

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

New Delhi, 6th May 2003

FINAL FINDINGS

Subject: Anti Dumping Investigations concerning Sunset Review of Anti-Dumping Duty on Imports of Pure Terephthalic Acid (PTA) from Indonesia, Korea (RP) and Thailand.

No.14/9/2002-DGAD – Having regard to the Section 9A(5) of the Customs Tariff Act, 1975, as amended in 1995 and the Customs Tariff (Identification, Assessment and Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury), Rules, 1995, thereof:

A. PROCEDURE

The procedure described below has been followed:

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules as per Section 9A(5) of the Customs Tariff (Amendment) Act, 1995 and the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995 initiated Sunset Review to review the need for continued imposition of anti-dumping duty on imports of PTA (Pure Terephthalic Acid) as indicated in the original preliminary findings of the Authority dated 4th September 1997 and the Customs Notification No.85/97 dated 21st November 1997, Final Findings No. 14/1/1996-DGAD dated 19th March 1998 and customs notification No.13/98 dated 28th April, 1998 originating in or exported from Thailand, Indonesia and Korea (RP) (hereinafter referred to as subject countries). A new Shipper review was also initiated on 13th Oct 98 and 12th November 98 for the subject goods originating in or exported from Siam Mitsui PTA Co Ltd and PT Amoco Mitsui PTA Indonesia respectively vide No 7/2/98-DGAD and the final findings were notified on 16th June 1999. The findings of mid term review were notified vide notification no 26/1/98-DGAD dated 29/5/2000 recommending imposition of Anti Dumping Duty on imports of PTA from Korea (RP).
- ii. The Authority notified the initiation of this Sunset review vide Public Notice dated 22nd May 2002 published in the Gazette of India, Extraordinary,

initiating anti dumping investigations concerning imports of the Pure Terephthalic Acid classified under Chapter 29 under Schedule I of the Customs Tariff Act, 1975 as amended in 1995 originating in or exported from subject countries.

- iii. The Authority forwarded a copy of the public notice to all the known exporters (whose details were available in view of investigations conducted earlier) and industry/user associations and gave them an opportunity to make their views known in writing in accordance with the Rule 6(2).
- iv. The Authority forwarded a copy of the public notice to all the known importers (whose details were available in view of investigations conducted earlier) of subject goods in India and advised them to make their views known in writing forty days from the date of issue of the letter in accordance with the Rule 6(2).
- v. The Embassy of the subject countries in New Delhi were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise all concerned exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter and questionnaire sent to the known exporter were also sent to the Embassy of the subject countries in New Delhi in accordance with Rule 6(3). Response was received from M/s. PT Polyprima Karyareksa, Indonesia.
- vi. Request was made to the Central Board of Excise & Customs (CBEC) to arrange details of imports of subject goods made in India during the past three years, including the period of investigation.
- vii. The Authority provided a copy of the initiation notification to the known exporters and the Embassies of the subject countries in New Delhi in accordance with Rules 6(3) supra.
- viii. The Authority sent questionnaire to elicit relevant information to the known exporters/producers in accordance with the Rule 6(4);
- ix. A questionnaire was sent to the known importers/user associations of the subject goods whose details were made available by the petitioner for necessary information in accordance with Rule 6(4). Response / information to the questionnaire was filed by the importer M/s. Indo-Rama Synthetics Ltd. New Delhi.
- x. Information regarding injury was sought from M/s. Reliance Industries Ltd. (RIL), M/s. MCC PTA India Corporation Private Limited and M/s. Bombay Dyeing & Mfg. Co. Ltd., Mumbai. The total cost of production / injury information was furnished by M/s. RIL. M/s. Bombay Dyeing submitted some costing information regarding the product DMT.
- xi. Cost investigation of M/s. RIL, Mumbai was also 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 (GAPP) and the information furnished by the Petitioner.

- xii. An opportunity was provided to all interested parties to present their views orally on 23rd October 2002. All parties presenting views were requested to file written submissions of the views expressed. The parties were advised to collect copies of the views expressed by the opposing parties and offer rebuttals, if any;
- xiii. The Authority kept available non-confidential version of the evidence presented by various interested parties in the forma public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7);
- xiv. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties on 9th April 2003.
- xv. **** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rule.
- xvi. The period of investigation (POI) considered is from 1st April 2001 to 31st December 2001.

B. VIEWS OF THE DOMESTIC INDUSTRY, EXPORTERS, IMPORTERS, USER ASSOCIATIONS AND OTHER INTERESTED PARTIES & EXAMINATION BY THE AUTHORITY

2. The views expressed by various interested parties have been discussed in the disclosure statement. The views which have not been discussed earlier in the disclosure statement and those now raised in response to the disclosure statement are discussed in the relevant paras herein below to the extent these are relevant as per rules and have a bearing upon the case. The arguments raised by the interested parties have been examined, considered and, wherever appropriate, dealt in the relevant paras herein below.

Initiation of Sunset Review

3. The Designated Authority initiated the sunset review investigation of anti-dumping duty imposed on imports of Pure Terephthalic Acid (herein after referred to as PTA) originating in or exported from Indonesia, Korea (RP) and Thailand pursuant to the final findings notification No. 14/1/96 dated 19/3/98 and subsequent review notification No. 26/1/98-DGAD dated 29/5/2000. This sunset review was initiated vide notification no. 14/9/2002-DGAD dated 22/5/2002.

C. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

4. The product considered in this investigation is Purified Terephthalic Acid (popularly known as PTA and referred to PTA hereinafter in this investigation)

5. PTA is classified under customs Sub heading 2917.36 of the Customs Tariff Act 1975 and further classified under ITC 29173600. PTA is a white free flowing powder free from any visual contamination and is used in the manufacture of Polyester Staple Fibre (PSF), Polyester filament Yarn (PFY), Polyester Terephthalate (PET), bottle grade resins and Polyester Filament Yarn film.

