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

Notification

4<sup>th</sup> April 2013

Subject: - Sunset Review Investigation of Anti-dumping duty imposed on imports of PVC Paste Resin originating in or exported from European Union – Final Findings (CESTAT remand case).

BACKGROUND

1. **No. 15/27/2008-DGAD.** – Whereas the Designated Authority (hereinafter also referred to as the Authority), having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 as amended from time to time, (herein after referred to as the Rules) initiated Sunset Review to determine whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury of Anti Dumping Duty on imports of PVC Paste Resin (hereinafter called subject goods also) falling under sub-heading 39042110 of customs classification and originating in or exported from European Union (hereinafter called subject country). Subject goods were defined in the original initiation of the present investigation dated 22.08.2003 and thereafter confirmed vide final findings dated 20.08.2004. The definitive anti dumping duty was imposed by the Central Government vide Notification No. 104/2004 dated 7th October 2004.
2. And whereas the Authority is required to review the need for continued imposition of duties in force and is required to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, the Authority issued a public notice dated 31<sup>st</sup> March 2009, published in the Gazette of India, Extraordinary, initiating Anti-Dumping sunset review investigation in respect of the duty in force on imports from EU to determine whether the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.
3. And whereas, antidumping duty as notified vide Notification No. 104/2004 dated 7<sup>th</sup> October 2004 was extended up to 6<sup>th</sup> July 2010 vide notification No. 115/2009 dated 6<sup>th</sup> October 2009 in terms of Section 9(A)(5) of the Act.

4. And whereas the Designated Authority having regard to the Act and Rules investigated and recommended continued imposition of Anti Dumping Duty on imports of PVC paste/emulsion resin (referred to as subject goods) originating in or exported from European Union, vide final findings dated 26<sup>th</sup> April, 2010 and Anti Dumping Duty was imposed on the subject goods vide Customs Notification No.70/2010-Customs dated 25<sup>th</sup> June, 2010 and amendment notification no.8/2012 dated 16.01.2012.
5. And whereas, Leather Cloth and Plastics Manufacturers Association (LCMPA) filed an appeal before CESTAT, challenging the continued imposition of anti-dumping duty on imports of product under consideration recommended vide final findings dated 26<sup>th</sup> April, 2010 and imposed vide Customs Notification No.70/2010-Customs dated 25<sup>th</sup> June, 2010 and amendment vide notification no.8/2012 dated 16.01.2012.
6. And whereas the Hon'ble CESTAT vide its order dated 6<sup>th</sup> July, 2012 set aside the final findings dated 26<sup>th</sup> April 2012, the Customs notification No.70/2010-Customs dated 25<sup>th</sup> June, 2010 and amendment notification no.8/2012 dated 16.01.2012 and remanded the matter back to Designated Authority for fresh decision after granting opportunity of hearing to the interested parties, stating, inter-alia, as follows –

*"27 Keeping in view our finding as above, we set aside the impugned Final Finding of DA dated 26.04.2010 as well as Customs Notification No. 70/2010 dated 25.06.2010 along with amending Notification no. 08/2012 dated 16.01.2012 and remand the matter to DA for deciding the matter afresh giving a reasonable opportunity of hearing to all concerned. The appellant shall have liberty to raise all issues before the DA which they have taken before us. At the same time, considering the fact that there is a positive finding of dumping, injury and casual relationships in the sunset review proceedings, we order continuance of the anti-dumping duty at the rate as applicable on the date proceedings issue of Notification No.70/2010 dated 25.06.2010 on PVC Paste Resin falling under CTH 3904 2110 on a provisional basis for a period of six months from today and direct the DA and the Ministry of Finance to conclude the remand proceedings as well as issue of fresh anti-dumping notification, if required, within that period.*

And Whereas the Designated Authority requested the CESTAT on 3<sup>rd</sup> January 2013 to grant further period of three months to give findings as per the order dated 06.07.2012 in AD 24 of 2010 and grant extension of continuation of the anti-dumping duties for the period of three months on provisional basis as per the order dated 6th July 2012 in AD 24 of 2010 in view of the necessity to examine the contentions of the various interested parties.

## PROCEDURE

7. In this proceeding, the procedure described herein-below has been followed:

- a. The Office of Delegation of European Union in India was informed about the initiation of the investigation, in accordance with Rule 6(2) of the AD Rules.
- b. The Designated Authority sent copies of initiation notification dated 31<sup>st</sup> March 2009 to the Office of Delegation of European Union in India, known exporters from the subject territory, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file the questionnaires' responses and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters were also sent to the Office of Delegation of European Union in India along with a list of known exporters / producers with a request to advise the exporters/ producers from the subject territory to respond to the questionnaires within the prescribed time.
- c. Questionnaires were sent to the following known exporters from the subject territory in accordance with Rule 6(4) of the AD Rules to elicit relevant information:

S.N.	Company's Name
1.	Vestolit GmBH & Co KG, <i>Denmark</i>
2.	EVC Business Centre, <i>UK</i>
3.	Vestolit GmBH & Co KG, Postfach, <i>Germany</i>
4.	Solvin SA, Brussels, <i>Belgium</i>
5.	Vinnolit, Ismaning, <i>Germany</i>
6.	Alscondel, Barcelona

- d. None of the exporters/producers from the subject territory responded to the questionnaires in response to the above notification.
- e. Questionnaires were sent to the following known importers, users and association of the subject goods in India for necessary information in accordance with Rule 6(4) of the AD Rules:

S.N.	Company's Name
1.	Akzo Nobel Coatings India Pvt. Limited, Karnataka
2.	Alleppey Co Ltd., Kerala
3.	Anabond Essex India P Ltd, Chennai.
4.	Creative World, Mumbai
5.	D C Mills (P) Ltd, Kerala
6.	DRG Leather P Ltd, Kerala
7.	Eftec Shroff India Limited, Mumbai
8.	Fenner Conveyor Belting Pvt Ltd, Tamil Nadu
9.	Fenoplast Ltd, Andhra Pradesh

10.	Halol Leather Cloth Ltd, Mumbai
11.	Henkel Teroson India (P)Ltd., Haryana
12.	Hindusthan Seals Ltd, Calcutta
13.	International Conveyore Ltd., Aurangabad
14.	Jasch Industries Ltd., New Delhi
15.	Kerafibertex International P Ltd., Cochin
16.	Kerala Balers Ltd, Kerala
17.	Mayur Uniquoters Ltd, Jaipur
18.	Oswal Cable Products, New Delhi
19.	Phiroze Sethna P Ltd., Mumbai
20.	Polmann India Ltd., Mumbai
21.	Polynova Industries Ltd., Goa
22.	Premier Polyfilm Ltd., New Delhi
23.	Roto Screentech Ltd., Rajkot
24.	Shivam Textiles, New Delhi
25.	Siel Tizit Ltd, Calcutta
26.	Sneha Vinyl Products P Ltd., Andhra Pardesh
27.	SRF Limited, Tamilnadu
28.	Texon Industries P Ltd., Chennai

S.N.	Association's Name
1	Leather Cloth and Plastics Manufacturers Association (LCPMA), New Delhi

- f. In response to the above notification, M/s Mayur Uniquoters limited and M/s Jasch Industries Ltd. filed their importer's questionnaire responses; whereas Leather Cloth and Plastics Manufacturers Association (LCPMA), an association of importers and users of the subject goods filed their submissions on the subject.
- g. In response to the initiation notification, M/s. Chemplast Sanmar Ltd., Chennai responded and filed their submissions along with information/data requesting for conducting the sunset review and, *inter alia*, sought extension of the anti dumping duties. The company submitted the information/data for undertaking the injury analysis. M/s Finolex Industries Ltd. did not respond to the initiation notification.
- h. The imports data for the period of investigation and preceding three years was called from Directorate General of Commercial Intelligence and Statistics (DGCI&S).
- i. The Authority made available non-confidential version of the information/data and evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- j. The Authority examined the information furnished by M/s. Chemplast Sanmar Ltd., Chennai to the extent possible on the basis of Generally Accepted

Accounting Principles (GAAP) to analyze the injury suffered and to work out the cost of production, cost to make and sell the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

- k. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 25<sup>th</sup> February 2010. The parties which presented their views in the public hearing were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered, wherever found relevant, in this finding.
- l. The period of investigation for the purpose of the present review is April 2008 – March 2009 (POI). However, injury analysis covered the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and the POI.
- m. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority were disclosed to the known interested parties. The comments received on disclosure statement were duly considered in the final findings
- n. The Authority notified final findings vide its notification dated 26<sup>th</sup> April 2010 recommending continued imposition of Anti-dumping duty, which was considered by the Central Govt. and definitive Anti Dumping Duty was imposed on the subject goods vide Customs Notification No.70/2010-Customs dated 25<sup>th</sup> June, 2010
- o. Leather Cloth and Plastics Manufacturers Association (LCPMA) filed an appeal before CESTAT, challenging the continued imposition of Anti-dumping duty on imports of PVC Paste Resin vide Customs Notification No70/2010-Customs dated 25<sup>th</sup> June, 2010.
- p. The Hon'ble CESTAT vide its order dated 6<sup>th</sup> July, 2012 set aside the final findings dated 26<sup>th</sup> April 2010 and the Customs notification dated 70/2010 (including its amendment dated 16 Jan 2012) and remanded the matter back to Designated Authority for fresh decision. The Hon'ble CESTAT held, inter-alia, as under

*"27 Keeping in view our finding as above, we set aside the impugned Final Finding of DA dated 26.04.2010 as well as Customs Notification No. 70/2010 dated 25.06.2010 along with amending Notification no. 08/2012 dated 16.01.2012 and remand the matter to DA for deciding the matter afresh giving a reasonable opportunity of hearing to all concerned. The appellant shall have liberty to raise all issues before the DA which they have taken before us. At the same time, considering the fact that there is a positive finding of dumping, injury and casual relationships in the sunset review proceedings, we order continuance of the anti-dumping duty at the rate as applicable on the date proceedings issue of Notification No.70/2010 dated 25.06.2010 on PVC Paste Resin falling under CTH 3904 2110 on a provisional basis for a period of six months from today and direct the*

*DA and the Ministry of Finance to conclude the remand proceedings as well as issue of fresh anti-dumping notification, if required, within that period.*

- q. Pursuant to the order of CESTAT, the Authority provided an opportunity to all interested parties to present their views orally in a Public Hearing held 6<sup>th</sup> August 2012. Prior to this date, the oral hearing was scheduled on 30<sup>th</sup> July 2012. Leather Cloth and Plastics Manufacturers Association filed a request for postponement of the oral hearing, which was accepted and the hearing was postponed to 6<sup>th</sup> August 2012. The parties attending public hearing were requested to file written submissions of the views expressed by them orally and were allowed to give rejoinders to the submissions made by opposing parties. Following the change of Designated Authority, another public hearing was held on 23<sup>rd</sup> November 2012. Leather Cloth and Plastics Manufacturers Association and Domestic Industry presented their views orally through their legal counsel. No other interested party made any submissions at the time of oral hearing. The parties attending public filed written submissions of the views expressed by them orally and gave rejoinders to the submissions made by opposing parties.
- r. Submissions made by various interested parties during the course of the investigations and pursuant to the oral hearing held by the Authority were examined in detail in the light of facts and legal provisions and the same have been considered **in the present final findings.**
- s. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.
- t. In accordance with the Rule 16 of the AD Rules, the essential facts considered by the Authority were disclosed to the interested parties. **The comments to the disclosure statement were received only from the domestic industry and M/s LCPMA.** The comments received on the disclosure statement have been duly considered in this findings to the extent considered relevant.
- u. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available'.
- v. "\*\*\*\*" represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.

### **Product under Consideration and Like Article**

#### **Submissions made by M/s. Chemplast Sanmar Ltd., Chennai**

- 8. M/s. Chemplast Sanmar Ltd., Chennai has made the following submissions:

- a. The product under consideration in the original case was "Poly Vinyl Chloride Paste Resin" also called as "Emulsion PVC Resin" and also referred to as "PVC Paste Resin". It is produced from Vinyl Chloride Monomer (VCM) and VCM is produced from EDC, which in turn require chlorine as major raw material. It is produced and sold in white/off white powder. It is produced in a number of grades, which differ in "K values". Various grades are technically and commercially substitutable. It is used in the artificial leather (Rexene), coated fabrics, Tarpaulins, conveyor belting, Toys, Automotive sealant and adhesives etc.
- b. The goods produced by the domestic industry are like article to the imported product. There is no known difference in PVC Paste Resin produced by the Indian industry and subject goods exported from subject country. The issue of product under consideration and like article was examined in detail by the Designated Authority in the original investigations and it has been held that the imported and domestic products are like article.
- c. Present review investigation being a sunset review investigation, product under consideration remains the same as has been defined in the previous investigations.
- d. PVC paste Resin produced by the domestic industry is used both in top coat and foam coat. The company produces three grades of PVC Paste Resin, 120, 121 and 124. Leather cloth contains three layers and all three layers can be produced from 124 grade of petitioner product. Grade 120 is used in production of sealents etc and 121 is used where high strength is required viz. for leather cloth to be used for production of football etc. Therefore, the claim of opposing parties is incorrect. In brief, the domestic industry has reiterated their arguments on top coat and foam coat and has submitted that the claim of the interested parties on this account is without any basis.
- e. It is classified under subheading no 39042210 in the Customs Tariff Act though the imports have been cleared in a number of classifications.

#### **Submissions made by M/s Mayur Uniquoters Limited, Jaipur**

9. The following submissions have been made by M/s Mayur unquoters ltd
  - It has been stated that they did not receive the copy of the Disclosure Statement in time and received it through letter from M/s. Leather Cloth & Plastics Manufacturers Association and hence desire the extension of time.
  - It has been contended that the product manufactured and supplied by M/s. Chemplast Sanmar Ltd., Chennai to them and all the members of the Association are not PVC Resin (Emulsion Grade) but the PVC Resin.

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

10. The following submissions have been made by Leather Cloth and Plastics

Manufacturers Association (India):

- a. PVC Paste Resin is of two types, (A) Suspension Grade and (B) Emulsion /Paste Grade. The only difference between Emulsion & Suspension Grade is in respect of particle size.
- b. Chemplast Sanmar is manufacturing both Suspension and Emulsion types of PVC Resin, but has applied for imposition of anti dumping duty only on Paste / Emulsion Grade, which is relatively small proportion of its total PVC Resin production.
- c. The domestic industry manufactures only one grade i.e.124 which is used in the production of PVC Leather Cloth.
- d. Chemplast's PVC Paste Resin is utilized by the members only for the Foam Coat whereas the consumers import PVC Paste Resin of superior quality, which is used for top coat. The requirement of PVC Paste Resin for top coat and foam coat is in the ratio of 30:70. Therefore, industry is forced to import minimum 30% of its requirement of top coat resin.
- e. Historically the difference in the prices of PVC Suspension and PVC Paste Grade is about Rs 10-12 per Kg. However today the price of PVC Suspension Grade is about Rs 58-60 per kg, while that of Emulsion Grade is Rs 80-85 Per kg, which has resulted in abnormal price differential of Rs 25-27 per kg.
- f. Imposition of Anti Dumping duty on PVC Paste Resin will further distort the price structure of PVC Paste Resin vis-à-vis PVC Suspension Resin. The additional cost involved in the manufacture of PVC Paste resin as compared with PVC Suspension grade is only about Rs 6-7 per kg.

