation for 2 verified exporters/producers from China PR and the determination is not falling within the range of dumping margin determined after para 103 of the disclosure statement. They have requested DGAD to examine the same and correct the same. With regard to ex-factory export price determination is concerned, it has been submitted that VAT refund should be based on FOB value of exports and they have requested DGAD to examine the same and if VAT adjustment is based on CIF value they have requested DGAD to correct the same and revised the ex-factory export price.
  - b. Methodology to arrive at constructed normal value not known
  - c. It has been submitted that injury is only due to non-dumped imports. European Union in Anti-dumping investigation against India concerning the imports of Stainless Steel Fasteners terminated the investigation because the quantity of non-dumped imports was much more than dumped in a situation where landed value of the non-dumped imports was lower than the dumped imports.
  - d. It has also been submitted that Chinese imports are not causing injury as the landed value is more than the landed value for other countries. that there is massive difference in DGCI&S import data and import data submitted by the Domestic Industry in its application.

- e. Non-Disclosure of Transaction-by-transaction data obtained from the DGCI&S and issue of confidentiality. Thus, DGAD is requested to disclose the information, for which no confidentiality has been claimed.
- f. Price effect analysis casts a very serious doubt and Huge discrepancy between the data in the petition and data relied upon by DGAD
- g. Continuation of the investigation is illegal after expiry of anti-dumping duty. Hence, it is the submission of the Respondent that DGAD has lost its jurisdiction to conclude the investigation due to expiry of time and as a result, the investigation requires termination. Present investigation is a mix of original investigation and sunset review. Thus, for the purposes of determining dumping margin, DGAD has considered the present investigation akin to original investigation. However, during injury examination, DGAD has considered the present investigation as sunset review examination only and went on to examine the existing injury as well as likelihood of recurrence of injury as well.
- h. Imports made by Applicant domestic industry to be examined for injury analysis.
- i. As regards the submission made by Respondent that captive and merchant market of the applicant domestic industry needs to be examined together. It has been submitted that there is no injury to the domestic industry and in incorrect determination on likelihood of recurrence of injury. It has been submitted that demand Supply Gap issue not addressed properly. It has also been stated that Consideration of 22% as Return on Capital Employed is not justified

### **Comments from Westlake Chemical corporation and Westlake Vinyl Corporation**

- 29. The following comments have been submitted by Westlake Chemical corporation and Westlake Vinyl Corporation after the issuance of disclosure statement
  - a. It has been stated that Westlake's data relating to its direct sales to India is more than sufficient for DGAD to calculate a company-specific dumping margin. Apparently, DGAD's position is that, because Westlake did not provide its unaffiliated customer's confidential data over which Westlake had no control or permission to use, DGAD did not have sufficient data on which to calculate a dumping margin for Westlake. In fact, Westlake's direct sales to India -- those not made through unaffiliated trading companies -- amount to no less than [\*\*\*%] of its sales during the period of investigation. Westlake responded to DGAD's exporter's questionnaire and also supplementary questionnaire. DGAD scheduled and cancelled verification of Westlake's questionnaire responses. Westlake was cooperative throughout the SSR. Instead of recognizing Westlake's cooperation by calculating a company-specific dumping margin for Westlake, DGAD punished Westlake for not providing information over which it had no control.
  - b. It has been stated that on October 18, 2012, Westlake Vinyl Corporation ("Corporation") requested to participate in the SSR. On December 13, 2012, Corporation filed its response to the Exporter's Questionnaire and the Additional Exporter's Questionnaire (Part II). The questions and requests for information set forth in both questionnaires pertained to global sales and the U.S. cost of

production of PVC-S. Corporation produces PVC-S at two U.S. plants, the Geismer plant and the Calvert City plant. Corporation owns 100% of the Calvert City plant and, through its 100% ownership of Westlake Vinyls Company LP ("Company"), also owns 100% of the Geismer plant. The Corporation and its 100%-owned affiliate, Company, both issued invoices associated with home market sales of PVC-S during the period of investigation (the "POI") and thereafter. Corporation and Company were the only Westlake entities to do so. Company issued all of the direct and indirect sales invoices associated with Corporation's and Company's sales of PVC-S to India during the POI and thereafter. Company was the only Westlake entity to do so.

- c. If two or more related entities sell the subject merchandise in the home market during the period of investigation, all such commercial sales are considered eligible to serve as normal value in an antidumping analysis. In its questionnaire responses Corporation reported all of its home market sales and those of Company. Moreover, if two or more related entities manufacture the merchandise under investigation, the costs of production generated by those entities must be weight-averaged, the result of which is one product-specific cost, which is then compared to the home market price. The result of that comparison acts as the normal value benchmark to compare the export price. In its questionnaire responses, Corporation reported all costs associated with both the Calvert City plant (Corporation) and the Geismer plant (Company) and, to the extent necessary, calculated unit costs by weight averaging the costs between the two plants.
- d. In other words, Corporation's sales reporting and cost calculation methodology conformed to those requirements. Corporation reported all home market sales of PVC-S during the POI, regardless of which of the two U.S. plants produced it. Moreover, Corporation, in conducting the cost test, was required to compare its and Company's combined home market sales to the weight average of the Calvert City plant costs (Corporation) and Geismer plant costs (Company). Because Corporation was the most specific Westlake entity with 100% ownership control of all sales and costs associated with PVC-S, Corporation was the only Westlake entity eligible to request to participate in the SSR.
- e. It has been stated that by naming Corporation as the producer and exporter on the Duty Table would be technically correct; however, such a listing would prove to be impossible to administer. Corporation is the exporter because its 100%-owned subsidiary, Company, issued the invoices associated with the exports of PVC-S to India. However, if Corporation were named on the Duty Table as the exporter, the Indian Customs Authority would not be able to administer the antidumping duty order or otherwise process the entries of PVC-S from the United States because Company would likely have issued the export invoice. In such a case, the Indian importer would likely be required to pay the "all others" rate or residual antidumping duty rate when, in fact, Corporation, the exporter, received its own company-specific antidumping duty as a result of its participation in the SSR.
- f. It has further been stated that naming Company as the producer and exporter on the Duty Table would not be correct because Corporation's costs and Company's costs were weight averaged together in calculating the cost of production. That cost of production was used in the cost test to determine the proper benchmark to use as normal value in the antidumping duty analysis.

- g. It has thus been submitted that by listing Westlake Vinyl Corporation/Westlake Vinyls Company LP as the producer and Westlake Vinyls Company LP as the exporter, DGAD would apply the appropriate antidumping duty to the combination of entities on which that duty was calculated.

### **Submissions by FPC, USA, Tricon Overseas and Tricon Energy UK**

- 30. The following comments have been submitted by FPC, USA, Tricon Overseas and Tricon Energy UK after the issuance of disclosure statement
  - a. It has been submitted that the Designated Authority has wrongfully denied an individual margin to Formosa Plastics Corporation, USA (“FPC USA”) and its unaffiliated exporter, Tricon Dry Chemicals LLC, USA as well as Tricon Energy UK Limited and Tricon Overseas Inc (“the cooperating Exporters”). It is submitted that the Exporters Questionnaire responses were duly filed including the responses to the deficiency responses by the entities from time to time. These cooperating exporters were represented at the Public Hearing and thereafter filed written submission and rejoinder to the Public Hearing. Further, the cooperating Exporters also invited the Hon'ble Designated Authority to conduct onsite verification at their premises. The requests for the onsite verification were made vide repeated communications dated November 6<sup>th</sup>, 2013, November 8<sup>th</sup>, 2013 and December 23<sup>rd</sup>, 2013 respectively. However, the Hon'ble Designated Authority deemed it fit to not conduct onsite verification at the premises of the Producer or the Exporter.
  - b. Despite both parties volunteering for an onsite verification on multiple occasions, the Hon'ble Designated Authority did not deem it “relevant and necessary” to conduct a verification. Despite the Exporter providing complete details and voluntarily filing verification information with the Hon'ble Designated Authority, it has been held that back to back invoices have not been provided which is contrary to the facts and filing on record. It has been submitted that denial of the cooperating Exporters’ individual margin while completely and deliberately neglecting the submissions made before the Hon'ble Designated Authority is in violation of the principles of natural justice apart from being a complete vitiation of the Hon'ble Designated Authority’s obligation to accord an individual margin pursuant to Rule 17(3) of the Anti-dumping Rules.
  - c. Nevertheless, the issues vexing the Hon'ble Designated Authority have been resolved and the evidence has been made available to them along with detailed calculations (cost of production, normal value, export price, adjustments to arrive at ex-factory value, dumping margin and landed price, wherever necessary) filed vide communication dated 4<sup>th</sup> March, 2014. These documents and information have been filed post detailed discussions wherein all of the Hon'ble Designated Authority’s issues have been dealt with and all queries answered. It is therefore hoped that the Hon'ble Designated Authority shall now be able to accord the cooperating Exporters the individual margin merited by the information provided as requested.
  - d. The domestic industry has claimed that the cooperating exporters in the present investigation have not provided the necessary information with regard to pricing of information of raw materials. In this behalf, it is most humbly submitted that FPC,

USA has submitted complete information with regard to captive consumption of raw materials. Further, complete details of raw material prices and costs have been reported in Appendices 5 and 6 of FPC USA's Questionnaire response. In fact, FPC USA has also asserted in specific and unambiguous terms that captively consumed raw materials are transferred to the vinyl divisions based upon market prices. Therefore, the objections raised by the domestic industry do not apply to FPC USA in this case.

- e. The domestic industry also claims that it is evident from the disclosure statement that the exporters have claimed transfer price "materially below the market value". It is humbly submitted that the domestic industry has merely assumed that all transfer prices are materially below market rates. Further, the Hon'ble Designated Authority is bound to follow its own set precedents and practice in terms of transfer of captively produced inputs, and US law or precedent has no binding value on the Hon'ble Designated Authority's obligations.
- f. It is undisputed that the margin calculations in the original investigation were conducted on a grade to grade basis. This was on the basis of certain evidences and inquiries by the Hon'ble Designated Authority whereby it arrived at the conclusion that different grades vary substantially in pricing and cost whereby a grade to grade comparison is required. It is most humbly submitted that there is no data presented by the domestic industry or the Hon'ble Designated Authority to establish that the previous methodology of a grade to grade comparison is required to be amended.
- g. With regard to the domestic industry's submissions on the NIP calculation, It is most humbly submitted that the domestic industry's submission in this behalf is without precedent or sound basis. The injury margin calculation is meant to facilitate a comparison between the prices at which the goods are available at factory gate in India. Therefore, additional expenses like inland freight from port/factory to customer's destination are not included in the price comparison since they are subject to variances and differ from agreement to agreement. As a result, the non-injurious price of the domestic industry is calculated post removal of all selling, distribution and financial expenses such as credit cost. Further the landed value is calculated without including any post factory expenses incurred in India, so that both prices reflect the price available to the Indian consumer at the same level.
- h. The Exporters also submit that the request of the domestic industry for inclusion of freight in the injury margin is without justification or legal basis. If the comparison of injury margin is to be conducted at the same level, freight in India would have to be included for both landed value as well as non-injurious price. Therefore, the recommendation of the Central Excise Act as well as Accounting Standard AS-2 is not applicable since they are contrary to the requirements of the Anti-dumping Rules.
- i. It is further submitted that Annexure III of the Anti-dumping Rules clearly lays down the procedure of determining the non-injurious price. The methodology mandated by the rules in force cannot be superseded by the conveniences of the domestic industry. The domestic industry's claims in this behalf are therefore liable to be dismissed.

- j. Further with regard to the domestic industry's claim that the NIP Determination as per Annexure III is against the basic right of the domestic industry to protect itself against unfair dumping of the goods in India, it is humbly submitted that the Hon'ble Designated Authority does not have the power to amend the anti-dumping rules, nor does it have the authority to violate those rules. Therefore, the domestic industry's claims of being aggrieved by Annexure III to the Anti-dumping Rules are being raised at an inappropriate forum without the jurisdiction to adjudicate on these issues. The domestic industry may therefore be re-directed to the appropriate judicial forum or legislative body to redress their grievances.

### **Comments from Republic of Korea RP**

31. The following comments have been submitted by Republic of Korea RP after the issuance of disclosure statement
  - a. It has been submitted that in the original investigation, in which the final decision was made on December 26, 2007, two Korean companies were found to have "de minimis" dumping margin and hence, no anti dumping duty was imposed on those Korean producers. In spite of these findings, the Indian Government has included these two companies within the scope of the exporters to be investigated in the sunset review. It has been stated that according to Article 5.8 of the WTO Anti-Dumping Agreement, "There shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible." This means that if the margin of dumping has been determined to be "de minimis", anti-dumping investigation should be terminated immediately, and the exporters should be exempted from any anti-dumping duties. LG Chem and Hanwha Chemical Corporation fall on this case.
  - b. In the case of Mexico-Definitive Anti-Dumping Measure on Beef and Rice (June 2005), the WTO Appellate Body ("AB") concluded that Excluding these exporters from anti-dumping or countervailing duty measure necessarily implies that they must also be excluded from administrative and changed circumstances reviews. By requiring Economia (Ministry of Economy of Mexico) to conduct a review for exporters with no margins and, by extension, de minimis margins, Article 68' is inconsistent with Article 5.8 of the Anti-Dumping Agreement..." (WT/DS295/AB/R360) This means that any exporters with de minimis margin should not be the subject of any review process.
  - c. Furthermore, the AB report states regarding Article 5.8 of the WTO Anti-Dumping.
  - d. Agreement that " Given that the issuance of the order establishing anti-dumping duties necessarily occurs after the final determination is made, the only way to terminate immediately an investigation, in respect of producers or exporters for which a de minimis margin of dumping is determined, is to exclude them from the scope of the order".
  - e. It has been requested that LG Chem and Hanwha Chemical Corporation should not be the subject to the on-going anti dumping sunset review investigation concerning imports of PVC suspension grade resin, and that the review investigation for these two companies should be terminated immediately.

### **Submissions by Taipei Economic and Cultural Centre in India**

32. The following comments have been submitted by Taipei Economic and Cultural Centre in India after the issuance of disclosure statement
  - a. It has been submitted that according to Article 5.8 of Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade, there shall be immediate termination in cases where the authorities determine that the margin of dumping is de minimis. Furthermore, Article 14 (c) of Customs Tariff Rules 1995 also implies that the authority shall terminate investigation against FPC and OPC immediately in the sunset review since both companies are determined de minimis in the initial investigation.
  - b. Secondly, WTO Appellate Body Report on Mexico Rice AD measure (WT/DS295/AB/R) requires an investigation authority to terminate the investigation in respect of an exporter found not to have a margin of dumping above de minimis, and that the exporter consequently must be excluded from the definitive anti-dumping measure. The logical consequence of this approach is that such exporters cannot be subject to administrative and changed circumstance review of the original measure.
  - c. They have requested Government of India again to exempt FPC and OPC from current sunset review investigation and to confirm the determination of no anti-dumping duty imposed on both companies.

### **Examination by the Authority:**

33. The Authority has noted the submissions made by the domestic industry and other interested parties and these issues have been examined under appropriate headings in this final findings in accordance with the Rules.
34. The domestic industry has raised issues regarding the responses filed by various producers/exporters from the subject countries in these investigations. The Authority, during the course of investigation, satisfied itself as to the accuracy of the information supplied upon which this finding is based. For that purpose, the Authority conducted on-the-spot verification of the co-operating producers/exporters to the extent considered relevant and necessary and sought the information required for the purposes of present investigation.
35. Some of the interested parties have raised the issue that those producers/exporters from the subject countries that were awarded zero duty in the original investigation should be excluded from the scope of these review investigations in view of the findings in WTO Appellate Body report Mexico-Beef and Rice.
36. With regard to initiation notification, it is noted that the Authority initiated the investigation to review the need for continuation as well as to examine the request of domestic industry for enhancement of anti-dumping duties, in force. It is the consistent practice of the authority to review all the aspects of the original investigation including scope of the domestic industry, dumping

(including dumping margin), existence of injury to the domestic industry, injury margin. In addition to this, the Authority undertakes an examination of whether the expiry of such duty is likely to lead to continuation or recurrence of dumping and injury to the domestic industry. Interested parties are free to raise issues with respect to any aspect of the case, including the existence of dumping, dumping margin, material injury to the domestic industry, injury margin, likelihood of continuation or recurrence of dumping and injury to the domestic industry in the event of revocation of duties, and causal link between the dumped imports and the injury to the domestic industry. As a result of such a determination, the Authority considers whether a modification in the form of measures is required.

37. The domestic industry has claimed that Exporters which were awarded zero duty in the original investigation should not be excluded from the sunset review as India by practice conducts full midterm and full sunset reviews which focus on existence, degree and effect of dumping and the Authority determines dumping margin in respect of actual exports, and dumping margin and injury margin are calculated on the same lines as is done in the original investigations. The duty is varied depending on dumping margin and injury margin determined during the review period. It has also been contended by the petitioner that the petition in case of Korea and Taiwan is based on actual dumping and actual material injury and further since the authority is undertaking full investigation in respect of these imports consistent with requirements of Article 2 & 3 of the Agreement, it follows that the Authority is fully entitled to recommend duties in respect of these companies. On the other hand, it has been contended by the other interested parties comprising exporters and importers that in case the dumping and injury does not exist, it cannot continue or recur. It has also been contended by them that in the original investigation carried out by the Authority, it was found that the four Exporters i.e. Hanwha Chemical Corporation Korea RP, LG Chem Korea RP, Formosa Plastic Corporation, Taiwan and Ocean Plastics Taiwan, were not dumping or causing injury to the domestic industry and these exporters should not come in the purview of present sunset review as investigations should have been terminated against them during original investigations. It has also been contended by them that the level of test of likelihood of recurrence of dumping and injury to these exporters should be different from those exporters who were found to be dumping in the original investigation.
38. The matter has been examined and it is noted that the WTO Appellate Body clarified in its report that Article 5.8 of the WTO ADA requires an investigative authority to terminate the investigation in respect of an exporter found to have a de minimis margin in an original investigation and that the exporter consequently must be excluded from definitive anti-dumping measures and such exporters cannot be subject to administrative and changed circumstances reviews. The Authority notes that where an exporter awarded zero duty in an original investigation is found to be dumping and the same is found to be causing injury to the domestic industry, then duties must be imposed considering the dumping margin and injury margin found in the present review investigation period. Since the WTO Agreement on anti dumping (ADA) allows WTO members to impose duties to counteract dumping which is injuring the domestic industry, the Appellate Body decision in the aforementioned report needs to be construed

as not permitting imposition of anti dumping duty on such exporters without a positive finding of dumping within the meaning of Article 2 of the ADA and injury to the domestic industry within the meaning of Article 3 of the ADA. Therefore, so long as the authority has followed the relevant requirements of Article 2 and Article 3 of the ADA, even when the present investigation is a sunset review investigation, it is appropriate to recommend anti dumping duty on such exporters, albeit after following the requirements of Article 2 and 3 of ADA and by determining individual dumping margin and injury margin for such exporters who are attracting zero anti-dumping.

39. Therefore, after examining the contentions of various interested parties it is held that it has been the practice of the Authority to conduct full investigation including determination of dumping margin injury and injury margin in respect of all the cooperating exporters including those who were earlier awarded de-minimis dumping margin or whose injury margin was negative. It is also noted that in those situations where the exporters were earlier awarded de-minimis dumping margin and have now been found to have de-minimis dumping margin or whose injury margin is negative, it is concluded that exports made by these companies are unlikely to be dumped. Further, in those situations, where the dumping margin was de-minimis earlier, the authority has considered the dumping margin now determined, for the purpose of determining the likelihood of dumping and injury in the event of revocation of anti-dumping duty.
40. As regards arguments on confidentiality; the Authority notes that information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

**Examination by the Authority on the issues raised by the interested parties after the disclosure statement:**

41. Following the issuance of the disclosure statement, the interested parties have raised various issues concerning the subject investigation. Some of the issues which have been raised by the interested parties till the issuance of the disclosure statement have been reiterated again by the interested parties.
42. On the issue raised by the domestic industry about the availability of the exporters data relating to third countries exports and verification conducted by the Authority for cooperative exporters from subject countries, it is stated that during the course of the investigations, the Authority had issued deficiency letters to the co-operative exporters and obtained inter alia invoice-wise details of exports to third countries. The Authority had verified the details of domestic sales and exports to India by means of test check and found them tallying with the SAP system maintained by the respective exporters for which the onsite verification was conducted. For others, the Authority had examined the information on the basis of the table study. Following the disclosure comments by the domestic industry about the

veracity of the information submitted by the exporters during the course of the investigation, the Authority further sought the domestic sales and export sales data of the PUC of Hanwha Chemical Corporation, LG Chem and Formosa Plastics Corporation duly certified by the auditors and satisfied itself about the accuracy of the data furnished by them.