6. The substitute for PTA is Di-Methyl Terephthalate (DMT). There are no arguments on the product under consideration. . The detailed technical description of these catalysts is indicated in the original investigation and the related Custom Notifications. Since the present investigation is only a review under Section 9A(5) of the Customs Tariff Act, 1975 as amended in 1995, the Authority holds that the scope of product under consideration is limited to the original investigation as indicated above.

7. Rule 2(d) relating to the definition of like article specifies that like article means an article which is identical or alike in all respects to the articles under investigation or in the absence of such an article, another article having characteristics closely resembling those of the article under investigation. From the first part of the definition of the like article, it is clear that the like article has to be identical or alike in all respects to the article under investigation. The scope of the term like article shall include those articles having closely resembling characteristics to those under investigation only in the absence of article "identical or alike in all respects". Therefore, the usage of the term "in the absence of " is of critical significance for interpretation of the term like article under the statute. There is no dispute that the words " in the absence of " have to be understood in the context of domestic industry alone whether there exists a domestic industry producing the like article or not. In other words, if there is no domestic industry producing identical article, the law permits the Authorities to cover in the scope of the term even those articles, which have closely resembling characteristics. The Authority recalls that during the main investigations DMT was taken as a like article in the context of antidumping investigations in the absence of any domestic industry producing an article identical to PTA.. In the instant sunset review, the Authority notes that there is a domestic industry namely, M/s. RIL producing an article identical to PTA, therefore, the Authority considers PTA produced by the domestic industry as like article to the PTA

imported from the subject countries in this investigation. There are no arguments under the Like article from any of the interested parties.

INITIATION, REVIEW, STANDING AND DOMESTIC INDUSTRY.

Views of Importer M/s. Indo-Rama Synthetics (I) Ltd (IRSL), New Delhi.

8. Indo Rama Synthetics (I) Ltd. (IRSL) wishes to submit that, this PTA Sunset Review case is an extraordinary case. The original case was initiated based on a complaint made by M/s. Bombay Dying & Manufacturing Company Limited (BDML) alleging dumping of PTA but claiming injury on DMT an alleged like product. In the original investigation, the dumping values were determined on the basis of the product PTA whereas the injury analysis was completely based on the domestic industry consisting of the DMT (a roped in like product). Thus, the causal link established was vague and weak with respect of PTA. Noticeably, the oligopolistic producer of PTA in the country M/s. Reliance Industries Limited (RIL) was excluded from the definition of the domestic industry under Rule 2(b) of the Rules 1995, being importer of PTA. However, RIL continued to be the concerned party and absolute beneficiary of the protection granted under the proceedings. The exit and entry of RIL from the definition of domestic industry in the present case has been conspicuous and obviously on the basis of their convenience and not strictly as per the provisions of Law in force.

9. IRSL proceeded with a note of protest on considering M/s RIL as the domestic industry in the sunset review case though they had been expressly excluded as such in the original proceedings. In view of the special circumstances of the original case IRSL considers that in a sunset review the domestic industry definition cannot be completely altered by considering a company, which was expressly excluded from the domestic industry definition and now to exclude all others who constituted domestic industry.

10. IRSL wishes to submit that the initiation of the case under Section 9A(5) of Custom Tariff Act 1995 under Rule 5(1) has been clearly contrary to the express provision of Section 9A(5) and Rule 5(1) supra and is also in violation of the Article 11.4 of ADA 1995, Article 5.8 of ADA 1995, Article 3.2 of ADA and Article 3.7 of the ADA as detailed hereunder.

11. The instant sunset review case is initiated under the provisions of Section 9A(5) of the Customs Tariff Act 1995 which reads as follows:

- a. The anti dumping duty imposed under this Section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:
- b. Provided that If the Central Government, in a view, 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;
- c. 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.

12. Corresponding provision of ADA 1995 are set out in Article 11.3, which reads as follows: "Notwithstanding the provisions of paragraph 1 & 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiated or upon a duty substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

13. It would be clear from a plain reading of the Section 9A(5) and Article 11.3 supra that prior to the initiation of the case under Section 9A(5), the Central Government has to have an opinion while Article 11.3 lays down the condition of the authorities to determine that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. Both the Customs Act 1995 and ADA 1995 places specific duty on the Authorities to arrive at a opinion/determination on the basis of the adequacy and accuracy of the information and evidences prior to the initiation of the case.

Submissions made by the IRSL after the Disclosure statement:

14. On the issue of initiation, standing of the domestic industry and like products, IRSL wishes to reiterate its submissions made earlier in this respect with further observations that DGAD can not over look the provisions of Rule 5(4) which spells out specific procedure to be followed when the investigation is initiated suo-moto.

Views of the M/s. Bombay Dyeing & Mfg. Co. Limited, Mumbai

15. The domestic industry has been immensely benefited in the last four and half years from the imposition of the anti dumping duty. There have been no imports of PTA during the 1st April 2001 to 31st December 2001. We firmly believe that due to the imposition of anti dumping duties, the imports from the subject countries stopped completely. This happened due to the fact that imports from the subject countries are not competitive at fair and non-dumped prices. Therefore, removal of the duties would certainly allowed exporters to resume their exports to India at dumped prices causing injury to the domestic industry. We, therefore, request that anti dumping should continue. It may be noticed that in spite of the anti dumping duty, we had incurred losses for the investigation period.

Views of the Domestic Industry - Reliance Industries Limited (RIL)

16. It has been vehemently argued by IRSL that the scope of the domestic industry cannot change from the original investigation. It has further been stated that since RIL was specifically excluded from the scope of the domestic industry in the original investigation, the Designated Authority is not at liberty to consider RIL as part of the domestic industry. Under Rule 2(b), the term 'Domestic Industry' has been defined as under:

'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 which case (such producers may be deemed) not to form part of domestic industry.