**Submissions made by M/s. Chemplast Sanmar (Domestic Industry) on 6<sup>th</sup> August 2012, 23<sup>rd</sup> November and response to the disclosure statement November 2012 are as follows:**

11.M/s. Chemplast Sanmar in brief, has submitted as follows:

- (a) **Scope of hearing-** The domestic industry made a preliminary submission at the time of hearing that the scope of the hearing should be restricted to the issues agitated by the appellant before the CESTAT i.e. the HS Code that should be specified for duty purpose; and the issues raised by the appellant as reproduced by the Designated Authority at Para 9 of the final findings and Para 10 by the Designated Authority should be reconsidered by Designated Authority.
- (b) **Non injurious price (NIP) of the domestic industry requires revision** – it is submitted that the NIP at the time of final findings was determined on the basis of the practice being followed by the Authority and the decision of the Supreme Court in the matter of Reliance Industries Ltd. (2006). The Government in meantime has introduced the NIP law in 2011. The Authority has in fact already applied the NIP law in other investigations concerning imports from China, Korea, Japan, RP, Malaysia, Russia, Taiwan and Thailand.

- (c) **No questionnaire response from exporters** – none of the exporters from the EU has responded to the Authority with the prescribed questionnaire response. It has been further contended that exporters neither furnished the information required by the Authority within the stipulated period, nor did they bother to participate in the investigation.
- (d) **No questionnaire response from importers or consumers** – none of the importers or consumers of the product under consideration have filled any questionnaire in the present matter; though majority (more than 90%) of the product under consideration is being consumed under leather cloth production. It has been thus contended that the Authority may kindly declare that the importers/ consumers have failed to cooperate with the Authority and therefore are non-cooperative.
- (e) **Relevance of timely response** – it has been contended that anti dumping investigations are time bound and are required to be completed in a time bound manner. Further, it is a multiple stage proceedings. It is therefore vital that timely response by the parties is filed so that further stage/ steps can be effectively undertaken. It is also contended that there has been a gross violation of natural justice as far as right of the domestic industry is concerned, as they have filed the petition in 2009, complied with all the directions of the Authority during the course of investigation, dealt with unsubstantiated allegation of the Association and now is suffering from the dumping from European Union.
- (f) The product under consideration in the original petition and sunset review are same. The domestic industry has not sought any enhancement in the scope of product description. It has merely sought modification or changes in the HS code to correctly reflect the HS code under which the product is being reported for customs clearance.
- (g) The scope of the measure must be seen with reference to product description and not with reference to HS code. Domestic industry has relied upon Section 9A(1) of Customs Tariff Act in this regard.
- (h) There is considerable confusion with regard to correct HS classification for the product. In fact, the product description is not co-terminus with any of the specific HS Code, as recognized by the Hon'ble CESTAT. Considering the purpose for which HS Code is required to be specified, the domestic industry has submitted, having regard to the product description, the Authority should specify 3904 as the HS Code for the product under consideration.
- (i) The purpose of HS code is extremely limited, i.e. to assist/ enable the Customs authorities at the port to correctly identify the article liable for anti-dumping. The purpose is not to charge anti-dumping duty on any and every product falling under specified HS code. In case of any conflict between HS code and description, it is settled position that product description will prevail over HS code. It is clearly understood that the objective of the HS code is only to enable the Customs authorities at the port in identifying the

product that is attracting anti-dumping duty. The consumers or the Association cannot claim that imports of the product under consideration reported for clearance should be exempted from payment of anti-dumping duty.

- (j) It is beyond the ambit of the Authority to determine the correct HS code for the product. The Authority mentions HS code based on submission made by the interested parties and evidence placed on record. The Authority can at the best seek technical inputs from the Central Government with regard to correct HS code for the product. The Authority issued public notice informing all interested parties to participate in the investigations and provide relevant information. The Authority received petition from the domestic industry, seeking extension of anti dumping duty. The Authority should therefore mention the HS codes that have been used by the importers/consumers while clearing the goods in question.
- (k) The domestic industry has compiled import data for the product under consideration, analysis of which show that imports of the product under consideration have been reported under large number of HS codes. These HS codes are 39013000, 39041010, 39041090, 39042110, 39042190, 39042210, 39042290, 390430390, 39043090, 39044000 and 39049000. It is evident that a large numbers of HS codes have been used by the importers/ consumers for importing the product under consideration. Further these HS codes were accepted by the Customs port authorities while clearing these import transactions. These are clearly permissible HS classifications of the product under consideration.
- (l) Same grade of the product has been reported by the importers/ consumers under more than one HS code and accepted by the customs authorities. In particular considering that the Ministry of Finance specified HS code 39042210, 39042110, 39042290 as the relevant HS code for the product under consideration, domestic industry analyzed import data for the period subsequent to imposition of duty after sunset review and determined volume of imports reported in various classifications. A statement has been provided showing imports under various codes, including HS codes 39042210, 39042110, 39041090 and 39042190.
- (m) There is no factual and legal basis for the argument that the Authority had sought to restrict the scope of product description through HS code.
- (n) CESTAT in its relevant part has held in para 17 of their order that "...the customs notification specified the goods subject to anti-dumping duty with reference two criteria, first by description of the good and secondly, by tariff item under which goods were classified". The domestic industry submitted that if these two criteria are required to be met, it is all the more important, relevant and necessary that all HS codes used by the consumers/ importers at the time importation of the product and accepted by the Customs port authorities be included within the purview of HS code specified by the Authority.
- (o) The domestic industry clearly finds a hidden *mala fide* and mischievous attempt of the association to create a system wherein the anti dumping duty can be evaded once the same is imposed. The domestic industry has

- requested the Authority and the Central Government to prevent any such eventuality.
- (p) The domestic industry has submitted that common applications of PVC paste/ Emulsion Resin are artificial leather (rexine, coated fabrics, tarpaulins, etc.). The subject good is processed at consumer end, by mixing liquid plasticizers like DOP to form free flowing mixtures. These mixtures or pastes are found to be suitable, shapes or coated on substrates like textile.
  - (q) PVC paste resin can be used both for the top coat and foam coat. The same grade produced and supplied by domestic industry has been used by the consumers for both the top and foam coat. In fact there are three layers of leather cloth, top coat, base coat and foam coat and all the three coats can be and have been prepared by the consumers using the same grade of PVC paste resin supplied by the domestic industry.
  - (r) There is no difference in the product being imported from subject countries and goods being produced by the petitioners. Therefore, subject goods produced by the domestic industry and imported from subject countries are like articles within the meaning of the anti-dumping Rules.
  - (s) **Relevance of evidence in anti dumping investigations** – it has been contended that the Authority is required to proceed on the basis of the positive evidence. However, so far as the Association is concerned, it has not provided any evidence in support of their contentions. Anti dumping duty was levied on this product was levied vide Notification No. 107/2004 dated 7<sup>th</sup> October, 2004. The domestic industry has collected detailed information on imports of product under consideration reported after this imposition of anti dumping duty. They have enclosed the listing of imports from the time of imposition of duty after the Sunset review till July, 2012. Further, the domestic industry has identified whether imports of PVC Paste Resin were of plasticized or non-plasticized grade. All these imports are reported in the enclosed statement. It has been contended that all import transaction of Paste Resin during the relevant period pertains to imports of non-plasticized PVC paste resin.
  - (t) It has been stated that contrary to the argument of the association at the time of oral hearing that, product under consideration falls under 39042110; imports continue to be reported in a large number of HS Codes. It is thus evident that the understanding of the counsel of the Association and its members is poles apart. Further, the Authority is not concerned with the personal understanding of the counsels rather with the way the importers and consumers have reported the goods for Customs clearance. The domestic industry has provided a tabulation regarding the imports reported and descriptions of these HS Codes as per Customs Tariff Act. It has been stated that the members of the association themselves have been using various codes under 3904 for clearing the product under consideration. Such being the case, the association has no factual basis for its claim that only 39042110 is relevant HS code. Evidently, the members of the association themselves have reported Paste/Emulsion Resin under all the three codes under which anti dumping duty has been imposed.
  - (u) It has been further contended that the imports reported under different HS codes actually pertain to different product, as the product types involved are different. It has been contended by the domestic industry that the association has concealed the fact that it is importing the product under

consideration under multiple HS Codes from CESTAT and now before the Authority. This is evident from the tabulation given by domestic industry on imports of PVC Paste Resin into the country during the period from April-July, 2012.

- (v) The domestic industry submits that the purpose of the notification issued by the Ministry of Finance is to collect ADD on imports of the product under consideration. The mere fact that the product is reported for Custom's clearance in some other HS Code does not imply that it should not attract ADD. Further, the domestic industry has contended that the association has the onus to prove that ADD is being charged on a product which was beyond a scope of the product under consideration of the original investigations. Further, this fact has not been established by the association till date either before the Authority or the CESTAT. Thus, the association has failed to establish its contention that the present notification has lead to collection ADD in some cases where it was not chargeable. With regard to Relevance of HS Codes in anti dumping and referring to Rule 4 (Duties of the Authority) and Rule 17 (Final findings and contents of the Public Notice), it has been contended that neither of the Rules require the Authority to specify the HS Code of the product. The only obligation on Authority is to identify the description of the product which is sufficient for the Customs purposes. It is therefore the duty of the Customs department at the port to identify the current HS Code for the product. The Hon'ble CESTAT has also clearly held so in Para 20 of the final order '...that the Customs Classification given by Authority are indicative and not dispositive.'
- (w) **Domestic industry** – it has been contended that with regard to scope of domestic industry; they are undisputedly a major producer of the like article in the Country. The petitioner constitutes domestic industry within the meaning of the AD Rules. Apart from them, the subject goods are being produced by M/s. Finolex Industries Ltd. It constitutes domestic industry within the meaning of the AD Rules.

#### **Normal value, export price and dumping margin**

12. The following submissions have been made by the domestic industry with regard to normal value, export price , dumping margin and injury to domestic industry.

**(a) Normal value** – referring to Section 9A (1) (c) regarding normal value, the domestic industry has contended that normal value was earlier determined on the basis of the estimates of cost of production. However, the normal value under the rules is price of the like article when sold for consumption in the domestic market of the exporting country. It is only when the such price is not available or the product is not sold in the domestic market of the exporting country or such price is not in the ordinary course of trade for any reason, including being below cost of production, that the Authority is entitled to consider export price to third countries or cost of production (including selling general and administrative expenses and profits). In the present case, however, there is sufficient evidence available with regard to prevailing price of the product under consideration in European Union. Such available information on price of the

product in European Union does not show that such prices are not in ordinary course of trade. The available information clearly shows that such prices are above estimates of cost of production. Under the circumstances, the domestic industry submits that that the normal value in the present case may kindly be determined on the basis of selling price in the European Union domestic market. It has been requested by the domestic industry to review such selling prices and adopt cost of production to determine normal value. Tabulation for the determination of the Normal value is provided by the domestic industry in their submissions.

**(b) Export price-** The domestic industry has provided transaction wise data from IBIS, Mumbai for the entire injury period and stated that the dumping margin is required to be determined by undertaking comparison of normal value with export price on the basis of sales made at nearly the same point in time. In view of wide fluctuation in the cost and price of the product with time period, the authority may kindly undertake month-to-month comparison and thereafter determined weighted average dumping margin.

The domestic industry further submits that it is not necessary to determine separate dumping margin for each grade of the products reasons that:

- i. The foreign producer concerned have not cooperated with the authority and have not established existence of significant difference in the price/ cost of different grades;
- ii. The available information on import price and associated grade does not show that there is a consistent price difference maintained by the foreign producers in respect of prices of different grades. In fact, data clearly shows a significant overlap in prices. Generally, product under consideration of lower and higher K value is sold at higher price. However, if the import data is examined, it would be seen that product which commands a higher price has been reported at a lower price and vice-versa. Thus, there is no consistent pattern of price difference between different grades of the product nor it has been demonstrated to the authority that the foreign producers have invariably kept a price difference between different grades of the product. In view of the same, the petitioner submits that the Designated Authority may kindly ignore the difference in price of different grades for the purpose of assessing dumping margin.
- iii. For the determination of export price at ex-factory level, the following adjustments are required to be made:
  - a) Ocean freight
  - b) Marine insurance
  - c) Inland transportation
  - d) Commission
  - e) Port expenses
- iv. Considering the fact that there has been a wide variation in raw material prices, Domestic industry has submits that comparison of

normal value and export price should be done on month to month basis. Tabulation in this regard is submitted in their submission.

**(c) Dumping margin** - Considering the normal value and the export price determined, dumping margin has been calculated, details of which are on record. The petitioner submits that the comparison made must be considered to be fair comparison. The petitioner has determined both the normal value and the export price at ex-factory level. Both the normal value and export price pertains to the same period. There are no known differences in the conditions and terms of sale. Both the prices are free of taxes. The Foreign Producers are selling the goods in both the markets at the same level of trade. Thus, the comparison made by the petitioner constitutes a fair comparison.

- o It would be seen that the dumping margin is beyond de-minimus limits and producers from subject territory are dumping the subject product in India.

**(d) Injury & casual link**-Referring to Section 9A (5) of the Customs Tariff Act, 1975, it has been contended that the main intent behind the legislation of sunset review investigation is to examine the following results of the anti dumping duty in force:

- i. Whether the dumping continued;
- ii. In case where dumping did not continue, whether the dumping would recur in the event of revocation of anti dumping duties;
- iii. Whether the domestic industry continued to suffer injury;
- iv. In case where the domestic industry has not suffered continued injury, whether injury to the domestic industry is likely to recur in the event of revocation of anti dumping duties.

- o In the present case it is contended that the domestic industry has suffered continued injury from continued dumping; the injury is likely to continue in the event of revocation of duties.

**(e) Assessment of Demand**-Domestic industry has submitted tabulation regarding demand of the product, it is observed that demand of the product in the country shows positive trend whereas sales of the domestic industry at the same time show a negative trend.

