

No. 14/5/2009-DGAD
Department of Commerce
(Directorate General of Anti Dumping & Allied Duties)

Dated 9th August 2012

Subject: Post-Decisional Oral Hearing on Anti-Dumping Investigations concerning imports of 'Polypropylene' originating in or exported from Oman, Saudi Arabia and Singapore.

In pursuance of the Hon'ble Tribunal (CESTAT's) Misc. Order No. AD/M/2-4/2012-CU(DB) dated 14th May, 2012, a Post-decisional hearing was held on 6th July, 2012 on the captioned subject, wherein the interested parties that had participated in the instant investigation were requested to participate.

2. Upon conclusion of the said hearing, the interested parties that had made their oral submissions were advised to file the written submissions within the stipulated time as per the AD Rules. They were also advised to file the rejoinders thereafter.

3. The written submissions and rejoinders filed by the interested parties, to the extent considered relevant, have been duly considered in this statement. Submissions made by interested parties have been examined by the Authority as follows:

Written Submissions made on behalf of M/s Saudi Polyolefins Company, Saudi Arabia, M/s Advanced Petrochemical Company, Saudi Arabia, M/s Saudi Basic Industries Corporation, Saudi Arabia, M/s Marubeni Chemical Asia Pacific Pte. Ltd, M/s Oman Polypropylene LLC, Oman, M/s ExxonMobil Chemical Asia Pacific, Singapore, M/s Inabata Singapore Pte Ltd., Singapore, M/s Sumitomo Corporation Asia Pte Ltd., Singapore

4. The following submissions, in brief, have been made on behalf of these interested parties:

Submissions on behalf of M/s Saudi Polyolefins Company, Saudi Arabia; Advanced Petrochemical Company, Saudi Arabia and Saudi Basic Industries Corporation, Saudi Arabia

- These respondents have in essence have reiterated their earlier submissions and have not raised new issue in the post decisional hearing.

Submissions on behalf of M/s Marubeni Chemical Asia Pacific Pte. Ltd

- The Authority, after conducting detailed investigation and verification at the premise of Marubeni, concluded that exports made by Marubeni were not causing injury to the domestic industry and therefore awarded zero duty to the exporter. That the same must be upheld.

- The export price of Marubeni during the POI was US\$ *** /MT whereas the export price claimed by the petitioner in its petition with respect to the imports from Singapore is US\$ 1473/MT. The significant difference between the export price of Marubeni and import price from Singapore itself establishes that the exports made by Marubeni could not have caused injury to the domestic industry.
- The price undercutting claimed by the petitioner is considering the average import price from Singapore which does not hold good. Marubeni fully cooperated in the present investigations and the data has been verified by the Authority. It was found that the export price of Marubeni was far higher than the average export price claimed by the petitioner in their petition.
- That the dumping margin in respect of its exports has been substantially revised upwards as compared to preliminary findings. It does not agree with the modification done in determining the dumping margin.
- The Authority should disclose their injury margin, as provided under the law since their injury margin is negative and therefore no duty should be payable in respect of their exports. The Authority had not disclosed the injury margin and it must be disclosed.
- They are not in agreement with the Authority with respect to the final findings with regard to scope of product under consideration, existence of like article, existence of dumping, existence of injury and causal link between dumping and injury.
- Marubeni has given interest bearing credits to its customers and such interests cost should be included in the landed price of imports in order to determine injury margin. The CIF price reported by the company was exclusive of such interest bearing credit.

Submissions on behalf of M/s Oman Polypropylene LLC, Oman

- The Accuracy of the evidence furnished by the Applicant was not corroborated with DGCI&S data before the initiation or before the issuance of preliminary findings. The Petition was initiated based on Info drive data and the preliminary findings were also issued on the basis of same data which the Authority has itself on examination found to be erroneous, in as much as, the wrong unit of measurement was stated in the info drive data. The Authority has wrongly calculated the Normal value for OPP. In the comments to the disclosure statement filed on behalf of OPP. The cost of production needs to be revisited by the Authority and necessary adjustments have to be made in accordance with the WTO Agreement.
- There is no causal link between the injury claimed by the Applicant Industry and the alleged imports as there is no volume effect of alleged dumped imports from Oman. There is no injury suffered by the applicant and the same can be demonstrated on the following parameters:-

- The sales of the Applicant Industry are far greater than the volume of subject imports that it is unlikely that the volume of imports could have any real impact on the volume of domestic sales.
- The capacity utilization shows an increasing trend. It is pointed out that in the POI Applicant's capacity utilization has shown a declining trend primarily due to their plant shut down at Jamnagar.
- The Domestic sales volumes has shown a rising trend, which is in pace with the rising Domestic Demand of the subject goods. It is seen that the Domestic sale of the Applicant Industry has increased by 66% points during the POI when compared with the base year. Thus, there is no volume effect of the dumped imports on the Applicant Industry.
- There was a trend of falling polypropylene prices faced by the producers all over Asia as also other parts of the world and losses on this account incurred cannot be attributed to dumped imports. That the decline in profitability, ROCE, and cash flow as a result cannot be linked with imports from the subject countries and is on account of general decline in Polypropylene prices, worldwide in particular during April-December 2008 (POI).
- The productivity, employment and wages have shown no negative impact due to imports of subject goods and the Authority has noted that the productivity is not a cause of injury to the Applicant Industry. That there has been a decrease of the average inventory level from 100 (in the base year 2005-06) to 73 in the POI showing an improved off take. In fact the inventory level is far lower in POI than at any time during the entire injury investigation period.

Submissions made on behalf of ExxonMobil Chemical Asia Pacific, Singapore

- The selection of period of investigation is not in accordance with the recommendations of the Committee on Anti-Dumping Practices. The POI is a representative period, on the basis of which, a determination is to be made, as to whether there is existence of dumping and injury. The POI in the present case is too short and includes the months during which the movement of raw materials and polypropylene prices was erratic due to global recession. Any examination of facts during this POI would not yield accurate results, as during this POI the global prices of polypropylene, Naptha and crude fluctuated in a totally unpredictable manner. ExxonMobil submits that the POI should be fixed for a period of 18 months for a fair and proper analysis.
- The export performance of the domestic industry has affected their financial and economic situation, as they are facing anti-dumping proceedings in Brazil for export of the same product i.e., polypropylene. This initiation has been published as Circular No. 41 dated July 23, 2009 by the Ministry of Development, Industry and International Trade. Injury, if any, is caused by extraneous factors.

- The perusal of international prevailing prices of polypropylene during the period 2007-2008 and 2008-09 demonstrates that there is a great fluctuation in prices over a period of time and in the year 2008-2009 prices plummeted globally. The prices, as per RIL's price list, crashed below US\$ 1000 PMT. The said price when compared with prevailing Platts prices shows that RIL prevailing prices were in the range of prevailing market prices. On the contrary, exporters were charging higher prices because of their long term contract with buyers in the Indian market. Therefore, to say that the surge in exports resulted in injury to domestic industry on this account is fallacious and misrepresentation of global position in polypropylene business.
- During the period of investigation and in subsequent two quarters the global demand plunged and prices of polypropylene crashed even below 50% of its price. In absence of comparison of export sales, it can be submitted that possibly reduction in export or shut down of plant for any other reason may be the reason for under utilization of capacity. Polypropylene, being a petroleum base product, is linked with petroleum production, petroleum pricing and plastic industry across the world. The domestic industry cannot be isolated from the global market, especially when the domestic industry is catering to around 3% of global consumption of polypropylene.
- The reduction claim on account of return on capital and cash flow on index basis cannot be believe to be true so far it is claimed on the basis of dumped imports. The analysis of imports from subject countries vis-à-vis the total market share of the domestic industry during the relevant period in time would show that the argument that due to increase in imports from the subject country return on capital employed has gone down to 30 against the base level of 100 and in case of cash flow it has gone down to 48 against the base of 100., would hold no water.
- The claim of confidentiality coupled with the fact that the domestic industry is a monopolistic player in the domestic market, the anti dumping complaint is a gross abuse of the process of law.
- The doubtful data submitted by the domestic industry and claim of injury made on the basis of such data in absence of fair disclosure cannot be treated as reliable for imposing anti dumping duty against import from the subject countries.
- The loss claimed on account of liquidation of stock after September and October 2008 does not hold any substance. The Platts prices and domestic industry's own prices as available at the given website clearly shows that prices reduced drastically.
- There has been no injury whatsoever to the domestic industry from the import of the Subject Goods. In fact, the entire injury has been engineered by fixation of an inflated non- injurious price ('NIP') for the domestic industry. The cost of production has been adopted on a higher side. Additionally, a 22% return on investment has been included for arriving at the NIP. By fixing an inflated NIP, on a comparison of such NIP with the

landed value of imports, injury has been determined by the Respondent No. 1. The findings relating to injury are without any factual basis.