17. It may be recalled that the definition of domestic industry was amended vide Customs Notification No.44/99-Cus(NT) dated 31st May 1999 wherein the word 'shall' was replaced with the word 'may'. It has been brought out by the Hon'ble Designated Authority in its final findings dated 19th March 1998 that RIL stands excluded from the purview of the domestic industry, as it was an importer during the period of investigation. It is important to note that at the relevant time, the law did not give any discretion to the Designated Authority with regard to inclusion or exclusion of any importer from the scope of the domestic industry irrespective of the reasons for which the imports had been made.

18. In the present sunset review, the Designated Authority is required to examine the test prescribed under Section 9A(5) of the Customs Tariff Act for the domestic industry as it exists at the time of such review. There is no indication in the law directly or indirectly, that the injury analysis is required to be restricted only to the domestic industry who had filed the petition for the original investigation. IRSL has

not pointed out any provision of law under which the Designated Authority is restricted to carry out the Sunset Review investigation only in the context of the original complainant. Apart from this legal position, the entire jurisprudence of WTO panel decisions suggest that the injury analysis even in a fresh investigation should be done for a substantial portion of the domestic industry and not restricted to only the complainants.

19. An issue has been raised by IRSL whether the Sunset Review initiated under Section 9A(5) of the Customs Tariff Act has been initiated on the basis of a complaint made by domestic industry under Rule 5(1) or suo moto under Rule 5(4) of the Anti-dumping Rules. We are shocked to see the averments made by IRSL imputing statements to the office of the Designated Authority which were never made. It appears that IRSL is surreptitiously trying to create facts for ulterior motives. We request the Hon'ble Designated Authority to take serious note of such submissions.

20. As regards the legality of the argument made by IRSL, we draw the kind attention of the Hon'ble Designated Authority to the provisions of Section 9A(5) of the Customs Tariff Act which casts a responsibility upon the Hon'ble Designated Authority to review the need for continuation of anti dumping duties if the conditions mentioned therein are met with. In fact, duties would cease to exist after a lapse of five years if the Designated Authority (D.A.) does not initiate an action to extend it further under the provisions of Section 9A(5) of the Customs Tariff Act. Since the responsibility rests entirely with the D.A., there is no provision made under Section 9A(5) for the domestic industry to request for the initiation of a Sunset Review. In fact, the representative of the IRSL has attempted to read the provisions of Rule 5 into Section 9A(5) of the Customs Tariff Act whereas no such linkage is envisaged under the present scheme of the Act and the Rules. It is our respectful submission that the intention of the Legislature is primarily to be gathered from the plain language used, which means that attention should be paid to what has been said as also to what has not been said. Had the intention been to initiate a Sunset Review only at the instance of the domestic industry, then the legislature would have categorically made the provisions of Rule 5 applicable to a review case under Section 9A(5) also. Thus, it is abundantly clear that Section 9A(5) is a self-contained provision with regard to 'Sunset Reviews' or 'Expiry Reviews' and there is no linkage with Rule 5(1) or Rule 5(4) as being sought to be made out by IRSL.

21. As aforesaid, the rights and obligations of Sunset Review under Section 9A(5) of the Customs Tariff Act vests only in the DA as is evident from the language employed by the Legislature. It is the discretion of the Designated Authority whether or not to review the need for continuation of anti-dumping duties.

22. In the instant case, it may be recalled that the DGAD vide its letter dated 27th March 2002, sought comments from RIL regarding the need for continuation of anti dumping duties and the requirement of review under Section 9A(5) of the Customs Tariff Act, 1975. RIL vide its letter dated 17th April 2002, informed the Designated Authority about its interest in proforma in which information is to be supplied by the domestic industry to assist the DA to arrive at appropriate findings under Section 9A(5), of the Customs Tariff Act. Thereafter, the DA in exercise of its powers under Section 9A(5), initiated review under notification dated 22nd May 2002. RIL as a part of the domestic industry submitted information to the DA as called for in para 6 of the initiation notification dated 22nd May 2002, to enable the DA to examine the need for continuation of duties. It appears that IRSL has completely misguided itself in presuming that the letter of interest by RIL in response to an inquiry by the Designated Authority or information supplied in response to initiation notification can be considered as a complaint. In fact, the absurdity of the presumption is writ large from the fact that the so-called complaint is subsequent to initiation of sunset review. Even the letter dated 17th April 2002 is merely seeking clarification from the office of the DA about the proforma in which information is to be provided and expressing interest that the DA should exercise powers to review under Section 9A(5) of the Customs Tariff Act. It is also interesting to note that IRSL in its written submissions (para 2.09 & 2.10) dated 1st November 2002 have themselves stated that there has been no formal complaint by the domestic industry in stark contradiction to the averments made in the earlier paragraphs of the said written submissions. In the aforementioned premises, the reference of IRSL to the present initiation as 'illegal' is itself, ironically, wholly devoid of legal basis and factual substance.

Examination by Authority

23. It is confirmed by the Authority that it has initiated sunset review in exercise of the powers vested under Section 9A(5) of the Customs Tariff Act 1975 as amended on 22nd May 2002. The Authority recalls that under the rule 4 (i)(e) of the Anti Dumping Rules, It shall be the duty of the Designated Authority to review the need for continuance of the Anti Dumping duty.