**(f) Volume Effect**-With regard to volume of the dumped imports, it is claimed by the domestic industry that the Designated Authority required considering whether there has been a significant increase in dumped imports either in absolute terms or relative to production or consumption in India.

**(g) Imports and Market share**- Domestic Industry submitted a tabulation regarding imports and market share of domestic industry in demand. It is concluded from the tabulation that –

- i. Volume of dumped imports from subject territory which declined in 2007-08, increased again significantly in period of investigation.
  - ii. Imports from subject territory have increased significantly in POI in relation to total imports, production and consumption in India.
  - iii. As a result of increase in imports from subject territory in absolute term and relative to production and consumption, share of domestic industry has declined significantly.
- (h) Price Effect**-Domestic industry states that –
- iv. Imports are significantly undercutting the prices of the domestic industry in market.
  - v. As a result of significant difference in the price of the domestic industry and dumped imports, the volume of imports has increased in period of investigation.
  - vi. It is requested by the Domestic Industry to the Designated Authority to determine price undercutting and injury margin after including all taxes & duties.
- (i) Profits** – it has been submitted by the Domestic Industry that performance of the domestic industry for subject goods has deteriorated over the injury period. Further losses suffered increased over the period. Domestic Industry has submitted tabulation in this regard.
- (j) Market share** - it is contended that market share of the Domestic Industry has severely declined whereas that of the dumped imports has materially increased. It is further submitted that if the present situation continues then their market share will further decline.
- (k) Inventory** – it is submitted that average inventory of the domestic industry declined which is a direct result of curtailment of production by them.
- (l) Productivity and Growth** of the Domestic Industry has also been declined.
- (m) Magnitude of Dumping Margin** – it is contended that dumping margin from the subject country and other dumping countries are not only de-minimus limits but also substantial. In the original investigation as well, the dumping margins were found to be significant.
- (n)** It is further submitted that employment are more or less constant and increase in wages is normal increase. Further, domestic industry has not raised their capital during the period of investigations, given continued injury being suffered by the domestic industry from one after another source.
- (o) Likelihood of recurrence of dumping and injury** – the domestic industry has referred to Section 9A (5) of the Customs Tariff Act and further Article 11.3 of the WTO agreement.

Submissions made by the domestic industry subsequent to the disclosure statement

(p) In response to the disclosure statement, the domestic industry has reiterated its submissions made earlier by them with regard to product under consideration, like article, dumping and injury and have sought to confirm the Authority's examination on dumping and injury. They have requested the Authority to address their issues relating to month to month comparison of dumping margin and injury margin, month wise NIP determination, and normal value determination on the price of the product in the domestic market of the exporting country. On the specific issue of product under consideration in general and request for exclusion of log fog resin in particular because of low volatile content in the low fog resin, the domestic industry has stated that heat loss and volatile content by and large refer to the same characteristics in PVC resin – both suspension & paste resin. While some producers specify heat loss, some producers specify volatile content. In this regard, they have stated that the product catalogue of Iranian producer provided by the domestic industry clearly establishes that heat loss and volatile content mean the same characteristics. It has also been added that the two standards generally followed by various manufacturers for measuring Volatile content / heat loss are ASTM D3030 and ISO 1269. The BIS 4669 of 1968 stipulates test procedure for measuring "heat loss" in PVC resin. It has been mentioned that the loss in weight, which is due to evaporation of volatile matter in resin, may be termed as 'Volatile Matter', 'Heat Loss', 'Volatile Content' or 'Volatile/ Volatiles' by producers; these terminologies are being used by producers interchangeably. It may also be noted that different manufacturers following same standard are using different terminologies - for example, Shintech is using 'Volatile', and RIL 'Heat Loss' to specify loss in weight, though both are using ASTM D3030 standards for testing. Further, same manufacture, following same standard, are using different terminologies to specify loss in weight (Finolex is using both 'Heat Loss' and 'Volatiles' though their test procedures are the same viz. ISO 1269). Further, it has been stated that the heat loss achieved by the domestic industry in its product is comparable to the volatile content in the foreign supplier's low fog product. It has been stated that the Domestic Industry tested three samples of PVC paste resin drawn from the same lot under three different test procedures and the results obtained that all three procedures are giving results close to each other, and, in any case, within the standard specification of 0.3%. Further, it has been reiterated that Low fog is the eventual property of the end product and not a property of paste resin *per se*.

**Submissions made by Leather Cloth and Plastics Manufacturers Association (LCPMA), New Delhi on 6<sup>th</sup> August 2012 are as follows:**

13. Leather Cloth and Plastics Manufacturers Association (LCPMA), in brief, has submitted as follows:

(a) Domestic industry does not manufacture any resin by emulsion process. It manufactures resin only by suspension process and Micro suspension process. The resin manufactured by suspension process is clearly and admittedly out of PUC (Product under Consideration). Thus what is within PUC is resin manufactured by micro suspension process and not the one which is manufactured by emulsion process.

(b) It is submitted that domestic industry itself on its website through its product catalogue depicts that different grades of PVC paste resin manufactured by it has different properties and they are suitable for different uses and one grade cannot be substituted for another grade. Further the domestic industry itself sells these grades at different prices. This in itself a sufficient proof which domestic industry cannot dispute that different grades are distinct products and they are technically and commercially not substitute of each other.

(c) Fogging and K-Value of PVC paste resin is an indicator of quality of resin. For high end applications, these two properties are very crucial. Domestic industry does not manufacture (1) PVC paste resin of High K Value and (2) PVC paste resin of low fogging. It has been contended that M/s. Chemplast Sanmar Limited does not manufacture grade Geon 129.

(d) On point of technology – Chemplast is manufacturing PVC paste resin with the technology from B F Goodrich, USA. The former B F Goodrich, USA is now part of PolyOne Corporation, USA.

(e) Fogging property is most stringent property required for all Automotive Interior application. Great emphasis is laid by all major Automotives on the Fogging property since it is related to the Safety of passengers. As a result any resin which fails the fog testing cannot be used for making leather cloth for automotive industry. It is mentioned that leather cloth manufactured with resins of Chemplast has never passed fog test and all the grades of Chemplast resins have been found to be failing on fogging test.

(f) High K value Resin not manufactured by domestic industry and is manufacturing non plasticized PVC paste resin of K-value between 65 and 77 as evident from their own product catalogue. Further domestic industry is clearing its products under 39042110 and no other classification. Therefore for the purposes of review PUC should be non plasticized PVC paste resin of K-value between 65 and 77 falling under CTH 39042110.

(g) Referring to the Final Findings dated 2<sup>nd</sup> May 2011 in Anti-Dumping Investigation regarding imports of PVC Paste Resin originating in or exported from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand; it has been stated that the Authority has given following finding of fact in respect of substitutability of PVC paste resin of different K-Value:

"However, as regards the issue of exclusion of low K value below K 60 is concerned; the Authority notes that same cannot substitute the PVC

paste resin of higher K value; while the PVC paste resin of higher K value may substitute the PVC paste resin of lower K value.”

(h) It has been contended that these findings have lead to irrefutable conclusions – High K-value PVC Paste resin cannot be substituted by a low K-value resin. Thus LCPMA members requiring PVC paste resin of higher than K-value of 77 technically cannot use Chemplast resin which is of a lower K-Value and thus members of LCPMA necessarily import the resin of Higher K-value for their top coat. With this logic there is a perfect case for exclusion of PVC paste resin of K-Value higher than 77. Low K-Value PVC paste resin can be substituted by a higher K- Value resin. Therefore a person requiring PVC paste resin of K- value lower than 65, can still use the Chemplast resin which has a K-value of 65-77. Thus Chemplast resin can work as a substitute for a low K-value resin. With this logic there is no case of exclusion of PVC paste resin of K-value lower than 65.

**LCPMA cannot execute orders with PVC supplied by domestic industry** – the orders for leather cloth which are placed by the members of LCPMA with specific specifications of products to be supplied are not achieving the prescribed grade. It is further submitted by the LCPMA that Designated Authority should order for testing of such product by any independent agency of authority choice and expenses from such testing will be bear by LCPMA.

(a) According to LCPMA members, orders for supply of PVC Paste Resin of K value and of low fog have been ordered but Chemplast was unable to supply and till date has not responded. Further, it is added that neither the domestic industry has manufactured these specialty grades nor have offered these graders through their website or catalogues.

(b) Orders for supply of PVC paste resin of High K value an PVC paste resin of low fog to domestic industry placed by LCPMA members have not been supplied and with no response till date.

**Wrong declaration of capacity and capacity utilization by domestic industry**-Capacity of domestic industry is combined capacity of suspension resin and paste resin. Thus, by jugglery of figures in order to show injury on capacity utilization for paste resin, they have shown impossible capacity utilization of 127% for suspension resin. The fact is that they do not have idle capacity to produce more Resin. The plant utilisation during POI at 95.78% is all time high for the domestic industry. Therefore there is no injury to Domestic Industry caused by imports.

**Capacity constraint of Chemplast** – on account of limited capacity, Chemplast is not able to supply the existing grades of 124 and is doing rationing.

(a) This capacity constraint has been specifically admitted by Chemplast in para 5.20 of the Investigation concerning imports of 'Poly Vinyl Chloride Paste Resin' (PVC Paste Resin) originating in or exported from China PR,

Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand for the same POI, in finding dated May 2, 2011.

**The absence of casual link** – the domestic industry has not invested in technology up-gradation as well as capacity expansion and they are incapable of meeting market demands. Therefore, imports are forced imports caused by shortage of material in India and even for the grades which they manufacture and as already mentioned above that domestic industry already manufactures limited grades of PVC paste resin.

(a) The domestic industry is taking undue advantage of this demand supply gap in India by charging exorbitant prices which is also evident from following fact. During the POI, Chemplast Sanmar Ltd was charging a basic price of Rs. 53,500 per ton for PVC Resin of CP- 124 grade. In Feb 2011, Chemplast is charging a basic price of Rs. 93,500 for the same product, marking an increase of 74.8% in absence of any corresponding increase in raw material prices.

(b) On the basis of the annual report by the domestic industry for the year ended 31<sup>st</sup> March, 2009 i.e. during the period in which injury is claimed on dumped imports, as a matter of fact the reasons for the substantial losses suffered is due to reasons other than dumping.

**Error in calculation** – it has been contended that there are errors in calculation of IM/DM in previous findings. In the finding dated 26.4.2010 (which stands set aside by CESTAT), the normal value etc has been constructed by taking average price of raw material, whereas in the Investigation concerning imports of 'Poly Vinyl Chloride Paste Resin' (PVC Paste Resin) originating in or exported from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand for the same POI, in finding dated May 2, 2011 based on our representation instead of simple average, weighted average has been taken for calculation of dumping margin etc. in view of volatility of prices. Similarly in para 36 while arriving at ex-factory export price average exchange rate of 45.72 has been adopted. We submit that this should also be taken as weighted average. We submit that in this investigation also wherever required the weighted average be taken to give a representative character to the figure so arrived. Further it is submitted that In the finding dated 26.4.2010 (which stands set aside by CESTAT), while calculating the landed value of imports and consequently injury margin 3% education cess on basic Customs Duty and 1% as landing charges on CIF price has not been taken into account. It is submitted that 3% education cess on basic customs Duty being non cenvatable and 1% as landing charges on CIF.

**Form of duty** – it is submitted that in this case ADD at a specific rate and that too without a reference point cannot be imposed.

**Other Submissions made by the LCPMA following oral hearing are as follows:**

14. The following submissions have been made by LCPMA following oral hearing.

(a) PVC Paste Resin is of two types, (A) Suspension Grade and (B) Emulsion /Paste Grade. The only difference between Emulsion & Suspension Grade is in respect of particle size.

(b) Chemplast Sanmar is manufacturing both Suspension and Emulsion types of PVC Resin, but has applied for imposition of anti dumping duty only on Paste / Emulsion Grade, which is relatively small proportion of its total PVC Resin production.

(c) The domestic industry manufactures only one grade i.e.124 which is used in the production of PVC Leather Cloth.

(d) Chemplast's PVC Paste Resin is utilized by the members only for the Foam Coat whereas the consumers import PVC Paste Resin of superior quality, which is used for top coat. The requirement of PVC Paste Resin for top coat and foam coat is in the ratio of 30:70. Therefore, industry is forced to import minimum 30% of its requirement of top coat resin.

(e) Historically the difference in the prices of PVC Suspension and PVC Paste Grade is about Rs 10-12 per Kg. However today the price of PVC Suspension Grade is about Rs 58-60 per kg, while that of Emulsion Grade is Rs 80-85 Per kg, which has resulted in abnormal price differential of Rs 25-27 per kg.

(f) Imposition of Anti Dumping duty on PVC Paste Resin will further distort the price structure of PVC Paste Resin vis-à-vis PVC Suspension Resin. The additional cost involved in the manufacture of PVC Paste resin as compared with PVC Suspension grade is only about Rs 6-7 per kg.

(g) Domestic industry itself on its website through its product catalogue depicts that different grades of PVC paste resin manufactured by it has different properties and they are suitable for different uses and one grade cannot be substituted for another grade. Further the domestic industry itself sells these grades at different prices. This in itself a sufficient proof which domestic industry cannot dispute that different grades are distinct products and they are technically and commercially not substitute of each other.

(g) Fogging and K-Value of PVC paste resin is an indicator of quality of resin. For high end applications, these two properties are very crucial. Domestic industry does not manufacture (i) PVC paste resin of High K Value and (ii) PVC paste resin of low fogging. It has been contended that M/s. Chemplast Sanmar Limited does not manufacture grade Geon 129.

(h) Fogging property is most stringent property required for all Automotive Interior applications. Great emphasis is laid by all major Automotives on the Fogging property since it is related to the safety of passengers. As a result, any resin which fails the fog testing cannot be used for making leather cloth for automotive industry. It is mentioned that leather cloth manufactured with resins of Chemplast has never passed fog test and all the grades of Chemplast resins have been found to be failing on fogging test.

(i) High K value Resin not manufactured by domestic industry. Domestic industry is manufacturing non plasticized PVC paste resin of K-value between 65 and 77 as evident from their own product catalogue. Further domestic industry is clearing its products under 39042110 and no other classification. Therefore for the purposes of review, product under consideration should be

non plasticized PVC paste resin of K-value between 65 and 77 falling under CTH 39042110.

(j) Referring to the final findings dated 2nd May 2011 in Anti-Dumping Investigation regarding imports of PVC Paste Resin originating in or exported from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand, it has been stated that the Authority has given following finding of fact in respect of substitutability of PVC paste resin of different K-Value:

“..... However, as regards the issue of exclusion of low K value below K 60 is concerned; the Authority notes that same cannot substitute the PVC paste resin of higher K value; while the PVC paste resin of higher K value may substitute the PVC paste resin of lower K value.”