43. With regard to the various contentions of the domestic industry as well as of the other interested parties on determination of NIP, the Authority notes that the NIP has been computed on the basis of financial and cost data submitted by the domestic industry and in terms of the principles outlined in Annexure III to the antidumping rules as well as its practices.
44. With regard to the domestic industry's contention that normal value has not been computed properly for Hanwha Chemical, LG Chem and Formosa Plastic Corporation, the Authority notes that it had determined month wise cost of production of the PUC after due examination and verification of records of the cooperating exporters and then carried out the ordinary course of trade test on monthly basis. As explained elsewhere in this finding, further adjustments on account of packing expenses, credit cost, inland freight, commission, etc., wherever applicable were carried out in the domestic selling price and month wise normal value for the PUC has been determined.
45. The Authority had considered the cost of production of captively produced inputs as recorded in the books of accounts of Hanwha Chemical, LG Chem and Formosa Plastic Corporation and as verified by the Authority as per its consistent practice.
46. With regard to the domestic industry's contention about verification of cost of production of subject goods of cooperating producers and exporters, it is noted that the Authority has considered the combined cost of production of all the units of Formosa Plastics Corporation producing the PUC for the purpose of carrying out ordinary course of Trade test as has been the consistent practice of the Authority.
47. With regard to the contention of the domestic industry that the domestic prices as reported by Formosa Plastics Corporation, Taiwan and LG Chem, Korea are not reliable and therefore should be rejected, the Authority notes that FPC, Taiwan and LG Chem, Korea in their comments have rebutted the domestic industry's contention. The Authority has considered the data on domestic prices duly certified by their respective auditors and as verified by for the purpose of this findings.
48. With regard to the question raised by the domestic industry that while China had imposed antidumping duty on the imports of the PUC from Taiwan including FPC, how Indian Authorities have determined de minimis

dumping margin for FPC, the Authority notes that FPC, Taiwan has already responded to the question. The Authority holds that it is not expected to reconcile its findings with the findings of another Authority of other country. The Authority has however, rechecked its dumping margin determination based on the data made available after due verification and finds that the dumping margin for FPC, Taiwan as determined in the disclosure statement needs no revision.

49. With regard to the question raised by the domestic industry that while Australia had imposed antidumping duty on the imports of the PUC from Korea including LG Chem, how Indian Authorities have determined de minimis dumping margin for LG Chem, the Authority notes that LG Chem has already responded to the question raised by the domestic industry. The Authority holds that it is not expected to reconcile its findings with the findings of another Authority of other country. The Authority had rechecked its determination based on the data made available after due verification and finds that the dumping margin for LG Chem as determined in the disclosure statement needs no revision.
50. The Authority has considered the transaction wise data of imports furnished by DGCI&S after due analysis. A copy of the summary of the DGCI& S transaction wise data has been placed in the public file.
51. The injury as well as causal link analysis has been carried out by the Authority in terms of the AD Rules elsewhere in this finding. The monthwise landed price of Chinese imports were lower than the landed prices of un-dumped imports and therefore the contention that Chinese imports are not causing injury to the domestic industry is not correct.
52. The adjustments claimed by the individual co-operative exporters and considered by the Authority in determination of normal value have been indicated elsewhere in this finding. The Authority further notes that the adjustments claimed by the exporters have been admitted after due scrutiny.
53. The Authority has considered the arguments of domestic industry as well as FPC, Taiwan and the responses of LG Chem, Korea regarding credibility of the domestic selling prices submitted to the Authority. The Authority has examined the responses of the LG Chem and FPC, Taiwan and does not find any reason for rejecting the domestic selling price claimed by them. The Authority further holds that in the absence of any evidence to support the allegation of the domestic industry about the reasonableness of the domestic selling prices, it cannot reject them based on the report of the study commissioned by the domestic industry. The Authority in any case has got all the data in respect of domestic sales and exports to India by FPC, Taiwan, LG Chem, Korea RP and HCC, Korea RP duly certified by their

auditors. The auditors have certified that the aforesaid data submitted by these exporters are as per the books of accounts maintained by them.

54. On the issue of incomplete questionnaire response submitted by M/s HCC and HWC, it is noted that after the submission of the response, a deficiency letter was issued by the Authority to M/s HCC (and other exporters as well) advising them to submit the additional information to the Authority. It may be stated that the Authority always calls for information that were not provided and the required additional information during the course of the investigation.
55. With regard to the response not filed by M/s HWC at the first instance, it is noted that the exporter had submitted the necessary information as part of the joint response filed along with the producer M/s HCC. Later, a separate response was also filed by M/s HWC and non confidential copy of the same was put in the public file.
56. With regard to issue raised by the domestic industry on filing Appendix 2A by Hanwha and other companies, it is stated that response has been filed by these companies along with M/s HCC as part of the response to the exporter's questionnaire.
57. On the issue of price adjustment on account of storage costs for M/s HCC, FPC and LG Chem it is noted that these concerned producers and exporters have not claimed any adjustment on account of storage cost.
58. On the issue of HWC raising invoice on Indian exporters without purchasing the subject goods from HCC and therefore no separate dumping margin should be determined for exports to India by HCC through HWC, it has been reported that the transaction of exports made by HCC to India through HWC is in the nature of an agent acting on behalf of the principal for a commission. However, HWC is not registered with the Korean Government as Commission Agent. During the on the spot verification, it was shown to the verification team that in respect of the subject goods exported to India by HWC, HWC received the commission from HCC for handling the sales documents and covering the marine insurance and bank charges. The Customs Authorities of Korea have named HWC as exporter and HCC as producer. When the domestic industry raised the issue that HWC could not have exported the goods unless it has purchased the goods from HCC, HCC submitted a certificate from their statutory auditors stating that the transaction between HCC and HWC are not treated as sales and purchases and they are treated as the services for a price rendered by HWC to HCC. The Authority has assessed the net ex-factory export price of HCC treating the transactions between HCC and HWC as one of purchase and sale. If it is treated as a sale and purchase transactions, the dumping margin reportedly comes to (-) \*\*\*% of the net export price.

59. With regard to the contention of the interested parties that CPMA has no *locus standi* to take part in the investigation, the Authority notes that CPMA is the apex forum representing the Indian Petrochemical Industry and it offers its members a podium to collectively present their ideas, voice concern and offer suggestions on relevant issues. The Authority further notes that all the four domestic producers constituting domestic industry in the present investigation are members of CPMA. The Authority, therefore, holds that CPMA has *locus standi* to collectively present the views of its member producers of PVC-suspension resin.
60. The Authority has considered the date of invoice of the co-operative exporters as the relevant date for working out the dumping margin as well as injury margin as per its consistent practice in the absence of any substantiated request for considering any other date.
61. The Authority has, as per its consistent practice, determined the landed value, net export price and normal value for the non-cooperating exporters from Indonesia, Thailand, Japan and Malaysia based on facts available and the DGCI&S data.
62. With regard to the argument of the domestic industry that the interest bearing credit extended by the foreign suppliers of VCM should be treated as loan and not current liabilities, the Authority notes that it has considered the same as current liabilities as exhibited in the Audited accounts and worked out capital employed for providing return. Further, the interest as well as the exchange loss/forward premium incurred/paid by the concerned domestic producers and claimed as part of raw material cost has already been allowed by the Authority. Further, for the same issue of treatment of foreign suppliers' credit, the domestic industry wants the Authority to consider different treatments – one for Chemplast and the other for DCW. The Authority, therefore, holds that NIP already determined does not need any revision.
63. The Authority has determined the injury margin as the difference between the NIP and the landed value as per its consistent practice. The Authority has further determined the NIP at ex-factory level in terms of the principles outlined in Annexure III to the Antidumping Rules. The Authority has determined the landed value as per consistent practice by considering CIF price, landing charges and applicable customs duty and education cess.
64. With regard to issues raised by M/s Tricon Overseas USA, Tricon Energy UK Ltd and M/s Tricon Dry chemicals, USA, West lake Vinyl Corporation and other interested parties for denial of separate dumping margin to them, it is noted that following the issuance of disclosure statement, these exporters have submitted additional documents as well as clarifications and explained the back to back invoices from the producer to the exporter and the exporter to Indian importers. Following the receipt of additional information and clarifications from these exporters, separate dumping margin has been determined for the cooperating producers and exporters where complete chain in the form of back to back linking of invoices has been made available. Similarly, issues raised by China Chlor

Alkali Association in respect of indexations of dumping margin and names of the producers have been addressed in the appropriate headings in this final findings.

65. It is noted that after the issuance of the disclosure statement, all calculations relating to determination of dumping margin and net export price were made available to the concerned for the cooperating producers and exporters. Similarly, confidential copy of the determination of NIP was also made available to the domestic industry.

## **CALCULATION OF DUMPING AND DUMPING MARGIN**

### **DUMPING MARGIN**

#### **Views of the domestic industry**

66. The domestic industry has claimed as under:

- a. China should be treated as a non-market economy for the purpose of determination of normal value. In the original investigations, due to the large number of responses from producers and exporters in China, the Authority had resorted to sampling. The Authority did not grant market economy treatment to any of the sampled companies from China PR.
- b. The facts of the case require the Designated Authority to undertake a month-to-month comparison since the prices of the product and VCM vary significantly from month to month. Taking an average price for the year would significantly distort the dumping.
- c. There is significant time lag between offers made for supply of goods and their arrival in India. The margin of dumping and injury should be determined on the basis of offers made by the foreign producers/exporters, or, at the least, on the basis of date of invoice issued by the exporters.
- d. The petitioners, for the purpose of determining normal value of product under consideration in Taiwan, Korea RP, USA, Malaysia, Japan, Indonesia and Thailand, referred to the prices quoted in Harriman Chemsult reports. The petitioners determined month-wise normal value by considering the average of the highest and the lowest price given in the report.
- e. Additionally, the petitioners determined cost of production of the foreign producers, considering international price of VCM and best estimates of the conversion cost and overhead costs. The selling price of the product during the relevant month has been compared with the cost of production for the month. It is seen that the selling price in several months of the investigation period were below cost of production. In other words, the selling price during the relevant period was not in the ordinary course of trade. Petitioners therefore adopted cost of production (after including reasonable addition for profit) wherever the selling price was below cost of production. Wherever the selling price was above cost of production, the petitioners have adopted selling price. Similarly, the petitioners determined separate export price for each of the months of the investigation period.

- f. Month-wise dumping margins show an increase in dumping in the later six months of the period of investigation.
- g. There were no exports from Malaysia and imports from Indonesia were low or negligible, but dumping margins from the other subject countries are substantial.
- h. With respect to Malaysia and Indonesia, the petitioners claim that the full volume of imports does not seem to be reflected in the Indian import data, since significant exports under 3904 are being reported from these countries, whereas the imports reported in India are at much lower volumes. Accordingly, the petitioners claim that the export price in case of Indonesia should be determined based on the exporting country trade data. Low imports from the two countries are due to the anti-dumping duties currently in force.
- i. There is no requirement of grade-wise comparison of the product under consideration, and that such an analysis would distort the dumping margin. Further, the producers/exporters do not have published price lists, implying that they do not have consistently different prices for the different grades. There is no significant cost and price difference between grades. Hence grade to grade wise analysis is unwarranted
- j. It is evident from the exporter questionnaire responses that a number of responding producers from the subject countries either captively produce the raw material, VCM, or purchase it from an affiliated supplier. Where the major raw material, which in this case is also the major determinant of the cost of the product, is captively produced or purchased from an affiliated party, it cannot be said that the records of the producer will “reasonably reflect the costs associated with production and sale” of the product.
- k. With regard to the argument that an inflated rate of dumping was arrived at in the petition due to use of constructed cost of domestic industry, the domestic industry submitted that constructed normal value for the subject countries is based on the best information available.
- l. As regards the argument of Shintech that Platts Polymer Scan is a more accurate source than Harriman Chemsult and is published weekly and Harriman Chemsult states that the prices are “before discounts, rebates, incentives, etc.”, so normal value calculated from these figures is high and unreliable. It was submitted that Harriman Chemsult is a highly reliable and regularly used source of information. The Authority itself has accepted Harriman Chemsult information in previous investigations. The exporter is required to quantify discounts, rebates, incentives, etc. The same cannot be presumed by the Authority as the same may or may not have been granted.
- m. It was claimed by Shintech that there was no dumping from US exporters during the POI or in the subsequent period as per information from Platts and ICIS. The information provided by the domestic industry has shown that there is dumping by exporters from the US.
- n. As regards the argument that Shintech has claimed Normal value as per Harriman Chemsult as USD 1547.33/MT and as per Platts as USD 1035.02/MT. It was submitted that the exporter has considered spot prices and there is no basis for this. The exporter has not filed questionnaire response and has not shown that all of its sales were on spot basis. In fact, sales are largely on contract basis within US.

- o. The argument that US producers have many export markets and so it does not make sense for them to sell at the low prices claimed by the petitioner is meaningless and is disproved by positive evidence.

### **Views of the other interested parties**

67. The interested parties have made following submissions with respect to the existence of dumping and the likelihood of continuation or recurrence of dumping.
- a. LG Chem Ltd. and Hanwha Chemical Corporation are the only known producers from Korea and Formosa Plastics Corporation is the largest producer in Taiwan. These are non-dumping exporters. The volume of imports from Korea and Taiwan constitute a substantial share of total imports and the landed value is lower than that of Chinese imports.
  - b. The export data relied upon by the Petitioners, by their own admission may also include substantial PVC Paste Resin data. This is clearly a violation of like article provisions under both Anti-Dumping Agreement as well as Anti-Dumping Rules.
  - c. While petitioners have considered prices in the specific subject countries they have taken raw material costs at the international rates, which presuppose identical raw material costs in every subject country.
  - d. Some domestic industry use EDC as a chief raw material for the product under consideration. EDC is first processed to obtain VCM which is then used to produce PVC. Authority should examine the conversion rate and allocation of costs in this regard.
  - e. Product under consideration is used captively by certain domestic industry members for further production. This captive consumption should be in conformity with transfer pricing mechanisms. If it is found that the captive consumption is much lower, then it is clearly a factor of non-attribution and the Authority should take it into consideration.
  - f. ICIS and Platts data shows that there is no dumping. Normal value as per Harriman Chemsult is USD 1547.33/MT and as per Platts it is USD 1035.02/MT.
  - g. Shintech has been profitable during the POI. It is an efficient producer and does not sell at a loss. The public reporting of the parent company, Shin-Etsu Chemical Co., Ltd., shows the profitability of Shintech during the POI.
  - h. Dumping margin calculations in Annexure 3.4 of the petition is little more than conclusory tabulation, based on Harriman Chemsult reports. The Freight and Expenses figures are contrived or at best not reliably substantiated by Petitioner. The available facts regarding these items show that both of these figures are too high. Accordingly, Petitioner's calculation of Dumping Margin during the POI for the USA is faulty.

### **Examination by the Authority**

68. Under section 9A (1) (c) normal value in relation to an article means:
- (i) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or

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

69. The Authority sent questionnaires to the known exporters and importers from the subject countries, and India, advising them to provide information in the form and manner prescribed. However, barring below mentioned producers, exporters and related importers, none of the producer/exporter from subject countries and importers from India have co-operated in this investigation by filing their Questionnaires' responses. The questionnaire response has been filed by the following companies:

- i. Tricon Overseas, Inc., USA (exporter)
- ii. Tricon Dry Chemicals LLC., USA (exporter)
- iii. Westlake Vinyl Corporation, USA, (producer and exporter)
- iv. Westlake Chemical Corporation, USA (producer and exporter)
- v. M/s. Formosa Plastics Corporation, U.S.A., (producer)
- vi. Formosa Plastics Corporation, Taiwan (producer)
- vii. Ocean Plastics Co., Ltd., Taiwan (producer)
- viii. Tricon Energy UK Ltd., UK (exporter)
- ix. LG Chem Ltd., Korea (producer and exporter)
- x. Hanwha Chemical Corporation, Korea (producer and exporter)
- xi. M/s Powell International Trading Co., Ltd., Taiwan
- xii. M/s Shintech Incorporated.
- xiii. CGPC Polymer Corporation ("CGPC Polymer"), Taiwan
- xiv.** China General Plastics Corporation, ("CGPC") Taiwan,
- xv.** Taipei economic and cultural centre, Delhi
- xvi.** ICC Chemical Corporation (hereinafter "ICC" or the "Company"), USA

70. None of the responding producer/exporter has established in their responses to the Exporter Questionnaire or Written Submissions or in the public hearing that grade-to-grade comparison is warranted. Further, after analyzing the records/documents placed by the interested parties and verification conducted at their premises, it is noted that these responding exporters have not established that the difference in cost and prices of different grades of the product under consideration is so

significant as to require grade to grade comparison. In fact, it is found that a grade purportedly sold at higher price has been sold at prices much lower than the price of another grade, purportedly sold at lower price. There is no consistent pattern of price differences between different grades.

71. As regards the argument of month to month comparison, the trend of prices of major raw material (VCM) and the product concerned on month to month basis shows significant variations. Further none of the interested parties have objected to a month-to-month comparison or provided reasons for rejecting such an analysis either in their responses to the Exporter Questionnaire, Written Submissions or during the public hearing. Hence, the Authority has undertaken month wise analysis for determining dumping margin in view of significant difference in prices of the major raw material and the product concerned.
72. As regards the argument of possibility of inclusion of PVC paste resin data in the import data of the product concerned, it is noted that the authority has analysed the transaction wise import data as per DGCIS and considered data pertaining to only PVC suspension resin for the purposes of present investigation.
73. With regard to arguments by some of the interested parties that exporters wise data should be made available by the Authority to the interested parties, it is stated that summary of the transaction wise data procured from the DGCIS has been placed in the public file for information to all concerned.
74. A verification report was issued to those companies where onsite verification was conducted by the Authority. The comments so received have been taken into account for determining the normal value and export price for cooperating producer and exporter.

## **NORMAL VALUE DETERMINATION FOR PRODUCERS AND EXPORTERS FROM CHINA PR**

### **China PR**

75. . Para 7 of Annexure I of the AD Rules provides that

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

76. The Authority notes that China has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The co-operating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:
- the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
  - the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
  - such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
  - the exchange rate conversions are carried out at the market rate.

### **Examination by the Authority**

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

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

78. The Authority sent questionnaires to the known exporters and importers from the subject countries, and India, advising them to provide information in the form and

manner prescribed. The Authority sent questionnaires to elicit relevant information to the Governments of subject countries, including known exporters/producers in accordance with the Rule 6(4). Due to the large number of requests for participation in the sunset review, a letter was issued to all known producers and exporters of subject goods in China PR (in terms of Article 6.10 of WTO Anti-Dumping Agreement and proviso to Rule 17 (3) of the AD rules) asking for basic information (sampling questionnaire) regarding the volume and value of the subject goods exported by them to India for limiting the number of respondents selected for review. In selecting the respondents for individual review, it was intended to select the largest exporters/producers in terms of export volumes to India during the POI. The response to the letter was received from following producers/exporters from China PR

- i. Xinjiang Tianye Foreign Trade Co.,Ltd
- ii. YibinTianyuan Group Co., Ltd.
- iii. Qingdao Haijing Chemical (Group) Co., Ltd.
- iv. Inner Mongolia Sanlian Chemical Corporation Limited.
- v. Tianjin LG Dagu Chemical Co., Ltd.
- vi. Tianjin Dagu Chemical Co., Ltd.
- vii. Shandong Ocean Imp & Exp Co., Ltd.
- viii. Xinjiang Zhongtai Chemical Co., Ltd
- ix. Tangshan SanyouChlor-Alkali Co., Ltd.
- x. ChipingXinfa PVC Co., Ltd.

