No. 15/11/2009 DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI DUMPING & ALLIED DUTIES
UDYOG BHAVAN, NEW DELHI

Dated the 31st August 2010

Mid Term Review Findings

Subject: Mid term review findings in respect of Anti-dumping investigation concerning imports of Maleic Anhydride (MAN) originating in or exported from the China PR, Chinese Taipei and Indonesia.

Background

1. The procedure described below has been followed with regard to this investigation:-

(i) The final findings in respect of the original investigation was issued vide Notification Number 14/3/2007-DGAD dated 22th August, 2008 and a corrigendum to the final findings on 5th Sep., 2008 and whereas definitive anti-dumping duties were imposed on the subject goods originating in or exported from the subject countries vide Customs Notification No.105/2008-Customs dated 18th September, 2008.

(ii) M/s Thirumalai Chemicals Ltd (TCL), Ranipet, the domestic industry, has submitted an application for mid-term review of the anti-dumping duties imposed vide Customs Notification No. 105/2008 dated 18th September, 2008, in respect of the imports of the subject goods Maleic Anhydride(MAN) originating in or exported from the China PR, Chinese Taipei and Indonesia. It was stated by the Domestic Industry that due to lack of protection from dumped imports, TCL (M/s. Thirumalai Chemicals Ltd.) was forced to close their total operations before the duties could be imposed. It was stated that the company is producing Maleic Anhydride in their plant. The company was forced to shut its operations due to very high cost of production and due to huge price undercutting due to cheaper imports. The company has provided the import data for earlier years (2005-06, 2006-07 and 2007-08) based on DGCI&S and for the period 2008-09 based on IBIS. The support letter from another producer namely M/s Mysore Petrochemicals Ltd has also been provided and it was stated that the company will provide

information upon the initiation. The company has requested for initiation of midterm review in view of these changed circumstances.

(iii) M/s. Polyester Resin Manufacturer's Association have requested to initiate a mid-term review because of changed circumstances as M/s TCL have stopped production of Maleic Anhydride and there is no domestic industry. They have submitted copies of import data based on IBIS for the period Jan-Oct. 2009 to support their claim. It is submitted that based on the data available from IBIS, the DI(TCL) have directly or through their agents imported large quantity of the subject goods from their own plant in Malaysia and through M/s. Ransom PTE Limited, Singapore which is their own front. It is contended that there is no operational plant in Singapore of this product which clearly indicates that these goods are of Malaysia origin and are merely routed via Singapore. Because of such imports from Malaysia, TCL have shut down their production facilities in India. It is prayed that as there is no domestic production of the subject merchandise in India, the very rational of imposition of anti-dumping duties-injury caused to domestic industry because of dumped imports-stands destroyed.

(iv) M/s Indian Plasticizers Manufacturers Association, have also requested for a review of the anti-dumping duty in the aforesaid case. It is submitted that the production shown by M/s. TCL for the year 2007-08 and 2008-09 is on account of their own imports which can be verified from import data. In fact, TCL have abandoned the production of Maleic Anhydride. It has been stated in their Annual Report of 2008-09 that they have discontinued Maleic Anhydride production and their own captive requirement of this product is being catered through imports since imports are more economical and viable than producing. It is stated that TCL is importing this product through their associates namely BMG Chemicals Pvt. Ltd. They have submitted the import data of Maleic Anhydride from August-November, 2009 and the relevant portion of their Annual Report of 2008-09. In view of the above circumstances, a review of anti dumping measures in force is necessary.

(v) Having regard to the information provided by the applicants indicating changed circumstances necessitating a review of the measure in force, the Designated authority considered that a mid-term review of the final findings notified vide No. 14/03/2007-DGAD dated 22.08.2008 and the Definitive anti dumping duty imposed by Customs Notification No.105/2008 dated 18th September, 2008 is appropriate in view of the changed circumstances, in terms of the provision of Section 9(A) of

Customs Tariff (Amendment) Act 1995 read with Rule 23 supra. Accordingly, the review was initiated vide Notification No.15/11/2009-DGAD dated 11th February, 2010. The review covers all aspects of Notification No. 14/03/2007-DGAD dated 22.08.2008.

(vi) The Authority sent copies of initiation notification dated 11.02.2010 to the Embassies of the subject countries in India, known exporters from the subject countries, importers and the domestic industry as per the addresses available, and requested them to make their views known in writing within 40 days of the initiation notification.

(vii) The Authority provided copies of the non-confidential version of the application to the known exporters and to the Embassies of subject countries in accordance with Rule 6(3) supra.

(viii) The Authority sent questionnaires, to elicit relevant information to the known exporters in subject countries in accordance with Rule 6(4).

(ix) In response to the above said notification, the aforesaid associations and the domestic industry responded.

(x) In response to the above notification, none of the exporters have responded to the questionnaire, except M/s D.D.International, on behalf of Shanxi Regent Works, China PR.

(xi) Importers namely M/s Jaydip Agencies, Mechemco Resins Pvt Ltd, Rachna Plasticizers, KLJ Silvassa Plast, Visen Industries have responded and provided the information in respect of imports made by them during 2006-07, 2007-08 and the POI.

