

MINISTRY OF COMMERCE

NOTIFICATION

New Delhi, the 4th September, 1997

Subject : Anti dumping investigation concerning imports of PTA from Thailand, Korea RP and Indonesia - Preliminary Findings

14/1/96-ADD- 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

The procedure described below has been followed with regard to the investigation:

- i. The Designated Authority (hereinafter also referred to as Authority), under the above Rules, received two separate written applications from M/s. Bombay Dyeing & Manufacturing Company Ltd. (referred to as Bombay Dyeing or BDMC hereinafter) and Reliance Industries Ltd. (referred to as Reliance or RIL hereinafter) on behalf of the domestic industry, alleging dumping of PTA originating in or exported from Thailand, the Republic of Korea (referred to as Korea or Korea RP hereinafter) and the Republic of Indonesia (referred to as Indonesia hereinafter). Reliance alleged dumping against Malaysia also;
- ii. SVC Superchem Ltd. and Indian Petrochemical Corpn. Ltd. also expressed their concern over dumping of PTA. While SVC Superchem expressed concern over dumping by Far East Producers, IPCL expressed concern over dumping by Korea RP, Indonesia and Far East;
- iii. Preliminary scrutiny of the application filed by BDMC revealed certain deficiencies, which were subsequently rectified by the petitioner. The petition was, therefore, considered as properly documented;
- iv. The Authority, on the basis of sufficient evidence submitted by the petitioners, decided to initiate the investigations against imports of PTA from Korea RP, Indonesia and Thailand. The Authority notified the Embassies of these countries about the receipt of dumping allegation before proceeding to initiate the investigation in accordance with sub-Rule 5(5) of the Rules;
- v. The Authority issued a public notice dated 20th Dec., 1996 published in the Gazette of India, Extraordinary, initiating anti dumping investigations concerning imports of PTA, classified under custom heading 291736 of Schedule I of the Customs Tariff Act, 1975 originating in or exported from

- Thailand, Indonesia and Korea RP (referred to as the subject countries hereinafter);
- vi. The Authority forwarded a copy of the public notice to all the known exporters (whose details were made available by the petitioners) and industry associations and gave them an opportunity to make their views known in writing in accordance with the rule 6(2);
 - vii. The Authority forwarded a copy of the public notice to all the known importers of PTA in India and advised them to make their views known in writing within forty days from the date of the letter;
 - viii. Request was made to the Central Board of Excise and Customs (CBEC) to arrange details of imports of PTA made in India during the past three years, including the period of investigation. No information was, however, received from CBEC;
 - ix. The Authority provided a copy of the petition to the known exporters and the Embassies of the subject countries in accordance with rules 6(3) supra. A copy of the petition was also provided to other interested parties, wherever requested;
 - x. The Authority sent questionnaire, to elicit relevant information, to the following known exporters, in accordance with the rule 6(4);
 - Sungkyong Industries Ltd., Korea RP referred to as Sungkyong hereinafter);
 - Samsung Petrochemical Co., Ltd., Korea RP (referred to as Samsung hereinafter);
 - Kohap Petrochemical Corporation, Korea RP (referred to as Kohap hereinafter);
 - Tae Kwang Industrial Co. Ltd., Korea RP;
 - Tuntex Petrochemicals (Thailand) Public Co. Ltd., Thailand (referred to as Tuntex hereinafter);
 - Pertamina, Indonesia.

A number of parties requested for extension of time, which was allowed by the Authority by two weeks. Response to the questionnaire was filed by the following:

- Samsung;
 - Kohap;
 - Tuntex;
 - Sungkyong.
- xi. The Embassies 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 the exporters/producers from their country to respond to the questionnaire within the prescribed time. A copy of the letter, petition and

- questionnaire sent to the exporters was also sent to the Embassies, alongwith a list of known exporters/producers;
- xii. A questionnaire was sent to the following known importers of PTA in India calling for necessary information in accordance with rule 6(4);
- Sanghi Polyesters Ltd., Hyderabad;
 - Orrisa Synthetics Ltd., Calcutta;
 - Parasrampuriah Synthetics Ltd., New Delhi;
 - JCT Ltd., Hoshiarpur;
 - Indian Organics Chemicals Ltd., Mumbai;
 - India Polyfibres Ltd., Lucknow;
 - Futura Polymers, Madras;
 - DCL Ltd., Nagpur;
 - K. Synthetics Ltd., Kanpur;
 - Raymond Synthetics Ltd., Allahabad;
 - Indo Rama Synthetics Ltd., Dhar;
 - Pearl Engg. Polymers Ltd., New Delhi;
 - Garware Polyesters Ltd., Aurangabad.

A number of parties requested for extension of time, which also was allowed by the Authority by two weeks. Response to the questionnaire was filed by the following:

- JCT Ltd.,
 - Indo Rama Synthetics Ltd.,
 - J K Synthetics Ltd.,
 - Orissa Synthetics Ltd.,
 - Parasrampuriah Synthetics Ltd.,
 - DCL Polyesters Ltd.,
 - Indian Organics
- xiii. Additional information regarding injury was sought from the petitioners, which was also furnished by them;
- xiv. The Authority conducted on-the-spot investigations, at the premises of the petitioners;
- xv. The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties.
- xvi. Cost investigations were 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 (GAAP) and the information furnished by the petitioners so as to ascertain if anti dumping duty lower than

the dumping margin would be sufficient to remove injury to the domestic industry.

- xvii. " *** " in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules;
- xviii. Investigation was carried out for the period starting from 1st April, 1996 to 31st Oct., 1996.