79. The data was examined to ascertain the largest %age of the volume of exports that can be reasonably be investigated. It is found that the top 4 exporters by volume account for 82% of the total volume of the exports made by the exporters who have filed the sampling questionnaire. Thus, considering the top 4 producers/exporters by volume will be reflective of the total population of exports from China PR, it was proposed to include the following exporters/ producers in the sample:

- i. Xinjiang Tianye Foreign Trade Co Ltd
- ii. Yibin Tianyuan Group Co Ltd
- iii. Qingdao Haijing Chemical (Group) Co
- iv. Inner Mangolia Sanlian Chem Corp Ltd

80. As no comments to the sampling procedure proposed by the Authority was received till the stipulated time given by the Authority from the interested parties, the 4 sampled producers and exporters mentioned were requested to submit the response to questionnaire in the form and manner of exporter's questionnaire, MET questionnaire as well as additional sunset questionnaire within the stipulated time period.

81. Out of the four sampled producers and exporters from China PR, it was noted during the examination of the response that two of these sampled producers and exporters had not disclosed names of all the producers of subject goods which have exported to India in their response. As their response was found deficient, no separate dumping margin has been proposed to be given to two producers and exporters whose information was not accepted by the Authority. The rest of the two sampled producers and exporters i.e. Yibin Tianyuan Group Co Ltd., and M/s Qingdao Haijing Chemical (Group) Co were examined in detail and separate

dumping margin as explained below has been granted to them on the basis of their questionnaire response. A verification report was issued to those companies where onsite verification was conducted by the Authority.

82. Since the above mentioned companies have filed questionnaire response, separate dumping margin has been determined in respect of these companies. In the absence of cooperation from the other producers/exporters in subject countries, the Authority has determined normal value, on the basis of facts available in terms of Rule 6(8) of AD Rules read with Article 6.8 of the WTO Agreement. Accordingly, the Authority has determined normal value, export price and dumping margin in respect of producers/exporters of the subject countries as follows.

### **Normal value determination in respect of all producers and exporters from China PR**

83. It is noted that none of the above sampled producers and exporters has requested for MET treatment and asked for separate normal value determination for them. Accordingly, in the absence of any rebuttal of presumption of non-market economy by sampled Chinese exporters, the normal value has been determined with respect to both the sampled producers and exporters on the basis of facts available. In this case, it was noted that the domestic industry in their application had made available Harriman Chemsult reports which give an account of the prices of subject goods prevailing in China PR during the POI. In the absence of any other information placed before the Authority by interested parties, normal value of the subject goods for all producers and exporters from China PR has been determined on the basis of facts available i.e on the basis of prices of subject goods prevailing in China PR during the POI.

### **Export Price and individual dumping margins of Sampled exporters for China PR**

- a) **M/s Qingdao Haijing Chemical (Group) Co Ltd (Producer and exporter)**

#### **Export Price**

84. During the examination of the response, it was noted that the above producer/exporter exported \*\*\* MT of PVC to India during the POI which comprised of \*\*\* MT of subject goods directly to India and balance subject goods through unrelated exporter M/s Tricon Energy UK Ltd. It is noted that after the issuance of the disclosure statement, the un-related trader/exporter Tricon Energy UK Ltd submitted additional clarifications with regard to reconciliation of producers supply of subject goods to India with the exporter M/s Tricon Energy UK Ltd and exports of same subject goods to India. After examining the same, it was considered appropriate to take into account direct exports of exporting producer to India as well as its exports through unrelated exporter. For direct exports, it was noted that the invoices were raised on Indian importers and

payments were received from them. Further, the company did not make any exports to India during the post POI period.

85. It was noted that the exports are in CIF or CFR terms against LC at sight. Therefore, the exporter has claimed adjustments towards all direct selling expenses on those transactions i.e., Inland freight, overseas freight and Insurance, export packing and bank charges. The company has allowed discounts on few of the transactions. The company received 17% VAT refund on domestic sales, whereas it received 13% VAT refund on export sales. As a result, a deduction of 4% was made in the export price. Following the receipt of comments to the disclosure statement, the calculations relating to VAT adjustments have been slightly modified as these adjustments have now been made on FOB value.
86. Inland transportation expenses which, includes document charges, handling charge, customs declaration brokerage fee and port charges, Overseas freight and insurance amount against CIF shipments were was taken into account after examination of data, and export price at the ex factory level was determined accordingly. The dumping margin of the above exporting producer for their direct as well as indirect exports have been worked out as mentioned in the dumping margin table.

**Export Price to India from a) M/s Qingdao Haijing Chemical (Group) Co Ltd (“Qingdao”) through M/s Tricon Energy UK Ltd**

87. It is noted from the response filed from M/s Tricon Energy UK Ltd that the subject goods produced by M/s Qingdao, China PR have been shown as exported to M/s Tricon Energy UK Ltd for exports to India. As mentioned in the heading for Qingdao Haijing Chemical (Group) Co, after the issuance of disclosure statement, M/s Tricon UK submitted the clarifications with regard to reconciliation of back to back invoice of producer and exporter along with the volume of exports made from the producer to exporter and from exporter to India. Export Price at the ex factory level has been calculated by deducting all post factory expenses incurred by the producer and the Tricon Energy UK (Bank Charges, Charters Liability, Discount Interest, Interest Expense, Export LC Fees and Ocean Cargo Insurance). The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin. For determination of ex factory export price at the end of producer Qingdao, necessary adjustments pertaining to traders in the chain have been made.
88. In view of the reconciliation provided, the separate dumping margin has been determined for indirect exports made by Qingdao Haijing Chemical (Group) Co., through Tricon UK Ltd and the same is mentioned in the dumping margin table.

**b) M/s Inner Mongolia Sanlian Chemical Corporation Ltd, China PR**

**Export Price**

89. The company exported the subject goods produced by itself as well as its related entities Inner Mongolia Sanlian Jinshan Co Ltd and Inner Mongolia Sanlian

Jinshan Plastic Co Ltd. While some of the transactions are through unrelated traders in other countries and other transactions are to end users and distributors in India.

90. During verification, the export transactions were examined and verified. It was found that related producers of the company have not filed a separate questionnaire response. During on-spot verification visit, it was asked as to why the related producers did not cooperate. It was explained that details of export transactions required for determining the export price for them was provided by Inner Mongolia and since both the related producers were not seeking market economy treatment, there was no new information that they could have filed. It was emphasized that the fact that there existed two related producers, who exported the subject goods to India during the period of investigation was stated in the questionnaire response.
91. It is noted that the sampled cooperating exporter has not filed response of related producers and exporters and hence, no separate dumping margin for sampled producer and exporter M/s Inner Mongolia Sanlian Chemical Corporation Ltd, China PR has been determined.
- c) **Xinjiang Tianye Foreign Trade Co Ltd (exporter) and Xinjiang Shihezi Zhongfa Chemical Co Ltd (Producer) and Xinjiang Tianye Co Ltd (Consignor)**

### **Export Price**

92. Xinjiang Tianye Foreign Trade Co., Ltd. was established on 30th November, 2000 as a limited liability company under Chinese Company Law. It is noted that M/s Xinjiang Tianye has furnished invoice-wise details of exports made to India.
93. It is noted that though the sampled cooperating exporter has disclosed the name of producer in the response to sampling questionnaire, their name did not figure in the sampled lists of the producers and hence no separate dumping margin was proposed in the disclosure statement. After the disclosure statement, it has been pointed out that name of the producer was indeed filed in the sampling questionnaire response and also in the response to the exporters questionnaire and therefore separate dumping margin for the sampled producer and exporter should be granted. The matter has been examined and it is noted that the response has been filed in the name of Xinjiang Shihezi Zhongfa Chemical Co Ltd as producer and Xinjiang Tianye Foreign Trade Co Ltd (exporter) as exporter in the response. During the examination of the response, it was noted that the sampled producer and exporter had sold \*\*\* MT of subject goods to India during the POI. However, their direct exports were \*\*\* MT during the POI. It is also noted that no back to back invoice has been provided by any trader through which the sampled producer has sold the subject goods to India. In view of the above, only their direct exports to India during the POI has been taken into account for determination of dumping margin. It was noted that the exports are in CIF or C&F terms. Therefore, the exporter has claimed adjustments towards all selling expenses on those transactions i.e., commission, handling and loading fee, Inland freight, overseas

freight and Insurance, export packing and bank charges. The company received 17% VAT refund on domestic sales, whereas it received 13% VAT refund on export sales. As a result, a deduction of 4% was made in the export price. Export price at the ex factory level was determined accordingly after deducting all expenses at the end of exporter. The dumping margin of the above exporting producer for their direct exports to India has been worked out and the same is mentioned in the dumping margin table.

d) **YibinTianyuan Group Company Limited**

**Export Price**

94. It is noted from the response that M/s Yibin Tianyuan has furnished invoice-wise details of exports made to India directly including the invoice value which the Authority treats as the basis of export price. Adjustments in respect of their direct sales to Indian customers are claimed on account of bank charges, ocean freight, insurance, inland freight, packing charges and clearing & handling charges. The export price at the ex factory level was determined accordingly after taking into account the adjustments claimed by the exporter and examined by the Authority. The dumping margin of the above exporter has been worked out and mentioned in the dumping margin table.

**Dumping Margin for all sampled cooperating Producers/exporters from China PR**

95. The net export price determined at the end of cooperating sampled exporting producers has been compared with the corresponding normal value for that month for working out dumping margin for that month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.

**Dumping Margin for all non-sampled cooperating Producers and Exporters from China PR**

96. Dumping margin for the non-sampled Producers and exporters from China PR has been determined in terms of Rule 17(3) of the Rules as the weighted average margin of dumping established with respect to the selected exporters or producers.

**All non-cooperating Producers and Exporters from China PR**

97. The dumping margin for other non-cooperating exporters from China PR has been determined as per best facts available taking into account the data examined for the co-operating exporters from that country as mentioned in the dumping margin table.

## **General Methodology followed for the responding exporters for determination of Normal Value**

98. It has been contended by the Domestic Industry that there had been volatility of the prices of the subject goods during the Period of Investigation. The Authority has, therefore, done a month-wise analysis of the entire data for the determination of dumping margin and injury margin. Necessary data from the cooperating producers/exporters was called for undertaking the analysis on a month-wise basis which was submitted, and Dumping Margin and injury margin has been assessed on monthly basis.
99. The Authority has assessed the Normal Value based on the information submitted by the producers and exporters and in accordance with the Rules. It was first seen as to whether the domestic sales of the subject goods by the responding exporters/producers in their home markets were representative and viable for permitting determination of Normal Values on the basis of their domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by the respondents. In their responses, the respondents have provided transaction-wise details of sales made in their home markets.. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. It was also seen whether the loss-making transactions account for over 20% of the sales or not. Wherever the profitable domestic sales transactions were found to be accounting for more than 80% of the total sales, the weighted average price of the domestic sales have been taken into consideration. However, wherever the profitable sales volume were found to be less than 80%, the weighted average price of the profitable domestic sales has been taken into consideration.

### **Normal value and Export price for cooperating producers and exporters from Taiwan**

100. The following producers/exporters from the subject countries have responded to the Exporter Questionnaire Response.

#### **Formosa Plastics Corporation (FPC), Taiwan (producer and exporter)**

##### **Normal value**

101. The company, which was established in 1954, is a multi-product company. Apart from PVC, the company is engaged in the production of more than dozen products. The Company manufactures the subject goods in 3 of its plants located in different places in Taiwan. It was noted that the main raw material required for production of PVC is VCM and the same is manufactured captively by the Company in 2 of its plants located in different places in Taiwan. It was noted that FPC not only captively produces this raw materials but also other inputs like Chlorine, Ethylene Chloride, etc. required for the manufacture of VCM. The main raw material used in the manufacture VCM is EDC and Ethylene. The main raw material in manufacture EDC is ethylene. While FPC captively produced EDC, it had purchased ethylene, mostly domestically. The details of month wise cost of production statements submitted by the company were examined and thereafter the same was taken into account for working out ordinary course of trade test.

102. It was noted that the company had reported in Appendix-I, \*\*\* transactions. It was also noted that the Company had sold \*\*\* Kg of the subject goods in the domestic market. It was noted that about \*\*\*% of the subject goods has been sold to the affiliated parties in the domestic market and the balance \*\*\*% of the sales were made to non-affiliated parties. It was noted that the sales made to affiliated parties were broadly at similar rates at which the sales made to unaffiliated parties. The company had claimed adjustments on account of Domestic Inland Freight, Packing and Credit Expenses, and Rebates in respect of its domestic sales.
103. The responses filed by this company were examined. It is noted from the questionnaires response that the company has given month-wise costing for the subject goods. It is noted from the examination that the domestic sales meets the sufficiency test. The cost of production of the subject goods as indicated in Appendix-8B of the response has been accepted for the purposes of carrying out the ordinary course of trade test. While carrying out the ordinary course trade test, it was noted that the domestic sales were profitable (more than 80% by the volume) in \*\*\* out of the \*\*\* each months of the POI (\*\*\*% overall during the POI) and therefore, their total sales for each of the \*\*\* months and their profitable sales for remaining months have been taken into account taken into account for the purpose of determining normal value. Adjustments thereof have been allowed after examination. The expenses claimed towards inland freight, packing costs, credit costs by producer have been adjusted to determine normal value. Based on such a determination, the Normal Value has been worked out on a monthly basis.

#### **Export Price to India from FPC, Taiwan**

104. It was noted that in Appendix-2 the company reported \*\*\* transactions showing exports of subject goods to India during the POI. It was further noted that out of these \*\*\* transactions reported in Appendix -2, \*\*\* transactions were direct sales to India and \*\*\* transactions were made through \*\*\* traders from outside India. Out of these \*\*\* traders M/s Tricon Energy UK Ltd., has filed questionnaire responses to the Authority. It was noted that since the transactions through the stated traders were small, no other traders except M/s Tricon Energy UK Ltd., have filed the response. The Authority has examined the export prices in respect of responding exporters on the basis of questionnaire responses filed by them. The export prices and the adjustments thereof have been allowed after examination. Export Price at the ex factory level has been calculated by deducting all post factory expenses i.e packing expenses, inland freight, trade promotion fee, ocean freight, commission, clearance and ancillary expenses, bank charges, negotiation interests, harbor service fe, loading fee, bill of lading etc, incurred by the producer. The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.

#### **Export Price to India from FPC, Taiwan through M/s Tricon Energy UK Ltd (Tricon UK)**

105. It is recalled that in the disclosure statement, due to non reconciliation of back to back invoice from producer and exporter/trader, it was noted that in the absence of the link between the producers of subject goods from FPC Taiwan to M/s Tricon Energy UK Ltd and from M/s Tricon Energy UK Ltd to India, no

separate dumping margin was proposed for the channel from M/s FPC Taiwan and M/s Tricon Energy UK Ltd.

106. It was noted from the response filed from M/s Tricon Energy UK Ltd that some of transactions representing the subject goods produced by M/s FPC, Taiwan have been shown as exported to M/s Tricon Energy UK Ltd for exports to India. After disclosure of the essential facts, M/s Tricon UK pointed out certain errors in reconciliations of back to back invoices as certain transactions for sales which were not exported to India from M/s. FPC, Taiwan had been mentioned in their Export price computation in the Appendix 2. In fact, these exports were reported as having been made by FPC, Taiwan directly to India as per information submitted by FPC, Taiwan. After the disclosure of essential facts, Tricon Energy UK Ltd clarified that except for transactions of \*\*\* MT, all exports to India which were previously mentioned as having being exported through Tricon UK were indeed exported by FPC Taiwan directly to India. In this regard, the company submitted that their transactions to India were complete and any mismatches in quantities would have been resolved during the onsite verification. It was also noted from the response of M/s FPC, Taiwan that except for transactions of \*\*\* MT, all remaining volume of exports to India (previously attributed to have been made through Tricon Energy UK Ltd have been made by them directly to Indian importers.
107. The Authority has examined the export prices in respect of Tricon Energy UK Ltd on the basis of questionnaire responses filed by them. It was noted that M/s FPC Taiwan has sold subject goods to India through Tricon Energy UK for a quantity of \*\*\* KG. The same quantity is reported by Tricon Energy UK in \*\*\* transactions. The export prices and the adjustments thereof have been allowed after examination. Export Price at the ex factory level has been calculated by deducting all post factory expenses incurred by the Exporting producer i.e M/s FPC , Taiwan, and exporter M/s Tricon Energy UK (Bank Charges, Charters Liability, Discount Interest, Freight Costs, Interest Expense, Export LC Fees and Ocean Cargo Insurance and SGA).. The net export price determined at the end of FPC, Taiwan for this chain has been compared with the corresponding normal value for that month for working out dumping margin for that month.
108. The net export price at the end of FPC, Taiwan so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.
109. After examination, a separate dumping margin to the channel from M/s FPC, Taiwan through Tricon Energy UK Ltd has been determined and the dumping margin and dumping margin % so arrived for above combination have been mentioned in the dumping margin table.

**China General Plastics Corporation, ('CGPC') Taiwan,**

**Normal value**

110. It is noted that the company, which was established in 1964, is a multi-product company. Apart from PVC Suspension Grade, the company is engaged in the production of PVC Pipe, Anti-Corrosion Liner, Sponge Leather, PVC Leather, PVS Flexible Film etc. PVC Suspension Grade constitutes about \*\*\*% of the total

sales of the Company. It was also noted that the basic raw materials required for production of PVC is VCM. The same has been sourced from a related company in Taiwan. It was noted that in Appendix-1, the company had reported \*\*\* transactions. The Company has sold \*\*\* Kg (NTD \*\*\*) of the subject goods in the domestic market.

111. The figures reported by the Company in Appendix 7 and 8 for the POI were reconciled and tallied with the figures mentioned in the audited accounts for the year 2011, quarter ending March, 2011 and quarter ending March, 2012. The main raw material used in the manufacture of PVC suspension resin is VCM. It was noted that CGPC purchased this raw material from its related company, Taiwan VCM Corporation. The company submitted documentary evidence to show that the subject raw material was purchased at arm's length prices. It is noted from the data submitted by the company that the average purchase price of VCM from the related company was comparable with the average market price. The details of monthwise cost of production statements were tallied with the cost of statement submitted for POI as a whole.
112. It was noted that less than \*\*\*% of the subject goods has been sold to the affiliated parties in the domestic market and the balance of the sales were made to non-affiliated parties. It was noted that the sales made to affiliated parties were broadly at similar rates at which the sales made to unaffiliated parties. In view of the above, their total sales have been taken into account for determination of normal value. As per Appendix-1, the company has claimed adjustments on account of Commission, Rebate, Domestic Inland Freight, Packing, Storage, warranty and Credit Expenses in respect of its domestic sales. After carrying out sufficiency tests, and ordinary course of trade tests, the normal value on a month wise basis has been determined after taking into account the above adjustments for its domestic sales. While carrying out the ordinary course trade test, it was noted that the domestic sales were profitable (more than 80% by the volume) in \*\*\* out of the \*\*\* months of the POI (\*\*\*% overall during the POI) and therefore, their total sales for each of the \*\*\* months and their profitable sales for remaining months have been taken into account taken into account for the purpose of determining normal value.

### **Exports Sales to India**

113. It was noted that in Appendix-2 the company reported \*\*\* transactions showing exports of \*\*\* Kg (US\$ \*\*\*) of PVC to India during the POI. It was further noted that out of these \*\*\* transactions, \*\*\* were direct sales to India and \*\*\* transactions were made through \*\*\* traders who are from outside India. Out of these \*\*\* traders, M/s Tricon Energy UK Ltd., and M/s Powell International Trading Co., Ltd., has filed comprehensive questionnaire responses to the Authority. It was noted that sales of the subject goods to India were made mainly on CIF basis and that the expenses with regard to exports to India have been incurred by the producer/exporter. The company has claimed adjustments on account of Ocean Freight, International Insurance, Inland Freight, Packing Expenses, Bank Charge, Others-Brokerage Fee, Trade Promotion Fee, credit costs and Others-Harbor Service Fee and credit costs, . The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.

