

GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE

NOTIFICATION

FINAL FINDINGS

New Delhi: the 26th June, 2002.

Subject:- Anti-Dumping Investigations concerning imports of Biaxially Oriented Poly Propylene Film (BOPP) originating in or exported from Taiwan, Hong Kong, Indonesia, Oman, UAE, Singapore and Thailand-Final Findings.

21/1/2001-DGAD - Having regard to 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

1. The Procedure described below has been followed:

- i. The Designated Authority (hereinafter also referred to as the Authority) notified Initiation vide Notification No. 21/1/2001-DGAD dated the 30th May, 2001 with regard to Anti-Dumping Investigations concerning imports of Biaxially Oriented Poly Propylene Film (BOPP) originating in or exported from Taiwan, Hong Kong, Indonesia, Oman, UAE, Singapore and Thailand and requested the interested parties to provide information and make their views known in writing within forty days from the date of its publication;
- ii. The Authority notified preliminary findings vide Notification No. 21/1/2001-DGAD dated the 14th August, 2001 with regard to Anti-Dumping Investigations concerning imports of Biaxially Oriented Poly Propylene Film (BOPP) originating in or exported from Taiwan, Hong Kong, Indonesia, Oman, UAE, Singapore and Thailand and requested the interested parties to make their views known in writing within forty days from the date of its publication;
- iii. The Authority forwarded a copy of the Preliminary Findings to known interested parties, who were requested to furnish their views, if any, on the Preliminary Findings within forty days of the date of the letter;
- iv. The Authority also forwarded a copy. of the Preliminary Findings to the Embassies of Indonesia, Oman, UAE, Singapore, Thailand in New Delhi,

- Taipei Economic and Cultural Center, New Delhi and Hongkong Special Administrative Region, HK; with a request to furnish their views on the Preliminary Findings;
- v. The Authority held a public hearing on 21st November, 2001 to hear the interested parties orally, which was attended by representatives of the Domestic Industry, Exporters and Importers. The parties attending the public hearing were requested to file written submissions of views expressed orally. Designated Authority in this finding has considered the written submissions thus received from interested parties;
 - vi. The Authority made the public file available to all interested parties containing non-confidential version of the evidence submitted by various interested parties, for inspection, upon request;
 - vii. Arguments raised by interested parties before announcing of Preliminary Findings, which have been brought out in the Preliminary Findings notified earlier have not been repeated herein for sake of brevity. However, arguments raised by the interested parties have been appropriately dealt with in the Preliminary Findings and/or these findings;
 - viii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to known interested parties and comments received on the same have also been duly considered in these findings;
 - ix. Investigation was carried out for the period starting from 1st April, 1999 to 30th September, 2000;
 - x. The Authority heard and discussed with the concerned interested parties the issues and submissions pertaining to price undertaking;
 - xi. The Authority received injury and costing information from two domestic producers, viz. M/s. Max India and Supreme Oriented. Further, questionnaire information was received from M/s. Al Khaleej, Oman. The Authority has accepted both the information, even though the same was after the preliminary findings. Issues raised by the exporter have been brought out in these findings. Further, the domestic producers have provided injury and costing information.
 - xii. *** in the Notification represents information furnished by interested parties on confidential basis and so considered by Authority under the Rules.
 - xiii. Central Government vide OM No.354/155/2001-TRU dated 17.6.2002 granted extension for a period of one month from 30.5.2002 for completion of this anti dumping investigation.

B. VIEWS OF PETITIONERS, EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES AND EXAMINATION BY AUTHORITY:

2. The petitioner, exporters and importers have expressed their views and the same are briefly mentioned below:-

2.1 views of the domestic industry:

(a) ON PRODUCT UNDER CONSIDERTION AND LIKE ARTICLE:

They have stated that they support the disclosure statement that BOPP films of all types are within the scope of the present investigations. Metalised BOPP Film and other BOPP Film are one like product. In support of it they have referred to the findings of European Commission on similar product viz. Polyester film. The Domestic Industry has stated that there is no justification for excluding metalised BOPP film or separate comparison of these films and base films for the following reasons as explained by the European Commission in their findings:

- i. The materialization process consists of addition of metal, such as aluminum, and the same does not alter the basic physical, technical and chemical characteristics of polyester film.
- ii. The fact that an additional production step is required for production of metalised polyester film (and the same results in higher cost of production and sales price) is not an element which could justify per se exclusion of certain type from the scope of the proceedings.
- iii. The companies doing metalizing alone do not produce base polyester film and the same is purchased from different sources. The purchased polyester film is then metalized by these metalizers. This additional processing step undertaken by them is however, not sufficient in itself to justify their consideration as community producers of polyester film.
- iv. Mere processing of the base polyester film (Metalization) does not alter the basic physical, technical and chemical characteristics of the product.

(b) ON STANDING OF DOMESTIC INDUSTRY

With regard to determination of standing, they have submitted that even at the time of initiation, the petitioners satisfied the standing to file the present petition. The petition has been filed by the Association.

The following producers are the members of the Association. M/s. Flex Industries Ltd, Gujarat propeck, Cosmo Films Ltd., Xpro India Ltd., Max India Ltd., Supreme Oriented.

The following producers of BOPP Films are not member of the Association, M/s. M.M. Rubber, M/s. Kabra Plastics, MPUPUL. Also they have indicated that M/s. Kabra Plastics is an importer (or related to importer) of the subject goods.

The Executive Committee of the Association earlier decided to file a petition before the Designated Authority requesting imposition of appropriate anti-dumping duties on imports of BOPP Films. The decision was taken in accordance with the byelaws of the Association.

Thus, the petition was filed by BOPP Producers Association and is specifically supported by Flex Industries Ltd., Gujarat Propack Ltd., Max India Ltd. and Supreme Oriented Films Ltd., The participating companies with the support of the supporting companies constituted more than 50% of eligible Indian Production even at the time of initiation.