- That in the Disclosure Statement, the fair selling price for the domestic industry has been fixed by determining the profit as 22% return on investment or capital employed. It is submitted that the Anti-Dumping law cannot place the domestic industry in a position better than, if there was no dumping. It is submitted that either no profit or a reasonable profit, ought to have been fixed, based on the global profits in the industry during the Period of Investigation or the historical profits earned by the domestic industry, for a fair analysis.
- The entire RIL business has never achieved such a high ROCE (Reliance on Capital Employed) (22%) in the past decade. A 22% ROCE in 2008 for the PP business in India would be even more unrealistic in 2008 given the unusual economic conditions in that year, which (in RIL's words) experienced a "commodity prices trend reversal" with "a combination of sky rocketing oil prices and poor demand". Even the three largest global PP manufacturers do not typically achieve 22% ROCE, as may be noted from their consolidated results for 2007 and 2008. A more typical ROCE for the PP Industry in 2008, based on a survey carried out by an independent consultant, would be 1.41%.
- The inflated NIP requires revision, and the profit should be fixed based on industry norms or on historical levels of return on capital employed.
- The injury claimed by Domestic industry in the Polypropylene business is due to the unprecedented volatility in the crude oil prices, and not due to any injurious dumping of Polypropylene by EXXONMOBIL in India. The effect of such global trends cannot be attributed to the subject imports.
- Additional grounds for termination of this investigation: ExxonMobil submits that it had filed an appeal no. 2 of 2011 before the Hon'ble Customs Excise Service Tax Appellate Tribunal against the Final Findings No. 14/5/2009 –DGAD dated August 23, 2010 issued by the Designated Authority in the instant matter. In view of the partial withdrawal of the duties by the aforesaid Findings, ExxonMobil had also filed an application raising additional grounds before the Hon'ble Tribunal for termination of the aforesaid Findings. The Hon'ble Tribunal while disposing off the appeal of Exxon Mobil (based on its order of remand for de novo consideration by the Designation Authority passed in the connected matter) directed to raise the additional grounds before the Designated Authority. In view of the directions given by the Hon'ble Tribunal, ExxonMobil is reproducing herein below the additional grounds raised before the Hon'ble Tribunal for consideration:
 - The applicants made a representation to the Central Government vide its letter 12.01.2012 pointing out that in view of the withdrawal of the duties on the imports from Saudi Arabia, duties on Singapore could not be continued, as this

was discriminatory and contrary to the provisions of Rule 19 of the Anti-Dumping Rules. The applicants submit that in view of the partial withdrawal of the duties by the aforesaid notification, they crave leave to adduce the following grounds, in addition to the grounds already set out in the appeal.

- The appellants submit that the imposition of duties is based on the recommendations of the Authority, as regards existence of dumping, injury and causal link. For the purpose of injury analysis, the Authority has conducted a cumulative assessment of the injury caused by the imports from Saudi Arabia, Singapore and Oman. If the imports from Saudi Arabia are to be excluded, the findings on the aspect of injury rendered by the Authority would not sustain. Moreover, in a case, where the Authority has held that there is dumping from various sources, it is not open to the Central Government to impose duties on a selective/discriminatory basis. Reference in this regard has also been made to their submissions made before the Central Government stating , *inter alia*, that

On December 30, 2011 the Central Government has withdrawn the duties imposed on the imports from Saudi Arabia by Notification 130/2011 -Cus. EMCAP believes, that this may be for the reason, that the Central Government has formed a view that the findings rendered by the Designated Authority, are not factually and legally sustainable with regard to Saudi Arabia. In this context, EMCAP submits that the duty against the imports from Singapore is based on the very same findings of the Designated Authority and, therefore, if the findings are not appropriate for Saudi Arabia, they are equally inappropriate for levying duties on imports from Singapore. The duties by the same token, are required to be withdrawn against Singapore also. EMCAP submits that for the imposition of duties, the Central Government must be satisfied that the imports from the subject countries are at dumped prices and that consequential injury is caused from such imports on the local manufacturer. The entire findings of the Designated Authority on the aspect relating to injury, are based on a cumulative assessment of the effects of the imports from Saudi Arabia, Singapore and Oman.

The scheme of the Act and Rules, do not permit partial acceptance of the recommendations, for the reason, that paragraph (iii) of Annexure II to the Rules, provides that where imports of a product from more than country are being simultaneously subjected to anti-dumping investigation, the Designated Authority shall cumulatively asses the effect of such imports. If the imports from Saudi Arabia are to be excluded from the analysis, the entire injury examination of the DA would no longer be valid. The recommendations of the DA, therefore, have to be accepted or rejected in whole and not in part. As the Central Government has partially rejected the finding, it must reject the entire findings.

- EMCAP submits that no separate analysis has been carried out by the Designated Authority, so as to ascertain whether there are injurious effects of the imports from Singapore on the domestic producer. The finding based on a cumulative assessment of injury would not hold, if the imports from Saudi Arabia are excluded. Existence of injury from the exports from Singapore has hence not been established in terms of Section 9B of the Customs Tariff Act, 1975. In the absence of any findings regarding the effects/consequences of the imports on the domestic producer from the imports from Singapore, the anti-dumping duties cannot be imposed. Section 9B provides that no duty shall be imposed under Section 9A of the Customs Tariff Act, 1975 unless a determination has been made that import of such article causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

- No duty can be imposed on the imports from Singapore, as there is no determination on the aspect of injury. It is also not open to the Central Government to follow a policy of pick and choose with regard to the countries against which, it chooses to impose anti-dumping duties. Rule 19 of the Anti-Dumping Rules, provides that the duty shall be imposed on a non – discriminatory basis, that is, it shall be applicable to all imports of such articles, from whatever sources found dumped. As the Central Government has already withdrawn the duties on Saudi Arabia, it can not continue the duties on imports from Singapore and Oman, since the imposition of duties on these countries would be discriminatory and contrary to the provisions of Rule 19 of the Rules.

- *EMCAP further submits that it has not dumped its products into India and submits that the findings of the Designated Authority are, based on an erroneous interpretation of the facts. The entire findings relate to data collected for a period, when on account of recessionary forces, there was a very wide fluctuation in prices of raw materials and finished goods. It is on account of selection of such a period, artificial margins have been derived. The injury analysis is also flawed, as the landed prices of the imports from Singapore was almost at par with the prices at which goods have been sold by domestic producer during the relevant period. Therefore, there is a total absence of any dumping or consequential injury arising from the exports made by EMCAP. In view of the fact that, the Central Government has withdrawn the duties on Saudi Arabia, EMCAP submits that there is no further justification for continuation of the duties in respect of Singapore. EMCAP, therefore, requests that the duties in respect of its exports to India, may be withdrawn forthwith. The appellants submit that in view of the withdrawal of duty on imports Saudi Arabia the duties against Singapore are totally unjustified and discriminatory.*

Submissions made on behalf of Inabata Singapore Pte Ltd., Singapore

- The selection of period of investigation is not in accordance with the recommendations of the Committee on Anti-Dumping Practices. The POI is a representative period, on the

basis of which, a determination is to be made, as to whether there is existence of dumping and injury. The POI in the present case is too short and includes the months during which the movement of raw materials and polypropylene prices was erratic due to global recession. Any examination of facts during this POI would not yield accurate results, as during this POI the global prices of polypropylene, Naptha and crude fluctuated in a totally unpredictable manner. The changes in the raw-material prices were significant and consequently, it was difficult to estimate the costs of production for fixation of prices.