24. As regards the observations made by some interested parties that the requirements of the review are required to be fulfilled with respect to Article 5 of the Agreements of the Anti Dumping, the Authority recalls that under the Rule 23 (3) of the Anti Dumping rules made under the provisions of the Customs Tariff Act 1975 as amended, the provisions of the rules 6,7,8,9,10,11,16,17,18,19,and 20 shall be mutatis mutandis applicable in the case of the review. This provision does not include Rule 5(1) so, it can be concluded that there can not be a linkage between the Rule 5(1) and Rule 23 in so far as review is concerned. Moreover, it is noted that Section 9A(5) is a self-contained provision with regard to 'Sunset Reviews' or 'Expiry Reviews' and

there is no linkage with Rule 5(1) or Rule 5(4) as being sought to be made out by IRSL. As per 11.3 of the Anti Dumping Agreements, "Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury

25. Hence as per the above provisions it is seen that the main observation of the Authority in the sunset review is to examine on their own initiative that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The Authority in this case had called for certain information in its letter dated 27th March 2002 from the RIL (which was taken as the domestic industry during the earlier mid term review). RIL vide its letter dated 17th April 2002, informed the DA about its interest in the continuation of anti-dumping duties and also enquired about the proforma in which information is to be supplied by the domestic industry to assist the DA to arrive at appropriate findings under Section 9A(5) of the Customs Tariff Act. Thereafter, the DA in exercise of its powers under Section 9A(5) has initiated review under notification dated 22nd May 2002.

26. As regards the standing issue, it is observed that the Authority has in exercise of its powers under Section 9A(5) has initiated review. M/s Reliance Industries Ltd (RIL) though excluded from the scope of the domestic industry in the main investigation was considered as the interested party in this case with reference to rule 2© of the Anti Dumping rules. As per Rule 2(b) of the Anti Dumping Rules, the Domestic Industry means the domestic producers as a whole engaged in the manufacture of the like article and any". Here the Authority proposes to take PTA manufactured by the Reliance Industries Ltd as the like article to the PTA imported into India from the subject countries. The Authority further notes that M/s RIL has not made any imports during the POI in this review and it is also observed that M/s RIL is the largest (having more than 50% of the domestic production) producer of the PTA, the subject goods, and has been taken as the domestic industry in the mid term review earlier by the Authority. The Authority, therefore, treats M/s RIL as the domestic Industry within the meaning of the rule 2(b) of the Anti Dumping rules in this sunset review.

Dumping:

Views of Importer M/s IRSL

27. Without prejudice to the argument of illegal initiation of the sunset review, IRSL now wishes to deal with merits and maintainability of this case and submits that as per the questionnaire response of RIL filed on 18th July 2002 itself, there are two admissions:

- i. that there has been no import of the product concerned during the investigation period from the countries against whom the case has been initiated i.e. Korea, Thailand and Indonesia; and
- ii. Further, RIL has also admitted that during the investigation period that the product concerned has not been imported from any other country also. RIL also confirmed that whatever imports that took place even before the investigation period were under Advance License, not posing any commercial competition to domestic producers.

28. Since there are no imports at all during the investigation period as per RIL admission itself, there is no continuance of any dumping, causing injury during the investigating period selected by DGAD at the behest of so-called petitioner. The imports of the product under investigation from the countries is nil which is diminimus under provision of rule 14(d).

29. These being the facts case the investigation deserves to be terminated forthwith as prescribed by the rules 14 (d) of the rules 1995.

30 . IRSL also wishes to submit that in the case of Low Carbon Ferro Chrome (LCFC) case No.44/1/99-DGAD, the Designated Authority had itself determined that in absence of any imports during the investigation period neither there is a continuance nor there is threat of recurrence of dumping and, therefore, the case could not be maintained.

31. The whole case has been initiated on the basis of presumption, presuppositions and wishful thinking without any information or evidence capable of being examined for adequacy and accuracy at the time of initiation of the case mainly on the following factors:

- i. That there will be significant import that will take place from the subject countries (no evidence submitted).
- ii. That the prices of such imports from the subject countries will necessarily be the dumped prices (no evidence submitted).
- iii. That the imports that will take place from the subject countries will have a causal effect on the domestic industry, which will necessarily, suffer injury due to such imports (no evidence submitted).

- iv. That either no imports will take place from other countries or if they take place, they will be at non-dumped prices, or insignificant to have any negative impact on the domestic industry (no evidence submitted).

Views of Domestic Industry – M/s. RIL.

32. Though we do not have the exact cost details of these producers who are dumping the product, as these would be trade secrets and not disclosed. Based on the global PTA manufacturing cost analysis carried out by M/s. DeWitt. & Co. (USA), the normal value of PTA is calculated for the POI. Though the cost studies carried out by DeWitt & Co. is in 1997, there are no changes in cost except for the cost of two principal raw materials i.e. Paraxylene and Acetic Acid.

33. RIL has obtained the statistics from Ports with regard to the imports of PTA. It is interesting to note that there have been no imports of PTA from the subject countries during the period of investigation in the domestic market. There have been some imports against advance licenses which are not relevant for the purpose of this review investigation in view of the fact that PTA imported against advance licenses is not subject to anti dumping duties as they do not enter the commerce of the country.

34. It may please be seen that under Section 9A(5) of the Customs Tariff Act, the maximum period for which anti dumping duties can be levied is restricted to five years. However, in terms of proviso to this sub section (5), the DA may extend from time to time the period of such imposition for a further period of five years provided it is of the opinion in a review that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury. In this section, we are providing information with regard to the massive exportable surpluses in the subject countries, which would clearly indicate that the same would find their way into India if the anti dumping duties are removed.

35. We would also like to state here that the fact that there have been no imports of PTA during the course of the period of investigation from the subject countries is itself indicative of the uncompetitive nature of the prices of these countries. The cessation of the anti dumping duties on imports from the subject countries would certainly result into recurrence of dumping. It is respectfully submitted that the fact that there have been no imports during the period of investigation is of no consequence in as much as the only test required to be examined by the DA is the ‘test of recurrence’, which in the instant case is adequately satisfied.

Views of Exporter - M/s. PT Polyprima Karyareksa

36. We make this submission on behalf of PT Polyprima Karyareksa following the public hearing at Udyog Bhavan on 23rd October 2002.