Further they have stated that the proposition advanced by the exporter would imply that "the Designated Authority should first investigate and then initiate the investigations". However, they contend that the initiation is for investigation.

(c) ON PERIOD OF INVESTIGATION

The whole argument with regard to the investigation period advanced by the exporters deserves to be ignored. Followings are relevant in this regard:-

There is no requirement of passing a decision on the investigation period by the Designated Authority envisaged under the Rules. Neither the Application Proforma prescribes for the same – Rule 5(2), nor the principles governing investigations-Rule 6 nor requirements for preliminary findings – Rule 12 states so. Such being the case, the entire argument is misplaced and unsupported with law.

While financial year, accounting year and business cycle may be considered for determination of investigation period, it is submitted that there is no basis to argue that these are vital and relevant for determination of investigation period. It has been lost sight of that the accounting year of different companies even in India may be different (for instance, the present investigation itself, wherein the two participating companies had different accounting years) leave aside the exporters in the subject countries.

Administrative convenience can not overlook the core issue of "dumping and injury". "Dumping causing injury to the domestic industry" and not administrative convenience would decide the investigation period. It is like arguing that the

administrative convenience of the hospital (and not illness of the patient) would decide whether and when the patient should be operated upon.

(d) ON DUMPING:

In the present investigation, only one exporter has responded. The exporter has responded after the preliminary findings. The domestic industry is greatly concerned about acceptance of such late response, which is jeopardizing the interests of the domestic industry as well as is a bonus for the exporters. Reliance is being placed upon the practices of European Union and USA in this regard, wherein no response from an exporter is admitted after the preliminary finding.

Petitioners reiterate that the response filed by the exporter can not be admitted for the following further reasons:

1. The response is unaccompanied with a meaningful non-confidential summary.
2. The non-confidential summary of information relating to Appendix-1 (relating to home market sales), Appendix-2 (exports to India), and cost of production are not provided on indexed basis. Even information such as certificate of correctness is provided on confidential basis. Hence, the whole response deserves to be rejected in accordance with the practice of other investigating Authorities world over.
3. The domestic industry is greatly concerned over the attitude of the exporter in cooperating with the Designated Authority, This is a situation of selective cooperation by the exporter.
4. Notwithstanding above, they have submitted as under with regard to the assessment of dumping margin proposed to be made by the Designated Authority.
 - i. Grading of the product as prime/first/second/ is merely a classification of the product after production. Cost of production of all these types remains the same. While reprocessable production is required to be simply ignored and only net saleable production is required to be considered, we submit that the exporter seems to have determined its cost of production, considering reprocessable production. Should it be the case, it is submitted that the cost of production is required to be determined on the basis of net saleable production.
 - ii. Unless the exporter has sold the material as "seconds/B Grade" and the same is evident from the invoice, the claim is unsustainable.
 - iii. Should the selling price of seconds be compared with cost of production, it would imply that such sales were below cost of production (such seconds are normally sold at prices significantly lower than prices of prime product). Such being the case, normal value in such cases would get determined based on cost

of production + reasonable profits. It would thus appear that there is dumping of both the types.

- iv. Should sufficient documentary evidence not exist to prove that the exporter has sold different grades in both the markets, it would imply that the export price and normal values are required to be assessed on average basis cumulatively for both the grades.

(e) On injury:

With regard to injury to the domestic industry, they reiterate their submissions made earlier in this regard. We have already provided sufficient information, which shows that the domestic industry has suffered material injury from the dumped imports from subject countries. The same is also acknowledged in the disclosure statement. They submit that the following parameters show injury to the domestic industry due to dumped imports:-

Market share of imports from subject countries has increased in absolute terms as also in relation to imports and consumption in India.

Though production, sales and capacity utilization of the domestic industry increased, domestic industry suffered financial losses per unit of the product, in spite of significant reduction in the incidence of overhead costs.

The industry made its best efforts to sell its produce. However, the industry was not able to recover its cost of production, leave alone profit.

Export price from the subject countries steeply declined. This directly resulted in decline in the landed price of imports. The decline in the export price was in spite of appreciation of Indian Rupee.

Landed price of imports from subject countries was significantly below the selling price of the domestic industry causing severe price undercutting in the Indian market. In fact, the imports were earlier not undercutting the prices of the domestic industry. However, imports started undercutting the domestic industry from 1999-2000, which intensified in the investigation period. This prevented the domestic industry from recovering their cost of production.

All the parameters, collectively and cumulatively show that domestic industry suffered material injury from the dumped imports from subject countries.

(f) DUTY ON FIXED AMOUNT BASIS

It is submitted that the cost of production of the subject varies significantly with the changing raw materials prices. Further, the raw material prices also keep changing considering the prices of other petrochemical products. In view of the same, it is requested that the anti dumping duty may kindly be recommended in terms of fixed amounts, expressed in US \$.

2.2 VIEWS OF M/s. AL KHALEEJ POLYPROPYLENE PRODUCTS COMPANY SAOG, SULTANATE OF OMAN:

(a) ON PRODUCT UNDER CONSIDERATION AND LIKE ARTICLES:

The product under consideration as stated by the domestic industry and also in the initiation notification is vague and too broad. The contentions of the petitioners as well as the contents of the initiation notification and the preliminary findings amply clarify that the different types of BOPP films are neither technically nor commercially substitutable amongst each other. Therefore, it would not be appropriate to consider all types of BOPP films as like articles under the Anti-dumping Rules.

The exporter has argued that metallised BOPP film should not be treated as like article to the BOPP film because the process of metallising renders a new product, which has a different name, character, and use. In support of this, the exporter has submitted two clarifications from the Central Board of Excise & Customs (copies enclosed) which are based on the judgements of the Hon'ble Supreme court of India and therefore, binding. The exporter has claimed that as per the Supreme Court rulings, Metallised BOPP films are distinct products than the plain BOPP films, there is no question of including the same under a single category. The Metallised BOPP films were not to be a part of the investigations ab initio.