- One of the products exported by them is a compound and, therefore, outside the scope of the investigations. ISPL submit that compounds and polypropylene are not substitutable, technically or commercially. The compound is a prepared product which is tailor made for a particular application and may include materials other than polypropylene. Whereas the polypropylene can be converted to a compound. The reverse is not true. Therefore, while polypropylene has multiple applications, the compound can be used only for the application for which it has been prepared.
- In the final findings, the Authority has held that since the exports by ISPL were not in commercial quantities, no margin of dumping can be determined for it. ISPL submits that in terms of sub Rule (3) of Rule 17 of the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and For Determination of Injury) Rules, 1995 (hereinafter referred to as Rules), the Authority is required to determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation. In this regard, it is submitted that the said Rules do not make any distinction for the purposes of Rule 17.
- The sale between the producer and the appellant is a domestic one. The sale to customers in India, by ISPL is an export sale. TPC has correctly accounted for the transactions as domestic sales. In fact, for the purposes of the questionnaire response, TPC has also tried to identify separately those domestic sales which are in the course of export. Therefore, merely because the transactions have been reflected as domestic sales by TPC does not reflect any discrepancy in the two responses.
- There is Non-compliance of Comprehensive Economic Cooperation Agreement (“CECA”) between Singapore and India. Article 2.7.2 of the CECA read together with Paragraph 6 of Annex II of Article VI of GATT 1994 imposes an obligation on the Designated Authority to use its “best endeavours” to procure information in case it is of the view that complete information has not been provided by ISPL in its Exporter Questionnaire (“EQ”) response. In view of the above submission, ISPL is of the view that where information previously submitted is not accepted or regarded as incomplete because of a new claim or allegation raised by the domestic industry, ISPL should be granted a reasonable opportunity to respond to that new claim or allegation.
- That the export performance of the domestic industry has affected their financial and economic situation, as they are facing anti-dumping proceedings in Brazil for export of

the same product i.e., polypropylene. This initiation has been published as Circular No. 41 dated July 23, 2009 by the Ministry of Development, Industry and International Trade. Injury, if any, is caused by extraneous factors.

- That it is not justified to assume that against the production of 15,17,688 MT during the period of investigation (annualized), domestic industry has suffered losses on account of price under cutting and return on investment due to import from subject countries (6.83% of the domestic industry's production).
- That the Designated Authority has not taken a view that the domestic industry has always abused its monopolistic position, being the largest polypropylene manufacturer and seller in India. That the global reduction of price of polypropylene (third and fourth quarter of 2008) during the investigation period might have affected the total sales, including the domestic sales and reduction on return of capital, cash flow etc cannot be said to due to imports from the subject countries.
- That the Designated Authority, in its findings has stated that there is increase in market share of domestic sales from 89% to 92%. However, it has been stated that "it appears that domestic industry has chosen to retain the market share at the cost of its realization". In this regard, it is being submitted that prices of exporter were contracted prices, which were determined on the basis of Platts average prices for the previous quarter/half year. This aspect can be confirmed by comparing the two transactions of exports made by Inabata in the month of September and November 2008 wherein inspite of prevailing price of around US \$ 1000 per MT, ISPL charged US \$ 2076 per MT, which were much higher than the prevailing market prices of RIL or Platts Prices. Therefore, to say that the higher prices were charged by the exporters whereas domestic industry could not increase the prices is incorrect, as the higher prices were charged due to long-term contracts
- That the domestic industry has cleverly chosen the period of investigation of nine months and has not gone beyond December 2008, as the global price of polypropylene plummeted in the last quarter of 2008. The price came down by more than 50%, which resulted in loss to the global industry due to demand shrinkage across the world. Any increase imports during the period of investigation, cannot result into loss of profit on the ISPLle of 100 to 20 on the base year of 2005-2006. That the domestic industry is trying to establish a new economic theory by alleging loss of profit to the tune of 80% due to reduction in imports from the subject country by 10% (approximately).
- That during the period of investigation and in subsequent two quarters the global demand plunged and prices of polypropylene crashed even below 50% of its grade. In absence of comparison of export sales, it can be submitted that possibly reduction in export or shut down of plant for any other reason may be the reason for under utilization of capacity. Polypropylene, being a petroleum base product, is linked with petroleum production, petroleum pricing and plastic industry across the world. The domestic industry cannot be

isolated from the global market, especially when the domestic industry is catering to around 3% of global consumption of polypropylene.

- That the analysis of imports from subject countries vis-à-vis the total market share of the domestic industry during the relevant period in time would show that the argument that due to increase in imports from the subject country return on capital employed has gone down to 30 against the base level of 100 and in case of cash flow it has gone down to 48 against the base of 100., would hold no substance.
- That the claim of confidentiality coupled with the fact that the domestic industry is a monopolistic player in the domestic market, the anti dumping complaint is a gross abuse of the process of law.
- That the data submitted by the domestic industry and claim of injury made on the basis of such data in absence of fair disclosure cannot be treated as reliable for imposing anti dumping duty against import from the subject countries.
- That the loss claimed on account of liquidation of stock after September and October 2008 does not hold any substance. The platts prices and domestic industry's own prices as available at the given website clearly shows that prices reduced drastically.
- That there is a high possibility that the injury claimed by Domestic industry in the Polypropylene business is due to the unprecedented volatility in the crude oil prices, and not due to any injurious dumping of Polypropylene by ISPL in India. The effect of such global trends cannot be attributed to the subject imports.

Submissions made on behalf of Sumitomo Corporation Asia Pte Ltd., Singapore

- That the selection of period of investigation not in accordance with the recommendations of the Committee on Anti-Dumping Practices. The POI is a representative period, on the basis of which, a determination is to be made, as to whether there is existence of dumping and injury. The POI in the present case is too short and includes the months during which the movement of raw materials and polypropylene prices was erratic due to global recession. Any examination of facts during this POI would not yield accurate results, as during this POI the global prices of polypropylene, Naptha and crude fluctuated in a totally unpredictable manner. The changes in the raw-material prices were significant and consequently, it was difficult to estimate the costs of production for fixation of prices.
- That the Cumulative Assessment of Injury is not warranted. The Designated Authority can cumulatively assess the effect of imports from more than one country, only when it determines that the cumulative assessment of the effect of imports is appropriate in the light of the conditions of competition between the imported article and the like domestic articles. The conditions of competition between Singapore and sales of domestic industry, are quite different from that of other countries (under to investigation). The exports from

Singapore were made at much higher prices, than the imports from other countries under investigation. The conditions of competition are therefore, quite different for Singapore, as compared to other countries. It follows that a separate assessment of injury should be carried out for Singapore. Also, the injury caused by the imports from Singapore, is negligible, the investigation would be liable to be terminated forthwith.

- That the examination of the injury parameters in the final findings is not appropriate for the following reasons. There is absence of volume effect of dumped imports and impact on domestic industry. That the decline in the capacity, production & capacity utilization due to plant shut down at Jamnagar. There is increase in sales of the domestic industry. The price underselling is negligible. That the decline in profitability due to other factors petrochemical companies globally are facing difficult times. The fact that domestic industry had profits belies the claim of injury. That the decline on return on capital employed by the domestic industry, if at all, has been caused due to factors, such as volatility in petroleum prices. The decline in cash flows, is widely prevalent in times of such severe recession. The domestic industry has increased the strength of its number of employees and increased the wages during the poi. There is no material to show that the ability to raise capital investment of domestic industry has been hampered in any way.
- That there is a high possibility that the injury claimed by Domestic industry in the Polypropylene business is due to the unprecedented volatility in the crude oil prices, and not due to any injurious dumping of Polypropylene by SCA in India. The effect of such global trends cannot be attributed to the subject imports.

Submissions made on behalf of Haldia Petrochemicals Ltd.

- That the excessive confidentiality claimed by exporters and erroneously accepted by the Designated Authority in clear violation of acceptable norm/law and trade notice/s.
- That comparing apples with oranges inasmuch as Designated Authority, in its Final Findings has calculated dumping margin by taking into account normal value of the producer and export value of the exporter. It is submitted that such an approach is not provided for under the provisions of the Indian Anti-Dumping law.
- That the indulgence has been given to certain exporters/producers who have been non-cooperative and consequently have benefitted since they were not declared non-cooperative. The Designated Authority in its Preliminary Findings had taken note of the fact that SABIC which sells the subject goods for two related entities namely, M/s. IBN Zahir and M/s. Yanpet has not provided any details in respect of Appendices 4 – 9. The Designated Authority had also observed that in the absence of the required information, the Authority is unable to carry out the ordinary course test.
- That the delay in filing of response by the exporters/producers should not have been condoned. Rule 6(4) of the Anti-Dumping Rules clearly provides that information is required to be furnished by the exporters, foreign producers and other interested parties

within thirty days of receipt of notice from the Designated Authority. Extension of time may be allowed by the Designated Authority only upon sufficient cause being shown.