37. Section 9A of the Customs Tariff Act ("the Act") which has its origin in Article 11 of the WTO Anti-dumping Agreement ("the Agreement"), provides that antidumping duty shall cease to have effect on the expiry of five years from imposition unless the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to a recurrence of dumping and injury.

38. It is not possible that the Central Government could reach an opinion in this review that the cessation of antidumping duty in relation to imports of PTA from Indonesia is likely to lead to a recurrence of dumping and injury. There have been no imports of PTA from Indonesia since 1999 and there is no positive information available to the Central Government, which demonstrates that there is even a likelihood that imports from Indonesia will recur, let alone the likelihood that there will be a recurrence of imports from Indonesia at dumped prices in the absence of antidumping duty. There is no reasonable basis upon which the Central Government can be satisfied that recurrence of dumped imports from Indonesia is likely in the absence of anti dumping duty. That there may be recurrence of imports of the goods concerned from Indonesia is mere conjecture and has no factual basis.

39. In its written submission to this review and in its oral Presentation to the public hearing, domestic producer Reliance Industries Ltd. has asserted that cessation of anti dumping duty is likely to lead to a recurrence of dumping but has provided no information of any change in circumstances which would reasonably lead to the Central Government forming an opinion that a recurrence of dumping from Indonesia is likely. The language of the Act and the Agreement make it very clear that there must be a demonstrated probability that cessation of antidumping duty will lead to recurrence of dumping. It is not enough that there is a remote possibility that dumping will recur in the absence of anti-dumping duty.

40. Reliance Industries Ltd. asserts that the fact that there have been no imports during the period of investigation is of no consequence and that the "test of recurrence" is inadequately satisfied. It is of note that in the two years immediately following the imposition of the antidumping duty imports from Indonesia continued but in the past three years there have been no imports from Indonesia. It is, therefore, cannot be assumed that it is the antidumping duty which has caused the cessation of imports from Indonesia.

41. It is also of significant note that the complainant in the original investigation, which brought the imposition of the anti dumping duty, M/s. Bombay Dyeing, has

made no submission to this review and appeared to have attended the public hearing at the behest of another party.

42. In summary, there is no evidence available to the Central Government which could reasonably lead to an opinion that cessation of anti dumping duty on imports of the goods concerned from Indonesia is likely to lead recurrence of imports of those goods from Indonesia at dumping prices. That there will even be recurrence of imports per se from Indonesia is mere conjecture.

Comments by M/s PT Polyprima Karyareksa to the disclosure statement

43. The domestic industry has failed to provide the Designated Authority with anything of substance in support of its claim that in the absence of anti-dumping measures there will be a recurrence of imports from Indonesia at dumped prices. It asserts that "the cessation of anti-dumping duties from the subject countries would certainly result in recurrence of dumping" but provides nothing but rhetoric to support its assertion. The domestic industry's case concerning the recurrence of dumping seems to rely on its assertion that there are massive exportable surpluses in the subject countries and there have been no exports to India during the period of investigation. This surely does not demonstrate the likelihood of the recurrence of exports to India at dumped prices in the absence of anti-dumping measures. We share the Authority's view that a recurrence of dumping on account of cessation of anti-dumping duty is not conclusive. We believe that this view must lead to a conclusion that Designated Authority cannot be satisfied that the cessation of anti-dumping duty is likely to lead to a recurrence of dumping.

Examination by Authority

Dumping

44. The Authority sent the exporter's questionnaire to the known exporters of PTA for the purpose of determination normal value in accordance with 9A(1)C. However, none of the exporters mentioned in the main investigation responded to the Authority. The Authority, therefore, holds that the exporters from the subject countries have not cooperated with the Authority as envisaged under the Rules. The Authority also holds that the primary responsibility to establish normal value of PTA rests with the exporters/producers who have failed to cooperate with the Authority.

45. The Authority also sent the importers' questionnaire to the known importers of PTA. Only one of the importers viz. M/s. Indo Rama Synthetics limited, have responded to the Authority.

46. As regards the export price, the Authority notes that none of the exporters/importers have furnished any export data of the subject goods from subject countries. The authority notes the contention of the domestic industry that there have been no imports of PTA from the subject countries during the POI in the domestic market. The domestic industry has also added that there have been some imports against advance licences which are not relevant for the purpose of this review investigation in view of the fact that PTA imported against advance licences is not subject to anti dumping duties as they do not enter the commerce of the country.

47. For the present investigation, a request was made to DGCI&S Calcutta to furnish details of imports of the subject goods originating in or exported from subject countries during the POI. DGCI&S have now also confirmed that there is no import trade of the PTA during the POI from the subject countries.

48. After examining the statistics furnished by the DGCI&S and claim of the industry, the authority concludes that no exports has taken place of the subject goods from the subject countries to India during the POI. In the absence of exports from the subject countries, the Authority does not propose to estimate the average export price of the subject goods from the subject countries to India during the POI.

49. The Authority, therefore, holds the view that under such a situation, a recurrence of dumping on account of cessation of anti dumping duty is not conclusive and therefore, does not consider it appropriate to evaluate the normal value with respect to the subject goods from subject countries. The Authority is of the view that as there are no exports of subject goods from the subject countries in India during the POI, there is no dumping of subject goods and in view of the absence of export price of the subject goods to India during the POI, the Authority is unable to determine the dumping margin in pursuance of the principle laid down in Para 6 of the Annexure I to the Rules.

INJURY

Submissions made by the Domestic Industry

50. As indicated, the test that is required to be applied by the DA in a sunset review case is to examine the likelihood of continuation or recurrence of dumping and injury in terms of Section 9A(5) of the Customs Tariff Act. Therefore, the parameters and the tests applicable for assessment of material injury cannot be applied in the case of sunset review. In this connection, attention of the DA is also invited to the ruling of the Hon'ble CEGAT in the case of IBB from China PR (citation 2001 (127) ELT 629 (Tri-Del). However, since there is no separate proforma prescribed by the DA for a sunset review case, we are providing the requisite information in proforma IVA.