(b) ON STANDING OF THE DOMESTIC INDUSTRY:

The exporter has stated that so far as 'standing' is concerned, the Designated Authority has to make a final determination at the time of initiation. This is in contrast to the test of 'sufficiency' as envisaged under Rule 5(3)(b) to justify an investigation. In this case, the Hon'ble Designated Authority has not recorded any determination in the initiation notification. Therefore, the exporter has submitted that the case needs to be terminated in terms of several WTO Panel decisions as this basic flaw cannot be cured now. Further it has been argued that any determination on standing is intrinsically flawed as the description of the product under consideration itself was ambiguous at the time of initiation.

(c) ON PERIOD OF INVESTIGATION:

They have stated that it appears that in this case, the domestic industry had proposed a period of 18 months for detailed examination by the Designated Authority and the same has been accepted by the Hon'ble Designated Authority for reasons not available either in the petition, public file or the preliminary findings. While there is no bar or limitation on the power of the Designated Authority to pick any particular period as the period of investigation, it may not be out of place to mention that the period is generally selected all over the world depending upon certain economic or financial factors. Some of the considerations which may affect the choice of the period of investigation include factors such as financial year, calendar year of the business cycle. Normally the financial year is taken as period of investigation, as it takes into account all the seasonal variations coupled with the administrative convenience. If, however, the Domestic Industry demonstrates that there is a need to take a longer period of investigation, there must be sufficient ground with the Designated Authority to depart from the practice of taking a full accounting year or only certain quarters of the same.

(d) ON INJURY

The injury analysis after taking into account only 47.8% of the Domestic Industry is incorrect particularly when the petitioners themselves acknowledged during the public hearing that the petition has been filed on behalf of the association and that they represent other produces as well.

(f) VIEWS OF M/S ALKHALEEJ ON THE DISCLOSURE STATEMENT:

1. It has been stated in the disclosure statement that 'The materialization process consists of addition of metal, such as aluminum, and the same does not alter the basic physical, technical and chemicals characteristics of polyester film'. This is in direct contrast to the CBEC Circular wherein it has been clearly held that 'conversion of bare films into lacquered, laminated or bare films brings into existence of a new product with distinct name, character and use'.
2. It may be noted that the decision of the CBEC is based on two decisions of the Hon'ble Supreme Court and the opinion of the Law Ministry. It would be extremely surprising if the Hon'ble Designated Authority chooses to rely upon some uncited decision of the EC when the same issue has been categorically decided by the CBEC following the decision of the Hon'ble Supreme Court and the opinion of the Law Ministry.
3. It has also been stated in para 1.7(ii) of the disclosure statement that "The fact that an addition production step is required for production of metallized polyester film (and the same results in higher cost of production and sales price) is not an element which could justify per se exclusion of certain type from the scope of the proceedings". The position in the EC case appears to be

different than the case in India. Apparently in the EC case, the issue was of exclusion of METALLIZED FILM. Therefore, the decision of the EC cannot be appreciated unless the claims made in the complaint, scope of the investigation in the initiation notice etc. are made known to the Designated Authority. The arguments made by the Indian exporters also have a direct significance on the issue, a copy of which has not been supplied to us despite request vide our letters dated 9th and 10th of May, 2002. It would be a travesty of justice if some decision of the EC is relied upon in preference to the guidelines of our own Supreme Court without even seeing all the papers and the background of the said EC decision. Notwithstanding the above, it appears that the EC case was different from this case as in the instant case, metalized film were not included from the very start of the case, as would be obvious from the following paragraphs.

4. It was never the intention of the Domestic Industry nor the Designated Authority to include the Metallised BOPP films under the scope of investigation as would be revealed by the following:-
 - a. In para 4,1,3 of the primarily findings, it has been categorically mentioned that:

"BOPP films is primarily used by the packaging industry , it is used mainly in packaging adhesive tapes..... Metallising,....etc."

It was submitted that the Metallised BOPP films cannot be used for further metallising and, therefore, the films which are already Metallised cannot be considered as a part of the product under consideration.

- b. In para 4,1,3 of the Preliminary Findings, it has been mentioned that "BOPP film is produced by extrusion method..... Polypropylene is extruded to obtain BOPP film". Thus, even this part of the product under consideration of the preliminary findings clarified that only extruded products were to be covered and it was never the intention of the Domestic Industry as well as the Hon'ble Designated Authority to include the Metallised BOPP films under the scope of investigation.
 - c. The fact that the Metallised BOPP films could not have covered from the scope of investigation, is also clear from the determination of the standing of the Domestic Industry to file the petition. It is obvious from plain reading of the petition as well as the preliminary findings that a large number of stand alone metallisers were not considered for the purpose of applying the tests of standing for the Domestic Industry. According to their information, there are as many as 29 stand-alone metallisers in the country. Even the DEPB rates are different for metallised films. If, however, the Hon'ble Authority considers that Metallised BOPP films were included in the scope of investigation, then, it is submitted

that the initial determination of the standing of the Domestic Industry to file the petition itself would be flawed.

- d. It is also interesting to note that in their written submissions, the Domestic Industry has 'clarified' that Metallised BOPP films is within the scope of the petition filed by them. The Hon'ble Designated Authority would be kindly aware that the jurisprudence of anti dumping does not permit enlargement of the scope of investigation. Thus, it is our submission that the above arguments singularly as well as severally establish the fact that Metallised BOPP films were not to be a part of the investigations ab initio.