B. PETITIONER'S VIEWS

2. The petitioner has raised the following major issues in its petition and subsequent submissions:

- a. PTA is a like article to DMT - both technically and commercially under the meaning of the definition of 'like article' under the Rules. This is evidenced by the following:
 - i. DMT and PTA are both technically alternate raw materials to be used in the manufacture of polyester.
 - ii. Dual feed users can easily change over from DMT to PTA or vice versa depending on availability and commercial considerations.
 - iii. PSF, PFY and Polyester Film are sold under a competitive environment where the product quality and the price are the deciding factors and not the process employed for the manufacture or the raw materials used. Producers of DMT ensure that the DMT prices result in Polyester cost same as that produced with PTA as a feedstock. There is, therefore, commercial equivalence between PTA and DMT which varies from country to country and from time to time.

It is evident from the above that DMT and PTA are interchangeable products and that their prices are related to ensure that the end-product has the same cost structure for its producer,

- b. The prices of DMT bear a distinct relationship with the prices of PTA. BDMC had to reduce its prices of DMT even to those consumers who could not use PTA in view of falling PTA prices, resulting in injury to it from the dumped PTA imports.
- c. The PTA export price from the subject countries should be based on the quantities which landed in India between May-Nov., 1996, as the prices of DMT are based on the prices of PTA at which the orders are booked.
- d. In view of DMT/PTA new capacities projected for 1996-2000, the imports from the subject countries pose a threat of material injury to domestic industry.

- e. Anti dumping duty to the extent of 25 percent is required to compensate the domestic industry for the injury suffered by it.

C. VIEWS OF EXPORTERS, IMPORTERS AND OTHER INTERESTED PARTIES

3. The views expressed by the exporters, importers and other interested parties are briefly as under.

(I) On Initiation of investigation:

- i. Bombay Dyeing filed petition on 20.12.96 and investigations were also initiated on 20.12.96. It is inconceivable that the Authority received the petition on 20.12.96, analysed the facts stated therein, came to a prima facie view about dumping and injury, notified the Governments of the exporting countries and initiated the investigations, all on the same day. IPCL supported the petition of Bombay Dyeing on 10.10.96, whereas the petition was filed on 20.12.1996. The Authority does not seem to have notified the Governments of the exporting countries.
- ii. IPCL has alleged dumping Korea RP and Indonesia whereas Bombay Dyeing alleged dumping from Thailand also. There has been difference even among the petitioners as to the countries from which the product is allegedly being dumped. This casts a doubt on the transparency in the matter of initiation of the investigations by the Authority.
- iii. The Authority has not satisfied itself about the adequacy and accuracy of the evidence with regard to normal value and export price with due care. In the light of the claims made and the evidence adduced by Bombay Dyeing, it is clear that the petition consists of a number of inconsistent figures. The petitioner has justified an anti dumping duty 23.1% based on the domestic price of PTA in Far East on 26.7.96 compared with the highest landed C&F export price. Dumping cannot be justified based on a single normal value, which is not specific to a country, but is all encompassing "Far East", and that too prevailing on one particular day, i.e. 26.7.96. Similarly the statement that the imports into India are between US \$ 460-521 appears to be without basis. The claim of dumping of 23.1% is untenable and should have been ignored. The petitioner has requested for a levy of a minimum of 25% duty.

(II) On like articles:

DMT and PTA are not like articles within the meaning of the rule 2(b). The argument is supported by the following :

- i. Like Article means an article which is identical or alike in all respects. The article under investigation is PTA and there is an exactly identical product being manufactured in India by RIL. In view of existence of an exactly identical product in the domestic and export market, the investigation should be with respect to the material injury caused to the domestic manufactures of PTA only.

Rule 2(b) specifically provides that another article having characteristics closely assembling the article under investigation has to be considered in the absence of an article which is identical or alike in all respects.

- ii. Since RIL is the only manufacturers of PTA in India and has been disqualified from being included within the definition of domestic industry, there exist no manufacturer of the like article within India, who is eligible to file a petition for dumping of PTA. The investigation in its present form is, therefore, untenable.
 - ii) The Indian Customs Tariff provides separate headings for the classification of PTA and DMT. While PTA has been classified under 2917.36, DMT has been classified under 2917.37.
- iii. The chemical formula of PTA and DMT are different. PTA has molecular weight of 166, whereas DMT has 194.
- iv. Hawley's condensed chemical dictionary has described DMT and PTA, which states that DMT and PTA have different end-use. While DMT is used for manufacturing polyester chips for film and fibre production, PTA is used, in addition, as a reagent for alkali in wool and as additive to poultry feeds.
- v. PTA and DMT are not universally substitutable. While it is true that PTA and DMT are both used for the manufacture of fibre, the petitioner himself has conceded that "... domestic polyester producer has the option to change over to PTA if he has dual feed facilities ...' (emphasis added by the contender). It is, therefore, abundantly clear that PTA and DMT are entirely different products and even to use them interchangeably there must be a provision for dual feed facility.

(III) On dumping:

There are a number of price adjustments which are required to be made in the domestic selling prices in order to determine dumping. Taking into account these admissible adjustments, the dumping margin would be much lower than the difference indicated by the petitioners.

(IV) On injury:

- i. PSF manufacturers in India can be classified into three broad categories, those having technology and plant structure which can use:

- PTA only;
- DMT only;
- both PTA and DMT.