Notwithstanding, our basic submission that the Application Proforma for new cases is not appropriate for a sunset review case, we would indeed like to bring to the attention of the DA that the domestic industry has benefited by the imposition of anti dumping duties on imports from the subject countries.

51. The domestic industry during the period of investigation has sold PTA at an average price of Rs.**** per MT. The domestic industry has been able to sustain the existing price level primarily on account of the existence of anti dumping duties. The performance of the domestic industry can be seen from the various economic and financial parameters as indicated.

52. While the annualized production has marginal declined during the period of investigation over 2000-01 from ****/ MT to ****/ MT, the domestic industry has still been operating at a high capacity utilization level of ****%. As regards the quantum of sales, there has been an appreciable increase even though the sales have declined in value terms. The domestic industry has also been able to earn some profits on its sales even though the net sales realization has been low resulting in a lower level of profitability.

Import of PTA from Indonesia, Thailand And Korea		
	Qty (MT)	CIF \$/MT
99-00	2021	422
00-01	3955	456
2001-02	NIL	NIL

53 As a result of present review, in the unlikely event that the anti dumping duties are withdrawn, the prices of imported PTA from the subject countries would be landing at prices lower to the extent of the incidence of anti dumping duties. As a result, the Indian industry would also be required to bring down the prices to the same extent, which would wipe out the entire profit of the industry. This would take the domestic industry to a situation, which existed prior to the imposition of anti dumping duties.

54 The expected fair price during POI for RIL with a reasonable return on its investment works out to Rs.****/MT. The withdrawal of anti dumping duties will certainly result in price depression, price suppression and eventual loss or severe loss of reasonable profit, which are more than sufficient to justify the continuation of anti dumping duties on the imports of PTA from the subject countries.

Injury Information to the Domestic Industry			
Parameters/Years	99-00	00-01	POI (A)
Installed capacity Index	100	100	100
Production Index	100	101	99
Capacity Utilisation Index	100	101	99

Sales Indigenous Index	100	86.15	90.86
Exports sales Index	100	296.32	184.43
Captive consumption Index	100	98.57	73.81
Opening stocks Index	100	79.12	76.6242
Closing stocks Index	100	96.85	100.883
Profit Index	100	101.7391	81.0172
Employment Index	100	100	100
Market Share Index	85%	79%	73%

Submissions made by the Domestic Industry after Disclosure

55. In connection with, we would like to submit that we have given sufficient data and cogent reasoning to substantiate our case of extension of anti-dumping duties on imports of PTA for another five years. In this regard, we had also furnished the jurisprudence as has developed in European Union and the USA. It clearly emerges that the fact no imports have taken place from the subject countries in the immediately preceding period can never be a basis of arriving at a conclusion that there is no case for extending the duties. We would humbly request the Hon'ble Designated Authority to kindly take all the submissions made by us at the time of the public hearing and also the additional submissions dated 17th January 2003 before a final decision is taken.

Submissions made by the Importer M/s Indo Rama Synthetics (I)Ltd

56 IRSL wishes to submit that the instrument of Anti Dumping Duty is not prescribed for providing protection per se unless there are positive evidence of significant imports taking place or likely to take place at the dumped prices causing injury to the domestic industry. This instrument cannot be invoked on mere surmises, conjectures, presuppositions and allegations not supported by positive evidences.

57. It is submitted that there are no positive evidences provided by RIL, which lead to any remote reference on recurrence of dumping or injury. The possible positive evidence could have been order, LC, quotations, invoices for import from the alleged countries or even enquiry. In absence of all these positive evidences the pre-supposition of recurrence is only wishful and presumptions.

58. If PTA has to be considered separately as independent Product which supposedly is in the present sunset review case as announced by DGAD during hearing, then capacity which stood **** Lac MT at the time of the initiation of the case has risen to **** Lac MT which shows increase of ****% in installation capacity. The production has shot up from **** lac MT to **** lact MT, a phenomenon growth of ****%. Capacity utilization for the same period has gone up from ****% to ****%, a growth

of ****%. In fact, production of PTA has reported to be even higher than the installed capacity.

59. On the price front during the period of imposition of anti Dumping duties i.e. from April 1998 to October 2002 the prices of PTA per kg have shot up from Rs.**** per kg. To Rs. **** per kg, an increase of ****%, as compared to protection granted between ****% to ****%. Even increase in prices during investigation period s(average price during investigation periods is Rs.**** per Kg.) are ****% higher than the prices when anti dumping duty was imposed. This price comparison is based on RIL's own prices lists available on website. All these positive evidences are there pointing towards substantial growth and strength of the domestic industry whereby wishful threat of recurrence is nothing more than a day dream without an iota of evidence and therefore on this account the case deserves to be terminated.

60. Views of M/s IRSL after Disclosure statement: There is neither any dumping during POI nor there are any chances of recurrence of dumping in future. There is neither any injury established during POI nor there are any foreseen chances of recurrence of injury or any other established factors as per Annexure II generally and sub-rule VII of Annexure II of Ant-dumping Rules. The only unsubstantiated submission made by Domestic Industry is allegation of massive exportable surplus without any proofs of facts, of its possibility of exports to India like enquiries, purchase orders, expression of interests, confirmed orders, LC's and allied documents. There is merely an allegation, conjecture and refers to an extremely remote possibility. The fact is that there have been no exports of PTA to India during POI even from non-target countries despite reduction in custom duties and Nil Anti-Dumping Duties. In the light of above, IRSL, while reiterating the submissions already made earlier, submits that the examination leads to a conclusion of no material threat or recurrence of injury.