- That the differentiation adopted by the Designated Authority in its final finding not correct inasmuch as having come to the conclusion that compounds are part of product under consideration has decided to treat ter-polymer as being not within the ambit and scope of investigation.
- That the Designated Authority has not holistically and extensively determined the injury to Domestic Industry.
- That the exclusion of Saudi Arabia which is a non-market economy would expose Domestic Industry for inevitable fate of continuous injury as this flank is admittedly not being covered by the Designated Authority.
- That the Designated Authority is a quasi judicial authority and hence bound by the principles of rule of law and natural justice. It should provide all the relevant information to the Domestic Industry and where it cannot, it must give detailed reasons to justify such non-disclosure.

Submissions made on behalf of Hydro S & S Ltd.

- That the period of investigation (i.e., 1st April 2008 to 31st December 2008) in the present case is too short and includes the months during which the movement of raw materials and polypropylene prices was erratic due to global recession. Moreover as evident from the subsequent anti-dumping investigation initiated by the authority in respect of imports from Korea, USA and Taiwan, the economic figures of the domestic industry itself would show a marked improvement in performance in short span of time immediately after the period of investigation in the instant matter.
- That there is violation of Rule 6 and 7. The DI has completely ignored the principal of due process, whereby DI could present its data in any manner to suit its interest while right of the other interested parties to defend their interested are seriously prejudiced.
- That the closure of plant has been projected as a result of dumping of subject goods from subject countries. Further the petitioner has not provided any meaningful disclosures with respect to the capital employed which would have been used for the purpose of capacity enhancement. It is submitted that the period of plant closure was for the purpose of capacity enhancement and not on account of dumping. Moreover the case of the petitioner as evident from the finding is based on price underselling rather than price undercutting which clearly shows that the imports were at the price higher than the domestic selling price of the petitioner. Hence the claim of injury on account plant closure is not sustainable and liable to be rejected.
- That the definition of the product under consideration by the petitioner has been intentionally left wide open to enlarge its scope to cover even all those grades which are

neither produced by the petitioner company nor it has capability of producing goods of such specifications.

- INJURY: That though the demand of subject goods have increased, Imports from subject countries declined considerably during the POI. The sale of the petitioner declined marginally during POI but the same is on account of plant closure by the petitioner but equally notable fact is that the imports from subject countries also declined during the said period.
- That the market share of the domestic producers has remained same over the period while it may be observed that the market share of the Indian producers rather increased from 90 to 92% if compared with the POI and the preceding year, which makes it evident that injury, if any, to the domestic industry is not on account of imports of the subject goods but is on account of increasing competition among the domestic producers.
- That the Domestic industry has enhanced its capacity during POI. The capacity utilization of the petitioner remained high despite planned shutdown of the pant for about 4 weeks. It is pertinent to note that for one month during the POI (total 9 months) the Domestic Industry resorted to planned shutdown. This shut down was to increase the capacity to meet the difference between total demand and total domestic production. Therefore any loss of business caused to the domestic industry as a result of the planned shut down is solely due to the acts of the domestic industry and the imports of the alleged dumped goods cannot be held responsible for the same.
- That the landed value of the imports has increased significantly on one hand, and the imports have declined on the other hand, hence injury, if any cannot be attributed to imports. That the Profitability is affected due to suspension of production of the domestic industry.
- That the domestic industry has increased wages, which resulted in the increased cost. It is further submitted that neither the petitioner nor the Authority has explained the reasons and factors on account which the cost of production of the petitioner has increased significantly.
- That finding of the authority is silent on undercutting and only discussed the price underselling, which clearly implied that there is no price undercutting. Since there has been no price under-cutting it clearly establishes the fact that the landed value of the imported goods was higher than the domestic selling price of the petitioner.
- That though the numbers of employees are showing declining trend yet the wages of the employees is showing increasing trend. Which clearly show that the wages of the employees have been increased substantially which as in turn pushed the cost of production significantly.
- That the fixation of AD duty be on reference prices is warranted keeping in view the the Petitioner is not a producer of all types of Polypropylene. The production offered by the

petitioner is marred by both the issues of interrupted supplies and most importantly with respect to issue of quality and product consistency. Moreover de-valuation of Rupee would further increase the protection level for the petitioner as the imports have already become costlier.

Written Submissions made by the Domestic Industry

5. The following written submissions, in brief, has been filed on behalf the domestic industry:
- It has reiterated and relied on all the submissions made earlier in the application, comments and other submissions.
 - The Authority should not grant individual dumping margin to M/s. SABIC as they have failed to provide vital and essential information to the DA. It is reiterated that SABIC ought to have been considered as a non-cooperative party.
 - M/s Itochu cannot be granted an individual treatment or separate dumping margin as information relating to the complete chain of exports to India cannot be established. The Authority has consistently in other cases rejected the information of the exporters only on the ground that they have failed to complete the chain of exports to India.
 - The delay in filing of the response has been condoned against the provisions of Rule 6(4) of the AD rules. The Authority can extend the period for filing the response only after sufficient cause is shown by the concerned interested party. From the perusal of the public file, it is clear that M/s SABIC had not even given the reasons for the delayed response. Therefore, there is no question of the DA extending the period. It needs to be appreciated that there is neither any legal provision for the DA to extend the period suo moto nor are there any such persuasive circumstances. Submission of grounds for seeking extension is a pre-condition for the DA to operate under Rule 6(4). Since it is an undisputed fact that no reasons had been given by the party, the Designated Authority could not have condoned such substantial delay in filling of the response.
 - M/s SABIC had not provided the information for all the related companies who are engaged in the activity of the subject goods whereas legally they are required to give the information for all the related parties. It is an undisputed fact that M/s SABIC had not given the information for M/s Yansab Yanbu National Petrochemical Company and M/s Saudi Kayan who apparently are also engaged in the activity of the subject goods. In the absence of full information of a single economic enterprise and its related entities, they could not have been treated as cooperating exporters.
 - The combination duties are contrary to Rule 17(3). In this context, it is submitted that the Designated Authority had calculated the dumping margin taking into account the Normal Value of the Producer and export price of Exporter. It is submitted, that there is no provision in law which permits the Designated Authority to determine combination duties. Moreover, this methodology can never lead to determination of individual dumping margin.

- The Authority in the final findings had excluded ter polymers from the scope of product under consideration without examination of submissions and settled law and practice on the subject. In the absence of details with regard to technical specifications, chemical composition, commercial and technical substitutability etc. from the interested parties, such exclusion was without any legal justification and basis. Further, no cogent basis to establish that the said polymer was not like article to product under consideration has been provided or placed on record.
- The onus of proof of seeking such exclusion was on the party claiming such exclusion. In the absence of discharge of such onus of proof, the exclusion was bad in law. Moreover, it is submitted that the Domestic Industry is capable of producing any grade and hence exclusion was granted without examination of the legitimate claims of the Domestic Industry. The Designated Authority failed to appreciate that ter polymer is part of copolymer where third monomer is less than 1% while ethylene remains the dominant co-monomer.

Rejoinder submissions made on behalf of M/s Advanced Petrochemical Company, Saudi Arabia, M/s Saudi Basic Industries Corporation, Saudi Arabia, M/s Marubeni Chemical Asia Pacific Pte. Ltd, M/s ExxonMobil Chemical Asia Pacific, Singapore, M/s Inabata Singapore Pte Ltd., Singapore, M/s Sumitomo Corporation Asia Pte Ltd., Singapore

6. The following rejoinder submissions, in brief, have been filed on behalf of these interested parties:
 - That the domestic industry has challenged the combination duty determined by the Designated Authority. Marubeni submits that the practice of the Designated Authority in this regard is now well established. No factual basis has been advanced by the domestic industry which requires reconsideration of the established practice. Given the nature of investigations and the fact that there is no change in legal or factual basis, nor any decision of any higher authorities, nor any factual basis established either by the domestic industry in the present case or otherwise, Marubeni submits that there is no necessity to review or reconsider the established practice in this regard. Furthermore, since Marubeni has not resorted to exports at low price and data provided by Marubeni clearly establishes that this export price is substantially higher than the prices at which goods have been sold by other suppliers in the Indian market, Marubeni submits that the company should not be penalized by anti dumping duty. Marubeni is not responsible for low price exports made by other trading companies and should not be penalized for the same.
 - That this practice of Authority of recommending combination duties in respect of cooperating exporters and trader exporters has not been successfully challenged at either the WTO or in India. Moreover, it's not required that all unrelated trader exporters cooperate in an investigation in order for a producer to be granted individual

determination. In a situation in which a cooperating trader exporter sourcing from many producers cooperates but not all the producers do then how can that be dealt with. In any case the fair way for any change in established practice would be to publish this through a trade notice and then apply it prospectively to investigations initiated after the concerned trade notice is published.