ON INJURY:

- a. Domestic Industry has been defined in the first part of the definition so as to refer to the domestic producers as a whole engaged the manufacture of the like article and any activity connected there with. It further states, as an alternative, that Domestic Industry can refer to those domestic producers whose collective output of the said article constitutes a major proportion of the total domestic production of that article. We, therefore, submitted that the injury analysis based only on 47.8% is inappropriate as anything less than 50% would not constitute a major proportion. Besides the legality of the issue, we requested the Designated Authority to consider the fact that it would be wholly inappropriate in economic sense to analyze the information of a smaller part of the Domestic Industry to arrive at a conclusion for the entire Domestic Industry. The Designated Authority also needs to go into the financial health of the producers who are merely "supporting; but not a part of the so-called petitioner Domestic Industry. It was in the above context that we had been insisting that the Domestic Industry be compelled to provide full disclosure to enable the Designated Authority to arrive at fair and just findings. This also has a direct bearing on the issue of causal link.
- b. As regards the volume of imports, it was stated in the preliminary findings that the volume of imports from the subject countries had increased in absolute terms further held that in percentage terms also the volume had increased. Similar analysis had been done for market share and landed costs also.
- c. Kindly recall that the exporters had submitted that the figures of the period of investigation cannot be compared to 1997-98 as a proper analysis would require that the comparisons are made with the immediately preceding period unless reasons to the contrary are demonstrated. That being not the case, the findings of injury on these factors need to be re-looked at as a proper analysis would result into a totally different picture. In addition to the above, exporter drew the kind attention of the Hon'ble Designated Authority to the incorrect presentation of information by the Domestic Industry to arrive at totally skewed

results. The Domestic Industry had 'annualized' the 18 month figures apparently to make proper comparisons. The Hon'ble Authority needs to appreciate that when the actual figures of 12 months within the 18 month period are available, only the remaining 6 months ought to have been annualized. We had carried out an analysis after taking the actual figures of 1999-2000 and annualizing the figures of the first six months of the year 2000-2001, both periods being part of the period of investigation. The market share from the subject countries had actually declined from 54.4% to 30.4% during the last six months of the period of investigation annualized). The market share as a percentage of the demand has also come down from 4.2% to 1.2% during the same period.

C. VIEWS EXPRESSED BY IMPOTERS:

2.3 M/S. NEW PACK PLASTIC PVT. LTD:

Due to the initiation of this anti dumping investigation the prices of BOPP Film have been continuously going up though the prices of Poly-Propylene is going down.

The imports of BOPP Film in our country is only 6.37% of the total demand. Such a meager volume of imports cannot be called as dumping of BOPP Film when 93.63% of the Indian demand of BOPP Film is being made by the domestic manufacturers.

In the international market the price of BOPP Film (Tape grade) is about US\$ 1.20 per Kg.(approx. Rs.57.60) and even the Indian Film manufacturers are offering same export price whereas in the domestic market they are offering at a price of Rs.98.00 per Kg.

In view of the above, they have requested that anti dumping duties should not be imposed.

VIEWS OF USER ASSOCIATIONS:

2.4 M/S.PAPER, FILM & FOIL CONVERTERS' ASSOCIATION, BOMBAY:

ON INJURY:

Export prices are not significantly below the prices of Indian product.

Production of Indian industry has gone up by 20%.

The profitability of few players including one of the petitioners has gone up dramatically in the year 2000-01 over the period 1999-00.

Almost every player has improved on capacity utilisation. Those who have been able to achieve 70 or more percentage utilisation are making profits. The increased capacity utilisation of Indian Industry has led to increase sale, which profits.

ON STANDING OF THE DOMESTIC INDUSTRY:

The petitioner constitutes only 47% of the total production and therefore in terms of Rule 2(b) of Customs Tariff(Identification, Assessment & Collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules 1995 {Notification 2/95- cus(N.T.) dt. 1/1/1995}, the petitioner cannot be defined as "domestic industry".

Other users:

Representations have been received are from M/s. Jurgyan Industries, Jabalpur, M/s. Jaipur Tissues, Jaipur, M/s. Ankit Packaging Ltd., Secunderabad, M/s. National Adhesives, New Delhi, M/s. P.G. Industries, Gwalior , Meghana Laminates, Mumbai and M/s. Windsor Packaging Pvt. Ltd., Chandigarh

In response to the preliminary findings interested parties mainly users of BOPP Film – Self Adhesive Tapes have been representing against imposition of anti dumping duty. In brief following issues have been raised:-

1. Imposition of anti dumping duty has led to increase in price of BOPP Film domestically, though the prices of polypropylene (which is the major raw material for BOPP film) is declining.
2. A clear case of profiteering by BOPP Film manufacturers at the cost of thousands of SSI units.
3. M/s. Gujarat Propack, one of the petitioners has been taken over by M/s. Cosmo Films.
4. Except for petitioners other manufacturers of BOPP Film like M/s. Cosmo Films M/s. Xpro India Limited are making profits.

M/s. Adhesive Tape Manufacturers Association (ATMA)

The users have stated that almost all requirement is being met by Indian manufacturers.

Out of small volume of import of BOPP film compared to total consumption of the country BOPP Film (Adhesive Type grade) would be below 0.4%. This does not show any dumping.

The domestic manufacturers in India have formed a cartel and are raising the sale price of their film continuously.

There are more 250 SSI units of adhesive tape employing thousands of workers. With the imposition of anti dumping duty, the adhesive tape manufacturers would suffer.

M/s. Sanghi Industries Ltd.

The present export market is extremely competitive with respect to BOPP Adhesive tape. Any increase in input cost of adhesive tape will result in becoming uncompetitive in international market.

There is no dumping of BOPP Film in Indian Market.

The domestic BOPP film manufacturers are make bumper profits.

The Government of Hongkong Special Administrative Region, Hongkong

In response to the preliminary findings, the Trade and Industry Department, Government of HKSAR have stated that the volumes of imports from HKSAR, India during the period of investigation were exceptionally larger than the volumes indicated in their own records. Since the the Authority has only provided non-confidential version of the petition, they are deprived of certain crucial information and could not comment further.

Their records illustrate that Hongkong had a very minimal amount of export of BOPP Films to India besides Hongkong is a separate customs territory. Commodities from allover the world could be routed through HongKong freely. These free exports could however, not be separated from their own exports. Hence they are unconvinced regarding sufficient evidence on dumping.

M/s. Oman Plastic Industries IIC

The company has stated that they are not manufacturing BOPP Film and are not exporting to India.