Views of M/s MCC PTA India Corp. Private Ltd :

61. The price trend of the PTA is already moving downwards from August 2002 in the international market as well as in the domestic market. 4 million tones of extra PTA would become available in the international market in the next year due to the commissioning of new plants and also due to the capacity expansion of the new plants. This poses a material threat of injury to the Indian PTA producers. Thus revocation of the anti Dumping duties would result in the dumping and recurrence of serious injury.

Views of M/s MCC PTA India Corp. Private Ltd after Disclosure

62. With the recent addition of capacities, supply of PTA has outgrown the corresponding demand in the international market. The market imbalance has further been aggravated by the drastic reduction of operation since March 2003 by the Chinese polyester manufacturers, the main importing market of PTA which absorbed more than 4 million tons of imported PTA in the year 2002. Consequent to such reduction of PTA demand in China, a huge quantum of PTA is floating in the Asian market and the threats of dumping looms large in the domestic market.

Examination by the Authority:

63. The Authority notes that as per Section 9A(5) of the Customs Tariff Act, 1975 as amended in 1995 " the anti dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provides further 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".

Also under Rule 11 supra, Annexure-II, when a finding of injury is arrived at, such finding shall involve determination of the injury to the domestic industry, "taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...." In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. have been considered in accordance with Annexure II (iv) of the rules supra.

Since under the present investigation it is to be evaluated as to whether cessation of anti dumping duties would lead to continuance or recurrence of dumping and injury, the Authority has considered appropriate injury parameters as indicated in Annexure II(iv) of the Rules supra to evaluate this aspect.

64. The Designated Authority is required to examine whether the cessation of the existing duty is likely to lead to continuation or recurrence of dumping and injury. The injury to the domestic industry is, therefore, required to be examined in the context of its continuation or recurrence. Further, existence of anti dumping duty in force is required to be kept in view while examining the injury to the domestic industry.

65. The Authority has gone through the submissions made by the domestic Industry and the importer as mentioned above. The Authority notes that there have been no imports of subject goods from any of the subject countries during the POI. In view of this fact the Authority notes that there has been no volume injury to the domestic Industry during these periods.

66. M/s RIL, the domestic Industry has claimed that the domestic industry has been able to sustain the existing price level primarily on account of the existence of the Anti dumping duties. The domestic Industry has also claimed that their quantum of sales have increased though the sales have decreased in the value terms. They have also added that the expected fair price as worked out by them is Rs ****/MT during the POI for the subject goods and withdrawal of the Anti dumping duties would certainly result in price depression, suppression, and eventual loss or severe loss of reasonable profit which are more than sufficient to justify the continuation of Anti Dumping duties on the imports of PTA from the subject countries.

67. As regards the price injury, the Authority has examined the various injury parameters as per the Annexure II of the Rules of the Anti Dumping. (i) Volume of Imports and Market Share: It is claimed by the domestic industry that there has been no imports of the subject goods during the Period of Investigation from the subject countries. The Authority has examined the volume of imports from the subject countries as made available by the DGCI&S and concludes that there has been no import of the subject goods from the subject countries during the POI. From the information made available to the Authority, It is noted that the market share of the domestic industry has declined from 80% in 99-00 to 64% during the POI. The demand of the subject goods has not shown any significant change during POI and previous two years. For calculating the demand, the Authority has taken into account the sales of the domestic Industry, production of other producers as made available by the domestic Industry (None of the other producers has submitted any relevant data) and volume of imports into India.

Market Share			
	99-00	00-01	2001-02A)
Domestic Ind %	80.92	69.97	64.98
Others producers %	14.61	29.01	35.01
Imports %	4.47	1.01	0

- i. Capacity Utilisation: The Authority notes that their capacity utilization has increased during the POI as compared to previous years. The Authority notes that capacity utilization of the subject goods continues to be high during the POI as also during the previous years.
- ii. Production: The production of the subject goods has shown a marginal improvement during the POI as compared to earlier periods. The Authority notes that the domestic industry has been able to achieve high production during the POI and previous years.
- iii. Sales Volumes: Sales have declined in terms of quantity and value during the POI as compared to previous years. They have declined by ****% in quantity and ****% in value from 1999-00 to 2000-01. However, the sales volumes have shown an upward increase by ****% in term of quantity from 2000-01 to POI.
- iv. Exports: The domestic industry has been able to achieve a significant export growth during the POI in terms of quantity as well as value over 99-00. In fact, the domestic industry has increased export sales of ****% in terms of quantity and ****% in terms of value over 99-00.
- v. Opening Stock & Closing Stocks: The opening stock has considerably declined during the POI as compared to year 99-00 while the closing stock has remained largely the same.
- vi. Profit/Loss: The profitability of the domestic industry has declined during the POI as compared to the year 99-00.

68. The Authority has taken into account the aforesaid indices regarding injury and the existing anti-dumping duty on PTA imports, while doing the final determination so as to arrive at conclusions as to whether the withdrawal of existing anti-dumping duty is likely to lead to continuation or recurrence of dumping and injury.

While determining the non-injurious price for the like articles for the domestic industry, the Authority has used the actual cost of production of the subject goods to determine optimum cost of production for the domestic industry which would take into account the normated best consumption norms and the actual price of the raw materials which are consumed for the production of the subject goods during the period of investigation.

69. The Authority notes that the Net Sales Realisation of the subject goods has not been below the NIP during the POI so there has been no underselling of the subject goods by the domestic Industry.

70. The Authority further notes on the basis of the information provided by domestic Industry and other interested parties that domestic industry has not suffered any price undercutting and price suppression for the POI, as there has not been any imports of the subject goods from the subject countries. In view of the above, it can be concluded that the domestic industry has not suffered any material injury during the POI on account of imports from subject countries. The decline in the market share and profitability for the domestic industry may have happened on account of internal competition from the other domestic producer of the subject goods and therefore there does not appear to be enough evidence to suggest that cessation of anti dumping duty would cause recurrence of injury and dumping.