**Export sales to India through M/s Powell International Trading Co., Ltd, Taiwan**

114. It is noted that M/s Powell International Trading Co., Ltd had submitted response to exporter's questionnaire on account of exports of subject goods to India which it had procured from M/s CGPC, Taiwan. However, the company did not agree for the onsite verification of the information filed by it. In view of the non cooperation by M/s Powell International Trading Co., Ltd, separate dumping margin for the channel of exports to India by M/s CGPC through M/s Powell International Trading Co., Ltd has not been granted.

**CGPC Polymer Corporation ("CGPC Polymer"), Taiwan**

**Normal value**

115. M/s CGPC Polymers started its commercial production in February 2012 and they were yet to stabilize its production during the POI. It was further noted that the Cost of production (COP) for this period reported in Appendix-7 and 8 may not represent normal COP as the operation of the plant during the POI has not stabilised. Consumption of VCM per unit of production of PVC given in Appendix-6 was compared with the figures derived from the total consumption indicated in Appendix-5 and found to be not matching. The main raw material used in the manufacture of PVC suspension resin is VCM. It was noted that CGPC Polymer purchased this raw materials from its related company, Taiwan VCM Corporation. The company submitted documentary evidence to show that the subject raw material was purchased at arm's length prices. In view of the non reconciliation of the information submitted by the producer and exporter with regard to determination of cost of production of the subject goods produced by CGPC Polymer, the ordinary course of trade test could not be carried out in respect of domestic sales made by the company. Accordingly, the normal value has been determined based on the facts available by the Authority.

**Exports Sales to India**

116. It was noted that in Appendix-2 the company reported \*\*\* transactions showing exports of \*\*\* Kg (US\$ \*\*\*) of PVC suspension resin to India during the POI. It was further noted that out of these \*\*\* transactions, \*\*\* were direct sales to India and \*\*\* transaction were made through Powell International Trading Co., Ltd. M/s Powell International Trading Co., Ltd., has filed questionnaire responses to the Authority but refused to participate in the verification. It was noted that all sales of the subject goods to India were made on CIF basis and that the expenses with regard to exports to India have been incurred by the producer/exporter. The company has claimed adjustments on account of Freight, Loading fee, International Insurance, Inland Freight, Packing Expenses, Bank Charge, Others-Brokerage Fee, Others-Trade Promotion Fee and Others-Harbor Service Fee. The net export price so arrived at on a month wise basis has been used for determining

dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.

#### **Exports Sales to India through M/s Powell International Trading Co., Ltd.**

117. It was noted that out of these \*\*\* transactions, \*\*\* were direct sales to India and \*\*\* transaction were made through Powell International Trading Co., Ltd. M/s Powell International Trading Co., Ltd., has filed questionnaire responses to the Authority but refused to participate in the verification. In view of the non cooperation by M/s Powell International Trading Co., Ltd, no separate dumping margin for the channel of exports to India by M/s CGPC Polymer through M/s Powell International Trading Co., Ltd has been granted.

#### **Ocean Plastics Co. Ltd ("OPC"), Taiwan,**

118. The company, which was established in 1965, is a multi-product company. Apart from PVC, the company is engaged in the production of other products as well. The Company manufactures the subject goods at Hai Hu east road, Hai Hu village, Luchu Hsiang, Tao-yuan, Taiwan. It was submitted that the company polymerizes the VCM monomer into PVC. By controlling the reactor, they have different grades used for different applications. It was submitted during the verification that they buy VCM from Japan and also from TVCM in which they hold small stake.
119. The main raw material used in the manufacture of PVC suspension resin is VCM. It was noted that OPC purchased this raw material from its related company, Taiwan VCM Corporation and also imported the same from non-related parties. The company submitted documentary evidence to show that the subject raw material was purchased at arm's length prices from its related company. It is noted from the data submitted by the company that the average purchase price of VCM from related company was comparable with the average price of the VCM imported from the unrelated parties. However, in view of the non reconciliation of the information submitted by the producer and exporter with regard to determination of cost of production of the subject goods produced by OPC, the ordinary course of trade test could not be carried out in respect of domestic sales made by the company. Accordingly, the normal value has been determined based on facts available by the Authority

#### **Exports sales to India**

120. It was noted that in Appendix-2 the company reported \*\*\* transactions showing exports of subject goods of US\$ \*\*\* to India during the POI. It was noted that all sales of the subject goods to India during the verification were made either

on FOB or CIF basis and that the expenses with regard to exports to India have been incurred by the producer/exporter depending upon the mode of trade. The company has claimed adjustments on account of commission, Inland Freight in Exporting Country, insurance, Handling fee, Export Development Charges, Credit Cost, Bank Charges, THC, Freight, Harbor duties. The claims of the export price including adjustments have been accepted after examining the claims of the company. The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.

## **Korea RP**

### **LG Chem Ltd., Korea RP**

#### **Normal value**

121. It is noted that the company, which was established in 1954, is a multi-product company. Apart from PVC, the company is produced in Petrochemicals Division which is engaged in the production of number of products. It is noted that the basic raw materials required for production of PVC namely VCM is captively produced. The subject goods are manufactured at two plants located at Yeosu and Dessan. The Company is operated under backward integration system. The VCM is produced by using EDC. EDC in-turn is manufactured by using Ethylene and the same is manufactured by the Company. The consumption of raw materials was with the raw material consumption for NP report and also monthly inventory report showing the consumption volume and value of each month during the POI. It is noted that the company has reported \*\*\* transactions for domestic sales. The Company has sold \*\*\* Kg (KRW \*\*\*) of the subject goods in the domestic market. It was noted that about \*\*\*% of the subject goods has been sold to the affiliated parties in the domestic market and the balance \*\*\*% of the sales were made to non-affiliated parties. It was noted that the sales made to affiliated parties were broadly at similar rates at which the sales made to unaffiliated parties. The company has claimed adjustments on account of Domestic Inland Freight, Packing and Credit Expenses in respect of its domestic sales which have been allowed after examination and verification. After carrying out sufficiency tests, and ordinary course of trade tests, the normal value on a month wise basis has been determined after taking into account the above adjustments for its domestic sales. While carrying out the ordinary course trade test, it was noted that the domestic sales were profitable (more than 80% by the volume) in \*\*\* months of the POI (\*\*\*% overall during the POI) and therefore, their entire sales were taken into account for the purpose of determining normal value.

#### **Exports Sales to India**

122. It is noted that in Appendix-2 the company reported \*\*\* transactions showing exports of \*\*\* Kg (US\$ \*\*\*) of PVC to India during the POI. It is also noted that all sales of the subject goods to India were made on CFR and CIF basis

and that the expenses with regard to exports to India have been incurred by the producer/exporter. The company has claimed adjustments on account of Inland Freight, Ocean Freight, Credit Expense, Overseas Insurance, Customs Agent Fee, Commission, Packing Expenses, Bank Charge and Duty Drawback. Claims of adjustments regarding above cited items were verified from basic records/supporting documents. The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.

**Hanwha Chemical Corporation (HCC), and Hanwha Corporation (HWH)  
Korea RP**

123. It is noted that M/s HCC has two factories located at Ulsan and Yeosu in Korea. The product under investigation is produced at both the factories. The Company is operated as backward integrated unit and manufactures raw materials such as EDC and VCM. The product under investigation, VCM and EDC are produced in two plants, i.e. Yeosu Plant and Ulsan Plant. The Company purchases Ethylene from unrelated suppliers as well as related suppliers. EDC is produced using Ethylene and VCM is produced out of EDC. It is also noted that there is no shareholder listed above involved in any activity related with the product under investigation except Hanwha Corporation. It is noted from the exporter's submission that for export sales of the product under investigation, M/s Hanwha Corporation has a limited role to handle sales documents such as commercial invoice and bill of lading instead of HCC. It is noted that the transaction of exports by HCC through HWC is in pursuance to the commission/handling agreement. It is noted that in the export sales, Hanwha Corporation receives the commission from HCC for handling the sales documents and covering the marine insurance and bank charges. Further, it is noted that there is a document named as export permit issued by the Custom Authorities of Korea, who permits the HWC to export goods as exporter and HCC as producer.

**Normal value**

124. It is noted that in Appendix-1, the company has reported \*\*\* transactions. The Company has sold \*\*\* MT (KRW \*\*\*) of the subject goods in the domestic market. During investigation, monthly production quantity and cost was found to have reconciled. Summary of heads of account for the period of investigation was also tallied vis-à-vis figures reflected in Appendix-7. As per Appendix-1, the company has claimed adjustments on account of Domestic Inland Freight, Packing and Credit Expenses in respect of its domestic sales. It was noted that about \*\*\*% of the subject goods has been sold to the affiliated parties in the domestic market and the balance \*\*\*% of the sales were made to non-affiliated parties. It was noted that the sales made to affiliated parties were broadly at similar rates at which the sales made to unaffiliated parties. After carrying out sufficiency tests, and ordinary course of trade tests, the normal value on a month wise basis has been determined after taking into account the above adjustments for its domestic sales. While carrying out the ordinary course trade test, it was noted that the domestic sales were profitable (more than 80% by the volume) in \*\*\* months of the POI ( \*\*\*%

overall during the POI) and therefore, their entire sales were taken into account for the purpose of determining normal value.

### **Exports Sales to India**

125. It was noted that in Appendix-2, the company reported \*\*\* transactions showing exports of \*\*\* MT (US\$ \*\*\*) of PVC to India during the POI. It was noted that all sales of the subject goods to India were made on CIF basis and that the expenses with regard to exports to India have been incurred by the producer/exporter. The company has claimed adjustments on account of Inland Freight, Ocean Freight, Credit Expense, Terminal Handling Charges, Customs Agent Commission, Commission to Hanwha Corporation, Packing Expenses. Commission paid by Hanwha Chemical Corporation to Hanwha Corporation includes Banking Charges and Marine Insurance. Since the consumption of imported material is negligible, hence, no drawback was claimed. The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin.

### **USA**

#### **M/s Westlake Vinyl Corporation, USA**

#### **Normal value and Export Price**

126. It is noted that M/s Westlake Chemical Corporation ("Westlake") is a publicly-owned corporation registered in the State of Delaware, United States of America. The Geismar, Louisiana, and Calvert City, Kentucky facilities are the only Westlake facilities in the United States capable producing of PVC resin. Westlake Chemical Corporation, i.e., the "Company," owns 100% of the Westlake Vinyl Corporation, which, in turns owns 100% Geismar, Louisiana, facility. Westlake Vinyl Corporation also owns 100% of Westlake PVC Corporation of which the Calvert City, Kentucky, facility and the Sulphur, Louisiana, facility are both subsidiaries. In the home market, Westlake sells PVC resin directly to end-users and through traders to end-users. It is noted that they have submitted domestic sales from these two facilities in the Appendix 1 of the response to the exporters questionnaire.

127. In this behalf, it is noted that Westlake Vinyl Corporation filed its response to the Exporter's Questionnaire and the Additional Exporter's Questionnaire (Part II). The questions and requests for information set forth in both questionnaires pertained to global sales and the U.S. cost of production of PVC-S. Corporation produces PVC-S at two U.S. plants, the Geismar plant and the Calvert City plant. Corporation owns 100% of the Calvert City plant and, through its 100% ownership of Westlake Vinyls Company LP ("Company"), also owns 100% of the Geismar plant (*See* Exporter's Questionnaire. It is also noted that Corporation and its

100%-owned affiliate, Company, both issued invoices associated with home market sales of PVC-S during the period of investigation and thereafter. It is also noted that Westlake Vinyls Company LP issued all invoices to India during the POI. It is noted that Westlake had a domestic sales of \*\*\* MT during the POI for US\$ \*\*\* during the POI. It was noted that about \*\*\*% of the subject goods has been sold to the affiliated parties in the domestic market and the balance of the sales were made to non-affiliated parties. It was noted that the sales made to affiliated parties were broadly at similar rates at which the sales made to unaffiliated parties. Hence, the entire sales volume has been considered for determination of normal value. The company had claimed adjustments on account of Discount, Rebates, Commission, Freight, Packing and Credit Expenses in respect of its domestic sales. It is noted from the questionnaires response that the company has given month-wise costing for the subject goods. It is noted from the examination that the domestic sales meets the sufficiency test. The cost of production of the subject goods as indicated in Appendix-8B of the response has been accepted for the purposes of carrying out the ordinary course of trade test. While carrying out the ordinary course trade test, it was noted that the domestic sales were profitable (more than 80% by the volume) in \*\*\* out of the \*\*\* each months of the POI (\*\*\*% overall during the POI) and therefore, their total sales for each of the \*\*\* months and their profitable sales for remaining months have been taken into account taken into account for the purpose of determining normal value.

128. Adjustments thereof have been allowed after examination. The expenses claimed towards inland freight, credit costs etc by producer have been adjusted to determine normal value. Based on such a determination, the Normal Value has been worked out on a monthly basis after conducting the profit test.
129. With regard to exports of subject goods to India, it is noted that the terms of sale for Westlake's export sales to India were either Free Along Side ("FAS") Houston, Texas, Free on Board ("FOB") Houston, Texas, Cost and Freight ("CFR") Nhava Sheva, India or Cost Insurance Freight ("CIF") Nhava Sheva, India. It was noted from the response that Westlake sold some merchandise to unaffiliated trading companies during the period of review and the sixth months thereafter. It is noted that none except one company had submitted information with regard to subject goods exported to India which was produced by Westlake. It is further noted that Westlake has submitted that it had no control over its unaffiliated customers and has no access to its unaffiliated customers' financial or sales information and, therefore, is unable to provide the data requested for the re-sales made by these unaffiliated trading company customers. It is noted that none of the resellers had provided any back to back linking of exports to the Authority from the producer to them and to the Indian importers.
130. It is noted after examining the information filed by the company that direct exports made by the company are \*\*\*% as compared to the indirect sales of subject goods to India. After the disclosure statement, the company provided copies of the invoices raised to Indian customers. It is noted from the response that the company had sold \*\*\* MT of the subject goods for US\$ \*\*\* to India during the POI. The exporter has claimed adjustments on account of inland freight, packing, warehousing, ocean freight, marine insurance, bank charges, credit expenses. In fact, it was noted that they had made Indian sales during \*\*\* months

of the POI. The ex factory price for the purpose of the working out the dumping margin has been determined taking into account these adjustments. The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin. The dumping margin so arrived at is mentioned in the dumping margin table.

**ITOCHU PLASTICS PTE, LTD, Singapore**

**Normal value and Export Price**

131. It is noted that the company is not a manufacturer of the subject material and they are exporting the subject material into India after procuring the same from four producers. It has also been added that M/s Itochu Plastics Pte Ltd, Singapore (Itochu Singapore) solicits enquiries from customers in India. Once enquiries are obtained it undertakes negotiation with the supplier/manufacturer in Singapore which offers a price range for the sales of the subject goods to Itochu Plastics Pte Ltd, Singapore (Itochu Singapore). On the basis of the price range offered by the supplier, Itochu Plastics Pte Ltd, Singapore (Itochu Singapore) further conducts negotiation with the individual customers and concludes the sales.
132. It is noted from the response filed from M/s Itochu Plastics Pte Ltd that the though some of the subject goods produced by other producers including M/s Westlake, USA have been shown as exported to India by M/s Itochu Plastics Pte Ltd, the details of back to back invoice was not made available with respect to the invoices raised by M/s Westlake and other producers to M/s Itochu Plastics Pte Ltd and from M/s Itochu Plastics Pte Ltd to India. In the absence of the link between the producers of subject goods from M/s Westlake USA and other producers and from M/s Itochu Plastics Pte Ltd to India, no separate dumping margin has been determined for the channel from other producers including M/s Westlake, USA and M/s Itochu Plastics Pte Ltd, Singapore . In view of the above, the normal value and the export price has been determined on the basis of the facts available in line with the determination of dumping margin for other non cooperating producers and exporters.

**M/s. Formosa Plastics Corporation, U.S.A., (producer)**

**Normal value and Export Price**

133. It is noted that M/s. Formosa Plastics Corporation, U.S.A (Formosa) is a corporation set up under the laws of the State of Delaware.. Formosa Plastics Corporation, U.S.A. M/s Formosa manufactures the goods under consideration. However, Formosa and its affiliated companies did not export these goods to India during the period of investigation. Except for certain limited sales to Canada, Mexico, and some European countries, sales of Formosa products for export are made by unaffiliated resellers. In other words, Formosa sells in the United States to a US-based company or reseller, with delivery to a place in the United States specified to it.

134. With respect to exports to India, it has been stated that M/s Formosa does not itself export PVC to India or does not itself sell PVC to any party in India, including manufacturers or end users in India. Instead, Formosa sells to resellers located in the United States, who then export the product to India. It has also been submitted that all Formosa knows is that a reseller has purchased its product for export to several possible countries, including India, and has provided Formosa with a port in the United States to which the Formosa's product is to be delivered.
135. In this behalf one of the unaffiliated re-sellers, i.e. Tricon Dry Chemicals also participated and provided responses to establish the export channel and price to India.
136. However, as per the information on record, the Authority was unable to match the quantities to establish complete flow of sales from the Producer through Tricon Dry Chemicals to India. Therefore in the disclosure statement issued earlier, it was noted that as no export price information to any importers or users in India had been submitted by the producer and the information in the form and manner exporters' questionnaire had not been provided by the company, no export price or separate dumping margin had been allowed for the producer. After the disclosure of essential facts, FPC USA and Tricon Dry Chemicals LLC submitted missing invoices numbers of certain transactions from producer to exporter for exports to India and clarified that all transactions were now complete. Post disclosure of essential facts, FPC USA and Tricon Dry Chemicals LLC clarified their position and demonstrated a complete channel of sales to India with all transactions matched back to back from producer to exporter.

#### Normal Value for FPC, USA

137. In this behalf, it is noted that FPC USA has sold \*\*\* MTs of PVC suspension grade in its home market against \*\*\* transactions during the POI. It is noted from the examination that all sales had been made to unaffiliated parties during the POI. It is noted from the questionnaires response that the company has given month-wise costing for the subject goods. It is noted from the examination that the domestic sales meets the sufficiency test. The cost of production of the subject goods as indicated in Appendix-8B of the response has been accepted for the purposes of carrying out the ordinary course of trade test. While carrying out the ordinary course trade test, it was noted that the domestic sales were profitable (more than 80% by the volume) in \*\*\* of the 12 each months of the POI (\*\*\*) overall during the POI) and therefore, their total sales for each of the months of the POI have been taken into account for the purpose of determining normal value. The company had claimed adjustments on account of Early Paid Discount, Price Adjustments, Volume Rebates, Commission, Freight, Packing and Credit Expenses in respect of its domestic sales. Adjustments thereof have been allowed after examination. Based on such a determination, the Normal Value has been worked out on a monthly basis after conducting the ordinary course of trade test.

#### Tricon Dry Chemicals LLC. USA

#### Export Price for FPC USA and Tricon Dry Chemicals LLC, USA

138. It is noted that M/s Tricon Dry Chemicals LLC is organized as a Limited Liability Company under the Laws of the State of Texas, United States. It is a trading company and is not involved in the manufacture of the subject goods. It has further been submitted that Tricon Dry Chemicals LLC has no manufacturing subsidiaries or related companies involved in the product concerned. It is further noted that Tricon Dry Chemicals LLC has no home market sales for the present investigation. For exports to India, Tricon Dry Chemicals LLC negotiates the selling price on the basis of the market rates.
139. It was noted that in Appendix-2, M/s FPC, USA reported \*\*\* transactions comprising sales of \*\*\* MT showing sales to resellers during the POI. It was further noted that out of these transactions reported in Appendix -2, of the FPC, USA, \*\*\* MT of the subject goods were sold through Tricon Dry Chemicals LLC to India. M/s Tricon Dry Chemicals LLC, USA has filed questionnaire responses to the Authority. The Authority has examined the export prices in respect of responding exporters on the basis of questionnaire responses filed by them. The export prices and the adjustments thereof have been allowed after examination. Export Price at the ex factory level has been calculated by deducting all post factory expenses incurred by the producer (Early Paid Discount, Price Adjustments, Freight, Packing and Credit expenses) and the re-seller (Bank Charges, Charters Liability, Discount Interest, Freight, Inland Freight, Interest Expense, Export LC fees, Ocean Cargo Insurance and Miscellaneous expenses). The net export price so arrived at on a month wise basis has been used for determining dumping margin on a month wise basis before aggregating them on a weighted average basis for determining weighted average dumping margin. For determination of ex factory export price at the end of producer FPC, USA, necessary adjustments pertaining to traders in the chain have been made.