- That as far as the claim of the domestic industry that M/s SABIC should be treated as a non-cooperating exporter as it has not submitted information for all the related parties involved in the production, it is submitted that M/s SABIC filed responses for two producers, who had produced and sold the subject goods to M/s SABIC. The information was also verified by DGAD. Further, as regards the allegation that other related companies have not filed their responses, it may be mentioned that such producers had not engaged in commercial production of the subject goods. Hence, both the companies did not file a separate response. The claim of the domestic industry falls flat in view of the same.
- That it has been contended that the concept of combination duty is inconsistent with the law. ExxonMobil submitted that there is no basis for this submission as Rule 17 provides for a determination of an individual margin of dumping for each known exporter or producer concerned of the article under investigation. Therefore, a separate margin can be determined either for the exporter or the producer. It is important to note that the term “exporter” has not been defined to mean an exporter which produces; the term “producer” has not been defined to mean a producer which exports either. Therefore, regardless of whether an exporter is a producer, regardless of whether a producer is an exporter, and regardless of whether a producer exports, exporters and producers are both eligible for determination of separate margin. In the case of an exporter which is not a producer it would be difficult to conduct the test relating to ordinary course of trade (18:20) unless information relating to cost of production has been provided by the concerned producer. There is nothing in the law to suggest the interpretation proposed by domestic industry which seeks to qualify the words exporter or producer is justified. In fact the domestic industry appears to read the word exporter or producer as exporter and producer, which is not the case.
- That Sumitomo Corporation Asia Pte Ltd has exported TERPOLYMERS of polypropylene that contain three monomers i.e. propylene, ethylene and butene. Therefore, they are not covered within the scope of the product under consideration. As a matter of abundant caution, Sumitomo Corporation Asia Pte Ltd. humbly requests DGAD to make an express mention in the final findings that TERPOLYMERS are not included within the scope of the investigation. The Hon'ble CESTAT in *Magnet Users Association vs. Designated Authority* [2003 (157) ELT 150 (Tri-Del)] has specifically ruled against the practice of including grades and types of the subject goods that are not manufactured by the domestic industry within the ambit of goods on which antidumping duties can be levied.

Rejoinder Submissions made by the Domestic Industry

7. The following rejoinder submissions, in brief, has been filed on behalf the domestic industry:
- That the domestic industry reiterates and relies on all the submissions made earlier in the application, comments and other submissions. The said submissions have not been repeated herein for the sake of brevity. Any facts or averments which are not specifically admitted hereinafter may be treated as specifically denied.

Examination by the Authority

8. The Authority has noted the submissions made by the interested parties and the same to the extent considered pertinent, have been examined as follows:
- The Authority has noted the submissions made by various interested parties in the instant matter and finds that most issues have already been raised by them during the course of this investigation by the Designated Authority. The Authority further notes that these issues have been appropriately and adequately addressed in the final findings dated 23rd August 2010. Nonetheless, some of the issues are being specifically addressed again. Besides, the issues that have been raised for the first time are also being addressed herein below.
 - The Authority notes that on the examination of the information and data, M/s Marubeni was awarded zero duty and there is no new information on record necessitating any change in that position. As regards the contention that the dumping margin has been raised upwards as compared to preliminary findings; the same is a result of month-wise analysis undertaken by the Authority taking cognizance of volatility in the prices of the PUC and its major inputs during the POI.
 - As regards the contention that injury margin should be disclosed; the Authority notes that as the injury margin is, *inter alia*, based on the NIP determined for the domestic industry and as the same is based on the information /data filed by the domestic industry on confidential basis and treated so; the injury margin cannot be disclosed.
 - As regards the contention of M/s Oman Polypropylene LLC, that the Accuracy of the evidence furnished by the Applicant was not corroborated with DGCI&S data before the initiation or before the issuance of preliminary findings and that the investigation was initiated based on Info drive data and the preliminary findings were also issued on the basis of same data which the Authority has itself on examination found to be erroneous, in as much as, the wrong unit of measurement was stated in the info drive data; the Authority notes that an anti-dumping investigation is a gradual process wherein the nature and content of information/data improves as the investigation moves forward. It is but natural the best and correct information /data as is available with the Authority at a point of time would be considered by it and that's what has also been done in the instant matter as well. The Authority reiterates its determination of Normal value for OPP as the same has been appropriately determined. As regards the contentions pertaining to injury and causal link are concerned; the Authority relies upon its findings dated 23rd August 2010 and the same are not being repeated herein for the sake of brevity.

- As regards the submissions made by various interested parties in respect of the selection of period of investigation; the Authority reiterates that the period of investigation in the instant matter had been appropriately chosen, covering the most recent available data on the subject. However, considering significant movements in the prices of raw-materials and that of the subject goods during the POI, the analysis of the data was undertaken on a month-wise basis; to the extent the same was feasible.
- As regards the submissions that the export performance of the domestic industry; the Authority notes that the export performance of the domestic industry has not impacted injury analysis as the same does not include the figures for export.
- As regards the submissions that the international prices of polypropylene during the period 2007-2008 and 2008-09 witnessed great fluctuation in prices over a period of time and in the year 2008-2009 prices plummeted globally and that RIL prevailing prices were in the range of prevailing market prices; the Authority notes that the prevailing market prices at that point of time also were reflective of dumping of the subject goods in India. In any case, global recession should not give a license to dump the subject goods.
- As regards the contentions that notional Injury has been claimed by the domestic industry; the Authority relies upon its final findings dated 23rd August 2010 and the injury analysis has been done with due application of mind by the Authority as required under Rule 11 read with Annexure II of the Anti-Dumping Rules, 1995.
- As regards the contention that there has been an incorrect determination of the NIP is devoid of merits as the Authority has computed the Non-Injurious Price as per its consistent practice being followed over a period of time.
- As regards ExxonMobil's contentions referring to the revocation of the antidumping duties on the imports from Saudi Arabia claiming that duties on Singapore could not be continued; the Authority notes that it had recommended imposition of the Anti-dumping duties concerning imports of the subject goods originating in or exported from the subject countries. Hence, there was no discrimination of any nature. Further the Authority notes that vide Customs Notification No. 130/2011-Customs dated 30th December 2011 the Central Govt. in exercise of powers conferred by sub-section (1) read with sub-section (5) of section 9A of the Customs Tariff Act, 1975 has revoked the duties on imports from Saudi Arabia but without finding any fault with the final findings dated 23rd August 2010 of the Authority. In fact, the notification revoking the duties is prospective in nature and thus the contentions made by ExxonMobil, *inter alia*, that duties are discriminatory, are devoid of any merit.
- As regards Inabata Singapore Pte Ltd's contentions that one of the products exported by them is a compound and, therefore, outside the scope of the investigations; the Authority notes that the claim has not been substantiated. Besides, it would not be correct to state that compounds are not part of the product under consideration and reiterates its final findings as regards the scope of the product under investigation. As regards the issue of determination of separate dumping margin in respect of Inabata Singapore Pte Ltd's is

concerned; it has been noted that M/s Inabata had provided the information very late. However, despite the delayed response, the information/data filed by the exporter was examined. It was, *inter alia*, noted that as per the export details provided by TPC in Appendix 2, there are only 3 transactions which have been exported through Inabata whereas there are 5 transactions reflected in the Appendix 2 provided by Inabata. The two shipments reportedly made by Inabata in September 2008 and November 2008 were not reflected in TPC's data; thus the exports to India as reported by TPC and Inabata did not reconcile. In the absence of reconciliation between the exports to India reported by them, the Authority notes and reiterates that it cannot determine a separate export price and dumping margin for Inabata. As regards M/s Inabata submission that no explanation or clarification was sought from them; the same is not correct as the issue was discussed with the company's representatives but no cogent explanation was submitted by them regarding the discrepancy. Notwithstanding this, further discussions were held with the representatives of the company in terms of the fresh submissions filed by them. During the discussions, it is found that M/s. Inabata had shipped the two transactions that were not reflected by TPC, after procuring the goods from another trading entity known as M/s. Intraco Trading Pte Ltd. Singapore and subsequently M/s. TPC had replenished the said goods. It is seen that M/s. Intraco never cooperated in this investigation and hence it is not possible to determine an individual dumping margin in favour of M/s. Inabata. Buying first and replenishment later, does not complete the chain of export transactions as the Authority does not have any information regarding the procurement of the subject goods by this new entity M/s. Intraco Trading Pte Ltd and the SGA expenses that it may have incurred and profit made on these transactions. It is disconcerting to note that the fact of buying the goods from M/s. Intraco Trading Pte Ltd was not even disclosed by M/s Inabata in its submissions filed as late as 27th July 2012, which is not an appropriate way of assisting the Authority.