71 As per the section 9A(5) of the Anti-Dumping Rules, in the case of Sunset Review, the Central Government has to form an opinion that the cessation of anti dumping duty is likely to lead to continuation or recurrence of dumping and injury. M/s. Reliance Industry has claimed that in the absence of antidumping duty on the subject goods, the domestic industry would be forced to reduce its price immediately to the extent ranging from Rs.1695 PMT to Rs.3375 PMT. It has also been claimed that withdrawal of anti dumping duty would result in the landed price of the subject goods becoming less than the net selling price of the domestic industry. This would result in price depression, price suppression and eventual loss of reasonable profit, which are more than sufficient to justify the continuation of the anti dumping duties on the imports of PTA from the subject countries.

72 The domestic Industry has also drawn the attention of the Authority towards the provisions of De minimus dumping margin and De minimus volumes indicating that these are not applicable to the Sunset review cases under Rule 23(3). Further they also aver that Rule 14 has not been made applicable in cases of Sunset Review under Rule 23(3). They have also drawn the attention of the Authority towards the judgment made by Hon'ble CEGAT in the case of IBB wherein the Order States that Designated Authority should record a finding that import of dumped articles into India causes or threatens material injury to any established industries in India. As a result of this provision, Designated Authority was bound to examine whether import of IBB from China PR will threaten material injury to any established industry in India in case the anti-dumping duty, which was in force, is discontinued. It was further held by the CGEAT that as a consequence to the imposition of anti dumping duty on IBB imported from China, the domestic industry might not have suffered any injury during the present period of investigation. When the anti dumping duty is discontinued would any threat of material injury to Indian Industry recur.

73 The domestic industry has further drawn the attention of the Authority towards the WTO Panel Decision on the Issue of De-minimus or no imports in case of US-Drams from Korea. The Panel examined the text of Article 11.2 of the Anti-Dumping Agreement and rejected Korea's assertion that Article 11.2 requires immediate revocation of anti dumping duty as soon the importer is found to have ceased dumping and that the continuation of an anti-dumping duty is precluded a priori in any circumstances other than where there is present dumping. The Panel further noted that the Sunset provision of Article 11.3 envisages a determination of whether the expiration of an antidumping duty would lead to a continuation or recurrence of dumping.

74 The authority notes that none of the exporters has participated in this investigation except M/s. P.T. Polyprima, Indonesia. However, the cooperating exporter M/s. PT Polyprima, Indonesia had not exported any subject goods from Indonesia during the POI and previous years and nor they have participated in the earlier investigations. From the import statistics made available by DGCI&S Kolkata, the domestic industry and the importer, the authority notes that import of subject goods from countries other than the subject countries have declined from 63648 MT during 1999-00 to NIL MT during the POI. Even the imports from the subject countries have declined from 2021 MT during 1999-00 to nil during the POI. It has been claimed by the importer that even higher imports during the earlier periods have all been routed through advance license. The Authority finds it significant to note that imports from even countries other than subject countries have declined to NIL during the POI.

75 The Authority, therefore, does not find merit in the submission of domestic industry that their net selling price of the subject goods would get reduced to the extent of anti dumping duty which had earlier been imposed during the original as well in the review investigations, if the authority revokes the anti dumping duty in this present sunset review. The Authority notes that even in the absence of anti dumping duty from countries other than subject countries, no imports have been taken place with respect to subject goods. The Authority further notes that the decline in the imports from the countries other than subject countries has happened despite reduction in the customs duty. It is also noted by the Authority that demand of the subject goods in India has not shown any significant change during the POI as compared to previous years. The Authority, therefore, notes that there is no basis for the domestic Industries claim that in the absence of Anti Dumping measures there will be a recurrence of imports from the subject countries and consequent injury to it. The Authority therefore cannot conclude reasonably that existence of Anti Dumping Duty has caused the imports to decline to zero from the subject countries when the imports from countries to which no Anti Dumping duty applies have similarly declined to zero.

76 In line with the observations made by the CEGAT, the Authority has further analyzed the fact that as a result of the withdrawal or discontinuation of anti dumping duty, would there be any threat to the domestic industry in terms of recurrence. The Authority notes that sub-rule VII to the Annexure II of the Anti-Dumping Rules states that a determination of the threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in the circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. The domestic industry has claimed that there exists a massive exportable surplus in the subject countries, which would clearly indicate that the same would find their way into India if the antidumping duties were removed. However, with regard to the other factors, no threat of injury had been claimed by the domestic industry. The Authority, therefore, concludes that evidence presented by the domestic industry does not demonstrate the likelihood of the recurrence of exports to India at dumped prices in the absence of Anti Dumping measures.

77. The above economic indicators imply that the cessation of anti dumping duty on the subject goods will not lead to continuance or recurrence of dumping and injury to the Domestic Industry and therefore the Authority recommends discontinuance of the anti dumping duty on the subject goods.

78. Landed Value: In the absence of any imports of subject goods from the subject countries during the POI the authority could not determine the landed value of the subject goods from the subject countries.

CONCLUSIONS:

It is seen, after considering the foregoing that:

- i. Pure Terephthalic Acid (PTA) originating in or exported Indonesia, Thailand, and Korea (RP) has not been exported to India during the POI.
- ii. The domestic industry has not suffered material injury from the import of subject goods from the subject countries.
- iii. Various economic indicators and injury parameters imply that the cessation of anti dumping duty on the subject goods will not lead to continuance or recurrence of dumping and injury and therefore the Authority recommends discontinuance of anti dumping duty on Pure Terephthalic Acid (PTA) exported to India from Indonesia, Thailand and Korea (RP).
- iv. An appeal against this order shall lie to the Customs, Excise, and Gold (Control) Appellate Tribunal in accordance with the Act supra.

(LVSAPTHARISHI)
DESIGNATED AUTHORITY