(k) These findings have lead to irrefutable conclusions – High K-value PVC Paste resin cannot be substituted by a low K-value resin. Thus LCPMA members requiring PVC paste resin of higher than K-value of 77 technically cannot use Chemplast resin which is of a lower K-Value and thus members of LCPMA necessarily import the resin of Higher K-value for their top coat. With this logic there is a perfect case for exclusion of PVC paste resin of K-Value higher than 77. Low K-Value PVC paste resin can be substituted by a higher K-Value resin. Therefore a person requiring PVC paste resin of K- value lower than 65, can still use the Chemplast resin which has a K-value of 65-77. Thus Chemplast resin can work as a substitute for a low K-value resin. With this logic there is no case of exclusion of PVC paste resin of K-value lower than 65.

(l) LCPMA cannot execute orders with PVC supplied by domestic industry. The orders for leather cloth which are placed by the members of LCPMA with specific specifications of products to be supplied are not achieving the prescribed grade. It is further submitted by the LCPMA that Designated Authority should order for testing of such product by any independent agency of authority choice and expenses from such testing will be bear by LCPMA.

(m) According to LCPMA members, orders for supply of PVC Paste Resin of K value and of low fog have been ordered but Chemplast was unable to supply and till date has not responded. Further, it is added that neither the domestic industry has manufactured these specialty grades nor have offered these grades through their website or catalogues.

(n) Orders for supply of PVC paste resin of High K value and PVC paste resin of low fog to domestic industry placed by LCPMA members have not been supplied and with no response till date.

(o) Domestic industry does not manufacture any resin by emulsion process. It manufactures resin only by suspension process and micro suspension process. The resin manufactured by suspension process is clearly and admittedly out of product under consideration. Thus what is within product under consideration is resin manufactured by micro suspension process and not the one which is manufactured by emulsion process.

(p) Chemplast is manufacturing PVC paste resin with the technology from B F Goodrich, USA. The former B F Goodrich, USA is now part of PolyOne Corporation, USA. PolyOne Corporation manufactures following grades of PVC paste resin as evident from their product catalogue.

**Submissions made by other interested parties subsequent to hearing held on 6<sup>th</sup> august 2012**

15. M/s. Solvin SA, Brussels, Belgium and M/s. Vinnolit Ismaning, Germany in their submissions made after post decisional hearing stated as under:

It has been contended that inspite of willingness to participate in the proceedings before the Designated Authority in the subject matter, they have not received any notice of hearing, as a result they were unable to participate in the hearing held on 6<sup>th</sup> August, 2012.

Acknowledging the opportunity provided to them, they have not received any official and/or any specific query from the authority, which they can answer with any precision.

(a) They are the leading producer of PVC specialty products and the specialty grades of Paste and Extender PVC Resins being manufactured by them are not manufactured by the domestic industry such as Vinnolit E 74 CC/E75 SK, Vinnolit P 80, P 70/P 70HT, E68 SA, E 69 ST, E 67 ST AND E 70 CQ, EP 7091.

(b) Domestic industry should be confronted with these specifications and claimed that the domestic industry in India does not manufacture any PVC Resin with K-value higher than 77 which is required for good mechanical strength.

(c) Grades manufactured by domestic industry cannot be substituted with the specialty grades of paste and extender resin manufactured by the exporter.

(d) Some of the products manufactured by them are not being manufactured by the domestic country.

(e) It has been further contended that since the exports are export of product which is not manufactured by the domestic industry, the products such as PVC Paste resin of K-value higher than 77 and PVC Paste resin of low fogging be excluded from the product under consideration.

(e) None of the grades manufactured by domestic industry can be substituted with the specialty grades of paste and extender resin manufactured by the exporter.

(f) It has been contended that non-participation by the producer/ exporter in the earlier proceedings was not deliberate and was only due to time constraints and claimed that non participation in earlier proceedings is not a disqualification for participation in the afresh proceedings. Further they prayed for giving an opportunity to explain the specialty grades exported by them to India in detail.

**Submissions made by LCPMA subsequent to the disclosure statement**

(g) In response to the disclosure statement, M/s LCPMA has submitted that the disclosure issued by the Authority does not contain fresh examination by the Authority and has taken arguments which are not part of non confidential submissions in this investigations. On the issue of the product under consideration in particular, it has been stated that the scope of the product under consideration has been expanded in the disclosure statement by adding

other products under the purview of the PUC. It has also been submitted that submissions of the LCPMA has been brushed aside while that of Domestic industry has been taken into account in the disclosure statement. On the issue of like article, LCPMA has reiterated their comments made earlier by them during the investigation proceedings. They have requested the Authority to take their documents on record which include affidavits of LCPMA showing test reports, email correspondence, and mails written to DI including copies of specific orders placed with the domestic industry. They have drawn the attention of the Authority towards the fact that injury during the POI is attributable to factors other than dumping. They have requested the Authority that no recommendation should be made for continued imposition of anti dumping duty as there is no likelihood of dumping and injury. It has further been submitted that if at all the duty is recommended, it should be done on a reference price basis. In the end, they have requested the Authority to examine all submissions of the interested parties in a objective manner.

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

16. The Authority notes that an appeal against the order of the Hon'ble CESTAT has been filed by LCPMA before Hon'ble Supreme Court wherein the Hon'ble Supreme Court has passed the order that counter, if any, is to be filed within 4 weeks and rejoinder, if any, is to be filed within 2 weeks thereafter. Further, an appeal against the Hon'ble CESTAT order has been filed by domestic industry before Hon'ble High Court of Madras. It is noted that there is no stay on the operations of the order of the Hon'ble Tribunal either by Hon'ble Supreme Court or Hon'ble High Court of Madras. Accordingly, the Designated Authority has complied with the orders of the Hon'ble Tribunal in the present matter.
17. The domestic industry contended that the scope of the present hearing should be restricted to the issues on which Hon'ble Tribunal has passed the order or the issues that have been raised by LCPMA before the Hon'ble Tribunal in their appeal before the CESTAT. LCPMA has however contended that the Designated Authority is required to examine all the issues now raised, regardless of whether or not the same have been raised before the Hon'ble Tribunal either at the time of hearing or in their appeal. In the comments to the disclosure statement, the domestic industry has raised the issues relating to the monthwise determination of normal value, dumping margin, NIP and injury margin. Similarly, the appellant before the CESTAT and also the user and importer has raised issues with regard to exclusion of the low fog resin. It is noted that these issues raised by the interested parties were not raised in the appeal before the CESTAT and also before the public hearing conducted by the Authority on 6<sup>th</sup> August 2012. The Authority notes the following as per the CESTAT order

*"The appellant shall have liberty to raise all issues before the DA which they have taken before us."*

While noting that the Authority is not obliged to examine the issues which were not raised before the CESTAT by the appellants as well as by domestic industry, the Designated Authority has considered it appropriate to examine all the issues raised by all the interested parties, whether or not the same were raised by LCPMA in their appeal before the Hon'ble Tribunal.

18. The Authority notes that the product under consideration in the original case was "Poly Vinyl Chloride Paste Resin" also called as "Emulsion PVC Resin" and referred to as PVC Paste Resin in the present notification. The product under consideration (also referred to as the subject goods) remains the same for the purposes of the present Sunset Review investigation.
19. PVC Paste Resin is produced from Vinyl Chloride Monomer (VCM). VCM is produced using EDC, which in turn requires chlorine as one of the major products. The subject goods is produced and sold in the form of white/off-white powder. The properties of the product are described in terms of K value, inherent viscosity, particle size retention, heat loss, initial BFV etc. All grades of the subject goods are subject matter of present investigation and are within the scope of product under consideration. Common applications of PVC Paste Resin are artificial leather, Rexene, coated fabrics, tarpaulins, conveyer beltings, toys, automotive sealant, adhesives etc. The subject goods are processed at consumer end, by mixing liquid plasticizers like DOP to form free flowing mixtures.
20. One of the issues that was raised before the Hon'ble CESTAT is the scope of the product under consideration and customs classification of the product under consideration. The issues raised by the interested parties have been examined by the Authority.
21. With regard to the scope of the product under consideration, the issues raised by the interested parties are with regard to the fact that whether PVC suspension resin is the same or different product, and whether PVC paste and PVC emulsion resin is the same or different product. The other major issue raised by the interested parties pertain to the scope of the paste/emulsion resin and whether some type of paste/emulsion resin is required to be excluded and what should be the customs classification of the product.
22. The Authority has examined the submissions of the interested parties with regard to these issues. The Authority notes that the present investigation is in the nature of sunset review investigation and therefore the scope of the product under consideration would normally remain the same as was in the original investigation, unless an interested party establishes the need to restrict the scope of the product under consideration.
23. The domestic industry has clarified that the 'Product under consideration' does not include PVC Blending Resin and Co-polymers of the PVC Paste Resin as they have not been producing them. Besides, the domestic industry further clarified that they are no longer producing the Battery Separator Resin and have no objection if the same is excluded. Thus, apart from PVC Suspension Resin,

the Authority has decided to exclude PVC Blending Resin, co-polymers of the PVC Paste Resin and Battery Separator Resins from the ambit and scope of the product under consideration and consequently from this investigation.

- 24 With regard to Poly Vinyl Chloride (suspension grade) also classifiable under 39042110, the Authority notes that the difference and similarities between suspension grade PVC and paste grade PVC were examined by the Authority in detail at the time of original investigation. No fresh evidence has been provided by any interested party warranting the review of the conclusion earlier made by the Authority in this regard. The present investigation is in the nature of sunset review investigation and the interested parties had made detailed submissions at the time of original investigation, claiming suspension and paste PVC resin as same or different product. The Authority did not find the two as one article. It is also relevant to note that the Authority had earlier conducted investigation into dumping of PVC suspension resin, wherein the scope was restricted to PVC suspension resin only. No evidence has been provided by interested parties to support that PVC paste and suspension resins constitute one article. The Authority holds that PVC suspension grade resin is a different product and is not within the scope of the product under consideration.
- 25 With regard to paste resin and emulsion resin being different products, it is noted that PVC Paste/Emulsion Resin can be produced through two processes i.e. micro suspension and emulsion polymerisation. However, the goods produced through these two processes are the same. It is further noted that the domestic industry has produced PVC paste resin through both emulsion and micro-suspension process during the POI though they have stated that they suspended their production of subject goods from emulsion route thereafter. Notwithstanding this, the assumption that the scope of the product under consideration is restricted to PVC Paste Resin produced through a particular process is without any basis. So the fact that the PVC paste resin can be produced through two different processes, the same does not imply that resultant product becomes different. However, it is noted that the domestic industry also produces the subject goods by adopting the micro suspension process. Thus, it is noted that the difference in the process employed cannot lead to different products, unless the resultant products themselves differ in terms of essential product properties. It is possible that each producer may have its own process to manufacture the product; but the difference in the production process would be immaterial as long as the resultant product's properties are the same. In view of the same, the Authority holds that both PVC paste and PVC emulsion resin mean the same product for the purpose of the scope of the product under consideration in the present investigations and both are within the scope of the product under consideration and proposed measures.
- 26 The interested parties have sought exclusion of K-Value paste resin below 60 k-Value, paste resin with K-Value above 78 and paste resin with low fogging properties. The domestic industry has disputed exclusion of paste resin with K-Value above 78 and paste resin with low fogging properties.

The submissions made by the interested parties and evidence placed on record have been examined by the Authority.

27. The Authority notes that PVC paste resin can be used both for top coat and foam coat. The domestic industry has contended that the same grade produced and supplied by them has been used by the consumers for both top and foam coat. The domestic industry has further contended that in fact there are three layers of leather cloth, top coat, base coat and form coat and all the three coats are prepared by the consumers using the same grade of PVC paste resin supplied by the domestic industry.
28. With regard to the argument that the paste PVC resin can be used for top coat and foam coat and that the domestic industry produces only one type of paste PVC resin; the Authority notes that while advancing this argument, the interested parties have provided no evidence to substantiate their claim. The interested parties have not established that the different grades of PVC paste resin or PVC paste resin produced by the domestic industry and imported from the subject territory are not comparable on the basis of physical & chemical characteristics, manufacturing process, functions and uses, product specifications, pricing, customs classification, etc. The domestic industry on the contrary has contended that the same grade produced and supplied by them is used by these consumers for both top and foam coat. The domestic industry has further contended that in fact there are three layers of leather cloth, top coat, base coat and form coat and all the three coats are prepared by the consumers using the same grade of PVC paste resin supplied by the domestic industry.
29. It has also been contended by the interested parties that the domestic industry does not supply grades comparable to the imported grades. But these interested parties have not substantiated their claim. It is noted in this regard that similar contentions were made at the time of original investigation as well but the Authority did not find sufficient justification to exclude the grades from the scope of the investigation. The Authority thus notes that PVC resin of different grades are being imported into India and the interested parties have not placed any evidence on record to establish that the different grades of PVC resins are different products within the meaning of Section 9A(1).
30. Regarding claim made that the domestic industry itself on its website through its product catalogue depicts that different grades of PVC paste resin manufactured by it has different properties and they are suitable for different uses; the Authority, on a perusal of the copies of the catalogues of three PVC paste resin grades, namely, 120, 121 and 124 being produced by M/s. Chemplast Sanmar Limited, notes that the catalogues show that all the three grades are, *inter alia*, suitable for manufacturing leather cloth and nowhere the same states that one grade cannot substitute the other and the different grades constitute different articles within the meaning of Section 9A(1). It is noted that the three grades merely differ in terms of associated values of the product properties and the basic product properties of the three grades are however similar. The Authority notes that mere difference in associated

values does not render them different articles. It merely implies different form of an article. The Authority notes in this regard that different article within the meaning of Section 9A(1) needs to be understood as articles with distinctly different product characteristics, manufacturing process, production technology, functions & uses. Different forms of an article cannot for the purposes of Section 9A(1) imply different articles. Hence, the Authority notes that the contention of LCPMA that the three grades are three different articles within the meaning of Section 9A(1) is inappropriate.