M/s. Toyo Packaging Industries Pvt.Ltd., Singapore

The company has stated that they have not done any business with India for the past five years.

M/s. P.T.Trias Sentosa Tbk, Singapore

The company has stated that they are the exporters of BOPP Film and other packaging flexible film all over the world including India.

They have also stated that there is no dumping of BOPP Film to India as currently BOPP film is in short supply. Therefore, there is no reason of selling the products at dumped prices by exporters.

They have also indicated that the filling up of the questionnaire is time consuming and have not furnished the information in the form and manner prescribed by the Authority.

M/s. PT Inamuti Intipack, Jakarta.

The company has stated that they have never exported BOPP products to India. Further, they have stated that they have never produced or sold BOPP products domestically or internationally.

Examination by the Authority:

2.5 On Domestic Industry: The Designated Authority is required to "determine" that the petition has been made by or behalf of the domestic industry. However, such "determination" is not stated to be the final determination.

Proviso to the Rules very clearly stated that the investigations can be initiated in case of producers expressing supporting the petition account for more than 25% of total production. Thus, this Rule very clearly implies that the case can be initiated, if the producers supporting the petition and participating in the investigation as petitioner companies command more than 25% of Indian production. Such being the case, the whole argument is without merit.

2.6 On investigation period: The Authority notes that the investigation period in the instant case is 18 months (April, 99 – Sept., 00). Thus, the Authority is required to examine the performance of the domestic industry in the investigation period with reference to previous periods. It would not be appropriate to annualize the figures for the period April-Sept., 00 and then compare with 1999-00, as 1999-00 itself forms part of the investigation period. Since the investigation period is of 18 months, it would be more appropriate to annualize the data for the investigation period and then

compare with the previous years. In an alternate, such comparison could have been done by reducing all figures to monthly averages. However, this also would not have materially altered the position.

While the Authority holds that comparison of investigation period with previous years is the requirement under the Rules and consistent practice of the Authority

The Authority notes in this regard that it would not be appropriate to base entire comparison to immediate preceding year. The practice of the Authority is to do comparisons over a period of time.

3. The submissions made by the petitioners, exporters, importers and other interested parties have been examined and issues raised with reference to the rules and having a bearing on this case have been considered and dealt with at appropriate places in the notification.

D. DISCLOSURE OF ESSENTIAL FACTS MADE BY THE AUTHORITY:

4. The views raised in response to the disclosure statement are discussed in the present findings to the extent these are relevant as per rules and have a bearing on the case.

E. PRODUCT UNDER CONSIDERATION:

5. The product involved in the present investigation is Biaxially Oriented Poly Propylene Film (BOPP) (also referred as subject goods hereinafter) originating in or exported from Taiwan, Hong Kong, Indonesia, Oman, UAE, Singapore and Thailand. Biaxially Oriented Poly Propylene Film (BOPP) is a high performance biaxially oriented, special film made from Polypropylene. BOPP Film is produced in a wide variety of forms and types which are employed for a large range of end-use applications. BOPP Film is produced on various types of production lines, which are differentiated by a number of technical features including the Film thickness and width, the feeding process and the formula of fillers, the production environment conditions as well as certain specific capabilities such as on-line coating or co-extrusion mainly depending on the combination of the capabilities BOPP Film can be commodity-type or specialty type.

Biaxially Oriented Poly Propylene Film (BOPP) is classified under Customs heading No. 3920.20 of schedule 1 of the Customs Tariff Act, 1975 and No.3920.2000 under Indian Trade Classification (based on Harmonized Commodity Description and

Coding System) originating from subject countries. The classification is however, indicative only and in no way binding on the present classification.

The Authority notes that the product under consideration in the present investigation is Biaxially Oriented Poly Propylene Film. Such BOPP Film is produced by extrusion of Polypropylene. Once this base film is produced, it can then be processed further (such as metallisation) to enhance some of its properties. However, the basic physical, technical and chemical characteristics of the product remains the same and is also used for packaging. It is also noted that the investments required for production of base film and for metallising such base film further reinforces the fact that Metallised BOPP Film is one of types of BOPP Films. The Authority notes that investigations were earlier conducted in respect of Polyester Films wherein metallised polyester films and plain polyester films were treated like articles..

The Authority further notes that the scope of the investigations has not been enhanced by including Metallised BOPP films. Such BOPP films were included in the petition. Even the calculations of export price, normal value, dumping margin, and information relating to injury provided by the petitioners included Metallised Films. This is also evident from the fact that Metallised BOPP Films and Plain Films fall under same customs classification and information with regard to imports and import price was based on the data compiled by the DGCI&S, Calcutta.

With regard to the circulars of CBEC and the orders of Hon'ble Supreme Court, it is appreciated that metallising plain film constitutes production within the meaning of Excise and Customs. However, the purpose of determination of "industry" for the present purpose is altogether different than the purpose for which production is recognized in Excise and Customs. Production for the purpose of Excise or Customs Duty and production for the purpose of anti-dumping investigations can not be equated. The Authority notes in this connection that CBEC Letters no. 93/75/86-CX3 dated 9-10-1986 and Circular no. 5/89 dated 10-1-1989 are for the purpose of collection of excise duty or CVD and rates thereof, whereas the meaning of production in the present context is altogether different. For the present investigations, only those producers who undertake basic production activity (i.e., making of base BOPP Films) are recognised as producers. Those producers who are carrying out incidental activities, such as metallisation, can not be regarded as producers for the present purpose.

In view of the above, the Authority holds that the scope of the present investigations extends to all types of BOPP Films, including Metallised BOPP films.

F. LIKE ARTICLES:

6. Rule 2(d) of the Anti-Dumping Rules specifies that "Like Articles" means an Article which is identical or alike in all respects to the product under investigation or in the absence of such an Article, another article, having characteristics closely resembling those of the articles under examination.

In view of the explanation in para..., the Authority confirms the Preliminary Findings on Like Article.

G. DOMESTIC INDUSTRY:

7.1 As per Rule 2(b) of the Anti Dumping Rules, "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 shall be deemed not to form part of domestic industry."