Manufacturers such as RIL, Indo Rama, Orissa Synthetics (OSL) cannot use DMT at all. BRPL, Swadeshi Polytex (SPL) can use DMT only. JCT, India Polyfibers (IPL), Indian Organic Chemicals (IOC) and JK Synthetics (JKS) can use both DMT and PTA. Thus, there are only four manufacturers who can switch between PTA and DMT and it is their import of PTA which, if at all, can injure the manufacturers of DMT. In this scenario, equating PTA with DMT as like articles and considering that import of PTA by all PSF manufacturers could cause injury to the DMT manufacturers sounds highly illogical. This aspect appears to have escaped the attention of the Authority completely.

- ii. An analysis of the imported and domestic sourcing of DMT and PTA from the information made available by PSF manufacturers in India, in their response to the Authority, shows that there has been no material injury to the domestic industry because of PTA imports. To illustrate:
 - a. IOC and JKS had not used DMT during 1995-96 and 1996-97 and, therefore, cannot have injured domestic industry.
 - b. JCT had not imported PTA from any of the three countries during the last two years. In fact, JCT increased their domestic purchases of PTA from 1458 MT (1995-96) to 20072 MT (1996-97).
 - c. IPL has neither imported from the three subject countries nor procured domestically. They have also not imported DMT from the subject countries.
 - d. JKS reduced the quantum of imports from the three countries from 5516 MT (1995-96) to 510 MT (1996-97).
 - e. Parasrampur (which uses DMT and PTA) neither imported from the subject countries nor purchased from domestic market. They have not imported DMT also.
 - f. DCL Polyester have been using only PTA and their sourcing within India has remained more or less the same.
 - g. Raymond Synthetics has not imported DMT, though their domestic sourcing declined from 13531 MT (1995-96) to 2976 MT (1996-97). There has been no significant increase in the quantum of PTA domestic sourcing or imports by Raymond Synthetics.
- iii. RIL has been operating at more than 125% of their installed capacity. Captive consumption of PTA by RIL has been increasing from year to year with a corresponding reduction in the quantity of PTA available for sale in the domestic market.

- iv. Capacity utilisation of BDMC has been in the range of 80-85% during the last three financial years. Sales of BDMC have also increased by about 18% in 1995-96 and 1996-97. Loss of market share due to imports, dumped or otherwise, is more an imagination than actual.
- v. RIL, BDMC, IPCL have all made considerable profits. Even though these companies are multi-product, it is common knowledge that each of their products has been operating profitably.
- vi. The fall in the prices of DMT and PTA for both RIL and BDMC is due to reduction in customs duty from 35% to 27%.
- vii. Fall in the international price has an impact on the domestic prices irrespective of whether the imports are dumped or not. Thus, a reduction in the domestic realisation is attributable to the fall in the international price of PTA and reduction in customs duty. The fall in the prices of Paraxylene also contributed to the fall in the domestic prices. Paraxylene prices declined from US \$ 1036 (Q 1, 1996) to US \$ 760 (Q 2, 1996) and US \$ 419 (Q3, 1996) per MT.

If the reduction in selling prices is adjusted for the above factors, it will be seen that there is no causal link between the import prices of PTA and price depression in India.

(V) Other Issues:

- i. There are customs duties anomalies, which the Government of India have not rectified in spite of strong pleas by the interested parties;
- ii. PTA/DMT is produced world-wide by giant petrochemical companies, who are not in a position to store these goods. It is the distributors, who depending upon the market, find it convenient to dispose off the material in the spot market at whatever prices they are able to realise. Question of dumping would, therefore, never arise;
- iii. Indian PTA/DMT producers price their product based on unreasonably high spot prices, which had cascading effect on the Indian PSF industry;
- iv. There is a monopolistic supply situation for PTA in India;
- v. Allegation of dumping should be considered with reference to the prices of Paraxylene;
- vi. When prices of PTA/DMT went up to US \$ 2000 pmt in 1994-95, the domestic PTA/DMT producers had made huge profits. These producers are continuously earning profits. There should be no intervention now when the global prices have come down. Competing market forces should be allowed to operate in a level playing field;
- vii. The problems faced by the DMT producers in India is due to global switch over to PTA in preference to DMT by the consumers;
- viii. The prices of PTA have since gone up. Since there is no trigger mechanism in the anti-dumping duty, even genuine imports would suffer the levy.

D. EXAMINATION OF THE ISSUES RAISED

4. The submissions made by the exporter, importers, petitioners and other interested parties have been examined, considered and have been dealt at appropriate places in the notification.

5. It is clarified that the BDMC filed a petition on 24.9.1996. The petitioner was asked to furnish additional copies of the non-confidential version of the petition filed for enabling the Authority to provide the same to the interested parties in accordance with Rule 6(3). The additional copies were supplied on 20.12.96. The contentions raised by the exporters in this regard are, therefore, incorrect. The Authority notified the Governments of the exporting countries on 12.12.1996.

6. With regard to differences among the petitioners as to countries from which the product is allegedly dumped, the Authority notes that the Authority has considered the petition filed by BDMC and Reliance. The complaints made by others, including IPCL are irrelevant for the purpose.

7. The Authority satisfied itself about the adequacy and accuracy of the evidence with regard to dumping, injury, and causal link between dumping and injury in accordance with Rule 5(2) before initiating the investigation. Mere existence of factual discrepancies in an application does not debar an applicant from seeking redressal of his grievance in accordance with the law, so long as the applicant has been able to demonstrate a prima facie case with reasonable burden.

E. PRODUCT UNDER CONSIDERATION

8. The product considered in this report for the purpose of the present investigation is Purified Terephthalic Acid (popularly known as PTA and referred to as PTA hereinafter in this notification).