31. As regards the contention that the Fogging and K-Value of PVC paste resin is an indicator of quality of resin, the Authority notes that the domestic industry has disputed this claim. It has been submitted by the domestic industry that K-Value essentially represents the molecular chain of the product and is not reflective of the quality of the product per se. A perusal of the emails filed by the members of the LCPMA and the response thereto by M/s. Chemplast Sanmar Ltd. has not shown any refusal by the domestic industry to produce and sell the low fog PVC paste resin. In fact, the domestic industry has contended that no order of any commercial quantity to supply low fog PVC paste resin has been placed with them by any user in the past. It has been further submitted that they have the capability to manufacture low fog PVC paste resin, should any order of commercial significance be placed with them. The domestic industry has provided relevant documents showing that the company was provided relevant technology to produce different kinds of paste resin by its technology supplier and that its technology supplier is undisputedly producing and selling low fogging resin. It has been further submitted by the domestic industry that members of the LCPMA are using anti-fogging agents/additives while manufacturing the leather cloth to meet specific end-use applications.
- 32 LCPMA in their submissions has submitted some test certificates of some 121 grade paste produced and supplied by domestic industry, wherein the K value of the goods produced was reported as 77. However, in their written submission, the domestic industry provided test certificates wherein the K value of the 121 grade produced was 78. The Authority notes that the product catalogue of the domestic industry itself clearly mentioned K Value for 121 grade as 76-78, which implies that the specific K value of goods produced may be anywhere between 76-78. It is also noted from the some of the test certificates enclosed by the domestic industry .that it has in fact produced paste resin grade 121 having K value 78.
33. It has been contended by the domestic industry that even when they have the technology for a number of grades and in particular for Geon 129 they have not commercially produced the same, as the product is being dumped for quite some time and there was a demand supply gap for this product in the country. In a situation where the domestic industry is suffering from dumping, it is naturally not supplying all the grades within its product range and is focusing on those grades which have much significant demand. Domestic industry contended that imports of paste resin with low fogging applications or K value above 78 were miniscule

during the injury period and therefore the domestic industry has not commercially produced the same. With regard to exclusions of low fog resins and high K value resin, the matter was examined and it was noted from the submissions that it is not clear whether the imports of low fogging are also imports of high K value. It is also noted from the submissions made by LCPMA that the low fogging resin can be of low, high or medium K value. The product catalogue of foreign producers also showed that they have shown interchangeable use of low fogging resin and other resin. Further, LCPMA has stated that all the leading manufacturers of the low fog resin in their catalogue put a numerical value and test method to signify low fog characteristics and the widely used method is gravimetric method. The domestic industry in their submission has cited low volatile content as mentioned by some of the major producers of the subject goods while emphasizing low fog resin. They have also submitted a copy of the specifications of PVC resin (original Iran) where it appears that the low volatile content corresponds with the heat loss content. It is noted that the domestic industry mentions heat loss content in its specifications of the grades of the PVC paste resin. Further, it is noted from the submissions that low fog resin characteristics is not solely due to one single factor, rather it depends on other parameters as well as the type of additives or plasticizers used for making the cloth. Further, during the investigations, the Domestic industry contended that "low fogging" is not a measurable characteristic of the paste resin alone and the foreign producers themselves have been offering paste resin both with and without low fogging characteristics for interchangeable applications. The domestic industry has also contended that the price of paste resin with "low fogging" characteristics is comparable to the price of paste resin without low fogging characteristics and it is undisputed fact that low fogging paste resin can be used in applications where the domestic industry and other foreign producers goods are being used. The domestic industry provided letters from a number of consumers who have confirmed that they have been using the paste resin supplied by the domestic industry for all applications and in particular for top coat applications. Letters to this effect have been provided from a number of consumers who are also members of LCPMA. It has also been contended by the domestic industry that plasticizer used in the PVC are main contributor to fog.

34. With regard to the persistent contention of LCPMA that the Designated Authority could order a test report from an independent authority, the matter was examined and after taking into account the contention of the various interested parties comprising of domestic industry and LCPMA, it was decided to examine their samples by IIT Delhi especially about the fact whether the domestic industry makes products belonging to K value higher than 78 and also if their products have low fogging characteristics. It is mentioned that both the parties were asked to send the samples and based on sample results which was duly conveyed to both the parties, it was noted after examination of samples reports (including the conclusions given by the above institution) that domestic industry samples of

subject goods included PVC paste resin carrying higher K value ( of more than 78) while none of the samples of the LCPMA had K values higher than 78, and all the samples (from both parties) had low fogging characteristics. In view of the above, the Authority holds that the contention of LCPMA that the domestic industry does not produce those grades of PVC paste resin having K value above 78 and low fogging characteristics is not correct. On the contrary, the test results provided by IIT, Delhi have confirmed that the domestic industry has produced those grades of PVC paste resin having low fogging characteristics and K value above 78.

"copy of the technical report from IIT Delhi is annexed as Annexure 1"

**35** With regard to the contention of LCPMA that the domestic industry does not produce Geon 129 grade, it is noted that the company produces PVC paste resin from the technology supplied by BF Goodrich of USA. As per the technological document given by the company, it has technology to produce Geon 128 (129) which has K value of 81. It has been submitted that M/s BF Goodrich is now owned by M/s Polyone corporation.

36 It is noted that the Designated Authority has in the parallel investigations concerning imports of paste resin from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand has held that paste resin with K value below 60 could be exempted as the comparable grade is not being offered by the domestic industry and this grade cannot be used in substitution to the grades produced and supplied by the domestic industry. Further, the Designated Authority did not exclude paste resin with K value above 78 even though grade with identical K value was not sold by the domestic industry during the period of investigation for the reason that comparable grade was being offered by the domestic industry and this imported product grade could be used in substitution to the grades produced and supplied by the domestic industry.

37. The Designated Authority also holds that if the imported product shall substitute the domestic product, exclusion of such imported product from the scope of product under consideration shall lead to continued dumping and injury to the domestic industry.

38 With regard to the submissions by the LCPMA and domestic industry after the disclosure statement, it is noted that all averments and submissions including the copies of the emails, test reports, submissions made by interested parties have been examined by the Authority and, after examining the evidence on record and submissions made, the Authority is of the view that it would not be appropriate to exclude low fogging PVC paste resin from the scope of this investigation.

39 As regards the issue of manufacturing equivalent to Geon 129 grade is concerned, the domestic industry has submitted a copy of the technical document provided by their technology supplier, namely BF, Goodrich USA that they have the capability to produce equivalent grade.

40 As regards the contention that LCPMA members cannot execute orders with PVC supplied by domestic industry; the Authority notes that the domestic industry has enclosed a number of evidences evidencing that they are using the product procured from M/s. Chemplast Sanmar Ltd.

41 In addition to above, as regards the contention that the High K value Resin is not manufactured by domestic industry and that it is manufacturing non plasticized PVC paste resin of K-value between 65 and 77; the Authority notes that the issue of exclusions or otherwise of certain types of PVC Paste Resin based on the K values thereof was discussed at length in the matter of Anti-Dumping Investigation concerning imports of 'Poly Vinyl Chloride Paste Resin' (PVC Paste Resin) originating in or exported from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand. In that matter the Authority had notes thus:

*As regards, the issue of exclusion, the Authority notes that the Product under Consideration (PUC) in the instant investigation is 'Poly Vinyl Chloride Paste Resin' also called "Emulsion PVC Resin" and referred to as PVC paste resin. It is further clarified that the injury analysis in respect of the domestic industry is undertaken in the context of "like Article" that is being produced by it. There is no dispute that the domestic industry is producing PVC Paste Resin and has done so during the POI as well. However, as regards the issue of exclusion of low K value below K 60 is concerned; the Authority notes that same cannot substitute the PVC paste resin of higher K value; while the PVC paste resin of higher K value may substitute the PVC paste resin of lower K value. The claim regarding non-substitutability of Higher K value with the lower one has not been sufficiently substantiated by the parties seeking their exclusion from the scope of the proposed measure. Likewise, the claims for excluding PUC with high viscosity etc have not been substantiated by the concerned interested parties seeking their exclusion.*

42. It has been further noted as follows:

*6.10 The Authority notes that though PVC paste resin has a number of grades and sub-types, all of them have similar physical and chemical characteristics and end-uses; even though specifications in terms of K values and other parameters are controlled by the manufacturers to produce these grades. LCPMA has submitted some copies of Bills of entries claiming to have imported PVC paste resin of K value more than 78 K. However, the domestic industry has claimed that they have the capacity to produce PVC paste resin of K value more than 78K.*

*6.11 After considering the information on record, the Authority notes that the product produced by the domestic industry is like article to the product under consideration exported from the subject countries as*

*the product produced by the domestic industry is comparable to the imported subject goods in terms of characteristics such as physical & chemical characteristics, functions & uses, product specifications, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably.*

*6.12 Thus, the goods produced by the applicant domestic industry is like article to the product under consideration in terms of the AD Rules.*

43. With regard to paste resin with k-value below 60, the domestic industry has admitted that since the Authority has already excluded this product type from the scope of the product under consideration in the parallel investigations, the same can be excluded from the scope of the product under consideration.

44. In view of the above, the Authority considers that while the product scope excludes PVC Blending Resin, co-polymers of the PVC Paste Resin, Battery Separator Resins and paste resin with k-value below 60, it would not be appropriate to exclude any other product type from the scope of the product under consideration. In particular, it would not be appropriate to exclude k-value above 78 or low fogging application paste resin.

#### **Scope of the Product under investigation**

45. Apart from the above issues, another important issue raised in this matter has been the ITC HS code of the PUC viz. PVC Paste Resin and whether the same is dispositive or merely indicative. During the investigations, M/s LCPMA has contended that the scope of the product under consideration should be restricted to 39042110, the scope of the product under consideration in the original investigations. The domestic industry has however contended that the scope of the product under consideration should include all those customs classification wherein the imports of the product under consideration have been reported. The issue has been examined in detail.

46. As per the submissions of M/s. Chemplast Sanmar Ltd (the domestic industry), the subject goods were classified under subheading no 39042210 in the Customs Tariff Act in the previous final findings. However, the domestic industry had claimed that the imports were being cleared under a number of other classifications as well. In the written submissions filed by the domestic industry, they specifically raised issue of imports of the product under consideration by the importers i.e. members of Leather Cloth and Plastics Manufacturers Association in a large number of classification. The domestic industry has provided imports information analysed for various HS codes in which imports have been reported during the injury period and thereafter till recent period. The domestic industry has also provided imports analysis by showing imports of the same grade of a

producer being reported in different classification. The domestic industry has contended that the product under consideration in fact does not have dedicated customs classification and the same fact has been admitted by all authorities, including the CESTAT. It is also the argument of the domestic industry that for the purpose of anti dumping duty, only the product description is important. The relevance of customs classification is only for ease in identification of the product. The domestic industry has further contended that the members of LCPMA have been reporting the very same product (and even very same grade) in different classifications.

47. It is noted that M/s LCPMA has not addressed the issue of imports of the product under consideration in a large number of customs classifications. LCPMA has contended that the domestic industry has cleared its product under 39042110 and therefore the same should be considered as the correct customs classification.

48 It is consistent position of the Authority that the customs classification is indicative only and is in no way binding on the scope of the product under consideration. The Authority has been consistently considering product description as dispositive and customs classification is referred to as indicative only.

49 There is no dedicated customs classification for the product under consideration, namely PVC Paste/Emulsion Resin. Customs classification under 3904 is reproduced below:

3904 21	Non-plasticised:
3904 21 10	Poly (vinyl chloride) resins
3920 21 90	Other
3904 22	Plasticised:
3904 22 10	Poly (vinyl chloride) (PVC Resins (emulsion grade)
3904 22 90	Other

50 It is further noted that the Authority had conducted two investigations in the recent past viz. the instant matter (Sunset Review Investigation of Anti-dumping duty imposed on imports of PVC Paste Resin originating in or exported from European Union, wherein final findings were issued on 26<sup>th</sup> April 2010) and the other case was Anti-Dumping Investigation concerning imports of 'Poly Vinyl Chloride Paste Resin' (PVC Paste Resin) originating in or exported from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand, for which final findings were issued on 2<sup>nd</sup> May, 2011.

51. It is recalled that in the original investigations of this present sunset review, the product under consideration was classified under 39042110 while mentioning that these classifications are indicative only. However, in both these investigations i.e final findings of the sunset review as well as final findings of the PVC paste resin concerning imports of 'Poly Vinyl Chloride Paste Resin' (PVC Paste Resin) originating in or exported from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand, the product under consideration was 'Poly Vinyl Chloride

Paste Resin' which is also called "Emulsion PVC Resin" and referred to as PVC paste resin. In both these final findings, the subject goods were classified under subheading no 39042110 in the Customs Tariff Act. In the instant matter, as per the submissions of M/s. Chemplast Sanmar Ltd (the domestic industry), the subject goods were classified under subheading no 39042210 in the Customs Tariff Act; however, M/s. Chemplast Sanmar Ltd. had claimed that the imports were being cleared under a number of classifications as well; therefore the findings categorically stated that the Customs classification is indicative only and is in no way binding on the scope of the present investigation. It may be pertinent to mention that the Authority has been considering product description as dispositive and Customs classification is referred to as indicative only. It is further noted that even in the recent past, the subject goods have been imported under many ITC HS sub-heads. Therefore, the Authority reiterates that product description is only dispositive and Customs classification is indicative only.

52 The Authority also notes that under the rules, the Authority is required to identify the article liable for anti-dumping duty. Rule 17 requires the Authority to record a finding based on information received on the matter of facts and considering the law and reasons which have led to the conclusion. Further, the Authority is required to give sufficient information regarding a description of the product which is sufficient for customs purposes. In this regard, the Authority notes that the purpose of specifying customs classification is only to assist the customs authorities at the port in correct identification of the product under consideration.

53 In a situation where the product under consideration does not have dedicated customs classification, the Authority considers that it is necessary to provide wider scope of the HS code in order to ensure that the imports of the product under consideration are appropriately subjected to anti dumping duty and the anti dumping duty is not evaded by merely specifying the HS code. It is however clarified that this does not imply that any import reported under that HS code shall be subjected to anti dumping duty merely because the HS code has been specified under anti dumping duty table. For sake of abundant caution, it is clarified that anti dumping duty being proposed is on the product description and not on HS classification. Any imports of a product not within the scope of the product under consideration should not be subjected to anti dumping duty merely because the HS code has been specified under duty table.

54 With regard to the argument following the issuance of the disclosure statement by LCPMA that mention of 4 digit head (3904) would lead to inclusion of other products within the PUC, it is stated that after examination of imports of products under consideration from subject countries, it was noted that product under consideration is imported under more than one customs subhead ( 8 digit). Having regard to the evidence on record, information provided by the interested parties, scope of the product under consideration in the present case and objective of specifying the HS codes, and in particular considering that the product under consideration does not have a dedicated HS code in the present case and is being imported under different ITC HS codes, the Authority has recommended anti dumping duty on imports of product under consideration falling under customs classification 3904.