### **ICC Chemical Corporation (ICC) , USA**

#### **Normal value and Export Price**

140. It is noted that M/s ICC Chemical Corporation (hereinafter “ICC” or the “Company”) is a subsidiary of ICC Trading Inc. and was incorporated under the laws of the state of New York, USA, on April 30, 1985. It is also noted that ICC is not a manufacturer. ICC CHEMICALS CORP as exporter sells to local end-users in India and local distributors as well as local traders. From the response submitted by the company, it is noted that the company is trader who purchases the subject goods from various producers from many countries and sells them to India. However, the company has not named the producers from where they have purchased the subject goods and has also not provided any link between the volume and price of the subject goods at which they have purchased the subject goods and sold them to Indian importers and users. In view of the above, it is not possible to determine the normal value and export price and therefore no separate dumping margin can be given to the channel of exports from the exports made from ICC to Indian importers..

### **M/s Shintech Incorporated, USA**

### **Normal value and export price**

141. It has been stated by the company that the US Normal Value data during the period of investigation ("POI") claimed by the Petitioner is not accurate. Petitioner cites Harriman Chemsult (currently "IHS Chemical") and provides copies of that monthly publication. It has been contended that a more accurate source of available facts on that subject is Platts Polymer Scan, which is published weekly. Harriman Chemsult states that the prices are "before discounts, rebates, incentives, etc." so the Normal Value is always high and unreliable for purposes of this Review. It has also been stated Shintech is a very efficient producer of the PVC resin product which is the subject of this investigation and does not sell at a loss. It has also been stated that Petitioner's calculation of Dumping Margin during the POI for the USA is faulty.
142. It is noted from the response submitted by the company that they did not submit the response in the form and manner of exporters questionnaire. In fact, the response was grossly deficient and in view of the deficient response, it was not possible to determine either the export price or the normal value for the subject producer and exporter. In view of the above, the normal value and the export price has been determined on the basis of the facts available in line with the determination of dumping margin for other non cooperating producer and exporter.

### **Tricon Overseas Inc., USA**

#### **Normal value and Export price**

143. It is noted that M/s Tricon Overseas Inc. is organized as a Stock Corporation under the Laws of the Republic of Panama. It has been submitted that it is a trading company and is not involved in the manufacture of the subject goods. It has also been submitted that M/s Tricon Overseas Inc has no manufacturing subsidiaries or related companies involved in the product concerned. It has also been submitted that with regard to purchase details of subject goods from various producers, the details required could be found in the cooperating producers' response. It has further been added that the exporter has no home market sales for the present investigation and for exports to India, Tricon Overseas Inc. negotiates the selling price on the basis of the market rates.
144. It was noted from the response originally filed from M/s Tricon Overseas Inc that they have one transaction of exports to India from M/s CGPC Taiwan. It was noted in the disclosure statement that though the subject goods produced by M/s CGPC, Taiwan have been shown as exported to M/s Tricon Overseas Inc for exports to India, the details of back to back invoice was not made available before the issue of disclosure statement with respect to all the invoices raised by M/s CGPC to M/s Tricon Overseas Inc and from M/s Tricon Overseas Inc to India.
145. After the disclosure statement, it has been submitted by the exporter that they had \*\*\* shipments made to India for the subject goods which had been procured from CGPC, Taiwan during the POI. One shipment of the same was

directly exported to India by Tricon Overseas while another shipment was exported to India through Tricon Energy UK Ltd. Both M/s Tricon Overseas as well as M/s Tricon Energy UK Ltd submitted the required information as well as clarifications after the disclosure. The export prices and the adjustments thereof have been allowed after examination. Export Price at the ex factory level has been calculated by deducting all post factory expenses incurred by the producer i.e CGPC, Taiwan and exporter i.e Tricon Overseas Inc., USA for working out the net export price at the end of producer M/s CGPC, Taiwan. The deductions allowed for M/s Tricon Overseas Inc include adjustments for bank charges, adjustments of charters liability, freight costs, interest expense, export LC fees, ocean cargo insurance, and SGA expense. The net export price determined at the end of CGPC, Taiwan for this chain has been compared with the corresponding normal value of the producer M/s CGPC, Taiwan for that month for working out dumping margin for that month.

146. With regard to another transaction involving both Tricon Overseas Inc, USA and Tricon Energy (UK) Ltd, the net export price has been determined by deducting all post factory expenses incurred by the producer i.e CGPC, Taiwan, exporter i.e Tricon Overseas Inc., USA and M/s Tricon Energy (UK) Ltd for working out the net export price at the end of producer M/s CGPC, Taiwan. The deductions allowed for M/s Tricon Energy (UK) include adjustments of charters liability, freight costs, interest expense, export LC fees, ocean cargo insurance, and SGA expense Overseas Inc include adjustments for bank charges, adjustments of charters liability, freight costs, interest expense, export LC fees, ocean cargo insurance, and SGA expense. The net export price determined at the end of CGPC for this chain has been compared with the corresponding normal value of the producer M/s CGPC, Taiwan for that month for working out dumping margin for that month.
147. In view of the fact that back to back invoice received from M/s CGPC, Taiwan, and Tricon overseas Inc and Tricon Energy UK LTD, separate dumping margins has been granted to the above chains and the dumping margin so determined is mentioned in the dumping margin table.

### **Tricon Energy UK LTD (Tricon UK)**

#### **Normal value and Export Price**

148. It is noted that M/s Tricon Energy UK LTD. is organized as a Private Company limited by shares under the Companies Acts 1985 to 1989 of England and Wales. It is a trading company and is not involved in the manufacture of the subject goods. It has been submitted that M/s Tricon UK has no manufacturing subsidiaries. It is also noted that M/s Tricon UK has no home market sales for the present investigation. For exports to India, Tricon UK negotiates the selling price on the basis of the market rates.
149. With regard to export sales to India, it is noted that the company has procured the subject goods which were produced by various producers during the POI. Out of the producers from where Tricon has purchased the subject goods for exports to India, it is noted that 4 producers from subject countries i.e M/s CGPC,

Taiwan, FPC, Taiwan, Qingdao Haijing, China PR and Inner Mongolia Sanlian, China PR have responded to the exporters' questionnaire and have submitted details of exports to India through Tricon UK. It may be recalled that due to non reconciliation of back to back invoice, no separate dumping margin was proposed for the exporting producers exporting through Tricon Energy UK LTD at the time of issue of disclosure statement. However, after the issuance of the disclosure statement and following the receipt of the comments from M/s Tricon UK clarifying some of the back to back invoice reconciliations, the separate dumping margin has been granted for M/s Tricon energy UK exporting the subject goods sourced through M/s FPC, Taiwan, CGPC Taiwan and M/s Qingdao, China PR and the same is mentioned in the appropriate headings in the findings. For Inner Mongolia Sanlian and others, no back to back invoice from the cooperating producer to the exporter and to Indian importer could be reconciled and hence separate dumping margin was not granted to them. The dumping margin determined from all these chains of exports are mentioned in the appropriate headings in the findings and also in the dumping margin table.

#### **Normal value and Export Price for all producers and Exporters from Indonesia, Malaysia, Japan and Thailand**

150. For working out dumping margin in respect of subject goods for all producers and exporters from Indonesia, Malaysia, Japan and Thailand, the normal value has been determined on facts available basis i.e. based on the prices reported in the Harriman Chemsult reports as there was no cooperation from any of the producers and exporters from these subject countries. The same has been compared with the net export price determined on the on the basis of facts available i.e. on the basis of DGCIS transaction wise data on a monthly basis. The dumping margin and dumping margin % so arrived for the all producers and exporters from these subject countries have been mentioned in the dumping margin table.

#### **Dumping margin determination for all responding and cooperating producers and exporters from subject countries**

151. For working out dumping margin in respect of subject goods, the normal value determined on ex factory basis has been compared with the net export price on a monthly basis and the dumping margin on a monthly basis was determined. A weighted average dumping margin was then arrived at after weighing these dumping margins with the export quantity of the respective producers and exporters. The dumping margin and dumping margin % so arrived for each of the responding and cooperating producers and exporters have been mentioned in the dumping margin table.
152. It is noted that in the subject investigations many cooperating producers and exporters are related to each other and form a group of related companies. It has been the consistent practice of the Authority to consider related exporting producers or exporting producers belonging to the same group as one single entity for the determination of a dumping margin and thus establish one single dumping margin for them. The Authority holds that grant of individual dumping margins

might enable the related exporting producers to channel their exports to India through the company with the lowest individual dumping margin and circumvent the anti-dumping measures, thus rendering them ineffective, by In addition, the dumping margin has also been determined together for a producer exporting the subject goods through various channels (through different exporters).

153. In accordance with the above, the related producers/exporters or those belonging to the same group were regarded as one single entity and attributed one single dumping margin which was calculated on the basis of the weighted average of the dumping margins of the cooperating producers/exporters in the respective groups Similarly, dumping margin has also been determined together for a producer exporting the subject goods through various channels (through different exporters).

**Export Price and Dumping margin for non cooperating producers and exporters from subject countries**

154. For working out dumping margin in respect of subject goods for the residual producers and exporters, and for those producers and exporters whose data was not accepted by the Authority, the normal value determined on facts available basis has been compared with the net export price determined on the lower representative price level. The dumping margin and dumping margin % so arrived for the residual producers and exporters, and for those producers and exporters whose data was not accepted by the Authority have been mentioned in the dumping margin table.

**Dumping margin Table**

Country	Producer	Exporter	Dumping Margin	Dumping Margin %	Group DM	Group DM%	DM% Range
Taiwan	CGPC Polymer Corporation	CGPC Polymer Corporation	***	***	***	***	0-10
	China General Plastics Corporation	China General Plastics Corporation	***	***			
	China General Plastics Corporation	Tricon Overseas Inc. USA and Tricon Energy UK LTD	***	***			
	China General Plastics Corporation	Tricon Overseas Inc. USA	***	***			

	Formosa Plastics Corporation	Tricon Energy UK LTD	***	***	(***)	(***)	(0-10)
	Formosa Plastics Corporation	Formosa Plastics Corporation	***	***			
	Ocean Plastics Co Ltd.	Ocean Plastics Co Ltd.	***	***			10-20
	Other than above		***	***	***		20-30
Korea RP	Hanwha Chemical Corporation	Hanwha Corporation	***	***			(0-10)
	LG Chem	LG Chem	***	***			(0-10)
China PR	Qingdao Haijing Chemical Group Co Ltd.	Qingdao Haijing Chemical Group Co Ltd.	***	***	***	***	20-30
	Qingdao Haijing Chemical (Group) Co Limited	Tricon Energy UK Ltd., UK	***	***			
	Yibin Tianyuan Group Co Limited	Yibin Tianyuan Group Co Limited	***	***			10-20
	Xinjiang Shihezi Zhongfa Chemical Co Ltd.	Xinjiang Tianye Foreign Trade Co.,Ltd	***	***			30-40
	Tianjin LG Dagu Chemical Co., Ltd.	Tianjin LG Dagu Chemical Co., Ltd.	***	***			20-30
	Tianjin Dagu Chemical Co., Ltd.	Tianjin Dagu Chemical Co., Ltd.	***	***			20-30
	Shandong Ocean Chemical Chlor – Alkali Resin Co.,Ltd	Shandong Ocean Chemical Imp & Exp Co., Ltd.	***	***			20-30
	Xinjiang Zhongtai Chemical Co., Ltd	Xinjiang Zhongtai Chemical Co., Ltd	***	***			20-30

	Tangshan Sanyou Chlor-Alkali Co., Ltd.	Tangshan Sanyou International Industry Co., Ltd..	***	***			20-30
	Chiping Xinfu PVC Co., Ltd.	Ningbo Grand international Trading Company Limited.	***	***			20-30
	Others	Others	***	***			30-40
USA	Formosa Plastics Corporation	Tricon Dry Chemicals LLC	***	***			10-20
	Westlake Vinyl Corporation or Westlake Vinyls Company LP	Westlake Vinyls Company LP	***	***			0-10
	Others	Others	***	***			10-20
Indonesia	All producers	All Exporters	***	***			20-30
Thailand	All producers	All Exporters	***	***			0-10
Malaysia	All producers	All Exporters	***	***			10-20
Japan	All producers	All Exporters	***	***			85-95

155. The Authority notes that in the original investigation, the dumping margins of M/s Hanwha Chemical Corporation, M/s LG Chem and M/s FPC Taiwan were determined at de minimis level. The dumping margin assessed in the present investigation for FPC, Taiwan, LG Chem, Korea and HCC, Korea is (-) \*\*%, (-) \*\*% and (-) \*\*% respectively, which is de minimis. Therefore, the volumes of the imports from these three exporters have not been taken into account for the purpose of injury and causal link analysis. The volume of imports from the Korean co-operating exporters exceeds the volume of imports from Korea as reported in DGCI&S data. The domestic industry in their petition had mentioned that HCC and LG Chem as the only known exporters. Government of Korea had also mentioned only about these two exporters in their communication to DGAD. Therefore, the entire imports from Korea have not been considered for injury and causal link analysis.

## **INJURY & CAUSAL LINK**

### **Views of the Domestic Industry**

156. The domestic industry has inter alia claimed as follows:

- a. Injury to the domestic industry should be assessed cumulatively. Present review is a sunset review and the Designated Authority had earlier assessed injury to the domestic industry cumulatively.
- b. The demand/apparent consumption of the subject goods increased throughout the injury period.
- c. Despite existing anti-dumping duties, the volumes of imports of subject goods from subject countries increased in absolute terms throughout the injury period with a significant increase during the period of investigation as compared to the base year. The share of imports from the subject countries have also increased over the years and account for more than 76% of the total imports during POI.
- d. Weighted average import prices (after including basic customs duties) have been significantly below the selling prices of the domestic industry, thus resulting in significant price undercutting.
- e. The landed price of imports is significantly below the cost of production of the domestic industry throughout the injury period.
- f. Imports have had significant suppressing effect on the prices of the domestic industry in the market, such that the domestic industry was compelled not to increase their price in proportion to increase in cost of sales, thereby suffering huge losses.
- g. One of the constituents of domestic industry enhanced capacities which commenced commercial production in 2009-10 and became fully operational in 2010-11. The production and sales of the domestic industry increased throughout the injury period because of the increase in capacity. The product involved is a petrochemical product whose production is a continuous process. It is almost an unavailable option for the domestic industry to suspend production. The combined fixed costs of the domestic industry are too significant to allow optimization of production. Further, production curtailment is not an option, since if the domestic industry sets its prices where it will earn reasonable return, the surplus capacities with the foreign producers are sufficient enough to take away the entire Indian demand.
- h. The profits of the domestic industry started declining since 2009-10, with significant losses during period of investigation. Cash profits showed the same trend as that of Profit/Loss. The return on investment also declined throughout the injury period to such an extent that the domestic industry suffered negative return on investments during period of investigation.
- i. The market share of the domestic industry and domestic producers as a whole decreased, while that of imports increased over the injury period.
- j. Employment with the domestic industry has increased till 2009-10 but thereafter declined. Wages paid have shown normal wage growth. Productivity per day has also shown an increase. The petitioners claim that these parameters are dependent on a number of other factors and not reflective of impact of dumping on the domestic industry.
- k. Inventory levels of the domestic industry increased till 2010-11 but declined during the period of investigation.
- l. Where the product is consistently not performing well because of persistent dumping over the last few years, substantial fresh investments cannot even be imagined. Despite significant demand in the country, the Indian producers find it unviable to invest in capacity additions.
- m. The various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury.
- n. In a situation where demand for the product under consideration is growing, the domestic industry should have been in a position to get a fair price for the product

in the market. It is not a situation where the capacities created in the country are far higher than the demand in the market and domestic producers are fiercely competing with each other to grab the market.

- o. With respect to the argument that RIL posted a 24% year on year rise in 2012-13 Q3, it is to be noted that the 24% increase in net profits from the previous year is in respect of Reliance Industries Limited as a whole. The company is a large, multi-product company whose business covers areas as diverse as textiles, oil, petrochemicals, retail and energy. Anti dumping investigations is (a) product specific, and (b) focuses on domestic industry. Individual company performance that too for different products is of no relevance.
- p. The demand supply gap clearly justifies further enhancement of capacities in the country. However, no such enhancement is being planned by any existing and new player for the reason that return on investment is extremely poor. Setting up of a plant of the order of 5 lacs MT shall involve a capital expenditure of Rs. 1200 crores, which requires a markup of Rs. 15,000 per MT in order to generate reasonable profits on VCM prices. As against this, the domestic industry is forced to earn on many occasion a markup of only Rs. 3000-4000 over the VCM price.
- q. With respect to the argument that prices of PVC in India have increased progressively, it would be seen that the prices of VCM have increased over the period after declining in 2008. The increase in the price of PVC is therefore on account of increase in the prices of VCM. In fact, the domestic industry has been prevented from increasing its prices in proportion to the increase in VCM price. It is also pointed out that the information relied upon by ICC is limited to the ICIS New Network report for the month of February. Further, ICC has relied on the statement made by Reliance that prices have increased from June 2011 to April 2012 to claim that there is an overall rise in the price of the product in India. ICC has further relied on Global Vinyls Market Report for the same month of February to claim that Indian producers have been able to increase their prices. However, the interested parties have ignored the increase in VCM prices during this period. The product prices cannot be considered in isolation without considering the input raw materials prices.
- r. With respect to the argument that the domestic industry is suffering losses due to its increased procurement of fuel, labour and electricity costs, it is to be noted that the major driver of costs in the manufacture of PVC Suspension is the cost of the primary raw material, VCM. The VCM prices have increased world over. It is not the case that domestic producers of the product are incurring high production costs.
- s. With respect to the argument that the raw material receiving port of Finolex was closed down for a substantial amount of time and so production was less than usual, Finolex is not part of domestic industry. The claimed injury is not on account of plant closure of Finolex. In fact, the plant closure with Finolex should have enabled the other constituents of domestic industry to earn a better price. However, the profitability of the domestic industry deteriorated which is not due to closure of plant by Finolex.
- t. The argument that the heavy reliance on import of raw material to produce PVC by the domestic industry has increased the cost of production and reduced the profitability cannot be accepted. The purchase of VCM by the industry is at international prices and therefore it is not a case where profitability of the domestic industry deteriorated due to abnormally high prices for VCM paid by the domestic industry. An industry cannot be said to be causing injury to itself for the mere reason that it does not captively produce the raw material required for the manufacture of the product or that the raw material is not available locally.