- As regards Inabata Singapore Pte Ltd's contentions that there is non-compliance of Comprehensive Economic Cooperation Agreement ("CECA") between Singapore and India; the same are devoid of any merit as ample opportunities were provided to all the stake holders during the course of the investigation.
- As regards Sumitomo Corporation Asia Pte Ltd's contentions that the Cumulative Assessment of Injury not warranted and examination of the injury parameters in the final findings is not appropriate; the Authority relies upon and reiterates its injury analysis as reflected in its final findings dated 23rd August 2010.
- As regards contentions that excessive confidentiality has been claimed by exporters; the Authority notes that the information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority had accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis. Wherever an interested party had refused access to, or had otherwise not provided necessary information during the course of the present investigation, or had

significantly impeded the investigation, the Authority had recorded the findings on the basis of the 'facts available'. In view of the same, the issue does not require to be revisited.

- As regards the contention that the indulgence has been given to certain exporters/producers who have been non-cooperative and consequently have benefitted; the Authority notes that additional information/data was filed by some of the respondents whose data was found to be deficient at the preliminary findings stage. Upon examination of the said information/data and appropriate verification thereof as deemed fit, the same was duly considered for the purposes of the final findings. M/s SABIC had provided the clarification in respect of M/s Yansab Yanbu National Petrochemical Company and M/s Saudi Kayan that these producers had not engaged in commercial production of the subject goods.
- As regards the contention regarding inclusion of 'ter-polymer' within the ambit and scope of investigation is concerned; the Authority notes that the same is devoid of any merit as the very initiation of the investigation had restricted its ambit and scope as 'Polypropylene (i.e., homo-polymers of propylene and co-polymers of propylene and ethylene)' and thus 'ter-polymer' was not within the ambit and scope of the investigation. As per the application filed by the domestic industry, 'ter polymer' was not a part of the PUC, and hence it has been correctly excluded from the scope of the investigation. It is further noted that the product under consideration had been clearly defined while initiating the investigation viz. 'Polypropylene (i.e., homo-polymers of propylene and co-polymers of propylene and ethylene)'.
- As regards the contention that the exclusion of Saudi Arabia, which is a non-market economy would expose the domestic industry for an inevitable fate of continuous injury; the Authority notes that the duties *vis a vis* Saudi Arabia have been revoked vide Central Government's Notification No.130/2011-Customs dated 30th December 2011 in exercise of powers conferred by sub-section (1) read with sub-section (5) of section 9A of the Customs Tariff Act, 1975.
- The Authority further notes that it had provided copies of all relevant information in the public file, which was available for inspection by all interested parties during the course of the investigation.
- As regards the contention that the Authority is silent on undercutting; the Authority relies upon the injury analysis undertaken by it in its final findings dated 23rd August 2010. Besides, the Authority notes that price undercutting is not the sole criterion for adjudging injury and that there are other parameters such as significant price depression or significant price suppression which may, *inter alia*, be considered by the Authority in a given case. There could also be a situation where the domestic industry may choose to match the landed prices, whereby it may not suffer a volume injury but as a result thereof suffer injury on price parameters.

- As regards the contention that the fixation of AD duty should be on reference prices; the Authority notes the duties were recommended considering the merits of the case and this issue is not required to be revisited at this stage.
- As regards the contention that M/s Itochu should not be granted an individual treatment as information relating to the complete chain of exports to India cannot be established; the Authority notes that the contention is baseless and devoid of merit. It was seen that M/s Itochu had exported the subject goods produced from TPC during the POI and based on the information/data filed by them, which was also verified to the extent deemed fit, an individual treatment was granted to them.
- As regards the contention on behalf of the domestic producers that 'Combination duties' are contrary to Rule 17(3); the Authority notes that the practice of the Authority in this regard is now fairly well established and therefore; there is no necessity to review the same.

Post-Disclosure submissions

9. The following submissions, in brief, have been made by the interested parties in response to the Disclosure statement. The issues that have been repeated are not being reproduced for the sake of brevity.
 - M/s Advanced Petrochemicals Company has requested to issue a corrigendum to the duty table in the final findings dated 23rd August 2010 from Advanced Polypropylene Co to Advanced petrochemicals company in terms of documents filed before the Authority to this effect.
 - M/s Inabata Singapore Pte Ltd has expressed its disappointment, with the disclosure statement. It has submitted that no fair opportunity has been given to Inabata in this matter and that aggrieved by the final findings and the Customs notification, issued pursuant thereto; Inabata filed an appeal before the Hon'ble Tribunal on grounds of denial of principles of natural justice. The Hon'ble Tribunal disposed off all the appeals, in view of its earlier remand order, on the second hearing issue, in respect of this very notification (Polypropylene).

It has been submitted that Inabata, has given all the information, including the documents relating to the disputed 2 transactions in the remand proceedings. The exported goods (for all 5 transactions) have been produced by TPC. In view of urgency, in respect of the last two transactions, the export goods were supplied from the existing stocks of TPC goods, which were replenished by TPC, a few days later. The Authority holds in the disclosure statement that since the fact of replenishment has been mentioned for the first time at the remand stage, the actions of Inabata are misleading. During the discussions held with the case officer on July 31, 2012; counsel for Inabata were informed, that the transactions at Sl. No. 4 and 5 of its response, were of replenishment, and therefore, could not be considered for purposes of combination duty, as they are not direct supplies from TPC. On the basis of these discussions, the counsel for Inabata, gave a letter to the effect that:

- (i) all the five (5) consignments exported to India, as reported in Inabata's response were of goods produced by TPC; and
- (ii) since the two transactions were case of replenishment by TPC, due to certain special circumstances, Inabata's margin could be determined by the Hon'ble Authority based on the remaining three (3) export transactions.

It has been further submitted that Inabata would have never found this issue as it had no access to the confidential data of TPC. This action of the Hon'ble Authority is a clear violation of the Article 2.7.2 of Comprehensive Economic Cooperation Agreement between India and Singapore (CECA). So called discrepancy was stated by the Hon'ble Authority only in the erstwhile final findings. The Hon'ble Authority is well aware of the fact that post-final finding, no opportunity of hearing is granted to the interested party. Therefore, it is but natural that Inabata was in a position to explain its position, such as in the instant case, only pursuant to the orders of the Hon'ble Tribunal (CESTAT's) Misc. Order No. AD/M/2-4/2012-CU (DB) dated 14th May, 2012 and also with the intervention of this Hon'ble Authority. Inabata has further submitted that had the Hon'ble Authority expanded its scope of on-site verification to cover all the exporters (as against the chosen ones), the said discrepancy could have been highlighted at that time (being only 5 export transactions) itself and Inabata would have been able to explain its position within the proper time frame.