55 In view of the foregoing, the Authority holds as follows with regard to the scope of the product under consideration

*"the scope of the product under consideration is Poly Vinyl Chloride Paste Resin" also called "Emulsion PVC Resin" and referred to as PVC paste resin, excluding PVC Suspension Resin, Battery Separator Resins and PVC Paste Resin with k-value below 60, falling under classification 3904 under the Customs Tariff Act. It is clarified that all products other than PVC Paste/Emulsion Resin falling under 3904 are beyond the scope of the present investigations and proposed measures". Further, the Authority reiterates that only product description is dispositive and Customs classification is indicative only.*

### **Standing and scope of the Domestic Industry**

#### **Submissions made by M/s. Chemplast Sanmar Ltd., Chennai**

56 M/s Chemplast Sanmar Ltd. is a major producer of the subject goods in India, as it commands 78.97 % of the Indian production. The company satisfies the requirement of 'standing' and constitutes 'domestic industry' within the meaning of the AD Rules.

#### **Submissions made by the importers, consumers, exporters and other interested parties**

57 The submissions have been filed by Leather Cloth and Plastics Manufacturers Association (LCMPA) (India). No other interested party has filed any submissions. None of the interested parties have made any submission in respect of 'domestic industry'.

58 M/s LCMPA (India) has, *inter alia*, contended that there is only one producer of subject goods in India.

### **Examination by the Authority**

59 At the time of the initiation of this review investigation, Rule 2(b) of the AD Rules read as follows:-

*"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers only":*

However, the Rule 2(b) of the AD Rules has recently been amended to read as:

*"(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' may be construed as referring to the rest of the producers only"*

60 In the present review investigation, M/s Chemplast Sanmar Ltd. has responded to the initiation notification. The Authority notes that M/s Chemplast Sanmar Ltd. is a major producer of the subject goods in India as it accounts for 78.97% of total Indian production. Therefore, M/s Chemplast Sanmar Ltd satisfies the requirement of 'standing' and constitutes 'domestic industry' within the meaning of the AD Rules.

61. As regards the contention by some of exporters/producers from EU that inspite of their willingness to participate in the proceedings before the Designated Authority in the subject matter, they have not received any notice of hearing, as a result they were unable to participate in the hearing held on 6th August, 2012; the Authority notes that the contention is not based on facts. These exporters/producers have chosen not participate in the investigation process undertaken by the Authority vide initiation notification no. 15/27/2008--DGAD dated 31st March 2009. The initiation notification was published in the Gazette of India and also hosted on the web-site of the Department of Commerce, Government of India.

62 Besides, it has been the practice of the Authority to invite only those interested parties that have participated in the investigation. Attention in this regard is also invited to letter sent to the representative office of EU in New Delhi (Delegation of the European Union), *inter alia*, stating as follows:

*Known exporters from your country are being requested separately to furnish the relevant information in the form of response to the questionnaire sent to them. A copy of the questionnaire being sent is enclosed herewith.*

*However, there may be more producers/exporters of the subject goods in your country who may be interested in this investigation. You are therefore, requested to bring this to the notice of all concerned, so that they can defend their interests effectively.*

*A list of exporters/producers being addressed by the Authority is enclosed herewith. These exporters/producers as also other exporters/producers having interest in export of the subject goods to India may be advised to furnish information in the form and manner prescribed in the enclosed questionnaire to the Authority within 40 days of the date of this communiqué.*

63 A letter sent to the known exporters (also sent to the Delegation of the European Union), *inter alia*, stated as follows:

*As per Rule 6(6) of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 "the Designated Authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the Designated Authority only when it is subsequently reproduced in writing." Please send a written request in advance if you desire a hearing at the address mentioned in Para 12 above so as to reach within 40 days from the date of publication of the notification.*

64 In view of the above, the Authority notes that the claim that they were willing to co-operate earlier is not tenable based on the facts of the case.

#### **Dumping Determination**

##### **Normal Value**

##### **Submissions made by the Domestic Industry**

65 It has been contended by the domestic industry that the producers from EU are dumping the subject goods in India. Efforts were made by them to obtain information about the prices of PVC Paste/Emulsion Resin prevailing in the domestic market in European Union; but no reasonable, authentic and accurate information could be obtained by them about the actual transaction-wise selling price of the subject goods (between a producer and wholesaler dealer/distributor) in their domestic market.

66 Efforts were also made by them to trace the prices of the subject goods in published journals. "Vinyl Chloride" from Harriman Chemsult Limited is an internationally acknowledged, widely relied upon authentic journal in this trade and that they have been able to get information about the prices in domestic market of subject country based on this journal.

67 In view of the same, the Normal value in subject territory has been estimated on the basis of the prices reported by this journal.

##### **Submissions made by the Exporters/Importers/Other interested parties**

68 None of the exporter or producer has filed the questionnaire response in the form and manner prescribed. M/s Chemplast Sanmar Ltd has, *inter alia*, contended that the dumping margin should be based on the domestic selling prices in EU; while the Leather Cloth and Plastics Manufacturers Association has submitted that it would not be appropriate to determine the Normal value based on the prices published in journal "Vinyl Chloride" from Harriman Chemsult Limited.

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

69. None of the exporters/producers in EU has cooperated with the Authority in this investigation. In view of non-cooperation by the exporters/producers in EU, the Authority has considered information and facts available on record. The Authority notes the claim of the domestic industry that efforts were made by them to obtain information about the prices of subject goods prevailing in the domestic market of EU, but no reasonable, authentic and accurate information could be obtained by them about the actual transaction-selling price of subject goods in their domestic market.

70. In view of the non-co-operation from the exporters/producers in EU, the Authority has constructed the Normal value. For this purpose, the Authority notes that though the prices of the subject goods are regularly published in journal, namely "Vinyl Chloride", which is published by Harriman Chemsult Limited but some interested parties have contended that prices of the subject goods published in the journal may not be reliable because of variations in grades of the PUC and their corresponding prices. In any case, considering non-co-operation of the EU exporters/producers in the instant matter, the Authority has little choice except resorting to construction method of determination of the Normal Value. Therefore, the Authority has constructed the Normal value for EU considering international prices of major raw materials, consumption factor of domestic industry and conversion cost of domestic industry and the Normal value so determined works out as US\$ 1396.76 per MT.

### **Export Price**

71 The Authority notes that none of the exporters / producers from EU has cooperated with the Authority in this investigation. In view of non-cooperation by the exporters / producers in EU, the Authority has considered information and facts available on record.

72 In view of non-cooperation by the foreign exporters / producers, the Authority considered whether import statistics provided by IBIS and DGCI&S could be used to determine the Export price of the subject goods during the relevant period. Thus, the Authority has determined weighted average import price for the product under consideration.

73 The domestic industry has claimed volume, value and import price on the basis of information provided by IBIS. The Authority also called for the data from DGCI&S; the analysis of which revealed that the volume of imports reported by the DGCI&S during the POI were substantially lower than the volume of imports reported by the IBIS. The Authority, therefore, corroborated the two data and compared first customs classification wise and thereafter customs port wise volume and value of imports reported in the two sources.

74 It is seen that there are significant differences in the volumes reported in the two sources. A significant difference is observed in import data reported at Cochin port. Further, analysis of classification wise imports shows that significant differences have been reported in other classifications (in particular under 3904 2110).

75 In view of the same, the Authority has adopted import data reported by IBIS in order to determine volume, value and import price of imports for the purpose of present determination as volume is much higher in the IBIS data, while the price per unit is almost similar in both the sources.

76 As regards submissions of the interested parties that weighted average monthly analysis of the normal value, export price and determination of dumping margin be carried out by the Authority, in view of the fluctuations in the raw materials prices, exchange rates and an identical exercise having been undertaken by the Authority in another Anti-Dumping investigation relating to other countries, the Authority notes that no such claims / submissions were made by the interested parties at the time of the original investigation. The Authority undertakes the month wise analysis of the normal value, export price and other parameters subject to the data on similar lines being made available by the interested parties, an opportunity being allowed to the interested parties to respond to such information and after due verification of the submissions of the interested parties, to the extent required. In the Anti-Dumping investigation against imports of PVC Paste Resin from South Korea, Japan, Taipei, Malaysia, Russia and Thailand, the Authority in the preliminary findings, had considered the average of the normal value and export price for the exporters for determination of dumping margin. Subsequent to preliminary finding, the interested parties, based on variances in various parameters, requested for a month wise analysis. Accordingly, all the interested parties were allowed a fresh opportunity to submit the required information on a monthly basis. It was only based on verification of the claims of the interested parties in this regard that the Authority carried out weighted average of various parameters on a monthly basis. Furthermore the facts and circumstances of two different investigations may vary in individual cases, even though the POI and the product under consideration may be identical. In view of the same, at this stage, the Authority does not propose to undertake the month wise analysis of Normal Value, Export Price and Dumping Margin.

77 The prices reported in the IBIS are CIF import prices. In view of non cooperation from the EU producers/exporters, the Authority has made price adjustments on the basis of best available information in order to arrive at ex-factory export price to India. Price adjustments have therefore been made with regard to ocean & inland freight, port handling, marine insurance. The Authority has determined the ex-factory export price of subject goods for all exporters or producers from European Union as follows:

Particulars	Unit	European Union
Import volume	MT	3,374
Import value	Rs. Lacs	1,766.44
CIF import price	Rs./MT.	52,354

Exchange rate	Rs./US\$	45.72
CIF export price in US\$	US\$/MT	1,145.08
Price adjustments (total)	US\$/MT	***
Ex-factory export price	US\$/MT	***

### **Dumping Margin**

78 Since none of the exporters /producers from EU has responded to the Authority in this investigation, the Authority notes that individual dumping margins for the exporters/producers cannot be determined. The Authority has therefore determined weighted average dumping margin for all producers/exporters of the subject goods from EU. On the basis of normal values and net export prices determined as explained above at ex-factory level; the dumping margin during POI for all exporters/producers from the subject territory has been determined, as detailed below:

	Units	European Union
Normal Value	US\$/MT	***
Export Price	US\$/MT	***
Dumping Margin	US\$/MT	<b><u>300-320</u></b>
Dumping Margin	%	27.73%

### **Continuation or recurrence of dumping:**

79 While there is no response from any of the EU producers/exporters, the domestic industry has submitted the following:

- (a) EU producers/exporters have not responded to the Authority and have not provided information in the form and manner prescribed.
- (b) The authority has prescribed specific additional requirements for sunset review. The EU producers/exporters have not responded to this questionnaire as well.
- (c) Any other party opposing extension of ADD also has not provided any information to the Authority in this regard.
- (d) There is a significant dumping margin from European Union. Dumping from European Union has not ceased in spite of anti-dumping duty being in existence.
- (e) The product under consideration continues to be exported in significant volumes and the dumping margin in respect of current exports is quite significant.

- (f) The producers in Europe are exporting the product to several countries. Imports from EU have increased after imposition of anti-dumping duties.
- (g) The producers in EU are understood to have significant surplus capacities.
- (h) While producers normally use production facilities between suspension and paste PVC on dedicated basis, it is possible for the producers to divert suspension PVC capacities to production of PVC Paste Resin and vice versa with minimal efforts. Thus possibilities of suspension PVC capacities being utilized for PVC Paste Resin are not ruled out.

80. In view of the above, the Authority considers that dumping of the subject goods is likely to continue in the event of cessation of the Anti-dumping measure in force.

### **Injury**

#### **Submissions made by the Domestic Industry**

81 The submissions made by the domestic industry with regard to injury and causal link, in brief, are as follows:

- (a) Product under consideration continues to be exported to India from the subject territory and other major countries at dumped prices;
- (b) Dumping has continued inspite of existing anti-dumping duties;
- (c) Domestic industry has not been able to improve its performance to the extent it could have;
- (d) Imports from subject territory and other dumping countries have increased in relation to total imports, production and consumption in India.
- (e) Performance of the domestic industry has deteriorated in terms of production, capacity utilization, sales values & volume, profits, return on investments, cash flow, and market share.
- (f) Capacity utilization of the domestic industry continued to remain sub-optimal in spite of existence of significant demand.
- (g) Continued dumped imports are at prices significantly lower than the cost of production of domestic industry that has resulted in suppression of the domestic prices of the subject goods.
- (h) The domestic industry has suffered continued material injury.
- (i) The current level of anti-dumping duties are grossly inadequate to prevent injurious dumping because of increase in raw material prices;
- (j) Anti-dumping duty is required to be extended, considering the dumping margin and injury margin in the present investigation.

#### **Submissions of other interested parties**

82. Submissions have been filed by M/s Mayur Uniquoters limited (in response to the Disclosure statement) and Leather Cloth and Plastics Manufacturers Association. No other interested party has made any submissions. There is no response from any producer/exporter from EU. Nor has any arguments been advanced on any aspect of the present investigation, including on injury & causal link.

83. M/s Leather Cloth and Plastics Manufacturers Association (India) has, *inter alia*, contended that:

- There have been frequent break downs / stoppage in the PVC Plant of Chemplast Sanmar, particularly during 2008-09 and in the current year, as a result of which Chemplast has not been able to meet the full demand of PVC Paste Resin in the Country.
- Prevailing international Prices of PVC paste resin is in the range of USD 1400 to 1500 ton and the landed price works out to Rs 85 – 87 per kg. as against prevailing domestic price of Rs 79-80 of Chemplast. No Imports have been made from European Union in the last 2-3 year below the prices of Chemplast Sanmar.
- PVC Paste resin constitutes almost 40% of cost of raw material for the manufacturing of PVC coated fabric. There is already large scale import of PVC Coated Fabric from China, Taiwan & Korea. If anti dumping duty is levied on PVC paste resin, the manufacturers of PVC Coated Fabric will not survive. The levy of Anti Dumping duty on PVC Paste Resin will make domestic small scale PVC Coated Fabric industry uncompetitive vis-à-vis imports and most of the units will be forced to close down. PVC processing units are mostly in small scale sector providing employment to more than one lakh workers directly & indirectly spread all over the Country.

**Examination by the Authority**

84. M/s Leather Cloth and Plastics Manufacturers Association (India) have, *inter alia*, argued that M/s Chemplast had frequent breakdown or plant stoppages, particularly in 2008-09, as a result of which the company has not been able to meet the demand. The Authority, for this purpose, examined month-wise production of M/s Chemplast during 2008-09 and compared the same with the volume of imports during the period. It is seen that the company has produced the goods in all the months during the POI. Apparently, the volume of imports bears no correlation with the trends in production of the company. Further, the volume of imports is significantly higher than the decline in the volume of production of the company. Thus, the claim that the imports were necessitated due to frequent breakdown or plant stoppages has not been substantiated.