- u. The argument that Indian consumers pay relatively more for PVC Suspension Resin cannot be accepted as the existence of dumping implies that normal price in the exporting countries is more than the export price to India.
- v. The argument by CCAIA that the landed value of Chinese exports are equal to or higher than NSR claimed by the domestic industry, cannot be accepted since Chinese imports are undercutting the prices of the domestic industry in 2009-10 and 2010-11. Any analysis on the basis of weighted average is highly misleading. There were significant variations in the prices with time period and therefore petitioners have justified the need for a month-by-month analysis for the purpose of dumping margin, price undercutting and injury margin.
- w. The argument that the domestic industry would have earned profits if it had aligned its prices in accordance with import prices cannot be accepted. The domestic producers set their prices with imports announced at the start of the month. There is no business sense in selling at prices lower than this. Further, selling at import prices lead to losses and not profits.
- x. One of the interested parties rejected the claim that the domestic industry is forced to price their products on the basis of imports. The Authority may consider offer/order date in case of imports and compare the same with the selling price of the domestic industry. Comparison of selling price of the domestic industry with landed price of imports is leading to misleading results.
- y. With respect to the argument that NIP has been incorrectly calculated, considering that the Authority does not grant higher return in case the domestic industry has earned higher return than 22%, the Authority should not give lower return if the domestic industry has earned lower return. Further, the issue has been well settled by the Authority. The authority consistently considers 22% return on capital employed.
- z. CCAIA has arrived at erroneous conclusions as to the NSR figures submitted by the petitioners. A single figure was arrived at for NSR of the domestic industry and used uniformly in comparisons with imports from subject countries.
- aa. One of the interested parties has asserted that the petitioners have failed to provide reliable evidence in support of claims of undercutting and landed values. The petitioners have provided import figures based on transaction-by-transaction information obtained from IBIS. NSR has been calculated based on the financial information of the petitioner companies. Calculations of undercutting and landed value have also been done based on this information.
- bb. With respect to the import data including PVC Paste resin transactions, the import price relied upon by the petitioners for determination of dumping and injury does not include imports of PVC paste resin. The dumping and injury claims of the petitioners are based on imports of product under consideration only. For the purpose of likelihood analysis, petitioners have explained in the petition that inclusion of paste resin, would, if anything, understate the dumping margin, as Paste Resin prices are generally higher than suspension resin.
- cc. There is no basis for the argument that the prices of the domestic industry were in the region of 75000-85000 PMT. The domestic industry has provided verifiable information, which shows that the prices are in fact much lower than this. Domestic industry sets its prices considering the offers given by the exporters. While domestic industry delivers the product immediately, the exporters' material arrived in India with a significant time lag. Since the domestic industry sets its prices based on price offers, the Authority should compare the domestic industry prices with the offers made and orders taken by the exporters.
- dd. The 'improvements' mentioned by the interested party can only relate to increase in volume parameters which have improved due to increase in domestic demand and

addition of capacities by the domestic industry. Profitability, ROI and cash profits have shown considerable decline over the injury period and became negative in the POI.

- ee. Higher prices do not mean higher profits. Profit is a function of price and cost. The interested parties have referred selectively only to prices and have ignored the increase in the costs.
- ff. The assertion that the domestic industry is able to earn the NIP since the range of price undercutting and price underselling is the same is erroneous. The NSR of the domestic industry is lower than the NIP calculated.
- gg. There exists a clear causal link between dumped imports and the injury to the domestic industry. Imports of product under consideration from third countries are either negligible or the export prices are higher, except for Mexico and EU. Imports from Mexico and EU are at dumped prices and the petitioners have filed anti-dumping duty petition in respect of imports from these countries. As the present petition is a sunset review petition, no new country can be included in the purview of subject countries. There was no contraction in demand of the subject product during the period of investigation. The technology adopted by domestic industry is comparable to the technology being adopted by producers in subject countries. There is no significant difference in the manufacturing process. Petitioners have exported the product under consideration. However, the claimed injury to the domestic industry is on account of domestic operations.
- hh. The injury caused to the domestic industry has been caused by dumped imports. The imported product is undercutting the prices of the domestic industry, and preventing it from increasing its prices in proportion to increase in cost of productions. Deterioration in profits, return on capital employed and cash profits is on account of dumping of the product in the Country.
- ii. The argument that non-subject imports are required to be assessed under the other causes of injury which could not be attributed to imports from the subject countries cannot be accepted. The law with respect to causal link found in the Anti-dumping Rules provide: “*Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices...*” Clearly, what is to be seen is whether un-dumped imports are causing injury to the domestic industry.
- jj. The domestic industry has filed a separate petition seeking the initiation of investigation for the imposition of anti-dumping duties in respect of imports from Mexico and EU. The present investigation being a sunset review investigation, these countries could not be included within the scope of the investigation. The rules do not require segregating injury from different dumped sources. The rules require segregation of injury suffered by the domestic industry from “non-dumped imports”.
- kk. As regards the argument that consideration of import price and domestic industry prices do not show causal link, it is necessary to compare import price with the domestic industry prices by considering import price on the basis of offers/orders. Since the domestic industry has set its prices considering import offers, the comparison of landed price of imports on arrival basis with selling price of the domestic industry is leading to misleading results.
- ll. It would be improper to compare profit, return on investment and cash profit with import volumes, when the domestic industry has pleaded adverse price effect of the imports. Import volumes have increased in view of demand-supply gap, whereas profits, return on investment and cash profit have declined in view of dumped prices of these imports. Thus, import price and not the import volumes must be compared with profits, return on investment and cash profit.

- mm. Regarding the argument that market share increase of imports does not correspond to market share decrease of domestic industry, it will be seen that the trend from 2008-09 to 2010-11 shows that increase in market share of the subject countries correspond to comparable decreases in the market share of the domestic industry and vice versa. It is only in the POI that the market shares of both decrease slightly.
- nn. Regarding providing information with respect to captive use of the product for downstream products by constituents of the domestic industry, the domestic industry has provided the necessary information. Further, considering overall sales volumes of the domestic industry, captive consumption is quite low in the present case.

### **Views of the Exporters, Importers, Consumers and Other Interested Parties**

157. The other interested parties have raised the following issues and made submissions with respect to material injury, and causal link between dumping and material injury to the domestic industry.
- a. The Domestic Industry is able to capture only 51% of the market share while operating at 95% capacity utilization. It is also clear from the audit report of DCW Ltd and Annual Report of Chemplast Sanmar that some of the demand of PVC is met by the imports and also PVC demand is growing. Thus it is clear that the imports are entering the country only to meet the demand supply gap and not to adversely affect the domestic industry.
  - b. Since the period of investigation of the original investigation the domestic industry has enhanced its installed capacities and has registered an increase of 38% in capacity utilization. Thus the claim of domestic industry that they are adversely affected by imports is incorrect.
  - c. The prices during POI and after POI have increased consistently (audit reports of various constituents of the domestic industry). Domestic Industry earned highest sales realization during the POI of the current SSR investigation. Thus the claim of the domestic industry that they have claimed losses is totally incorrect.
  - d. When the imports were at its peak the domestic industry was earning profits. Thus there is no correlation between the behavior of domestic prices and import volumes.
  - e. It is mandatory for the Designated Authority to examine reasons for injury other than dumping, if any. The so called negative results are due to accident in major supplier's plant in Japan and increase in crude prices.
  - f. The methodology of non-injurious price needs to be revisited as it is highly inflated and not based on real situations. The interest is allowed as an item of cost of sales and after deducting the interest, the balance amount of return is to be allowed as a pretax profit to arrive at the NIP.
  - g. The Designated Authority should adopt ROCE earned by the Industry when there was no allegation of dumping as reasonable profit margin and not 22% ROCE. Providing 22% return on Capital Employed is incorrect.
  - h. In terms of Rule 2(b), all the domestic producers other than DCW Ltd. stand excluded from the scope of domestic industry as they have imported the subject goods during the injury period. Though the standing of the domestic industry need not be examined during a sunset review, determination of injury and likelihood of injury is made only with respect to the domestic industry.
  - i. The landed value of Chinese imports is the highest, it is equal to or higher than NSR of the domestic industry and there is no undercutting. When current anti-dumping duty is added to the landed value of Chinese imports, it is higher than NIP claimed by the domestic industry.

- j. With almost optimal capacity utilization, domestic industry is facing supply constraint to the tune of 44%.
- k. Imports from China are not causing injury since the landed value of imports from China with ADD is higher than the average NSR calculated from the price undercutting range taken from the petition.
- l. The domestic industry could have earned profits if it had matched the higher prices of imports.
- m. From the price undercutting range and landed values provided, the range of NSR can be determined. It was observed that the lowest possible net sales realization, when calculated taking landed values of Japan, Korea, Taiwan and Thailand respectively are more than the highest sales realization in case of Indonesia.
- n. Since landed value of imports from Korea and Taiwan is below the NIP, injury, if any, caused to the domestic industry is as a result of imports from non-subject imports. The Designated Authority is to exclude non-subject imports and examine past injury and likely continuation of injury from China.
- o. The petitioners stated at page 88 of the petition that dumping is occurring from Mexico and Germany.
- p. Imports cannot be blamed for the domestic industry being unable to increase its selling price when import prices were rising. Whenever the import price increased in the POI, the domestic price decreased
- q. The profits, ROI and cash profits of the domestic industry don't follow the same trend of subject countries import volumes.
- r. The decline in market share of the domestic industry does not correspond to the increase in the market share of the subject countries.
- s. The product concerned appears to be captively consumed by the domestic producers for the manufacture of downstream products. Hence, the domestic industry is bound to provide information regarding captive and merchant markets
- t. The NIP has been wrongly calculated since 22% ROCE is not justified and due adjustment for captive consumption of raw material must be made since Chemplast captively produces EDC.
- u. Reliance and Finolex indicated that demand for S-PVC grew by 3% in 2011-12.
- v. The domestic industry is increasing its production capacity (Reliance Industries is setting up another plant for manufacture of PVC at Dahej, Gujarat; Chemplast Sanmar is setting up another plant at Cuddalore; Reliance is expanding capacity at Jamnagar). Hence, subject country imports are not retarding the growth of the domestic industry.
- w. As per various reports such as from ICIS Network, M/s Reliance Industries have admitted that prices of PVC in India have increased progressively.
- x. The import of S-PVC from the United States of America is not responsible for the shrinking market share of the Petitioners. It has shrunk as the direct consequence of the petitioners' inability to expand their production capacity.
- y. The heavy reliance on import of raw material to produce PVC by the domestic industry has increased the cost of production of PVC and reduced the profitability.
- z. During the period of investigation the costs incurred by the domestic industry on the procurement of fuel, labour, electricity has increased manifold and the same has contributed to the injury alleged by the domestic industry as per annual report of M/s Finolex Industries Ltd.- 2011-12, HIS Chemical Market Advisory Services, Global Vinyls Market Report 2012, etc.
- aa. Petitioners have not suffered any injury during the POI or injury period according to their Annual Reports which indicate profits. Annual Report data indicates that the Petitioners have not only been selling above cost for the injury period and the

period of investigation but have been making increasing profits over the period of investigation.

- i. Price obtained from Public Domain Information indicates a range between 75000 to 85000/MT
- ii. Cost constructed in the same format as the constructed normal value found to be much lower than the selling price from the public domain.
- iii. Therefore there is a profit per MT in every year of the injury period including the period of investigation implying that the negative profit indicated in the Petition is unreliable and inconsistent.
- iv. Further the variance in the domestic industry prices ought to be looked into by the Hon'ble Designated Authority.

bb. After the global recession subsided in 2009-10, the domestic industry recovered despite alleged 'dumping and injury' and has prospered in the second half of the injury period and showing substantial improvements in critical factors.

### **Examination of the Authority**

158. The submissions made by the domestic industry and other interested parties during the course of investigations have been examined by the Designated Authority, having regard to the relevant legal provisions. The Authority has examined the various submissions under appropriate headings.

159. One of the interested parties has contended that the methodology adopted by the domestic industry for the calculation of Non-Injurious Price (NIP) is erroneous and had the effect of inflating the NIP. The Authority has determined the NIP for the domestic industry considering the provisions of Annexure III to the Rules and as per its consistent practices.

160. Regarding information on captive and merchant market for the domestic industry, it is noted that the Authority has sought and analyzed all the information which is necessary for the purposes of the present investigation.

161. The Authority notes that since the present investigation is a Sunset Review investigation, the performance of the domestic industry during the injury period and the likelihood of dumping and injury to the domestic industry in the event of the cessation of the anti dumping duty are required to be considered to determine whether expiry of anti dumping duty is likely to lead to continuation or recurrence of injury to the domestic industry. Further, the performance of the domestic industry in terms of cost and prices has been seen in the context of landed value of the subject goods from the subject countries during the injury period. A detailed analysis has been carried out in respect of all the parameters listed under the law. These parameters are discussed herein under.

### **Cumulative Assessment**

162. Annexure II to the Anti Dumping Rules provides that in case the imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Designated Authority will cumulatively assess the effect of such imports, in case it determines that:-

"(a) the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports

cumulatively accounts for more than seven percent of the imports of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles."

163. In this regard, the Authority notes that the criteria for de minimis dumping margin and negligible volume of imports are not relevant for the purpose of determining likely hood of dumping margin from subject countries. However, for the purpose of cumulative assessment, un-dumped imports from producers from subject countries have been taken out for the purpose of injury analysis.

164. Further, the goods manufactured by the producers from the subject countries are like articles inter se and in comparison to the product manufactured by the domestic industry. A cumulative assessment of the effects of imports from the subject countries is appropriate since the exports from the subject countries directly compete with the like goods offered by the domestic industry in the Indian market. Commons parties are using the goods from the different sources and from the Indian domestic industry interchangeably, and the channels of sale are similar.

#### Assessment of demand

165. For the purpose of the present investigation, the Authority has defined demand or apparent consumption of the product in India as the sum of sales of subject goods by domestic industry and imports from all sources. Exports made by the Indian Producers have been excluded from the computation. It is noted that the demand/apparent consumption of the subject goods increased throughout the injury period. Demand so assessed is as follows –

Particulars	Units	2008-09	2009-10	2010-11	POI
Total Domestic sales	MT	7,87,181	8,17,655	9,77,281	9,78,779
<i>Trend</i>	Index	<b>100</b>	<b>104</b>	<b>124</b>	<b>124</b>
<b>Sales of other Producers</b>	<b>MT</b>	1,86,020	1,67,392	2,02,736	1,50,286
<i>Trend</i>	Index	<b>100</b>	<b>90</b>	<b>109</b>	<b>81</b>
Total Imports	MT	2,35,312	5,45,736	5,50,468	7,51,027
<i>Trend</i>	Index	<b>100</b>	<b>232</b>	<b>234</b>	<b>319</b>
Demand	MT	12,08,513	15,30,783	17,30,485	18,80,092
<i>Trend</i>	Index	<b>100</b>	<b>127</b>	<b>143</b>	<b>156</b>
Dumped Imports from subject Countries	MT	1,17,151	1,79,287	1,64,771	1,77,468
<i>Trend</i>	Index	<b>100</b>	<b>153</b>	<b>141</b>	<b>151</b>
Share of Domestic Industry in demand	%	65%	53%	56%	52%
<i>Trend</i>	Index	<b>100</b>	<b>82</b>	<b>87</b>	<b>80</b>
<i>Share of other domestic producer in total demand</i>	MT	15.39%	10.94%	11.72%	7.99%

<i>Trend</i>	Index	<b>100</b>	<b>71</b>	<b>76</b>	<b>52</b>
Share of dumped imports from Subject Countries in demand	%	10%	12%	10%	9%
<i>Trend</i>	Index	<b>100</b>	<b>121</b>	<b>98</b>	<b>97</b>
Share of imports from other countries under investigation in demand	%	3%	5%	3%	7%
<i>Trend</i>	Index	<b>100</b>	<b>147</b>	<b>92</b>	<b>230</b>
Share of imports from Other Countries and un dumped imports from subject countries in demand	%	7%	19%	19%	23%
<i>Trend</i>	Index	<b>100</b>	<b>292</b>	<b>294</b>	<b>351</b>

166. As regards the argument that the petitioners are unable to meet the demand in India and there is wide demand supply gap and therefore the imports are necessary, the Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers. The Authority refers to its past consistent position in this regard and also relies upon the decision of the CESTAT in the matter of DSM Idemitsu Limited vs Designated Authority. If the exporters want to supply the goods to meet the requirement in Indian market that could be done by exporting the requirement at a price equivalent to normal value but not at dumped prices.

### **Volume of Dumped Imports**

167. With regard to volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports from the subject countries either in absolute terms or relative to production or consumption in India. Annexure II (ii) of the anti dumping rules provides as under:

*“While examining the volume of dumped imports, the said authority shall consider whether there has been significant increase in the dumped imports either in absolute terms or relative in production or consumption in India”*

168. Imports of the product under consideration from exporters in absolute terms and in relation to production and consumption were as follows –

<b>Volume of Imports</b>	<b>Unit</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI</b>
<b>Dumped imports from Subject Countries</b>	<b>MT</b>	<b>1,17,151</b>	<b>1,79,287</b>	<b>1,64,771</b>	<b>1,77,468</b>
CHINA PR	MT	41,257	26,468	21,724	49,540
CHINESE TAIPEI	MT	51,048	68,196	41,360	21,217

INDONESIA	MT	3,433	3,783	609	1,253
JAPAN	MT	1,782	2,920	1,974	3,039
MALAYSIA	MT	0	1,186	1,796	2,384
THAILAND	MT	1,464	5,353	6,523	10,075
U S A	MT	18,167	71,381	90,786	89,961
<b>Subject Countries – Trend</b>		<b>100</b>	<b>153</b>	<b>141</b>	<b>151</b>
Other countries - under investigation	MT	38,415	71,650	50,386	1,37,638
<b>Trend</b>		<b>100</b>	<b>187</b>	<b>131</b>	<b>358</b>
Other Countries and un dumped imports from subject countries	MT	79,747	2,94,799	3,35,311	4,35,921
<b>Trend</b>		<b>100</b>	<b>370</b>	<b>420</b>	<b>547</b>
Total Imports	MT	2,35,312	5,45,736	5,50,468	7,51,027
<b>Trend</b>		<b>100</b>	<b>232</b>	<b>234</b>	<b>319</b>
<b>Domestic sales of domestic industry</b>	<b>MT</b>	<b>7,87,181</b>	<b>8,17,655</b>	<b>9,77,281</b>	<b>9,78,779</b>
<b>Sales of other Producers</b>	<b>MT</b>	<b>1,86,020</b>	<b>1,67,392</b>	<b>2,02,736</b>	<b>1,50,286</b>
Imports from subject countries in relation to sales of domestic industry	%	15%	22%	17%	18%
<b>Demand</b>	<b>MT</b>	<b>12,08,513</b>	<b>15,30,783</b>	<b>17,30,485</b>	<b>18,80,092</b>
Dumped Imports from subject countries relative to consumption	%	10%	12%	10%	9%
Share of dumped imports from subject countries in total imports	%	50%	33%	30%	24%

169. It is noted that there is a significant increase in dumped imports of subject goods from subject countries in the period of investigation when compared with the base year in absolute terms and in relation to domestic industry's sales of the product in India. The market share of subject countries' imports in demand has marginally declined in the POI when compared with the base year.

### **Price Effect**

170. With regard to the effect of the dumped imports on prices, Annexure II (ii) of the Rules states as under:

*"With regard to the effect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the Designated Authority shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree."*

### **Price Undercutting**

171. The domestic industry has claimed that weighted average import prices (after including basic customs duties) have been significantly below the selling prices of the domestic industry, thus resulting in significant price undercutting.

The Authority has examined the situation after analyzing the net selling prices of the domestic industry and landed prices of imports from subject countries which have been determined on a monthly basis. It is noted after the analysis that the prices of subject goods from subject countries as a whole are undercutting the prices of domestic industry during the injury period.

### **Landed Price of Imports**

INR/MT

	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI*</b>
CHINA P RP	54,137	45,780	49,138	54,459
CHINESE TAIPEI	49,509	45,351	49,925	53,776
INDONESIA	54,645	42,729	48,800	53,801
JAPAN	50,422	46,268	48,910	54,671
MALAYSIA	-	48,199	48,879	53,216
THAILAND	52,393	43,982	48,797	52,139
U S A	36,020	39,356	46,531	52,741
Subject Countries as a whole	48,235	44,171	49,215	53,357

\* POI numbers are based on month wise analysis

### **Price Undercutting**

INR/MT

	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI*</b>
CHINA P RP	***	(***)	(***)	***
CHINESE TAIPEI	***	(***)	(***)	***
INDONESIA	***	(***)	(***)	***
JAPAN	***	(***)	(***)	(***)
MALAYSIA	-	(***)	(***)	***
THAILAND	***	(***)	(***)	***
U S A	(***)	(***)	(***)	***
Subject Countries as a whole	***	(***)	(***)	***
<b><u>Price Undercutting (%)</u></b>				
CHINA P RP	***	(***)	(***)	***
CHINESE	***	(***)	(***)	***

TAIPEI				
INDONESIA	***	(***)	(***)	***
JAPAN	***	(***)	(***)	(***)
MALAYSIA		(***)	(***)	***
THAILAND	***	(***)	(***)	***
U S A	(***)	(***)	(***)	***
Subject Countries as a whole	***	(***)	(***)	***
	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI*</b>
<b><u>Price Undercutting (%) range</u></b>				
CHINA P RP	10-20	(0-10)	(0-10)	0-10
CHINESE TAIPEI	0-10	(0-10)	(0-10)	0-10
INDONESIA	10-20	(10-20)	(0-10)	0-10
JAPAN	0-10	(0-10)	(0-10)	(0-10)
MALAYSIA	-	(0-10)	(0-10)	0-10
THAILAND	0-10	(10-20)	(0-10)	0-10
U S A	(30-40)	(20-30)	(10-20)	0-10
Subject Countries as a whole	0-10	(10-20)	(0-10)	0-10

\* POI numbers are based on month wise analysis

### **Price suppression and depression**

172. The following table shows the cost of sales of the domestic industry and the selling price of the domestic industry over the injury period and the trends of both sets of figures.