9. PTA is a white crystal or powder; insoluble in water, chloroform, ether, acetic acid; slightly soluble in alcohol; soluble in alkalis; sublimes above 300C Combustible. PTA is produced by oxidation of p-xylene or of mixed xylenes and other alkyl aromatics. PTA is used for production of linear, crystalline polyester resins, fibers, and films by combination with glycols; reagent for alkali in wool; additive to poultry feeds. The major usage of PTA is, however, for production of polyester fibre.

10. PTA is classified under the chapter 29 (under subheading 2917.36). The custom classification, manufacturing process and, usage of the product indicated herein are,

however, indicative only and are in no way binding on the scope of the product under consideration.

F. LIKE ARTICLES

11. 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 article under investigation, or in the absence of such an article, another article having characteristics closely resembling those of the article under investigation.

From the above definition of the term "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 in the absence of articles identical or alike in all respects. Therefore, the usage of the words "in the absence of" is of critical significance for the 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. In the instant case the petition has been made by the producers of PTA and DMT, on the ground that both of them are suffering injury on account of dumped imports of PTA from the subject countries. However, in view of the definition of the term "domestic industry" in the law, the only manufacturer of PTA, namely, RIL has been excluded. There is sufficient evidence and technical literature to suggest that even though DMT is not identical to PTA, DMT has been technically and commercially substituted by PTA and, therefore, it can, be considered that in the absence of any "domestic industry" producing an article identical to PTA, it is DMT which is a like article in the context of these investigations.

G. DOMESTIC INDUSTRY

12. Petitions have been filed separately by M/s Bombay Dyeing, Manufacturing Company Ltd. and Reliance Industries Ltd. There are the following two more producers of PTA/DMT in India, in addition to the petitioners:

M/s.

- Indian Petrochemicals Corporation Ltd., Vadodara
- Bongaigaon Refinery & Petrochemicals Ltd., Dhaliagon

13. In addition to the above, Mls. SVC Superchem is also setting up facilities for production of PTA. SVC Superchem has, however, not yet commenced commercial production. The petitioners have not alleged that the imports of PTA into India would materially retard the establishment of an industry in India.

14. Reliance has imported PTA from the subject countries during the investigation period and, therefore, cannot constitute domestic industry within the meaning of rule 2(b). Production of BDMC constitutes a major proportion of the total domestic production of DMT/PTA in India. BDMC, therefore, constitutes domestic industry within the meaning of the rules.

H. DUMPING

15. Under Section 9A(1)(c), normal value in relation to an article means:

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

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

16. The Authority sent questionnaire to the exporters from the subject countries in terms of the section cited above. The normal value and export price in respect of the exporters who have furnished information to the Authority have been determined from the information furnished by them and the same is discussed hereinbelow. Since these exporters have furnished details of their prices in the home market, normal value

has been determined in accordance with the Section 9A(1)c(i). The dumping margin in case of individual exporters have been analysed hereinbelow:

i) Exporter - Samsung Petrochemical Co. Ltd. (Samsung):

17. The arguments raised and the claims made by Samsung are as under:

- a. The company has not directly exported to India. The sales have been made to an unrelated domestic market trader, who has in turn exported the goods to India. The company had sold on ex-works basis, on local L/C, at sight, cash basis. The sales in the domestic market were either on wholesale or retail basis. The wholesale sales (to the PSF consumers) were made to unrelated manufacturers, on local L/C (as raw material) payment basis.
- b. Samsung has claimed the following price adjustments in the domestic prices and export prices to India:
 - i. Packing costs: The company has claimed different packing cost for the sales made in the domestic market (won *** pmt) and export markets (won *** pmt).
 - ii. Freight: Samsung has claimed that it has not incurred any expenditure on account of inland and ocean freight in cases of exports to India. The company has claimed freight of won *** pmt (US \$ ***) in case of sales in the domestic market. The freight expenses have, in the domestic market, been claimed on the basis of outside contractor fee and distribution centre expenses.
 - iii. Duty drawback: The company has claimed an amount of won *** pmt (US \$ ***) on account of duty drawback.
 - iv. Credit expenses: The company has claimed an amount of won *** pmt (US \$ ***) on account of credit extended by it in the domestic market. The claim has been made on the basis of average collection period of the sales in the domestic market (which has been claimed as *** days) and interest rate for the company's short term borrowings (which has been claimed as ***%).
 - v. Unloading expenses: The company has claimed an adjustment amounting to won *** pmt (US \$ ***) on account of unloading facilities especially designed in customers factory. The company has claimed that it incurred a total expenditure of won *** on this account during the relevant period.

(ii) Exporter - Tuntex Petrochemicals (Thailand) Public Company Ltd.

(Tuntex):

18. a.) Tuntex has claimed the following price adjustments in the export price to India:

- Inland freight (US \$ *** pmt);
- Terminal handling charges (US \$ *** pmt);
- Ocean freight (US \$ *** pmt);
- Bill of lading fee (US \$ *** pmt).

Adjustment on account of inland freight has been claimed on the basis of some debit notes raised by a transport services company in Thailand, which indicates that the company has been debited @ Baht *** per *** MT container. Adjustment on account of ocean freight, B/L fee, and handling have been claimed on the basis of some invoices raised on the exporter, which indicate that invoices have been raised on the company @ US \$ *** per container on account of ocean freight, Baht *** per container on account of terminal handling charges (TMC) and Baht *** for B/L fee.

b) The following adjustments have been claimed in the selling prices in the domestic market:

- Inland freight (US \$ *** pmt);
- VAT (value added tax @ 7%, amounting to US \$ *** pmt);
- Interest (US \$ *** pmt);
- Drawback (US \$ *** pmt).