Oman Polypropylene LLC

- It has sought to reiterate its earlier submissions and stated that Rule 5.3(b) of the Anti-dumping Rules requires the Authority to examine the accuracy and adequacy of the evidence provided at the stage of initiation of the investigation itself. Till the stage of verification and issuance of disclosure statement, DGCI&S data was not available with the Authority. It was only at the time of Final Findings, when DGCI&S data was examined by the Authority.
- Oman's Normal Value should be reconstructed in accordance with the Article 2.2.2.1 of the Anti-Dumping Agreement. OPP has time and again submitted that it started its commercial production from 1st July 2007. The year 2008 was the first full year of production. OPP gets its feedstock from Oman Refinery and Petrochemical Company ('ORPC') which too started its operations almost at the same time. Being starts up ventures, there have been several teething problems which have led to lower production against the rated capacity. The production for the year 2008, the first full year of production, has been 161,850 MT which is only 48% of the nameplate capacity of 340,000 MT. For the POI the production has been 112464 MT against capacity of 266,220 MT i.e. capacity utilization of 42.2%.
- In addition to facing initial teething problems in production, there has been another abnormal situation arising on account of lack of feedstock supply from ORPC which has resulted in the same. In fact OPP has also filed claim for damages from ORPC on account of lack of delivery. The company is dependent upon ORPC for the supply of the

feedstock which is made available through pipelines and it is not possible for the company to switch over to another supplier because the plant layout is designed to get raw materials only from the refinery and it would entail substantial costs and change in plant layout for such switchover. Accordingly, OPP had submitted that due to this abnormal situation, recovery of fixed costs is considered on the basis of standard capacity and not the actual production i.e. on the basis of capacity of 266,220 MT for the POI. OPP had in this regard referred the Authority to relevant Cost Accounting Standard on Administrative Overheads issued by ICWAI and generally accepted cost accounting principles on recovery of overheads. If the above stated submissions were to be considered by the Authority; the loss making sales would have been less than 20% and according, all profitable sales was required to be considered thereby a lower normal value would have been derived. It is an admitted fact that the production cost of a company is very high during the start-up period. Though it sells its products at world prices, but its production costs are likely to be higher at that stage. For cases such as this, we would like to draw the Authority's attention towards the Article 2.2.2.1 of the Anti- Dumping Agreement clearly states that:

*“.... Cost shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are **affected by start-up operations.**”*

In furtherance to the above submissions, it is reiterated that there is no dumping and injury to justify the present investigation against Oman. In addition, the Domestic Industry has a very weak case on injury and imposition of anti dumping duty is not justified based on the present facts and circumstances. In any event, once Anti dumping duty imposed on Saudi Arabia on the subject goods have been revoked (discriminatorily) by the Ministry of Finance vide notification dated 30 December 2011, no case of injury to the Domestic Industry, at all, exists. The comments above are without prejudice to OPP's right to approach the Tribunal and the Courts of law (including High Court and Supreme Court) for redressal of its grievances.

M/s. Haldia Petrochemicals Ltd. ('HPL')

- HPL has endorsed the submissions filed by Reliance Industries Ltd. Besides, the issues already raised by it have been reiterated. It has also stated the following : :
 - In the Preliminary Findings dumping margin was much more than that has been concluded in the final findings.
 - The exclusion of Saudi Arabia which is a non-market economy would expose Domestic Industry for inevitable fate of continuous injury. This also requires to be compensated. State is duty bound to ensure fairness and transparency in all its sections especially where any such policies can adversely affect someone. The Authority must determine the margin of injury due to acts of Saudi Arabia business entities involved in the product under consideration of Authority and increase the said duty on other entities to compensate and to protect the Domestic Industry simultaneously with the recommendations by Authority that Saudi Arabia should not

be excluded as otherwise entire exercise of State would come under the realm of being a colourable exercise.

- Wrongful exclusion of a country which is dumping and harming Domestic Industry: Saudi Arabia has been wrongly excluded and this is clear violation of Article 14 of the Constitution of India. In all decisions of the State the element of fairness and transparency should be there and different yardsticks cannot be applied for different countries where admittedly dumping is taking place and Domestic Industry is being injured. Saudi Arabia being a non-market economy is all the more reason for the Designated Authority to determine the real value as contradistinguished to value presented by Saudi Arabia.
- In relation to injury to Domestic Industry, it has referred to the production, consumption, export and import data for the subject product for the years 2008-2009 to 2011-2012 as derived from Infodrive and contended that the same necessitates imposition of control in import of polypropylene into India.
- The Authority is requested to rework the Anti-Dumping Duty which is likely to be in excess of what has been determined in the Final Findings and levy the same and thereby provide appropriate protection to the Domestic Industry.
- ExxonMobil Chemical Asia Pacific; Sumitomo Corporation Asia Pte Ltd have not raised any additional point but have sought in-depth analysis of the injury submissions. M/s Saudi Basic Industries Corporation, Saudi Arabia (SABIC); M/s Marbueni have sought to reiterate their earlier submissions.

Submissions made by M/s Hydro S & S

- The Authority has denied the disclosure of injury margin. The Non injurious price may be treated as confidential. However the injury margin cannot be a confidential figure.
- On the issue of selection of period of investigation the Authority has not addressed the issue appropriately with respect to fixation/selection of period of investigation as March 2008 to December 2008. How the said period would lead to true and correct finding of existence, degree and extent of dumping and injury to the domestic industry, given the fact that the said period was marred by peculiar market situation.
- The Authority has not dealt any issue raised by the interested parties on injury examination. The Authority has not examined the contentions raised by the respondent. The authority has relied on its final findings which were set-aside by the Hon'ble CESTAT vide its order dated 14th May, 2012.

- The claim of the Petitioner with respect to decline in capacity utilization cannot be sustained in view of non-disclosure of export performance. It is submitted that it is an admitted position that the export performance of the petitioner has declined significantly during the period of investigation.
- As regards the contention that the Authority is silent on undercutting; the Authority relies upon the injury analysis undertaken by it in its final findings dated 23rd August 2010. Besides, the Authority notes that price undercutting is not the sole criterion for adjudging injury and that there are other parameters such as significant price depression or significant price suppression which may, inter alia, be considered by the Authority in a given case. There could also be a situation where the domestic industry may choose to match the landed prices, whereby it may not suffer a volume injury but as a result thereof suffer injury on price parameters. In this respect it is submitted that it is now admitted position that no price under-cutting has been caused by the imported goods and there is only finding marginal price under selling. The under selling is again derived from the figures so arrived after fixation of NIP which has been fixed by artificially increasing and fixing the ROCE as high as 22%.
- The duty should be on reference price basis as imposition of fixed duty will have a negative effect on the user industry and would provide undue protection to domestic industry as the implication of duty will fall upon the user industry irrespective of the fact that the subject goods are being imported at un-dumped prices. In view of the foregoing the Designated Authority is requested to revise the form of duty from fix to variable duty and be collected in rupee terms.

Submissions made by the Domestic industry

- ATMA decision is applicable in those cases where a specific request for hearing have been made by the interested parties.- In this context, it is reiterated that ATMA decision rendered by Hon'ble Supreme Court was in the context of the facts of that case wherein the Hon'ble Court had recorded that a specific request for hearing was indeed made by the ATMA. Moreover, it is an undisputed fact that M/s. Advance Petrochemicals did not ask for any hearing and hence the facts were clearly distinguishable. It is respectfully submitted that Hon'ble Court has held unequivocally in the case of ATMA that if hearing is sought and not given by new Designated Authority, the final finding and final notification are liable to be quashed. Accordingly, a case where a hearing is not sought by any party pursuant to the change of designated authority is not contemplated in the ATMA judgment.
- Issue of Post-decisional hearing can be raised only before appropriate Authority- It is not open for M/s Advance Petrochemicals or any other party to raise the issue of post-decisional hearing before the Hon'ble Designated Authority, If they were aggrieved by the decision of the CESTAT, said parties ought to have followed an appropriate remedy in law against the direction of the CESTAT.

- Individual dumping margin should not be granted to M/s SABIC and delay in filing of the response has been condoned against the provisions of Rule 6(4) of the anti-dumping rules.
- Ter polymer should be within the scope of Product under consideration - Ter polymer is a part of co-polymer where third monomer is less than 1% while ethylene remains the dominant co-monomer and hence should form part of the PUC. It is reiterated that interested parties have claimed exclusion of Ter polymer from the scope of product under consideration. In this context, it is submitted that the onus of proof of seeking exclusion of a product from the scope of product under consideration was on the party claiming such exclusion. In the absence of discharge of such onus of proof, the exclusion was bad in law.
- Combination duties are contrary to Rule 17(3).
- Individual dumping margin should not be granted to M/s Itochu and conclusions in respect of Ms Marubeni should be revisited.
- It is also prayed that the while making recommendations through the present Final Findings Designated Authority may specifically record that the present Final Findings are recorded in terms of remand directions and therefore may be deemed to have been issued from the date of original Final Findings. Such recording is necessitated to protect actions taken by Central Government in past.