Month	Production in MT	Production Indexed	Imports in India in MT
April 08	***	100	1078

May 08	***	83	2117
June 08	***	79	1934
July 08	***	85	2482
Aug 08	***	74	5382
Sept 08	***	68	1761
Oct 08	***	89	621
Nov 08	***	88	664
Dec 08	***	85	1221
Jan 09	***	90	1561
Feb 09	***	76	2859
Mar 09	***	89	1594

85. As regards the contention that wrong declaration of capacity and capacity utilization have been made by the domestic industry: the Authority notes that the domestic industry has acknowledged that the capacities as far as polymerization of the VCM are concerned, are interchangeable. However, so far as the drying process is concerned, the technology for drying the PVC suspension resin and the PVC paste resin are completely different and cannot be interchanged. During the verification of the information submitted by the domestic industry, it was noted that the domestic industry has dedicated and separate drying facilities both for the PVC suspension resin and the PVC paste resin. Based on the technical data submitted by the domestic industry and duly certified by the management, it has been stated that the domestic industry has drying capacities for the PVC paste resin to the extent of 34060 MT per annum. Therefore, so far as PVC Paste is concerned the drying capacity becomes the limiting factor and has been adopted as the basis for the purpose of the analysis. Based on the installed capacities for the PVC paste resin, there has been decline in the capacity utilization of the domestic industry from 90.34% in 2005-06 to 68.32% during the POI. On the other hand the capacity utilization in respect of PVC Suspension Resin for the same period has increased from 98.22 % to 127.17%.

86. It was claimed by some of the interested parties that the domestic industry has deliberately and willfully switched over its capacities from the PVC paste resin to PVC Suspension resin which is more profitable. The issue was examined. In this regard the Authority has analyzed the production records as well as the profitability records of the domestic industry for the POI and the previous three years both for PVC Paste resin as well as PVC Suspension resin. It is noted that there has been an increase in the quantum of loss suffered by the domestic industry both in respect of PVC suspension resin as well as for the PVC paste resin. The profitability of the domestic industry from the PVC paste resin declined

from a loss of Rs. \*\*\* lakhs in 2005-06 to Rs. \*\*\* lakhs during the POI. Therefore, there was almost \*\*\* times increase in the loss suffered by the domestic industry for the product under consideration. On the other hand, the losses of the domestic industry on account of suspension resin increased from Rs. \*\*\* lakhs to Rs \*\*\* lakhs showing an increase of \*\*\* times. Thus, the contentions of some of the interested parties that the business of suspension resin was more profitable and therefore, the domestic industry had switched over the production from PVC paste resin to PVC suspension resin is devoid of any merit. However, the Authority further notes that given the interchangeability of capacities between PVC suspension resin and PVC paste resin, the changes/ decline in the level of production and capacity utilization alone has not been formed as the basis for determination of injury to the domestic industry. In the matter of determination of injury to the domestic industry, the Authority has been guided by all the relevant parameters as laid down in the AD Rules, which have been addressed at appropriate placed in the findings.

87. In order to analyse any correlation between the profitability of PVC paste resin *vis-à-vis* PVC suspension resin, the Authority has also examined the cost, net sales realization and profitability structure of both the PVC suspension resin and the PVC paste resin. The Authority notes that while the average sales realization of the domestic industry from the PVC suspension resin was around 83% of the sales realization for the PVC paste resin, the losses suffered by the domestic industry both for the PVC suspension resin and the PVC paste resin were almost identical at 23%. A further month-wise analysis of the profitability of the domestic industry for both the PVC suspension and the PVC paste resin indicates that in some of the months in the POI, the losses of the domestic industry for the PVC suspension resin as % of the net sales realization were significantly higher than for the PVC paste resin. Therefore, the Authority does not concur with the contention of the interested parties that the domestic industry had deliberately and willfully switched over the production capacities (which are interchangeable between PVC suspension resin and PVC paste resin) to PVC suspension resin and the reduction of production and capacity utilization of the PVC paste resin was deliberate and the injury is self inflicted.

88. As regards the submissions of interested parties that the landed values of imports have been erroneously calculated by the Authority, the Authority has re-examined the matter and notes that their appears to be some apparent errors in the working of the landed value, as claimed by some of the interested parties. This discrepancy in the workings has been rectified.

#### **Submissions made by interested parties in response to the Disclosure statement**

89. M/s Chemplast Sanmar Ltd. and Leather Cloth and Plastics Manufacturers Association (India) have made the following submissions in response to the Disclosure statement:

#### **Submissions made by M/s Chemplast Sanmar Ltd**

90. Decisions of the CESTAT have been referred by the domestic industry in support of their claim of injury and likelihood thereof.

91. The anti dumping duty should be in the form of fixed quantum. The previous form of duty was neither appropriate, nor was able to prevent dumping causing injury to the domestic industry.

92. The anti dumping duty should be expressed in US\$.

**Submissions made by Leather Cloth and Plastics Manufacturers Association (India)**

93. In order to assess the cost of production of paste resin, the cost of production of suspension resin should also be taken into account from the data of the domestic industry because the raw material is 100% the same.

94. Decline in profitability of domestic manufacturers can be on account of many reasons including inefficient use of production facilities

95. The apparent impression that the productivity of domestic industry has shown decline, is quite deceptive. The fact of the matter is that Chemplast can make both suspension resin and paste resin and they can easily switch over from one to another. Therefore, one must have a look at the productivity of both suspension resin and paste resin together to get a realistic picture.

96. They have sought extension of time of about two months for collection of relevant data to make a further effective representation before the Authority.

**Examination by the Authority**

97. The Authority has taken note of the arguments on injury examination and addressed the issues raised at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the arguments of the interested parties.

98. Annexure-II of the AD Rules provide for an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.

99. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the AD Rules states as follows.

*"The examination of the impact of the dumped imports on the*

*domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the Industry, including natural and potential decline in sales, profits, output, market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of margin of dumping actual and potential negative effects on cash flow, inventories, employment wages growth, ability to raise capital investments."*

100. For the purpose of assessing the 'injury', the Authority has examined the volume and prices effects of imports of the subject goods from EU on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any.

101. As regards , the submissions by LCPMA that the injury has been casued to the domestic industry for other reasons like Stock loses and high cost of repair and maintenance and depreciation, the mattter has been examined by the Authority and the Authority notes as under:

- High Depreciation and Repair and Maintenance Cost: It has been contended by some of the interested parties that there is an abnormal increase in the expenses on account of depreciation and repair and maintenance of domestic industry for the period of investigation. This has been attributed as one of the reasons for the losses suffered by the domestic industry. The issue has been examined by the Authority. The Authority notes that the present investigation relates to a particular product i.e., the PVC paste resin. The Applicant company is a multi-product and multi-unit company and the balance sheet of the company reflects its actual cost and profitability not only for the PUC but for also other activities of the company. So far as the expenses of the company for the period of investigation are concerned, for the purpose of the present investigation, only the expenses relevant to the PUC are important. Based on the audited accounts and the cost records maintained by the domestic industry, no unusual increases in the expenses under the head depreciation and repairs and maintenance have been noted by the Authority. Further, only the expenses actually incurred by the domestic industry in the ordinary course of trade have been considered for injury analysis as well as for determination of Non-injurious selling price for the domestic industry.
- Losses due to fluctuations in the prices of raw materials: It has been contended by some of the interested parties that as per the domestic industry's audited accounts, some of the losses suffered by it are on account of raw materials which were purchased by it at abnormally high prices. Therefore, the losses to that extent, as suffered by the domestic industry, cannot be attributed to dumping. During the verification of the information of the domestic industry, the company was requested to furnish a complete reconciliation of its audited accounts with the cost of production for various activities. Based on the reconciliation of the data on the profitability, based on finance accounts and cost accounts, the Authority notes that the petitioner company suffered losses to the extent of Rs

\*\*\* lakhs on account of raw materials, which it had procured at higher prices. It is clarified that the losses suffered by the domestic industry, being of unusual and non recurring nature, have not been considered as a part of the cost of production for the purpose of working out the NIP for the domestic industry for the present investigation. Further, in the matter of determination of injury by the domestic industry including the losses suffered by the domestic industry, the unusual and non-recurring losses, as mentioned above, have been excluded.

- The submissions of the domestic industry with regard to determination of NIP and month-wise analysis and injury margin has already been appropriately dealt with in these findings.

### **Volume effect**

#### **Assessment of Demand**

102. For the purpose of assessment of the domestic consumption/demand of the subject goods, the sales volume of the domestic industry and other Indian producer have been added to the total imports into India, which has been summarized as under:

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Imports from Subject country	MT	840	891	292	3,374
Imports from other countries	MT	3,927	4,158	6,337	19,900
Total imports	MT	4,767	5,049	6,629	23,274
Sale of domestic industry	MT	30,733	29,184	27,664	23,269
Sales of other Indian Industry	MT	3,195	4,891	5,402	5,997
Demand	MT	38,695	39,124	39,695	52,540

The Authority notes that the demand has shown a positive trend and increased significantly in the period of investigation as compared to the base year. The growth in demand during the period of investigation over the base year was about 35.78 %.

#### **b) Import volumes and market share**

103. Annexure-II (ii) of the AD Rules provides that "while examining the volume of dumped imports, the Authority shall consider whether there has been a significant increase in the dumped imports either in absolute term or relative to production or consumption in India .....". Thus, with regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.

104. The table below summarises the position with regard to import volumes and market share: -

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Imports from EU	MT	840	891	292	3,374
Imports from other countries under investigation	MT	3,636	3,740	6,313	19,020
Total Imports	MT	4,767	5,049	6,629	23,274
Indian Production	MT	33,703	34,636	32,442	29,439
Demand	MT	38,694	39,124	39,695	52,540
Subject imports in relation to					
Total Imports	%	17.62%	17.64%	4.40%	14.50%
Production	%	2.49%	2.57%	0.90%	11.46%
Consumption	%	2.17%	2.28%	0.73%	6.42%
Market share of domestic industry in demand	%	79.42%	74.59%	69.69%	44.29%

From the above, the Authority notes that:

- (i) The volume of dumped imports from EU which declined in 2007-08, increased significantly in the period of investigation.
- (ii) The increase in imports is inspite of existing anti dumping duties on imports from EU.
- (iii) Imports from subject territory have increased significantly in POI in relation to the total imports, production and consumption in India.
- (iv) As a result of the increase in imports, the share of the domestic industry has declined significantly.

#### **Price effect of the dumped imports on the Domestic Industry**

105. In order to ascertain the price effect of the imports of the subject goods from EU on the domestic industry, the Authority has examined 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. In order to assess the extent of price undercutting, the Authority has compared net sales realization of the domestic industry with the landed price of imports. The net sales realization was arrived, after deducting all rebates and taxes. The landed value of imports was compared with net sales realization of the domestic industry, even after considering the anti-

dumping measure in force. Landed price from EU including applicable customs duty and cess on custom duty is significantly below the net sales realization of the domestic industry. Further, in view of significant imports of the product from other countries, the Authority determined price undercutting in respect of these imports from third countries separately under investigations.

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Net Sales Realization	Rs./MT	***	***	***	***
Trend	Indexed	100	105	108	116
Antidumping duty Benchmark	Rs/MT	42,230	43,363	38,755	43,478
Average Landed Price from European Union	Rs./MT	<b>42514</b>	<b>50243</b>	<b>54307</b>	<b>55077</b>
Trend	Indexed	100	118	128	130
Price undercutting amount	Rs./MT	***	***	***	***
Price undercutting %	%	22.09	8.74	2.92	9.18
Average Landed price of imports from other countries separately under investigation	Rs./MT	54579	51951	49563	56453
Trend	Indexed	100	95	91	103
Price undercutting amount	Rs./MT	***	***	***	***
Price undercutting %	%	-5.25%	4.91%	11.33%	6.12%

From the above, the Authority notes that:

- (i) The dumped imports from EU are significantly undercutting the prices of the domestic industry.
- (ii) As a result of significant difference in the price of the domestic industry and imports, the volume of imports has increased in the period of investigation.
- (iii) Though the landed price increased because of increase in CIF price, but the Authority notes that the increase in CIF price was lower than increase in the selling price of the domestic industry as would be seen from the following table.
- (iv) Imports from other countries separately under investigations are also significantly undercutting the prices of the domestic industry.

#### **Price suppression/depression**

106. In order to assess whether the imports from EU were suppressing the prices of the domestic industry, the Authority has compared the cost of production and net

selling price of the domestic industry along with the landed price of imports over the injury period, which is given in the following table:

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Cost of Production	Rs./MT	***	***	***	***
Trend	Indexed	100	109	122	135
Net Selling price	Rs./MT	***	***	***	***
Trend	Indexed	100	105	108	116
Profit/Loss	Rs./MT	***	***	***	***
Trend	Indexed	(100)	(171)	(352)	(442)
Average Landed price of imports from EU	Rs./MT	<b>42514</b>	<b>50243</b>	<b>54307</b>	<b>55077</b>
Trend	Indexed	100	118	128	130
Average Landed price of imports from other countries under investigations	Rs./MT	54,579	51951	49563	56453
Trend	Indexed	100	95	91	103

The Authority notes that whereas both the cost of production and net selling price increased over the injury period, the increase in the net selling price were much lower than the increase in the cost of production. Thus, the imports are significantly suppressing the prices of the domestic industry.

### **Economic Parameters relating to the Domestic Industry**

107. Annexure II to the AD Rules requires that a determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. With regard to determination of consequent impact of these imports on domestic producers of such products, the AD Rules further provide that the examination of the impact of the dumped imports on the domestic industry should include an objective and unbiased evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output market share, productivity, return on investments or utilization of capacity; factors affecting domestic prices, the magnitude of the margin of dumping; actual and potential negative effects on cash flow inventories, employment, wages, growth, ability to raise capital investments.

### **Production, sales, capacity and capacity utilization**

108. The production, sales, capacity & capacity utilization of the domestic industry has been as follows:

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)

Capacity	MT	34,080	34,080	34,080	34,080
Production	MT	30,789	29,117	27,584	23,249
Capacity utilization	%	90.34%	85.44%	80.94%	68.22%
Domestic sales	MT	30,733	29,184	27,664	23,269
Demand	MT	38,695	39,124	39,695	52,540
Production in % of demand	%	79.57%	74.42%	69.49%	44.25%
Sales in % of demand	%	79.42%	74.59%	69.69%	44.29%

It is noted that:

- a) The production, capacity utilization and sales of the domestic industry have declined in absolute term.
- b) The production, capacity utilization and sales of the domestic industry have declined in relation to demand/consumption of the product in India.
- c) The domestic industry has contended that production and sales of the domestic industry should have increased with the pace of increase in demand of the product in India. However, the dumping of the product has led to decline in these parameters. The Authority notes that the domestic industry has not been able to improve its production to the extent of capacity or the increase in demand.
- d) The production and sales of the domestic industry significantly declined in relation to demand of the product in India. Domestic industry is not able to utilize its production capacities.