Adjustment on account of drawback has been claimed on the basis of volume of sales made in the home market and amount of duty.

Evidence with regard to inland freight (invoice raised by a transport company) indicates that the invoice of Baht *** was raised for transportation of *** MT goods, translating into an expense of US \$ *** pmt, as against US \$ *** pmt claimed by the company. Since the exporter has not furnished evidence suggesting that the inland freight paid during the investigation period averaged US \$ *** pmt, the Authority has allowed an adjustment of US \$ *** on this account.

(iii) Exporter - Sungkyong Industries Ltd. (Sungkyong):

19. Sungkyong has not provided any supporting document, such as purchase order, invoice, bill of lading, rebate settlement, discounts information, pleading that the same is voluminous and is available for on-site verification. Sungkyong has claimed the following differences in the circumstances of sales:

- i. Terms of payment: The exporter has claimed that the company allows approx. *** months trade credit for the domestic market whereas the exports are on the basis of at-sight local L/C. The exporter has argued that the opportunity cost for

the credit extended in the domestic market should, therefore, be taken into account for a fair comparison.

- ii. Quantity discounts: The exporter has claimed that it allows discount and/or rebate based on the sales quantity in domestic market and export markets. The exporter has, therefore, argued price comparisons on the basis of prices for similar quantity levels.
- iii. On-going customer and spot customer: The exporter has claimed that offers different price formula for its on-going customers, which can stabilise the price change and it may offer these customers the prices based on announced prices by market leader. The same is followed in case of exports also in case of on-going customers. The exporter has claimed at the price of its exports to India were, however, determined on a spot delivery basis, which might have created the sales price difference in certain market situation during short period of time. The exporter has further argued that its average price of spot customers and long-term on-going customers were, however; approximately the same. The exporter has, in view of the above, suggested the Authority to consider the same type of customers.
- iv. Sungkyong has claimed the following price adjustments:

a) On export price:

- Commission: Sungkyong has exported through two trading companies, one of which is related to Sungkyong. The company has claimed that according to Korean law any price discrimination between related and unrelated parties is illegal. The company has further provided sale price structure by relationship separately for the related and unrelated company. It is found that the prices at which the goods have been sold by the exporter to the two companies are comparable. The company has shown commission paid to the related company (there is only one sale made through unrelated company), and has claimed that no commission was paid in case of the sale made through the unrelated company. The commission shown by the company ranged between ***% to ***% of the export price.
- Inland freight ranging between US \$ *** pmt to US \$ *** pmt.
- Handling charges ranging between US \$ *** pmt to US \$ *** pmt.
- Ocean freight of US \$ *** pmt, except for the export made through the unrelated company, in which case the amount is US \$ *** pmt.
- Duty drawback ranging between US \$ *** pmt to US \$ *** pmt.
- It is considered appropriate to allow the adjustment on account of the above, as claimed.

b) On domestic market:

The exporter has claimed the following price adjustments in the selling prices in the domestic market:

- Inland freight ranging between US \$ *** pmt to US \$ *** pmt, with a declining trend from April, 1996 to Oct., 1996;
- Credit expenses ranging between US \$ *** pmt to US \$ *** pmt for sales made to the related customers, except for one sale in the month of 1996, wherein the amount claimed is US \$ *** pmt in which case the sales were made through an unrelated party

(iv) Exporter - Kohap Petrochemical Company

20. Kohap has claimed the normal value in Korea RP and export price of the exports made to India on the basis of the following :

a. Selling prices: Kohap has claimed selling price in the home market and export to India on the basis of average sales realisation from the sales in the respective market. Since the selling price has been claimed on the basis of actual sales made and value realised therefrom by the exporter in each of the month in the investigation period, the selling price claimed by the exporter have been accepted for the purpose of preliminary determination. In case of sales in the here market, the exporter has claimed that the same is exclusive of duty.

b. Adjustments in the selling prices for exports to India. The exporter has claimed the following prices adjustments in the average selling prices in case of exports to India (all adjustments are in US \$ pmt) :

- i. Packing expenses (***)
- ii. Inland Freight (***)
- iii. Terminal handling charges (***)
- iv. Container tax (***)
- v. W/F (***)
- vi. Stuffing (***)
- vii. Customs (***)
- viii. Interest (***)
- ix. Overseas freight (***)

c. Adjustments in the selling prices in the home market: The exporter has claimed the following price adjustments in the average selling price for sales it the home market (all adjustments are in US \$ pmt):

- i. Inland freight (***)

- ii. Interest (***)
- iii. Container tax (***)
- iv. Transfer fee (***)
- v. Nego fee (***)

Adjustment on account of interest has been claimed on the grounds that credit period for sales in the home market is *** days, whereas the exports are on the basis of L/C at sight. The exporter has claimed that it has two customers in the home market and supply to one customer is through pipelines. Transfer fee of US \$ *** has been claimed on the basis of cost of nitrogen used for transporting PTA through pipelines from its factory to its customer.