<b>Particulars</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI</b>
Cost to make and sell	Rs./MT ***	***	***	***
Index	<b>100</b>	<b>91</b>	<b>103</b>	<b>126</b>
Increase (Decrease) from	-	(9)	3	26

base year (%)				
Domestic Selling Price	Rs./MT ***	***	***	***
Index	<b>100</b>	<b>105</b>	<b>109</b>	<b>116</b>
Increase (Decrease) from base year (%)	-	5	9	16

173. The Authority notes that while selling price of the domestic industry has increased over the injury period, it was not in proportion to the increase in the cost of sales. Further, the selling price is below the cost of sales in the period of investigation. Hence, there is price suppression occurring of domestic industry prices.

174. The Authority notes that in the case of PVC Suspension Resin production, the main cost driver is the price of the raw material, Vinyl Chloride Monomer ('VCM'). VCM prices have been rising in the international market, from where two of the domestic producers constituting the domestic industry procure VCM. As a result, cost of sales has increased throughout the injury period with the exception of 2008-09. From the information examined by the Authority, prices of VCM have increased over the period after declining in 2008-09.

### **Price Underselling**

175. The Authority has also examined price underselling suffered by the domestic industry on account of dumped imports from subject countries. After due examination, it is seen that the Landed price of the subject goods into India from subject countries has been lower than the NIP determined for the domestic industry resulting in price underselling. The price underselling margin has been determined by taking NIP and landed value on a monthly basis.

<b><u>Price Underselling (summary of monthwise) in POI (US\$/MT)</u></b>				
	<b>CHINA PR</b>	<b>CHINESE TAIPEI</b>	<b>INDONESIA</b>	<b>JAPAN</b>
Price Underselling	***	***	***	***
Price Underselling (%)	***	***	***	***
Index (percentage)	0-10	0-10	0-10	0-10
	<b>MALAYSIA</b>	<b>THAILAND</b>	<b>USA</b>	
Price Underselling	***	***	(***)	
Price Underselling %	***	***	(***)	
Index (percentage)	0-10	0-10	(0-10)	

### **Economic Parameters Relating To the Domestic Industry**

176. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.. The present investigation being a sunset review investigation, Rule 11, dealing with determination of injury applies *mutatis mutandis*. Further, it was examined whether expiry of existing measure is likely to lead to injury to the domestic industry. The various injury parameters relating to the domestic industry are discussed below.

#### **A. Production, Capacity, Capacity Utilization and Sales**

177. The following table shows the performance of the domestic industry in terms of production, capacity, capacity utilization and sales.

<b>Particulars</b>	<b>Unit</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI</b>
Capacity	MT	8,08,320	8,97,745	10,29,320	10,29,320
Production	MT	7,84,884	8,33,651	9,77,797	9,85,559
Capacity Utilization	%	97%	93%	95%	96%
Domestic Sales	MT	7,69,326	8,00,227	9,51,324	9,51,941

178. The domestic industry has claimed that one of its constituents made capacity expansions, which commenced commercial production in 2009-10 and became fully operational in 2010-11 and on account of this the production and sales of the domestic industry increased throughout the injury period. The domestic industry further explained that the increase in production and sales was to be considered in the context of the product involved. As the product is a petrochemical whose production is a continuous process, it is not practical for the producers to suspend production if it does not receive the right price for the product. Additionally, the fixed costs in relation to the product are too high for production and sales to be lowered.

179. The Authority notes that there is an increase in the volume of production as well as domestic sales during the injury period. However, the capacity utilisation of the domestic industry has decreased in the injury period as compared to the base year.

180. ICC Chemical Corporation has argued that the fact that Indian producers like Reliance and Chemplast are expanding and setting up plants implies that imports are not retarding the growth of the domestic industry. In this connection, the Authority notes that the domestic industry has expanded its capacity in the light of the increase in Indian demand for the product. However, it was not in a position to fully utilize its expanded capacity. The mere fact that the domestic industry has expanded its capacity does not imply that the domestic industry is not suffering injury or is not likely to suffer injury in the event of revocation of anti-dumping duty.

## B. Profitability, return on investment and cash profits

181. Information on profitability, return on capital employed and cash profits of the domestic industry is provided below:

Particulars	Unit	2008-09	2009-10	2010-11	POI
Profit/loss before tax	Rs./MT	***	***	***	***
Trend	Index	100	238	169	17
Profit/loss before tax	Rs./lakhs	***	***	***	***
Trend	Index	100	248	208	21
Profit/loss before interest and tax	Rs./lakhs	***	***	***	***
Trend	Index	100	210	177	28
Cash profit	Rs./lakhs	***	***	***	***
Trend	Index	100	231	196	27
ROCE	%	***	***	***	***
Trend	Index	100	156	167	26

182. Profitability of the domestic industry has been determined by considering the cost to make & sell and the selling price. It is noted that profitability of the domestic industry has increased in 2009-10 and thereafter declined. The profitability during POI has steeply declined. Further, as a result of steep decline in profitability, the profit before interest, cash profits and return on investment in POI also steeply declined.

183. With respect to the claim of AIPMA that the domestic industry have wrongly claimed losses since they posted the highest sales realization during the POI, the Authority notes that it has verified the data provided by the domestic industry and finds that profits have deteriorated substantially in the POI.

184. FPC, USA, Tianjin Dagu and Tricon have challenged the profit/loss figures provided by the domestic industry on the basis of information they have obtained from Annual Reports, etc

185. It is noted that the anti-dumping investigations are product specific investigations and not company specific investigation. The Authority has examined the injury parameters after verification of the records of the domestic industry and after the examination; the injury parameters have been analyzed.

### C. Market share

186. The market shares of the domestic industry and imports from subject countries are shown in the table below.

<b>Volume of Imports</b>	<b>Unit</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI</b>
<b>Dumped imports from Subject Countries</b>	<b>MT</b>	<b>1,17,151</b>	<b>1,79,287</b>	<b>1,64,771</b>	<b>1,77,468</b>
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Other countries (EU and Mexico) - under investigation	MT	38,415	71,650	50,386	1,37,638
<b>Trend</b>		<b>100</b>	<b>187</b>	<b>131</b>	<b>358</b>
Other Countries and undumped imports from subject countries	MT	79,747	2,94,799	3,35,311	4,35,921
<b>Trend</b>		<b>100</b>	<b>370</b>	<b>420</b>	<b>547</b>
Total Imports	MT	2,35,312	5,45,736	5,50,468	7,51,027
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Demand	MT	12,08,513	15,30,783	17,30,485	18,80,092
<i>Trend</i>	Index	<b>100</b>	<b>127</b>	<b>143</b>	<b>156</b>
Imports from subject Countries	MT	1,17,151	1,79,287	1,64,771	1,77,468
<i>Trend</i>	Index	<b>100</b>	<b>153</b>	<b>141</b>	<b>151</b>
Share of Domestic Industry in demand	%	65	53	56	52

187. It is noted that the market share of the domestic industry has declined when compared with the base year and the imports from subject countries have increased over the period of injury. The Authority further notes that imports from subject countries have increased despite the imposition of anti-dumping duty.

#### **D. Employment, Productivity and Wages**

188. Figures regarding wages, employment and productivity of the domestic industry are shown below.

<b>Particulars</b>	<b>Unit</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI</b>
Employment	Nos.	***	***	***	***
<i>Trend</i>	Index	100	116	115	115
Productivity per day	MT	***	***	***	***
<i>Trend</i>	Index	100	106	125	126
Productivity per Employee	MT	***	***	***	***
<i>Trend</i>	Index	100	91	108	109
Wages	Rs Lacs	***	***	***	***
<i>Trend</i>	Index	100	105	144	161

189. The domestic industry has claimed that trends with respect to employment and wages are determined by a number of factors, and may not be indicative of dumping. The Authority notes that the number of employees has increased from 2008-09 to 2009-10 but marginally declined thereafter. The wages paid by the domestic industry has also increased over the injury period. Productivity per day, as well as productivity per employee, has showed an increase during the injury period.

#### **E. Inventories:**

190. The average stock or inventory levels of the domestic industry are given below.

<b>Particulars</b>	<b>Unit</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>POI</b>
Average Stock	MT	***	***	***	***
Trend	Index	100	299	395	283

191. It is noted from the data furnished in the Table given above that the average inventory levels of the domestic industry increased till 2010-11 but declined during the period of investigation. However, the levels of inventories with the domestic industry have steeply increased over the injury period.

### **Factors Affecting Domestic Prices**

192. Consideration of the import prices from the subject country and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market shows that the landed value of imported material from the subject country is below the selling price of the domestic industry, causing significant price undercutting in the Indian market. There is no viable substitute to this product. It is also noted that demand for the subject goods was showing significant increase during the injury period and this could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is landed value of subject goods from subject country and cost of raw materials.

### **Ability to raise capital investments**

193. The domestic industry claims that, given the state of affairs of the domestic industry, substantial fresh investments cannot be imagined. It claims that despite significant demand in the Country, the Indian producers find it unviable to invest in desired capacities additions. It is noted that continued dumping of the product and financial deterioration with respect to the product are bound to adversely impact the ability of the domestic industry to raise capital investments. Though the domestic industry is multi-product companies, the adverse impact on the operating performance of the domestic industry on account of this product could affect the ability of the domestic industry to raise capital investment for the subject goods.

### **Growth**

194. The domestic industry has recorded a positive growth in volume terms and a significantly negative growth in financial terms during the past three years. With regard to price parameters, it is noted that the growth in profits, return on investment and cash profits has been negative on year on year basis.

		2008-09	2009-10	2010-11	POI
<b>Growth in</b>					
Production	%	-	6.21	17.29	0.79
Domestic Sales	%	-	4.02	18.88	0.06
Profit	%	-	***	(***)	(***)
Cash Profit	%	-	***	(***)	(***)
ROCE	%	-	***	***	(***)

### Magnitude and Margin of Dumping

195. It is noted that the imports coming into India from the subject countries are above the de minimis level of dumping margin. The dumping margin determined from the subject countries are considered significant.

#### Determination of Injury margin

196. The following is the determination of injury margin in respect of cooperating as well as non cooperating producers and exporters from subject countries. In line with the determination of dumping margins, the injury margin has also been determined for the related companies together taking them as one entity. In addition, the injury margin has also been determined together for a producer exporting the subject goods through various channels ( through different exporters) The injury margin determined are as under:-

Country	Producer	Exporter	IM	IM%	Group IM	Group IM%	IM% range
Taiwan	CGPC Polymer Corporation	CGPC Polymer Corporation	(***)	(***)	***	***	0-10
	China General Plastics Corporation	China General Plastics Corporation	***	***			
	China General Plastics Corporation	Tricon Overseas Inc. USA and Tricon Energy UK LTD	***	***			
	China General Plastics Corporation	<b>Tricon Overseas Inc. USA</b>	***	***			

	Formosa Plastics Corporation	<b>Tricon Energy UK LTD</b>	***	***	***	***	0-10
	Formosa Plastics Corporation	Formosa Plastics Corporation	***	***			
	Ocean Plastics Co Ltd.	Ocean Plastics Co Ltd.	***	***			0-10
	Other than above		***	***			0-10
China PR	Qingdao Haijing Chemical Group Co Ltd.	Qingdao Haijing Chemical Group Co Ltd.	***	***	***	***	10- 20
	Qingdao Haijing Chemical (Group) Co Limited	Tricon Energy UK Ltd., UK	***	***			10- 20
	Yibin Tianyuan Group Co Limited	Yibin Tianyuan Group Co Limited	***	***			10- 20
	<b>Xinjiang Shihezi Zhongfa Chemical Co Ltd.</b>	Xinjiang Tianye Foreign Trade Co.,Ltd	***	***			0-10
	Tianjin LG Dagu Chemical Co., Ltd.	Tianjin LG Dagu Chemical Co., Ltd.	***	***			10- 20
	Tianjin Dagu Chemical Co., Ltd.	Tianjin Dagu Chemical Co., Ltd.	***	***			10- 20
	Shandong Ocean Chemical Chlor – Alkali Resin Co.,Ltd	Shandong Ocean Chemical Imp & Exp Co., Ltd.	***	***			10- 20
	Xinjiang Zhongtai Chemical Co., Ltd	Xinjiang Zhongtai Chemical Co., Ltd	***	***			10- 20
	Tangshan SanyouChlor- Alkali Co., Ltd.	Tangshan SanyouInternati onal Industry Co., Ltd.	***	***			10- 20
	Chiping Xinfu PVC Co., Ltd.	Ningbo Grand international Trading Company	***	***			10- 20

		Limited.					
	Others	Others	***	***			10-20
USA	Formosa Plastics Corporation	<b>Tricon Dry Chemicals LLC</b>	***	***			0-10
	Westlake Vinyl Corporation or Westlake Vinyls Company LP	<b>Westlake Vinyls Company LP</b>	***	***			10-20
	<b>Others</b>	<b>Others</b>	***	***			10-20
Indonesia	<b>All producers</b>	<b>All Exporters</b>	***	***			0-10
Thailand	All producers	All Exporters	***	***			0-10
Malaysia	All producers	All Exporters	***	***			0-10
Japan	All producers	All Exporters	***	***			0-10

**Conclusion on continuation of injury**

197. It is observed that –

- i. The dumped imports of the subject goods from subject countries have increased significantly during the injury period in spite of the anti dumping duties in force.
- ii. The dumped imports have increased throughout the injury period and market share of the domestic industry has declined.
- iii. The performance of the Domestic Industry improved in terms of production and sales. However the performance of the domestic industry has significantly deteriorated in terms of profits, cash profits and return on investment, during the POI.
- iv. The imports have been significantly undercutting the prices of the domestic industry. Besides, these imports were at prices below the NIP determined for the domestic industry.

**Likelihood of continuation/recurrence of dumping and injury**

**Views of the domestic industry**

198. Domestic industry inter alia submitted as follows:

- a. Exports of product under consideration from subject country to third countries are at dumped prices.
- b. A number of third countries have imposed anti-dumping duties on producers and exporters from the subject countries. This is often for long periods of time showing that these exporters have the tendency to continue dumping despite the existence of duties in force.

- c. The volume of exports reported in the previous cases as well as in the current period would show that the volume of imports in case of subject countries have significantly increased despite imposition of anti dumping duty.
- d. As per data obtained from CMAI, producers in subject countries maintain huge capacities to produce subject goods, and freely disposable capacities are estimated to be significant as compared to Indian demand..
- e. In the event of revocation of duty, subject imports would further undercut the prices of the domestic industry. The prices at which subject goods are being imported from subject countries are substantially lower than the price at which the goods are being sold by the domestic industry, making the Indian market extremely price attractive. In the event of revocation of duty, producers/exporters in the subject countries would channelize output to the Indian market.
- f. The June 2011 Harriman Chemsult commentary on the Asian PVC market stated that Japanese output had recovered and this was having a ripple effect on the market with Chinese and US exporters looking to place orders in other markets. It added that there was a downward price trend due, in part, to mounting competition from US material.
- g. An article in ICIS dated 20<sup>th</sup> June, 2011 stated that the US PVC exports increased from 650,000 tonnes in 2005 to 2.7 million tonnes in 2010. US PVC exports are forecast to rise to 40% of total US production this year compared with 32.5% last year, 20% in 2009 and 10.5% in 2007.
- h. An article in Simuch.com dated 9<sup>th</sup> April 2011 stated that there is low domestic demand and excess capacity of PVC in USA. The reason that North America has so much excess capacity is the collapse of the U.S. housing market. This is significant for the PVC market, as around 60 percent of demand comes from construction.
- i. The CMAI report of 2012 stated that China will have capacity of close to 25 million metric tons by the middle of the decade, and account for about 45 percent of the global PVC capacity.
- j. The virtual explosion of Chinese capacity that doubled over the past five years and is forecast to increase by another 20 percent until 2016 has enabled China to become self-sufficient. As PVC supplies begin to exceed domestic consumption requirements, China will become a net exporter with shipments projected to go mainly to India and other countries within the Asian, African and the Middle Eastern regions. Current exporters into the Chinese market, including mainly producers in Japan, South Korea and Taiwan, by then will have to find other export destinations. Slow growth will limit the capacity of their respective domestic markets to absorb the additional supplies.
- k. The subject countries hold significant market share which has increased over the injury period.
- l. Capacities in the subject countries are far more than the domestic demand in these countries.
- m. Capacities in subject countries, domestic demand and their current exports show that the producers in subject countries are having significant export orientation.
- n. Following the imposition of anti-dumping duties, the volume of imports from Indonesia, Japan, Malaysia and Thailand became less significant. The changed behaviour of the exporters is clearly the result of the imposition of duty and in the event of revocation of duty, they will export the subject goods at dumped prices.
- o. The continued presence of dumped imports has prevented the domestic industry from recovering from past effects of dumping. In the event of cessation of current anti-dumping duty, the domestic industry will have to either decrease the selling price further or maintain the current selling price. In either case, it will suffer material injury. In the event of cessation of current anti-dumping duty and if

Domestic Industry chooses to sell at import prices, the Domestic Industry would suffer further financial losses. The return on investment and cash profit would also be significantly negative. In the event of cessation of current anti-dumping duty and if Domestic Industry chooses to maintain the selling price at the same level, the imports volume will increase, thereby causing changes in market share, sales and production volume.

- p. With respect to the argument that the petitioners have failed to show that the disposable capacities are likely to be utilized for exports to India, the demand in subject countries like USA is reducing whereas Indian domestic demand is on the increase.
- q. It has been alleged that the source of the data regarding disposable capacity has not been provided by the petitioners. The petitioners have relied on information in the public domain to calculate disposable capacities in the subject countries. It is based on CMAI and the source of information was provided in the petition filed.
- r. It has been argued that the likelihood of dumping and injury due to subject countries holding a substantial market share is not true since the market share of the subject countries is on a decline since 2009-10. The market share of the subject countries has increased considerably (10%) from the base year and the decrease since 2009-10 is due to the increase in market share of other sources resorting to dumping in the country and the enhancement of capacities by the domestic industry.
- s. The volumes exported by the producers/exporters from the subject countries, along with their production capacity and demand in their home markets show export orientation.
- t. As regards the argument that there is no likelihood of dumping by Hanwha since no duty was imposed in the original investigation on Hanwha, and now its exports constitute only 2% of Indian demand, the fact that it constitutes 2% of the volume of Indian demand is not as relevant as the prices at which its imports are entering the country.
- u. It has been argued that there is no surplus capacity in the subject countries. The rules require authority to consider “freely disposable production capacities” and not “surplus capacities”. Thus, even it is assumed that foreign producers are not having surplus capacities, the foreign producers are clearly having freely disposable production capacities. The exporters have not established availability of other export markets to absorb additional exports. The volumes exported by the producers/exporters in the subject countries have been excluded by the domestic industry when calculating surplus capacity since these can potentially be diverted to India in the event of revocation of duties. In the event of revocation, there will surely be an increase in the volume of the product exported to India as the domestic industry will be completely unprotected from the dumped prices of the foreign exporters.
- v. The prices at which subject goods are being imported from subject countries are substantially lower than the price at which the goods are being sold in the domestic market, making the Indian market extremely price attractive.
- w. The subject countries hold significant market share which has increased over the injury period.
- x. The continued presence of dumped imports has prevented the domestic industry from recovering from past effects of dumping. In the event of cessation of current anti-dumping duty, the domestic industry will have to either decrease the selling price further or maintain the current selling price. In either case, it will suffer material injury. In the event of cessation of current anti-dumping duty and if Domestic Industry chooses to sell at import prices, the Domestic Industry would

suffer further financial losses. The return on investment and cash profit would also be significantly negative. In the event of cessation of current anti-dumping duty and if Domestic Industry chooses to maintain the selling price at the same level, the imports volume will increase, thereby causing deterioration in market share, sales and production volume.