### **Profitability**

109. The cost of production, net sales realization & profit/loss of the domestic industry is shown below:

	Unit	2005-06	2006-07	2007-08	2008-09
Cost of Production	Rs./MT	***	***	***	***
Net Sales Realization	Rs./MT	***	***	***	***
Profit/Loss	Rs./MT	***	***	***	***
PBT on Domestic Sales	Rs. Lacs	***	***	***	***
PBIT on Domestic Sales	Rs. Lacs	***	***	***	***

110. The Authority notes that performance of the domestic industry for subject goods has deteriorated over the injury period and the domestic industry is in significant losses. The Authority examined profitability by considering the trends in the cost of production and selling prices over the injury period. It is found that both the cost of production and the selling prices increased throughout the injury period. But the increase in cost of production is far more than increase in selling price. Consequently, profitability of the domestic industry suffered severely during the POI.

111. In view of continued losses being suffered by the domestic industry, the extent of which increased over the current injury period, the Authority examined the reasons for continued financial losses by the domestic industry, particularly when anti-dumping duties were earlier imposed on imports from EU. It is noted that the anti-dumping duties were earlier imposed in the form of benchmark price. The import prices of the subject goods after the imposition of anti-dumping duties have been significantly higher than the ADD benchmark that the imports would not have attracted anti-dumping duties. Further, the domestic industry provided evidence to show that the increase in import prices was not due to elimination of dumping, but the same was due to significant increase in the raw material costs. The domestic industry has submitted that in fact, the increase in the import price was significantly lower than the increase in the cost on account of raw materials and that the product continued to be imported at dumped prices in spite of imposition of anti-dumping duties because of the form of duties.

112. It is also noted that the product under consideration is being imported from a number of other countries. It is noted that the landed price of imports throughout the injury period from subject countries remained substantially lower than the selling price of the domestic industry, thus causing continued price undercutting. Existence of significant price undercutting prevented the domestic industry from charging a price which would have permitted reasonable recovery of the cost of production. It is further noted that while the costs increased throughout the injury period and even though the selling prices also increased but the increase in the selling prices was far lower than increase in the cost of production.

113. The Authority notes that continued dumping of the product from the subject territory and other sources has apparently led to financial losses suffered by the domestic industry throughout the injury period.

#### **Market share**

114. Comparison of the sales of the domestic producers and imports from EU and various the other sources shows that although the demand for the product has shown positive trend, the market share of domestic industry has declined significantly over the injury period, with the increase in the share of subject imports from EU and other countries.

Market Share in Demand	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
Subject Country – European Union	%	2.17%	2.28%	0.73%	6.42%
Other Countries	%	10.15%	10.63%	15.96%	37.88%
Domestic industry	%	79.43%	74.59%	69.69%	44.29%
Other domestic producer	%	8.25%	12.50%	13.62%	11.41%

### **Employment and Wages**

115. Position with regard to employment, wages and productivity as follows:

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
No. of Employees	Nos.	***	***	***	***
Wages	Rs.lacs	***	***	***	***
Productivity per day	MT/day	***	***	***	***
Productivity per employee	MT	***	***	***	***

The Authority notes that the productivity of the domestic industry declined with the decline in production. The decline in productivity has ultimately resulted in decline in performance of the domestic industry. However, the Authority notes that the domestic industry is a multi-product company and hence the employment by the domestic industry and wages paid may not be a correct parameter to evaluate the injury in the instant matter.

### **Return on investments and cash flow**

116. The Authority notes that return on investment and cash profits situation of the domestic industry deteriorated significantly over the injury period. Similar is the situation of cash profit as well.

	Unit	2005-06	2006-07	2007-08	2008-09 (POI)
ROI - GFA Basis	%	***	***	***	***

Trend	Index	(100)	(203)	(340)	(363)
ROI - NFA Basis	%	***	***	***	***
Trend	Index	(100)	(219)	(358)	(400)
Cash Profit	Rs.Lac	***	***	***	***
Trend	Index	(100)	(162)	(316)	(335)
Cash Flow	Rs.Lac	***	***	***	***
Trend	Index	(100)	(50)	(601)	(421)

### **Inventories**

117. Inventories of the domestic industry have shown a declining trend.

	Unit	2005-06	2006-07	2007-08	2008-09
Average Inventories	MT	***	***	***	***

It has been claimed by the domestic industry that average inventory of the domestic industry declined is a direct result of curtailment of the production by the domestic industry, in view of presence of dumped imports in the market.

### **Magnitude of Margin of Dumping**

118. The Authority notes that the dumping margin from EU is quite significant. The significant dumping margin in the period of investigation is also indicative of likely future behaviour of the exporters from EU.

### **Growth**

119. The Authority notes that while there has been a substantial growth in the import volume from the subject country; but the growth of domestic industry in terms of sales, production, and capacity utilization has been negative. The growth in cash profits, profits and return on investment has also been negative over the injury period.

### **Likelihood of continued dumping & injury**

120 The following factors have been brought before the Authority for examination of likelihood of continuation or recurrence of injury to the domestic industry. The domestic industry has pleaded that in a sunset

review, the Authority is required to examine the likelihood of continuation or recurrence of dumping and injury to arrive at a decision to continue or vary or remove the duty so as to offset dumping. The Authority notes that:

- (i) That the producers from EU are dumping the material in the Indian market. Though there is a significant increase in the raw material prices, the export price of the exporters has not shown proportionate increase apparently indicating absorption of the cost by the exporters.
- (ii) That the injury to the domestic industry is still continuing and in case the duties are discontinued the injury to the domestic industry is likely to increase.
- (iii) That the landed price of imports from EU is much lower than the fair selling price domestic industry ought to get.
- (iv) That volume of imports from European Union has increased in spite of the antidumping duty in existence.
- (v) That the domestic industry has claimed that the producers are holding significant surplus capacities and their domestic demand is significantly below the capacities created by them. The Authority notes that this claim has not been disputed by any other interested party.

**Magnitude of Injury and Injury margin:-**

121. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority has been compared with the landed value of the exports from EU for determination of injury margin during the POI. Thus compared, the injury margin is worked out as under:

NIP	Rs./MT	***
Landed Price	Rs./MT	55077
Injury Margin	Rs./MT	***
Injury Margin (%)	%	20-25

**Causal Link**

122 The Authority has examined the submissions with regard to the significance and relevance of causal link in a sunset review investigation. It is important to note that under Section 9A(5) of the Act, the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the product under consideration during the review investigation period or not. However, it was examined whether other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It is noted as follows:

**Volume and Prices from Other Countries**

123 It is noted from the import statistics that the subject goods have been imported from a number of other countries and their volumes are above the de minimis limits. Imports of the subject goods from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand are significant in volume and have cumulatively shown increase over the injury period. It was, therefore, examined whether imports from these sources would have caused injury to the domestic industry. It is noted that the domestic industry has already filed an application alleging dumping of the subject goods from these sources and after due examination thereof, the Authority has initiated anti-dumping investigations vide notification dated 3<sup>rd</sup> November 2009, in order to examine whether apparent dumped imports of the subject goods from these countries have caused injury to the domestic industry. Since imports from these countries are apparently at dumped prices; the Authority holds that injury from such apparent dumped imports is not required to be segregated for the present case. The imports from other sources are *de-minimis* in volumes and therefore, could not have caused injury to the domestic industry.

#### **Contraction in Demand and / or Change in Pattern of Consumption**

124. It is noted that the demand of the subject goods has increased by 35.78% in the period of investigation as compared to the base year. There is also no indication of any change in the consumption pattern.

#### **Trade Restrictive Practices of and Competition between the Foreign and Domestic producers**

125 The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The domestic producers compete amongst one another and at the same time compete with the landed prices of the subject goods. The price of the domestic industry is influenced substantially by the landed price of subject goods. Moreover, no evidence has been submitted by any interested party even to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

#### **Development of Technology**

126. No party has raised any issue with regard to developments in technology as being the cause of injury to the Domestic Industry. Nor there appears to be any significant development in technology that the same could be the principal cause of injury to the domestic industry.

#### **Export Performance**

127 There are no exports of the subject goods. In any case, the Authority has considered profitability and other price parameters only in respect of domestic operations.

#### **Productivity**

- 128 It is noted that the productivity of the domestic industry has shown decline. While the domestic industry has argued that the decline in productivity was due to the decline in production triggered by dumping and such injury was not required to be segregated, the Authority has examined whether the information relating to domestic industry would have shown injury, had productivity of the domestic industry been the same. It was noted that the impact of lower productivity is on cost of production and consequently profit/loss, return on investment and cash flow. The Authority has estimated the levels of profits, ROI and cash flow considering there was no decline in productivity and found that the condition of the domestic industry would not have been significantly different.
- 129 The Authority thus concludes that other listed known factors have not caused injury to the domestic industry.
- 130 Thus, the Authority holds that the performance of the domestic industry over the injury period has deteriorated due to dumped imports from subject territory. This is established by the following:
- a) Imports of the product under consideration have increased significantly. As a direct consequence thereof, the domestic industry has lost its market share.
  - b) The domestic industry has lost sales volumes due to the presence of the dumped imported subject goods in India at prices lower than their cost of production.
  - c) The market share of the imports increased significantly and as a direct consequence thereof, the market share of the Indian producers has declined.
  - d) The decline in sales volumes appears to be a direct consequence of dumped imports from subject territory;
  - e) The imports are undercutting the prices of the domestic industry.
  - f) The imports are suppressing the domestic prices. The domestic industry has been prevented from increasing its prices in line with the increase in its cost of production due to availability of low priced imported goods.
  - g) The deterioration in profits, return on capital employed and cash profits are apparently as a result of the dumped imports;
  - h) The imports are still continuing at dumped prices and the extent of dumped imports has remained at significant levels. Apparently, the circumstances, which were prevalent at the time of original investigations, are very much in existence even till date. There has been no change in the circumstances, which only reflects that the dumping would continue, may be at higher levels, if the duties are allowed to expire.
  - i) Growth of the domestic industry has become negative in respect of a number of parameters.

#### **Likelihood of recurrence of dumping and injury**

131. The Authority notes that dumping is continuing from subject territory in spite of the antidumping duty in force and the domestic industry continues

to suffer material injury due to such dumped imports. Further, dumping of the subject goods from the subject territory and consequent injury to the domestic industry is likely to continue, if the anti-dumping duties in force cease to operate. Therefore, further examination of the likelihood of recurrence of dumping and injury is not required.

## CONCLUSIONS

132. Having regard to the contentions raised, information provided and submissions made by the interested parties including the submissions made post CESTAT remand and facts available before the Authority through the submission of interested parties or otherwise as recorded in the above findings and on the basis of the above analysis of the state of current dumping and injury and likelihood of continuation or recurrence of dumping and injury, the Authority concludes that:

- i. The subject goods are entering the Indian market at dumped prices and dumping margin of the subject goods imported from subject territory is significant and above de-minimis limits prescribed. The subject goods continue to be exported to India at dumped prices inspite of existing anti dumping duties.
- ii. The situation of domestic industry deteriorated further in spite of existing anti dumping duties. Further, should the present anti dumping duties be revoked, injury to the domestic industry is likely to continue and intensify.
- iii. The deterioration in the performance of the domestic industry is because of dumped imports from the subject territory.
- iv. The current level of anti dumping duty is insufficient to address continued dumping and consequent injury to the domestic industry and thus the anti-dumping duty is required to be extended and modified.

## RECOMMENDATIONS

133. Having concluded that the product continues to be exported at dumped prices, the current dumping margin and injury margin establishes the need for revision in the anti-dumping duty in force, the situation of the domestic industry continues to be vulnerable and there is likelihood of continuation of dumping and injury on account of imports from subject territory, if the duties are revoked, the Authority is of the opinion that the measure is required to be extended and the quantum of Anti-dumping duty is required to be modified in respect of imports from subject territory as specified in the duty table below. For the purpose of determining injury, the landed value of imports is

compared with the non-injurious price of the domestic industry determined for the period of investigation.

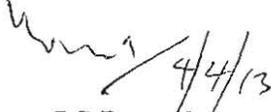
134. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the difference between the amount indicated in Col 8 of the table below and the landed value is recommended to be imposed on all imports of subject goods originating in or exported from the subject territory.

Duty Table

Sl. No	Heading/ Sub-heading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1	3904	Poly Vinyl Chloride Paste Resin	European Union	Any	Any	Any	265.19	Per MT	US\$
2	3904	Poly Vinyl Chloride Paste Resin	Any	European Union	Any	Any	265.19	Per MT	US\$

135. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975.

136. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

  
 J S Deepak  
 The Designated Authority



डा० वीना चौधरी  
प्रोफेसर एवं विभागाध्यक्ष  
**Dr. Veena Choudhary**  
Reliance Chair Professor  
Professor & Head

ANNEXURE - I

बहुलक विज्ञान एवं अभियांत्रिकी केन्द्र  
Centre for Polymer Science & Engineering  
भारतीय प्रौद्योगिकी संस्थान दिल्ली  
INDIAN INSTITUTE OF TECHNOLOGY DELHI  
हौज़ खास, नई दिल्ली-११००१६ (भारत)  
Hauz Khas, New Delhi-110016 (India)

*Handwritten notes:*  
7/5  
11/2/13  
07.02.13  
M/S  
11/2/13

Mr S.K.Sharma [Advisor]  
Ministry of Commerce and Industry  
Department of Commerce  
DG antidumping and allied duties  
Udyog Bhawan, New Delhi

Subject: Examination of samples of PVC paste [Emulsion] resin from M/s LCPMA and M/s Chemplast Sanmar Ltd for K value and volatile content

Dear Mr Sharma,

With reference to your letter No. F.No. 15/27/2008-DGAD the samples were submitted in sealed boxes by the above mentioned company which was delivered to us in person by your department. It was properly sealed and the sealed boxes were opened in the presence of two members. The samples were tested for K Value which give information about the molecular weight and the volatile content as per ISO 1269 in our laboratories and the results are given below:

S.No.	Sample Designation	K-Value		% volatile content [ISO 1269]
		Cyclohexanone [1%]	Nitrobenzene [0.4%]	
1	Resin 121 [LCPMA]	70	74	0.39±0.02
2	Resin E-74CC [LCPMA]	68	72	0.24±0.02
3	Resin 373ND [LCPMA]	70	71	0.32±0.02
4	Resin 382N01 [LCPMA]	75	75	0.22±0.02
5	LOT 112/120 [Chemplast Sanmar Ltd]	66	67	0.35±0.03
6	LOT 54/121 [Chemplast Sanmar Ltd]	75	79	0.42±0.02
7	LOT 336/124 [Chemplast Sanmar Ltd]	65	69	0.32±0.02
8	LOT 1/128 [Chemplast Sanmar Ltd]	79	79	0.26±0.02

If you have any other question please feel free to contact us.  
With kind regards.

Sincerely Yours  
*Handwritten signature*  
Veena Choudhary  
6/2/13