21. Examination of the claims of the exporters by the Authority:

Samsung has worked out the packing costs on the basis of material and labour costs involved. It is, however, found that the company has claimed higher labour cost on account of packing (won *** pmt) in case of domestic market as compared to exports (won *** pmt). The Authority has allowed the same amount of packing labour costs for the two markets. The revised packing cost for the exports comes to won *** pmt, which has been allowed as an adjustment-

All the exporters have claimed adjustment on account of credit purported to have been extended by the exporters only in their domestic market. Sungkyong has claimed adjustment on this account even without establishing the actual period for which credit was extended to the domestic market customers. Tuntex has not adduced any evidence in support of the claim made on this account. The claim of these exporters is based on the contention that the exporters have sold on credit in the home market, whereas the exports to India were without any credit. The claim is, however, unsubstantiated, especially with regard to the exports to India. The exporters have not furnished photocopies of all the documents relating to exports to India. The evidence available with the Authority, however, establishes that the exports were made on credits, ranging as high as 180 days. The Authority has, therefore, disallowed the adjustments claimed on account of interest for the purpose of preliminary determination.

The Authority has allowed all other adjustments, except as stated in the foregoing, for the purpose of preliminary determination.

(v) Exporters from Indonesia:

22. None of the exporters from Indonesia has furnished any response to the Authority. The Authority holds that the exporters from Indonesia have failed to co-operate with

the Authority. Since these exporters from Indonesia have failed to co-operate, the Authority has not determined Individual dumping margin in case of these exporters. The Authority has determined normal value in case of Indonesia on the same basis as was adopted at the time of initiation of investigation, i.e., on the basis of prices published in the PCI. The Authority notes that the variations in the claims by the co-operative exporters from Korea and Thailand are so significantly different that the normal value in case of Indonesia cannot be adjusted on the basis of claims made by any of the co-operative exporters. No adjustment has, therefore, been allowed in the normal value. The Authority has considered the same level of normal value and export price as was adopted at the time of initiation for the purpose of preliminary findings. The export price from Indonesia has, however, been adjusted on the basis of claims made by one of the co-operative exporters, in the absence of any information from the exporters from Indonesia.

23. 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.

24. For the purpose of fair comparison between the normal value and the export price, the Authority took into account the information furnished by the exporters, importers, and petitioners. The Authority notes that there is significant decline in the selling prices in both the markets from April, 1996 to Oct., 1996 and some of the exporters have not exported in all the months of the investigation period. Comparison of normal value with export price on weighted average basis would, therefore, not represent the correct comparison. The Authority has compared weighted average normal value with weighted average export price on month-to-month basis for individual exporter.

25. The comparison shows the following normal value, export price and dumping margins:

US \$ per MT

S. No.	Name of the exporter	Dumping Margin **
A. Exports from Korea RP		
1.	Samsung	3.13 %

2.	Sungkyong	8.65 %
3.	Kohap	2.31 %
B. Exports from Thailand		
1.	Tuntex	8.61 %
C.	Exports from Indonesia	14.97 %

** Note : The dumping margins are percentage of export price.

I. INJURY

26. 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.

27. Annexure II(iii) under rule 11 supra further provides 'that in case where imports of a product from more than one country are being simultaneously subjected to Anti Dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when it determines that

- a. the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and
- b. cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

28 The Authority notes that the margin of dumping and quantum of imports from each of the subject country, Thailand, Korea RP and Indonesia are more than the limits prescribed above. Cumulative assessment of the effects of imports is appropriate since the export prices from the subject countries were directly competing with the prices offered by the domestic industry in the Indian market.

29. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such further 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. in accordance with Annexure II (iv) of the rules supra.

a. Volume and Market Share of Dumped Imports

30. Imports of PTA in India increased from 63173 MT (1994-95) to 99104 MT (1995-96) and were 119916 MT during the investigation period (205570 MT on annualised basis). Imports from the subject countries increased from 29421 MT (1994-95) to 62385 MT (1995-96) and were 85874 MT (147213 MT on annualised basis) in the investigation period.

31. The weighted average CIF import price per MT during the corresponding period from the subject countries increased from Rs. 26784 pmt (1994-95) to Rs. 49180 pmt (1995-96) and declined to Rs. 23965 pmt in the investigation period.

b. Economic indicators affecting domestic industry:

i) Production and Capacity Utilisation:

32. Production of DMT by the domestic industry increased from 113773 MT (1994-95) to 134540 MT (1995-96) and was 76752 MT (131575 MT on annualised basis) during the period of investigation. BDMC increased its installed capacity from 145000 MT in 1994-95 to 165000 MT in the investigation period and the capacity utilisation of the domestic industry in the corresponding periods were 78.46% (1994-95), 92.79% (1995-96) and 79.70% (investigation period). BDMC had to keep its production at very low levels in the months of May and June, 1996. Even though BDMC enhanced its capacity in the investigation period, it achieved capacity utilisation of 96.05% in the month of April, '96 itself and crossed 106% in the month of Oct., '96 and, therefore, the decline in capacity utilisation cannot be attributed to enhanced capacity.

ii) Sales in Absolute Quantity

33. Sales of the domestic industry in absolute terms increased from 112166 MT (1994-95) to 132441 MT (1995-96) and were 79628 MT during the period of investigation (136505) MT on annualised basis). The increase in the sales volume, however, has to be viewed in the context of increased installed capacity and production, as brought out in the preceding paragraph and declining sales realisation, as discussed in the following paragraph.

iii) Selling Price Trend

34. BDMC argued that the prices of DMT and PTA move in the same direction. It further argued that 194 Kg. of DMT gives 192 Kg. of PET and 64 Kg. of MeoH, whereas 166 Kg. of PTA gives 192 Kg. of PET, resulting in stoichiometric ratio in DMT and PTA of 1.1687. BDMC has, therefore, argued that the DMT and PTA prices would bear the following relationship:

DMT Prices	Ratio	PTA Prices
20	1.030	20.67
25	1.060	26.50
30	1.079	32.36
40	1.101	44.05
50	1.115	55.73
60	1.125	67.42

35. An analysis of the list prices of DMT and PTA since January, 1995 for RIL and BDMC reveals as shown in the figure below:

There is reasonable indication to believe that the prices of DMT and PTA move in the same direction and the prices of DMT remains lower than the prices of PTA.