- y. There is no need to consider post POI data in the present case. In fact, any such application would tantamount to enhancing the POI in all the cases. In the present case, the post POI data is not even relevant for the reason that the present case is a case of continued injury suffered by the domestic industry as a result of continued dumping.
- z. One of the parties relied on the investigation concerning imports of Aniline from USA and Japan to state that presence of excess capacities in subject countries does not indicate likelihood of injury. In Aniline from USA and Japan sunset review, imports from USA were found to be entering at prices 'significantly above' the domestic industry NSR and NIP. The Designated Authority found that the price undercutting was negative. Further, the Designated Authority found that there was no price suppression/ depression in the POI. The injury margin was found as negative. Further, the Designated Authority concluded that the domestic industry had not suffered any injury from the imports from the subject countries. Facts of the present case are totally different.
- aa. It has been argued that the petitioners' claims that the Indian market is price attractive and at the same time that there is undercutting is contradictory to the economic tenet producer's equilibrium. The Indian market is attractive since the domestic industry's price is higher than that at which the foreign exporters are selling their product in the Indian market. This implies that the foreign producers find Indian prices lucrative. There is no contradiction.
- bb. One of the interested parties claimed that the price sensitivity of the Indian market implied that it is the nature of the product and the market that is causing the injury and not the imports. The petitioners' contended that the product is price sensitive in the sense that consumers will purchase from those sellers selling at a lower price. The product is the same. Hence, when major exporters quote lower prices, the domestic industry is forced to match these prices so as to sell their product.
- cc. CCAIA relied on the CESTAT case, BASF SOUTH EAST ASIA PTE. LTD vs. Designated Authority, to assert that the Designated Authority cannot include the non-dumped imports into the total volume of imports from the subject countries for assessing injury. CCAIA is misleading the Authority in its interpretation since in that case, the Designated Authority found in the sunset review investigation that the imports from the appellant exporters from Singapore had a negative dumping margin. Further, no price depression was found. Other injury parameters were determined to show no injury to the domestic industry. The likelihood analysis was also found to be 'sketchy'. Clearly, the ratio of this case is inapplicable in the present case where the Designated Authority has not established the dumping margin of the producers/ exporters from Korea RP and Taiwan, or any of the other subject countries is de-minimis.
- dd. The argument of ICC that there is no likelihood of injury since the prices of the subject imports are much higher than the prices of the domestic producers is factually incorrect. The imports from subject imports are undercutting the domestic price.

### **Views of the Exporters, Importers, Consumers and Other Interested Parties**

199. The other interested parties have raised following issues with regard to likelihood of continuation or recurrence of dumping and injury.
- a. There is no likelihood of dumping or injury since there exists no adverse volume effect to the domestic industry from subject countries imports.
  - b. Post POI data has not been sought by the Designated Authority from the exporters or the domestic industry.
  - c. The Designated Authority has held in the past that mere existence of excess capacity in an exporting country is insufficient to conclude likelihood of recurrence of injury.
  - d. The Petitioners' calculation of the disposable capacities is itself questionable due to the fact that the source of calculation and total demand is undisclosed.
  - e. The likelihood of dumping and injury due to subject countries holding a substantial market share is not true since the market share of the subject countries is on a decline since 2009-10.
  - f. As US producers have many export markets, it does not make sense for them to sell at the low prices claimed by the petitioner.
  - g. No duty was imposed in the original investigation and now Hanwha's exports constitute only 2% of Indian demand. This shows there is no likelihood of dumping from Hanwha in the event of no duty.
  - h. There are no surplus capacities in the exporting countries. These countries are operating at more than 90% capacity utilization. The domestic industry has deliberately excluded export volumes by subject countries while computing the freely disposable capacity.

### **Examination of Authority**

200. As regards the argument of domestic industry regarding post POI data, it is noted that the Authority has asked the exporters for post POI information in the form and manner of part II of the exporter's questionnaire and interested parties have also submitted their response to these questionnaire. Further the information pertaining to Post POI period was also asked from the domestic industry. The Authority holds that wherever there is continuation of dumping of subject goods from subject countries and the domestic industry continues to suffer injury because of continued dumped imports from subject countries, further examination of recurrence of dumping and injury to the domestic industry in the event of revocation of anti-dumping duties is not warranted.
201. With regard to cooperating producers and exporters, it was considered that the post investigation period data on injury to the domestic industry is more relevant where the claim of injury to the domestic industry is based on likelihood of recurrence of injury. If the domestic industry has suffered injury during the present investigation period, the same itself is sufficient evidence to conclude on likelihood of injury. With regard to the negative injury margin determined for the USA during the POI, it was examined further whether there would be likelihood of continuation or recurrence of dumping and injury. In this regard, the post POI data in respect of USA was analysed and it was found that the dumping margin as well as the injury margin was positive during the post POI.
202. The present investigation being a Sunset Review, the question of likelihood of dumping and injury to the domestic industry has been examined by the Authority in terms of Section 9 (A) (5) of the Customs Tariff Act, which states as under:-

*(5)The Anti dumping duty imposed under this section shall, unless revoked either, case to have effect on the expiry of five years from the date of such imposition;*

*Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension;*

*Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the Anti dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.*

203. In terms of relevant provisions, the following aspects need to be examined in a Sunset review investigation:

- a. Whether the dumping or/and injury is continuing; and if so, whether it is likely to continue in the event of cessation of the anti-dumping duties;
- b. In case where dumping or/and injury did not continue, whether the dumping would recur in the event of cessation of the anti dumping duties;

204. The AD Rules do not prescribe any specific methodology for examination of the likelihood of dumping or injury in a Sunset review investigation. The Authority holds that in case there is a significantly positive dumping margin in respect of exports of the subject goods during the POI and consequent injury to the domestic industry; then it is likely that dumping and injury would continue in case of cessation of if the anti-dumping duty in force is allowed to expire.

205. The Authority has examined the information regarding the likelihood of continuation of dumping and injury from the producers and exporters from subject countries. The Authority has taken note of the issues raised by the domestic industry and other interested parties in this regard, and dealt with them under the appropriate heading.

#### Parameters Indicating Likelihood of Dumping and injury

206. It is noted that a number of third countries have carried out anti-dumping investigations and imposed anti-dumping duties on producers and exporters of the subject countries. In some cases, imposition of duty has been extended through multiple sunset reviews.

207. In the instant matter, the subject goods have been imported from the subject countries during the period of investigation in significant volumes. In fact, the volumes of the subject goods from the subject countries have been increasing over the injury period. It is noted that these goods have been exported at dumped prices and are significantly undercutting the prices of the domestic industry. In case, the anti-dumping duties are allowed to expire, the volume of the subject goods at

dumped prices is likely to increase. This view is further buttressed, considering the unutilized capacities to produce the subject goods in subject countries as provided by domestic industry on the basis of CMAI report and the anti-dumping measures imposed by other countries against subject countries.

208. The domestic industry has claimed that the reduced volume of imports from Indonesia, Japan, Malaysia and Thailand are a result of the current duties in force. The Authority notes that the quantum of duties imposed on these subject countries was significant.
209. In addition to the examination of present injury, likelihood of continuance or recurrence of injury to the domestic industry has also been examined by the Authority on the basis of information and evidence presented by domestic industry during the course of the investigations. The domestic industry has claimed that the requirement under sunset review is to examine whether expiry of anti dumping duty is likely to lead to continuance or recurrence of injury to the domestic industry. Other interested parties have also raised issues in this regard. Therefore, all such factors brought to the notice of the Authority have been examined to ascertain if there is a likelihood of continuation or recurrence of injury in the event of expiry of the duty.
210. The Authority notes that, at present, injury in the form of volume and price effect of import of dumped subject goods from subject countries has caused deterioration in operating performance of domestic industry. As the domestic injury is currently suffering material injury, it is to be examined whether in the event of revocation of the existing anti-dumping duty, injury will continue. In this respect, the following factors are relevant and have been discussed keeping in mind issues raised by both the domestic industry and other interested parties.
211. The Authority notes that the prices at which the subject goods were entering the country from the subject countries during the period of investigation are lower than the net sales realization of the domestic industry, making the Indian market an attractive destination for exports.
212. The domestic industry has raised the issue that the market share of the subject countries' imports has increased over the period. The Authority notes that dumped imports from subject countries have a considerable market share despite the existence of anti-dumping duties and that this market share has increased in the period of investigation when compared with the base year. If the current duty is revoked, this market share can only be expected to increase.
213. The current injury to the domestic industry indicates that it still suffers from the effects of dumping despite imposition of anti-dumping duties. The Authority holds that where there is current injury to the domestic industry, examination of post-POI data by the Authority is not required to determine whether there is likelihood of dumping and injury in case the duty is allowed to expire.
214. AIPMA has raised the argument that there aren't surplus capacities in the exporting countries. It has alleged that they are operating at 90% capacity, and that the domestic industry has deliberately excluded export volumes from the subject

countries to other countries while computing freely disposable capacity. The Authority notes that even if it was to be expected that the producers in the subject countries exported such a large volume to third countries, nothing prevents them to divert their exports to India once anti-dumping duty is revoked.

### Causal Link

215. The Authority notes that under Section 9A(5), the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the product under consideration during the review investigation period or not. Notwithstanding this, it was examined whether other parameters listed under the AD Rules have caused injury to the Domestic Industry.

#### Imports from Third Countries

216. The Authority has collected the transaction-wise imports data of the subject goods. From the information available on record, the Authority notes that imports from the countries other than subject countries are either at higher prices or subject to anti-dumping duty investigation or at un-dumped prices. As regards the argument of the opposing interested parties that dumping from other countries breaks the causal link, the authority notes that the current investigation being a sunset review investigation, new countries cannot be added to the scope of the present investigation and in any case such imports are being investigated separately.

#### Contraction in Demand

217. The Authority notes that the demand for the product under consideration has shown significant improvement during the injury period. Possible contraction in demand could not have caused injury to the domestic industry.

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#### Trade-restrictive Practices

218. The subject goods are freely importable and there are no trade restrictive practices in the domestic market. The subject goods produced by the domestic producer compete among one another and at the same time compete with the landed price of the subject goods.

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#### Developments in Technology

219. It is noted that the technology for production of the subject goods has neither undergone any material change nor is likely to change in future. Developments in technology, therefore, do not appear to be a possible factor of injury.

#### Export Performance

220. The domestic industry has exported the product under consideration during the relevant period. However, the Authority has considered the performance of the domestic industry with respect to its domestic operations. Hence, the export

performance of the domestic industry cannot be the cause of the injury to the domestic industry.

#### Factors Establishing Causal Link

221. The other interested parties have argued that there is no causal link since there is no correlation between import volumes and the profit/loss, ROI, selling price of the domestic industry. It has also been argued that whenever the import price increased in the POI, the domestic price decreased. As per the consistent practice followed by the Authority, the Authority has compared the landed price of the imports with the net selling price of the domestic industry and the comparison of landed price of imports and the selling price of the domestic industry shows that the landed price of imports was lower than the selling price of the domestic industry. On the basis of the analysis, it is noted that that the imports are (1) undercutting the prices of the domestic industry and (2) imports are suppressing the prices of the domestic industry and preventing them to increase its prices to even at the level of increase in the cost.
222. It has been argued that rising crude prices due to shutdown of a supplier in Japan have led to losses and imports are not responsible. It is noted that these events have led to an increase in world VCM prices and this increase should have reflected in the price of the subject goods. The Authority notes that despite increase in raw material prices, the sales realization of the domestic industry could not increase due to presence of dumped imports.
223. It has been argued by ICC Chemical Corporation that during the period of investigation, the costs incurred by the domestic industry on the procurement of fuel, labour, electricity has increased manifold and the same has contributed to the injury. The Authority notes that the major driver of costs in the manufacture of PVC Suspension is the cost of VCM. The international prices of VCM have increased and therefore this cannot be attributed to the inefficiency of the domestic industry.

#### **Conclusion on Injury and causation**

224. The Authority notes that the domestic industry has suffered material injury as a result of dumping from the subject countries with the exception of Korea RP. There has been an increase in the volume of dumped imports from subject countries throughout the injury period in absolute terms and in relation to consumption in India. The dumped imports were undercutting the prices of the domestic industry in the market. It is also determined that the dumped imports have had significant adverse price effect in terms of price suppression. Further, the dumping margins for the subject countries have been determined and are considered significant.
225. It is noted that dumped imports of subject goods from subject countries have adversely impacted profitability, cash profits and return on investments. Therefore, the Authority concludes that the domestic industry has suffered material injury as a result of dumped imports from the subject countries.
226. The Authority, therefore, holds that material injury to the domestic industry continues to be caused by the dumped imports of subject goods from the subject countries.

#### **A. Indian Industry's Interest & Other Issues**

227. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry by the unfair trade practices of dumping so as to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way; and therefore, would not affect the availability of the product to the consumers.

228. It is recognized that the imposition of anti-dumping duties might affect the price levels of the product manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of the subject goods.

## **B. Conclusions and Recommendations**

229. Having regard to the contentions raised, information provided and submissions made by the interested parties and facts available before the Authority as recorded in the above findings and on the basis of the above analysis, the Authority concludes:

- (a) The product under consideration continues to be imported at the dumped prices from the subject countries except Korea RP
- (b) The domestic industry continues to suffer material injury on account of dumped imports.
- (c) The material injury to the domestic industry on account of dumping of subject goods is likely to continue if the anti dumping duties from subject countries except Korea RP are revoked.

230. The Authority notes that the investigation was initiated and it was notified to all interested parties. Adequate opportunity was given to the exporters, importers and other interested parties to provide information on the aspects of dumping, injury and causal link. Having initiated and conducted an investigation into dumping, injury and the causal link thereof in terms of the Anti-dumping Rules and having established positive dumping margins as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti dumping duty is necessary to offset dumping and injury. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. For the purpose of determining injury margin, the landed value of imports of product under consideration has been compared with the non-injurious price of the domestic like product produced by domestic industry determined for the period of investigation.

231. Accordingly, anti-dumping duty equal to amount indicated in the column 8 of the table below, is recommended to be imposed by the Central government on all the imports of subject goods originating in or exported from subject countries except Korea RP.

Duty Table

SN	Sub heading or Tariff Item	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Currency	Unit
1	2	3	4	5	6	7	8	9	10
1	3904	Homopolymer of vinyl chloride monomer (suspension grade **	Taiwan	Taiwan	CGPC Polymer Corporation	CGPC Polymer Corporation	33.62	US\$	MT
2	3904	Do	Taiwan	Taiwan	China General Plastics Corporation	China General Plastics Corporation	33.62	US\$	MT
3	3904	Do	Taiwan	European Union	China General Plastics Corporation	Tricon Overseas Inc. and Tricon Energy UK Ltd.	33.62	US\$	MT
4	3904	Do	Taiwan	USA	China General Plastics Corporation	Tricon Overseas Inc.	33.62	US\$	MT
5	3904	Do	Taiwan	European Union	Formosa Plastics Corporation	Tricon Energy UK Ltd.	Nil	US\$	MT

6	3904	Do	Taiwan	Taiwan	Formosa Plastics Corporat ion	Formosa Plastics Corporat ion	Nil	US\$	MT
7	3904	Do	Taiwan	Taiwan	Ocean Plastics Co Ltd.	Ocean Plastics Co Ltd.	9.47	US\$	MT
8	3904	Do	Taiwan	Taiwan	Any combination other than above		61.25	US\$	MT
9	3904	Do	Taiwan	Any country except Taiwan	Any	Any	61.25	US\$	MT
10	3904	Do	Any other than subject countri es	Taiwan	Any	Any	61.25	US\$	MT
11	3904	Do  Do	China PR	China PR	Qingdao Haijing Chemica l (Group) Co., Ltd.	Qingdao Haijing Chemica l (Group) Co., Ltd.	139.6 4	US\$	MT
12	3904	Do	China PR	Europea n Union	Qingdao Haijing Chemica l (Group) Co., Ltd.	Tricon Energy UK Ltd.	139.6 4	US\$	MT
13	3904	Do	China PR	China PR	Yibin Tianyuan Group Co Limited	Yibin Tianyuan Group Co Limited	139.5 2	US\$	MT
14	3904	Do	China PR	China PR	Xinjiang Shihezi Zhongfa Chemica l Co Ltd.	Xinjiang Tianye Foreign Trade Co.,Ltd	91.27	US\$	MT
15	3904	Do	China PR	China PR	Tianjin LG Dagu	Tianjin LG Dagu	123.2 7	US\$	MT

					Chemical Co., Ltd.	Chemical Co., Ltd.			
16	3904	Do	China PR	China PR	Tianjin Dagu Chemical Co., Ltd.	Tianjin Dagu Chemical Co., Ltd.	123.27	US\$	MT
17	3904	Do	China PR	China PR	Shandong Ocean Chemical Chlor-Alkali Resin Co., Ltd.	Shandong Ocean Chemical Imp & Exp Co., Ltd.	123.27	US\$	MT
18	3904	Do	China PR	China PR	Xinjiang Zhongtai Chemical Co., Ltd.	Xinjiang Zhongtai Chemical Co., Ltd.	123.27	US\$	MT
19	3904	Do	China PR	China PR	Tangshan Sanyou Chlor-Alkali Co., Ltd.	Tangshan Sanyou International Industry Co., Ltd.	123.27	US\$	MT
20	3904	Do	China PR	China PR	Chiping Xinfu PVC Co., Ltd.	Ningbo Grand International Trading Company Limited.	123.27	US\$	MT
21	3904	Do	China PR	China PR	Any combination other than above		147.96	US\$	MT
22	3904	Do	China PR	Any country other than China PR	Any	Any	147.96	US\$	MT
23	3904	Do	Any country other than Subject countries	China PR	Any	Any	147.96	US\$	MT

24	3904	Do	USA	USA	Formosa Plastics Corporat ion	Tricon Dry Chemica ls LLC	31.22	US\$	MT
25	3904	Do	USA	USA	Westlake Vinyl Corporat ion or Westlake Vinyls Compan y LP	Westlake Vinyls Compan y LP	29.99	US\$	MT
26	3904	Do	USA	USA	Any combination other than above		115.5 4	US\$	MT
27	3904	Do	USA	Any country other than USA	Any	Any	115.5 4	US\$	MT
28	3904	Do	Any country other than Subject countri es	USA	Any	Any	115.54	US\$	MT
29	3904	Do	Indones ia	Indones ia	Any	Any	70.58	US\$	MT
30	3904	Do	Indones ia	Any other than Indones ia	Any	Any	70.58	US\$	MT
31	3904	Do	Any country other than subject countri es	Indones ia	Any	Any	70.58	US\$	MT
32	3904	Do	Thailan d	Thailan d	Any	Any	48.21	US\$	MT
33	3904	Do	Thailan d	Any other than Thailan d	Any	Any	48.21	US\$	MT
34	3904	Do	Any	Thailan	Any	Any	48.21	US\$	MT

			country other than subject countries	d					
35	3904	Do	Malaysia	Malaysia	Any	Any	42.92	US\$	MT
36	3904	Do	Malaysia	Any other than Malaysia	Any	Any	42.92	US\$	MT
37	3904	Do	Any country other than subject countries	Malaysia	Any	Any	42.92	US\$	MT
38	3904	Do	Japan	Japan	Any	Any	14.95	US\$	MT
39	3904	Do	Japan	Any other than Japan	Any	Any	14.95	US\$	MT
40	3904	Do	Any country other than subject countries	Japan	Any	Any	14.95	US\$	MT

\*\* The product under consideration is homopolymer of vinyl chloride monomer (suspension grade) where various polymer chains are not linked to each other. It, however, excludes the specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin.

232. An appeal against the order of the Central Government shall lie before the Customs Excise and Service Tax Appellate tribunal, in accordance with the Act.

(J S Deepak)  
Designated Authority