7.2 The definition of domestic industry given above is further clarified by Rule 5 of Rules which reads as follows:-

"----- the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be to the application.

7.3 The petition has been filed by BOPP Film Producers Association, New Delhi on behalf of domestic industry. The petitioners alongwith supporters account for a major proportion of total Indian production and therefore have a standing to file the petition on behalf of domestic industry under the Rules above said.

	Prod.(in MT) during POI	% Share
Petition with supporters (Members of Association)	54161	92
Others (Non Members)	4695	8
Total Indian production	58856	100

The Authority notes that the petition in the instant case was filed by the Association of BOPP producers. There is no opposition to the petition. The participating companies constituted more than 25% of Eligible Indian Production at the time of initiation.

Further, the petitioners alongwith the supporters constituted more than 50% of Eligible Indian Production. Thus, there is no basis for the argument that the petition

did not satisfy standing at the time of initiation. Subsequent to initiation, the petition has been specifically supported by Max and Supreme. Thus, the petitioner satisfies the requirement of standing.

H. The Normal value, Export price and Dumping margin:

DUMPING MARGIN-COMPARISON OF NORMAL VALUE AND EXPORT PRICE:

- a. The rules relating to comparison provides as follows:

"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability."

- b. The views of the Domestic Industry, Exporters, Importers and other Interested parties with regard to the Dumping Margin have been dealt with in para 2 above and have not been reproduced here for the sake of brevity.
- c. The Authority has followed the provisions governing determination of Normal Value, Export Price and Margin of Dumping as laid down in Annexure I of Anti- Dumping Rules and the practice being followed in this regard. Based on the Normal Value and Export Price, determined as explained above, the Authority has worked out the Margin of Dumping.

8.0 NORMAL VALUE:

8.1 M/S. AL KHALEEJ POLYPROPYLENE PRODUCTS COMPANY SAOG, SULTANATE OF OMAN:

- i. M/s. Al Khaleej has responded in the investigation after the Preliminary findings.
- ii. BOPP film is a process industry and it generates a wide spectrum of product quality. The film rolls are graded as A grade (prime/first), B grade(second) or re-processable. All producers in the world sell the B grade films in addition to prime quality. India is a very cost conscious market and users in India seek the 'B' grade film.

- iii. 'B' grade films are sold at price around 40-50% cheaper than 'A' grade film. The price of 'B' grade film should be compared with price of 'B' grade and not with 'A' grade.
- iv. They have stated that the Indian BOPP industry already has sufficient protection in form of import duties.
- v. They have indicated that the domestic prices as compared to average selling price in India is higher due to reasons like short lead time, just in time delivery and small lots and open payment terms which means higher risk.
- vi. They have also stated that they do not keep grade-wise accounts and costing data. Hence, combined information for all grades have been furnished.
- vii. Even though the exporter has stated specifications in the transaction-wise statements, the same have not been explained anywhere in the response.

The response filed by the exporter has been analyzed in detail. Average selling price as per transaction wise statement in the domestic market as per the sale price structure statement comes to **** RO per MT. The company has claimed the cost of production as **** RO per MT. The data as presented by the exporter has been analysed as under:

- a. Ex-factory selling price has been determined for each transaction in the domestic market. Such selling price has been compared with Ex-factory cost of production claimed by the company.
- b. This analysis shows that the exporter has made losses in respect of 30% of its domestic sales. Para-2 (i) of Annexure-I to Anti Dumping Rules under Customs Tariff Act, 1975 provides that when the volume of sales below per unit costs represent not less than 20% of the volume in transaction under consideration the Designated Authority may disregard the sales in determining normal value.
- c. Ignoring the loss making sales it is found that the weighted average selling price at ex-factory level in respect of exporter for profitable domestic sales the Authority determines the normal value at US\$ **** per Kg.

8.2 other exporters from SUBJECT COUNTRIES:

None of the other exporters/producers in subject countries have responded to the Authority in the form and manner prescribed. The Authority determine normal value on the basis of the constructed cost of production, considering the best information available on record at US \$ *** per Kg.

8.3 EXPORT PRICE:

M/S. AL KHALEEJ POLYPROPYLENE PRODUCTS COMPANY SAOG,
SULTANATE OF OMAN:

M/s. Al Khaleej Polypropylene Products Company SAOG, Sultanate of Oman, one of the exporters, has furnished information relevant to determination of export price. The exporter has provided details of exports made to India during Period of Investigation (POI) for both A grade as well as B grade films though majority sales are of B grade films. The exporter has however claimed export price based on sale of A Grade after excluding sale of B grade BOPP films to India. The exporter has not indicated any reason or justification for such classification and exclusion thereof. The exporter has also acknowledged that they do not keep any grade wise accounts and cost data. In view of the above, it is proposed to consider all exports to India for arriving at the Export Price. Adjustments as claimed by exporter on account of overseas freight and overseas insurance etc. have been considered. This Authority determines export price at US\$**** per MT.

8.4 OTHER EXPORTERS FROM SUBJECT COUNTRIES

In respect of all other exporters from subject countries, the Designated Authority proposes to arrive at ex-factory export price based on the information provided by the petitioners as per the information compiled by DGCI&S, Calcutta. In order to arrive at the ex-factory export price the petitioners have claimed adjustment with regard to ocean freight, Landing charges Marine insurance, commission etc. The same has been proposed to be considered.

8.5 The Authority holds that the exporter M/s Al Khaleez has not adduced any evidence to justify separate treatment of the two grades. Further, the exporter admits that it does not maintain separate records for the two grades. It more appropriate to combine the information for the two grades.

8.6 DUMPING MARGIN

The Authority proposes to follow the consistent policy of adopting the principles governing the determination of Normal Value , Export Price and Margin of Dumping as laid down in Annexure I of Anti- Dumping Rules.