BDMC has, in view of the foregoing, argued that it was forced to keep the prices of its DMT lower in view of imports of PTA from the subject countries, even for those customers who did not use or even did not have facilities to use PTA. It has furnished evidence indicating that its customers demanded lower prices for DMT in view of the prevailing prices of PTA from the subject countries. There is reasonable evidence, therefore, to suggest that the domestic industry was forced to lower its selling prices even for those customers who did not or could not use PTA, resulting financial losses to the domestic industry.

36. List price of BDMC and monthly average net sales realisation (after excluding excise duty and discounts) since Jan., 1995 were as shown in the figure below :

The net realisation sharply declined from Rs. 64000 pmt in the month of July, 1995 to a low of Rs. 20116 pmt in the month of August, 1996. It is also seen that the domestic industry which was selling at the list prices upto Sept., 1995 started offering discounts from Oct., 1995. The declining sales realisations as also the discounts offered by the domestic industry were due to dumping as also declining prices of paraxylene, as discussed in the following paragraph.

37. The prices of Paraxylene (referred to as Px hereinafter) declined sharply from a peak of US \$ 1036 pmt (Q1, 1996) to a low of US \$ 470 pmt (Q4, 1996) (both US

Gulf Course prices, as payable by the Indian importers). The decline in the sales realisation, therefore, was also due to decline in the prices of Px. However, as may be seen from the table and figure hereinbelow, the decline in the sales realisation was significantly higher than the decline in the cost of production as a result of decline in the costs of Px.

Rs. per MT

Month	DMT (Net Realization)	Cost of Px pmt of DMT	Increase over previous month	
			DMT	Px
Jan-95	***	***		
Feb-95	***	***	0	0
Mar-95	***	***	3250	0
Apr-95	***	***	7000	3715
May-95	***	***	0	-149
Jun-95	***	***	3000	0
Jul-95	***	***	3000	3090
Aug-95	***	***	-5000	0
Sep-95	***	***	-3000	243
Oct-95	***	***	-5168	1960
Nov-95	***	***	-363	1169
Dec-95	***	***	-796	-517
Jan-96	***	***	-904	48
Feb-96	***	***	-1603	837
Mar-96	***	***	-3501	0
Apr-96	***	***	-7677	-1152
May-96	***	***	-6875	0
Jun-96	***	***	-2051	0
Jul-96	***	***	-4498	-9876
Aug-96	***	***	-2448	0
Sep-96	***	***	1122	0
Oct-96	***	***	4193	-2875

Whereas the prices of Px declined in Q2, 1996 by US \$ 56 (resulting in reduction in cost of production by Rs. 1381 pmt), the sales realisation declined sharply from Rs. 48769 pmt (Jan., '96) to Rs. 27062 pmt (June, '96). Further, whereas the prices of Px declined by US \$ 395 between Q 2, '96 and Q 3, '96 (resulting in decline in the cost of production by Rs. 9876), the sales realisations declined by Rs. 15872 pmt from Apr., '96 to Aug., '96. The decline in the sales realisations to the domestic industry was, therefore, significantly higher than the decline in its cost of production attributable to decline in the Px prices.

iv) Stock

38. Stock of DMT with the domestic industry are as shown in the figure below:

The stock position is more or less constant, which does not directly show injury to the domestic industry. However, the relatively comfortable position with regard to stock level must be viewed in the context of the declining sales realisations.

v) Profit/Loss

39. The petitioners are engaged in a number of activities in addition of production and sale of DMT. The profit/loss reported by the petitioners in the published annual accounts cannot, therefore, be relied upon, for assessment of injury to the domestic industry from sale of PTA/DMT in the Indian market. DDMC has, however, furnished details, which have also been verified by the investigating team, which show that the company has suffered financial losses in the investigation period from sale of DMT at prices significantly below the fair selling price, resulting in financial losses of Rs. *** pmt (investigation period) as compared to a profit of Rs. *** pmt (1995-96) and Rs. *** pmt (1994-95), as may be seen from the table below:

Rs. per MT

Year	Cost of Sales	Net Avg. Sales Realisation	Profit/Loss
1992-93	***	***	***
1993-94	***	***	***
1994-95	***	***	***
1995-96	***	***	***
Investigation period	***	***	***

c. Conclusion on injury

- The circumstances warrant consideration of injury on cumulative basis for imports from the subject countries;
- The imports of PTA increased in absolute terms from the subject countries during the period of investigation;
- The share of the subject countries in the total demand in the country increased significantly during the investigation period.
- Exports of PTA from the subject countries forced the domestic industry to keep its prices of DMT to unremunerative levels, and prevented the domestic industry from recovering its fair selling price, resulting in financial losses to the domestic industry, in spite of the fact that the consumers did not consume PTA during the period.
- Various indicators relating to domestic industry such as production, capacity utilisation, sales quantities, average sales realisation, stock, losses collectively

and cumulatively establish that the domestic industry has suffered material injury, even though some of the parameter show improvement;

It is thus seen the domestic industry has suffered material injury.