Examination by the Authority

10. The issues raised by the interested parties in response to the Disclosure statement, to the extent considered pertinent, have been examined. While the Authority is not reproducing its examination of the issues in the preceding paras for the sake of brevity; it is addressing some of the issues that have been raised for the sake of clarity on the subject.
 - As regards request filed on behalf of M/s Advanced petrochemicals company formerly known as Advanced poly propylene company limited; the Authority notes that it had taken note of the change in name of the company on record for the purposes of this investigation in para 92 of the final findings dated 23rd August 2010 but inadvertently the same was not reflected in the duty table. Hence, the Authority recommends that column no 6 of Sr. no 5 of the duty table of the final findings dated 23rd August 2010 be read as M/s Advanced petrochemicals company instead of Advanced Polypropylene Co.
 - M/s. Inabata, Singapore Pte Ltd submissions have been noted. The Authority notes that M/s Inabata chose not to file any submission in response to the initiation notification on the subject and filed its submissions only after the issuance of the preliminary findings. Notwithstanding the delayed response, the same was examined and discussions were held with the company's counsel to understand the factual position as regards the two export transactions which were not reflected in the TPC data but were reflected in Inabata's

export sales transactions before the Authority's final determination. The company has, acknowledged this fact. As regards the contention that the Authority had considered that the exports were not in commercial quantity, the Authority notes that this was precisely the contention of the company as it had, *inter alia*, submitted that "Inabata has exported only five consignment of very small quantity during the period of investigation, which can neither be said to be representative exports by Inabata nor the exports causing injury to the domestic industry in any manner". Notwithstanding this, opportunities were available to the company to file further submissions during the course of the investigation. It has been acknowledged that an opportunity before the final findings was given to the company's counsel to explain the difference in the data but he was not able to explain the same, despite opportunity given to this effect. Instead, the company has sought to file its submissions only on 27th July, 2012; citing that it could not have filed a submission at an earlier date.

The submission dated 27th July 2012 filed by the company was examined by the Authority, wherein it was, *inter alia*, stated that because of several problems with the producer, namely, TPC, Singapore, M/s Inabata arranged the shipments from its common stock of TPC grade available in its warehouse and shipped the goods through its own forwarder to CIF ICD Delhi. Vide an e-mail, the company was provided an opportunity to explain along with the documentary evidence that the shipments made were procured from M/s TPC and pertained to TPC grade; explaining the complete chain as to how the goods were procured from M/s. TPC Singapore and shipped thereafter from common stock. The company was also advised to clarify whether it procures and sells the goods of any other producer also. In response thereto, the company's representative met the case officer on 31st July, 2012. During the interaction, the Authority sought to understand the complete chain as to how the goods were procured from M/s. TPC Singapore and shipped thereafter from common stock. It was found that the goods were actually procured by Inabata from another trading company, namely, Intraco Trading Pte Ltd, which was subsequently replenished by the TPC whereas in its submissions filed on 27th July, 2012, M/s. Inabata had mentioned that in order to facilitate the urgent request of its customer, it arranged its shipments from common stock available in its warehouse and shipped the goods from its own warehouse up to CIF/ICD, Delhi. Thus, during the interaction on 31st July 2012, it was noted that the goods exported to India during the POI were actually procured from M/s. Intraco Trading Pte. Ltd. It is noted that M/s. Interaco has not cooperated in this investigation at all. Besides, it is also noted that the analysis in this investigation for its final findings was conducted on a month-wise basis and the Authority does not have on record any data as regards the procurement of the subject goods by M/s Intraco from TPC and the SGA expenses etc incurred by it while doing so. M/s Inabata's belated contention that the Authority should ignore these transactions and determine its dumping margin would tantamount to turning a blind eye to all these facts. In the circumstances, the Authority notes that it is not feasible to determine the individual dumping margin for M/s. Inabata.

- As regards, M/s Oman Polypropylene LLC submissions; the Authority notes that the applicant had based its claims on the basis of data obtained from Infodrive India Pvt. Ltd. as the DGCI&S data was not available at that stage. This was considered as prima facie

evidence to justify initiation of the investigation in terms of AD Rules. During the course of the investigation, transaction-wise DGCI&S data was received and the same was examined by the Authority. The transaction-wise DGCI&S data was duly discussed with the counsel of the company to determine their claim of *de-minimis* volume of exports and hence, it is not correct to state that no opportunity was given to them to comment on the same.

- As regards the contention that Oman's Normal Value should be reconstructed in accordance with the Article 2.2.2.1 of the AD Agreement; the Authority notes that relevant extract of Article 2.2.2.1 of the Anti- Dumping Agreement reads as follows:

“Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.”

The Authority had accepted the costs as claimed by the company in Appendix 8 of the exporter's questionnaire' response as filed by it in response to the initiation notification and hence it would be wrong to contend that start up costs were not allowed. The on-the-spot-verification report was duly shared with the company, where too there was no mention of the start-up claim made by the company. In response thereto, the company raised no such issue. It is noted that the company had made its claim towards the fag end of the investigation, that is, in the 18th month of the investigation; and as the same was an unverified claim, it could not have been accepted by the Authority. In any case, Article 2.2.2.1 of the AD Agreement enjoins the Authorities to take the same on board only if the same have not been reflected in the cost allocations but such an evidence is not on record to show that start-up costs have not been reflected in the cost allocations. The Authority therefore reiterates that it had taken on board the verified data for determination of the Normal value, and the same does not require any change in the Normal value determined. As regards the non-supply of feedstock supply by ORPC, the same also does not require any change in the Normal value determined.

- As regards M/s. Haldia Petrochemicals Ltd. ('HPL') submissions, it is noted that it has endorsed the submissions filed by Reliance Industries Ltd. So far as its contention that in the Preliminary Findings dumping margin was much more than that has been concluded in the final findings; the Authority notes that same is based on wrong appreciation of facts. Antidumping investigation is a process whereby information/data is evaluated as the investigation progresses. Besides, it needs to be noted that considering the facts and merits of the case, it was decided to undertake month-wise analysis in the final determination.
- As regards the contention that injury margin should be disclosed; the Authority notes that the disclosure of the same would lead to the disclosure of the NIP as well, which the interested party has conceded that it could be treated as confidential.
- The Authority examined the issue pertaining to injury and notes that injury analysis has been appropriately undertaken in terms of the AD Rules on the subject and does not warrant any modification in the its final findings of 23rd August 2010. It further notes that

Hon'ble CESTAT vide its order dated 14th May, 2012 has not set-aside the Authority's findings at all but remanded the matter in view ATMA's decision.

- As regards the form of duty; the Authority reiterates that on facts and merits of the case, there is no case to modify the same.
 - As regards the contention regarding the applicability of ATMA's decision is concerned; the Authority notes that the present proceedings are in pursuance of the Hon'ble Tribunal's directions and the interested parties should raise the issue, if any, before the appropriate authority.
 - The Authority finds no merit in the contention that the determination in respect of M/s Marubeni should be revisited. There is no doubt the present findings are recorded in terms of remand directions.
11. After careful examination of the submissions made by interested parties on the subject and considering the legal provisions and facts of the case, the Authority notes that facts on record do not justify nay modification to the final findings dated 23rd August 2010.

Conclusion:

12. Having given opportunity in terms of the orders of Hon'ble CESTAT to interested parties to make oral as well as written submissions, the Authority has examined the same in the paras given above. After having examined the submissions of all the parties, the Authority confirms the conclusions arrived at earlier and indicated in the final findings dated 23rd August 2010.
13. The Authority therefore confirms its earlier recommendation of imposition of the definitive anti-dumping duties on the subject goods originating in or exported from the subject countries, subject to notification No.119 /2010-Customs dated 19th November, 2010 and Notification No.130/2011-Customs dated the 30th December, 2011 issued by the Central Government in this matter. The Authority further recommends that Col.No.6 of Serial No.5 of the duty table of the Final findings dated 23rd August 2010 may be read as 'M/s Advanced Petrochemicals Company' instead of 'Advanced Polypropylene Co.'

(Vijaylaxmi Joshi)
Designated Authority