Subject Country	Exporters	Normal value In	Export price US\$	Dumping margin Per Kg.	DM as % of EP
Taiwan	All Exporters	***	***	***	73.68
Hong Kong	All Exporters	***	***	***	61.77
Indonesia	All Exporters	***	***	***	72.57
M/s Al Khaleej	***	***	***		28.77
Other Exporters	***	***	***		47.86
Singapore	All Exporters	***	***	***	81.48
Thailand	All Exporters	***	***	***	88.54
UAE	DeminimusImports	***	***	***	-

I. INJURY AND CAUSAL LINK:

9.0 The Authority has taken into account all indices regarding injury in the final determination. This involved examination of all relevant parameters, as laid down under Principles for Determination of Injury specified under Annexure II to the Anti Dumping Rules. The Authority has examined (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products. The Authority, for the purpose, considered whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. In order to examine the effect of the dumped imports on prices the Authority has considered 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 was otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred to a significant degree. The effect of dumped imports on the domestic industry has been examined by considering the parameters such as decline in sales (actual or potential), production, capacity utilisation, market share, productivity, stocks, selling prices, profitability, return on investments, the magnitude of the margin of dumping, cash flow (actual and potential), employment, wages, growth, ability to raise funds, etc. for the domestic industry. The Authority has carried a detailed examination of the domestic industry to arrive at non-injurious price. While determining the non injurious price, the Authority has done appropriate analysis of the relevant factors such as usage of raw material & utilities, expenses incurred by the domestic industry during the period of investigation,

Injury to the domestic industry was based on two petitioner companies, M/s. Flex and Gujarat Propack for the purpose of preliminary findings. However, M/s. Supreme and Max have provided costing and injury information after the preliminary findings. The Authority has considered it appropriate to include this information for the purpose of injury assessment. Accordingly, these findings on injury are based on four companies.

It is clarified that the injury and costing information by M/s Max and M/s Supreme has been provided after the oral hearing and a non confidential version thereof was placed in the public file.

9.1 Investments and capacity utilisation.: The Non-Injurious Price for the domestic industry has been determined considering a reasonable return on the capital employed by the participating and supporting companies. For calculation of injury margin, the wt average ex-factory non-injurious price of the domestic industry has been compared with the landed value of the subject goods.

9.2 Imports Volume :

The volume of imports from subject countries is above de minimis except in respect of UAE. The Authority notes that the volume of imports from UAE is 2.6% that is below de minimis level of 3%. The volume of imports from UAE during the period of investigation is de minimis and therefore the Authority does not consider appropriate to recommend anti dumping duty with respect to imports from UAE. In the circumstances, the country UAE is taken out of the purview of this anti dumping investigations and the preliminary findings confirmed.

9.3 Volume of Imports and Market Share:

in Kg

Country	1997-98	1998-99	1999-00	4/00 to 9/00	POI	POI Annu
Subject Countries	205472	637974	1775323	275725	2051048	1367365
Other Countries	846445	1411910	1490639	632384	2123023	1415349
Total Imports to Country	1051917	2049884	3265962	908109	4174071	2782714
Sale of Indian Producers	35248000	39973000	39341000	21991000	61332000	40888000
Demand in the Country	36299917	42022884	42606962	22899109	65506071	43670714
Share of Subject Country in Total Imports (%)	19.5%	31.1%	54.4%	30.4%	49.1%	49.1%
Market Share in Demand						
Subject Countries	0.6%	1.5%	4.2%	1.2%	3.1%	3.1%
Other Countries	2.3%	3.4%	3.5%	2.8%	3.2%	3.2%
Indian Industry	97.1%	95.1%	92.3%	96.0%	93.6%	93.6%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

As seen from the above, the volume of imports from subject countries (i.e. excluding UAE) have increased in absolute terms during POI (Annualised) over the year 1997-98. In percentage terms also the volumes have increased from 19.5% in 1997-98 to 49.1%. The market share in demand of subject countries which was at 0.6% in 1997-98 has increased to 3.1% during POI and the share of domestic industry has declined from 97.1% to 93.6% during the same period.

9.4 Production

The production of the participating companies and supporting companies has increased over the period. However, increase in production has to be seen alongwith commencement of production by M/s Flex Industries and the cost of production and sales realization of the domestic industry. Though, the production increased, the industry was not able to sell its produce at a price which permit even recovery of full cost of production. Therefore, the increase in production has resulted in increase of its losses.

9.5 Capacity Utilization

The capacity utilisation of the domestic Industry has increased. As mentioned in the previous para, though the production increased, the industry was not able to sell its produce at a price which permit even recovery of full cost of production.

9.6 Sales

The sales of the participating /supporting units have increased over the period. Further, the production and sales volume are directly related to cost of production and sales realization. Export Price from the subject countries have declined resulting in lowering the landed value due to which the sales realisation could not reach upto a fair level.

9.7 Landed Price of imports & Selling Price of domestic industry:

The landed price has been declining over the past years. The selling price has also been declining over the past years disproportionate to the changes in cost of production of the subject goods. A comparison of sale price and the landed price of subject goods, it is noted that the participating companies increased the prices in 1999-2000, the same was due to steep increase in the cost of production. However, the increase in the cost of production was more than the increase in the selling price during the period of investigation.

The dumped imports from the subject countries are significantly undercutting the prices of the domestic industry in the Indian market.

9.8 Employment

The employment level in the participating companies/supporting companies has not undergone any significant change due to poor operating levels.

Examination by Authority regarding injury to domestic industry:

9.9 With regard to the argument that the participating companies command less than 50% of Eligible Indian Production, the Authority notes that there is no legal basis to state that the injury to the domestic industry must be examined in respect of those producers who command more than 50% of Indian Production.

9.10 The Authority further notes that merely because Association has filed the present petition, it does not imply that the Authority is bound to consider information in respect of all Members of the Association. The Authority considers that the

participating companies command more than 25% of Indian Production. Further, the support by the Association after a decision by the Executive Committee of the Association implies that the members of the Association are supporting the petition. Thus, the Authority considers that the participating companies' alongwith supporters are more than 50% of Indian Production.