J. CAUSAL LINK:

40. In establishing that the material injury to the domestic industry has been caused by the imports from the subject countries, the Authority has considered that exports of PTA from the subject countries forced the domestic industry to keep its prices to unremunerative levels, and prevented it from recovering its fair selling price, resulting in financial losses to the domestic industry. The Authority has relied upon, in this regard, on the evidence presented by BDMC establishing that its customers demanded lower prices under the pretext of lower prices at which PTA was available in the market, in spite of the fact that these consumers were not consumers of PTA at all or did not consume PTA during the investigation period and that the decline in the sales realisation was significantly higher than the decline in cost of production attributable to the decline in the prices of Px.

K. FAIR SELLING PRICE:

41. The methodology adopted by the Authority for determination of fair selling price is as follows:

The cost of production as also fair selling price considered is for the investigation period. Since the period does not include any completed accounting year, the information has been extracted largely from the company's financial accounts for internal control and/or report purposes. The company is a multi-product, multi-location, diversified company and annual accounts do not show complete picture with regard to the expenses and the cost of production on DMT.

The cost of production has been worked out element-wise for items or expenditure incurred by the company. Fair return has been added to the cost of production for arriving at fair selling price. The details of cost of production and fair selling price worked out are discussed herein below:

- a. Raw material Cost: Manufacturing of DMT requires paraxylene and Methanol. The raw materials cost has been allowed as per norms for major raw-materials or actual consumption quantities for preceding three years, whichever is lower, alongwith the actual raw material rates for the investigation period.

The company furnished a statement showing item wise opening stock, purchases, closing stock and consumption of Px and Methanol for the investigation period. Raw material prices have been worked out on the basis of this statement, after verification.

- b. Utilities: Bombay Dyeing was requested to provide utilities consumption statement showing therein consumption norms (standard consumption per unit of production), the actual consumption per unit of consumption since 1992-93 and the utilities rates for the investigation period. These have been relied upon. The actual costs of these utilities per unit of production for the investigation period have been considered to determine total cost of utilities per unit of production. Utilities cost has been allowed as per consumption norms or actual consumption quantity for preceding three years whichever is lower alongwith the actual utilities rates for the investigation period.
- c. Overheads: Bombay Dyeing furnished a statement showing the total overheads costs and costs per unit of production for the investigation period in the format prescribed by the Authority. The statement has been compiled by the company from the statements prepared by it from their financial accounts, which have been verified by the investigating team and the same have been relied upon. Element wise unit costs have been worked out from these statements.
- d. Return: Fair return has been worked out as per consistent practice of ***% on capital employed.
- e. Cost at Normative Level: Costs have been calculated at a normative level of capacity utilisation.

L. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

42. The purpose of anti dumping duties, in general, is to eliminate dumping which is causing injury to the 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.

43. It is recognised that the imposition of anti dumping duties might affect the price levels of the products manufactured using PTA/DMT 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 the anti dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of PTA/DMT. 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.

44. To ascertain the extent of Anti-dumping duty necessary to remove the injury to the domestic industry, the Authority as relied upon reasonable selling price of PTA/DMT in India for the domestic industry, by considering the optimum cost of production at optimum level of capacity utilisation of the domestic industry.

45. Injury caused to the domestic industry from factors other than dumping, if any, have not been considered while recommending the amount of Anti Dumping Duty necessary to remove the injury to the domestic industry caused by dumped imports.

46. The reduction in custom duties in no way affect the dumping per se. In so far as the injury is concerned, the Authority has calculated the level of injury being faced by the domestic industry after considering the custom duties prevailing during the period of investigation.

M. LANDED VALUE:

47. The Authority has calculated landed value for individual exporter on the basis of weighted average export price declared by them, after adding the prevailing level of customs duties and one percent landing and two percent handling charges.

N. CONCLUSIONS:

48. The Authority concludes, after considering the foregoing, that:

- a. PTA originating in or exported from Korea RP, Thailand and Indonesia has been exported to India below normal value, resulting in dumping;
- b. the Indian industry has suffered material injury;
- c. the injury has been caused cumulatively by the imports from the subject countries.

49. It is considered necessary to impose anti dumping duties, provisionally, pending final determination, on all imports of PTA originating in or exported from the subject countries, pending investigations.

50. It was considered whether a duty lower than the dumping margin would be sufficient to remove the injury. Landed prices of the imports for each exporter, for the purpose, were compared with the fair selling price of the domestic industry, determined for the period of investigation, as detailed hereinabove in paras K and M. Wherever the difference was less than the dumping margin, a duty lower than the dumping margin is recommended. Accordingly, it is proposed that provisional anti dumping duties as set out below be imposed, from the date of notification to be issued

in this regard by the Central Government, on all imports of PTA originating in or exported from Korea RP, Indonesia and Thailand falling Under Chapter 29 of the Customs Tariff, pending final determination.

(Rs. per MT)

S. No.	Products Originating in or exported from	Name of the exporter	Amount of Duty Rs. per MT
1.	Korea RP	Sungkyong Industries Ltd.	1355
		Kohap Petrochemical Corporation	NIL
		Samsung Petrochemicals Co., Ltd.	463
		Any Other Exporter	1355
2.	Thailand	Tuntex Petrochemical (Thailand) Public Co. Ltd.	1769
		Any Other Exporter	1769
3.	Indonesia	Any Exporter	3375

51. Known exporters, importers, petitioners and other interested parties are being addressed separately by the Authority, who may make known their views, within forty days from the date of the despatch of the letter. Any other interested party may also make known its views within forty days from the date of publication of these findings.

(Dipak Chatterjee)
Designated Authority