Max and Supreme have provided injury information after the preliminary findings. The Authority has included this information also for assessment of injury. Thus, the injury to the domestic industry in the present findings has been assessed for those producers who command more than 50% of Eligible Indian Production.

9.11 Conclusion:

The following parameters prima facie indicate that the injury to the domestic industry has been caused from the dumped imports:

- The volume of Imports from the subject countries have increased significantly and a direct consequence the domestic industry was not in a position to increase its selling price to a fair level;
- The market share of imported goods from subject countries has gone up;
- The decline in the Export Price by the exporter in the Indian market has directly resulted in the decline in the landed value from the subject countries;
- The dumped imports from the subject countries are significantly undercutting the prices of the domestic industry in the Indian market.
- The domestic industry is finding it difficult to increase the selling prices to optimum level;
- The domestic industry has been forced to sell below cost of production. This has directly resulted in severe financial losses to the domestic industry.
- The volume of imports from UAE during the period of investigation is de minimus.

In view of the above, Authority concludes that the material injury to domestic industry has been caused by the dumped imports from subject countries other than UAE.

J CAUSAL LINK

10.1 The imports from the subject countries are being made at dumped prices. The imports from other countries are at much higher prices or the volumes are de minimus. Imports from other countries are, therefore, not causing injury to the Indian industry.

10.2 The demand of the BOPP Film in India is more or less constant. The domestic industry has sufficient capacity to meet the entire demand of BOPP Film in India. Therefore, the changes in demand have not caused any injury to the Indian industry.

10.3 Petitioners have reiterated that the BOPP Film industry in India is not so old as to have suffered any injury on account of the developments in the technology. The industry has employed the latest available technology and constant efforts are made to update the same. In fact, India is a major exporter of BOPP Film to developed countries, where production facilities also exists.

11.0 PRICE UNDERTAKING

11.1 Rule 15 relating to Suspension or termination of investigation on price undertaking provides that the designated authority may suspend or terminate an investigation if the exporter of the article in question furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated.

11.2 One of the exporters, M/s. Al Khaleej Polypropylene Products Company SAOG, Sultanate of Oman (Al Khaleej) had extended its willingness to offer price undertaking. The offer was examined in detail and the Designated Authority found that the undertaking offered by the exporter can be accepted since it eliminates the injurious effect of dumping. The exporter has agreed to provide all reasonable information which the Designated Authority considers relevant and necessary. The Designated Authority has accepted Price Undertaking from the exporter and accordingly no duties would apply in the case of exports of all types of BOPP films, from this company. However, in the case of any violation in the execution of this undertaking by the exporter, the duties, as set out in the preliminary findings, would provisionally apply, pending specific recommendations by the Designated Authority in this regard. It is also clarified that this undertaking would apply only in case of exports made by this company directly to India. In case the goods are exported by some other company, the residual duty, as mentioned below, would apply, even if the same are the produce of this company.

11.3 The company has extended one price undertaking for all types of BOPP film exported by them. The undertaking amount is at US \$ 1.63 per Kg of BOPP film. The undertaking price is the minimum CIF value of imports.

K. INDIAN INDUSTRY'S INTEREST AND OTHER ISSUES:

12.1 The purpose of antidumping duties, in general, is to eliminate dumping which is causing injury to the petitioner companies/ domestic industry and to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the country.

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

12.3 To ascertain the extent of anti dumping duty necessary to remove the injury to the petitioner companies, the Authority has relied upon non injurious selling price of BOPP film in India for the petitioner companies and supporting companies, by considering the optimum cost of production at optimum level of capacity utilisation for the petitioner companies.

M. CONCLUSIONS:

13.0 The Authority, after considering the foregoing, concludes that:

- a. BOPP film originating in or exported from the subject countries has been exported to India below its normal value, thereby resulting in dumping.
- b. The domestic industry has suffered material injury.
- c. The injury has been caused to the domestic industry by dumping of the subject goods originating in or exported from subject countries.

14.0 The Authority, after considering the foregoing, concludes that:

- a. The Authority recommends imposition of definitive anti-dumping duty on all imports of BOPP Films falling under Chapter 39 of the Customs Tariff Act,

originating in or exported from Taiwan, Hong Kong, Indonesia, Oman, Singapore and Thailand.

- b. The Authority considered recommending the amount of Anti-Dumping Duty equal to the margin of dumping or less, which if levied, would remove the injury to domestic industry. The average landed price of the imports, for the purpose, was compared with the Non-Injurious selling price of the petitioner ,supporting companies, determined for the period of investigation. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended.
- c. Accordingly, the Authority confirms the preliminary findings with regard to imposition of anti-dumping duty and recommends imposition of definitive anti-dumping duty on all imports of BOPP film falling under the Chapter 39 of Customs Tariff Act. Originating in or exported from subject countries. However, no duty would apply in case of exporter form M/s Al Khaleej, Oman wherein Authority has accepted the price undertaking given by the company. The anti dumping duty shall be the amounts mentioned in column (3) below :

Subject Country	Name of the Exporter /s	Amount of anti dumping duty in US \$ per Kg
(1)	(2)	(3)
Taiwan	All Exporters	0.70
Hong Kong	All Exporters	0.63
Indonesia	All Exporters	0.52
Oman	M/s. Alkhaleej	No Duty-covered under price undertaking
	Other Exporters	0.47
Singapore	All Exporters	0.60
Thailand	All Exporters	0.79

15. Landed value of imports for the purpose shall be the assessable value as determined by the customs under the Customs Act, 1962 and all duties of customs except duties levied under Section 3, 3A, 8B, 9 or 9A, as the case may be, of the Customs Tariff Act, 1975.

16. Subject to above, the Authority confirms the preliminary findings dated 14.8.2001

17. An appeal against this order shall lie to the Customs, Excise and Gold (Control) Appellate Tribunal in accordance with the Act supra.

(L. V. SAPTHARISHI)
DESIGNATED AUTHORITY