(xii) The Period of Investigation (POI) for the purpose of the present mid-term review is from April 2008 to September, 2009 (18 months). However, injury analysis shall cover the years 2005-06, 2006-07, 2007-08 & POI.

(xiii) Request was made to the DGCI&S to arrange details of imports of subject goods for the past three years and the period of investigation. Data has since been received from DGCI&S, and has appropriately been replied upon in this finding.

(xiv) The Authority carried out the verification at the premises of the domestic industry.

(xv) The Authority held a public hearing on 9.2.2010 to hear the interested parties orally. The parties attending the public hearing were requested to file written submissions of views so expressed orally.

(xvi) ******* in this finding represents information furnished by the interested parties on confidential basis and so considered by the Authority under the Rules.

(xvii) In accordance with Rule 16 of the Rules supra, the Authority disclosed the essential facts considered for these findings, on 21st July 2010 by giving adequate notice, to known interested parties and comments received on the same have been considered at appropriate places in this finding.

2. Submissions made subsequent to the Public hearing

By TCL - The submissions made by TCL have been summarized as follows:

i. TCL has reduced the production, but never stopped production. The company continues to be in production of the product.

ii. There are two producers of the product concerned in India i.e. TCL and Mysore Petrochemicals (MPL) whose production details are as follows:

Year	Production			TCL % in Total Production
	TCL	MPCL	Total	
2005-06	***	***	***	81.0%
2006-07	***	***	***	79.8%
2007-08	***	***	***	43.3%
2008-09	***	***	***	22.7%
POI	***	***	***	19.6%
POI-Annualized	***	***	***	19.6%

iii. TCL has imported the subject goods. However, reasons for imports are substantially different from what has been argued by the other interested parties. There was a significant difference in the prices of domestic

industry goods and imports. In spite of the increase in the global prices of the raw material (benzene), the prices of the imports never showed any appreciable changes, due to which the company was unable to increase its prices in line with cost increases and were left with no option but to import and resell it in order to cater to the needs of the customers. Imports from Malaysia increased only during 2008-09. Prior to this period, imports by TCL constituted only 7.22% of the total imports. The fact that TCL was not importing the product prior to 2008-09, which clearly proves that TCL never intended to import from its Malaysian plant

iv. TCL has invested significant amount in the Indian Plant which is much higher than what it has invested in Malaysian Plant. No prudent business entity would allow its capital worth crores of Rupees to remain idle and opt for imports. Malaysian plant is undergoing liquidation process. So it would be illogical to shut down its profitable venture to protect a plant under liquidation proceedings.

v. TCL had made few attempts to restart its production but could not do so due to dumped imports and therefore had to shut down its plant. The AD Duty imposed is grossly inadequate and did not consider the damage that had occurred in Oct 2006-Sep2008. During this period the imports had increased significantly from 11416MT in 2006-07 to 19983 MT in 2007-08 at further dumped prices.

vi. The non-cooperation from the exporters only suggests that the actual level of dumping is much higher than projected by the domestic industry.

vii. Imports of the subject goods have caused injury to the domestic industry, as is established by the followings.

a. Imports have increased in absolute terms. Within a period of 4 years the imports have increased by 97%.
b. Imports have also increased relatively. In 2005-06, dumped imports constituted 62% of total production which has increased manifold to 553% during POI 2008 -09.
c. In 2005-06, dumped imports constituted 40% of total consumption. The same has increased to 49% of consumption during 2008-09.
d. Despite the increase in cost of production, the landed price of the imports remained the same. There is significant price depression and price suppression due to dumped imports.

e. The sales quantity of the domestic industry has declined to 769 Mt in POI
f. The domestic industry was having 96% market share during 2001-02 when there were no dumped imports. The same declined to 5% in 2007-08 and further fell down to 1.7% during POI.
g. Capacity utilization has decreased from 59% in 2005-06 to a meager 3% during POI.
h. Production has fallen steeply from 10,442 MT in 2005-06 to 847 MT during POI
i. TCL has a state of the art plant and machinery and they did not record any fall in productivity.
j. Domestic Industry made profits during 2005-06 but thereafter suffered losses in the subsequent years.
k. Return on Investments declined significantly because of presence of dumped imports, which declined to a negative 20.49% during POI.
l. Domestic Industry earned cash profits during 2005-06 but suffered cash losses in subsequent years due to dumped imports.
m. There is a fall in inventory since 2006-07, as there has been significant low volumes of production and sales
n. Employment has been adversely affected due to fall in production. However, none of employees were retrenched and were redeployed for the manufacture of Pthalic Anyhydride (PAN.)
o. Wages per person declined during POI as the allocation of salary of Maleic Anhydride plant staff to other plants
p. There is no contradiction in demand as it kept on increasing during the injury period and even in POI. On the other hand domestic sales declined.
q. Inspite of increase in installed capacity the production capacity of the Domestic Industry remained idle. Consumption of the product increased upto 70% but still the Domestic Industry was unable to increase their production or sales.
r. Since the return on capital employed is negative (i.e. – 20.5%), ability to raise capital or investments has been severely affected.

s. The petitioner was in a position to get remunerative prices before dumping started. But they were compelled to reduce their prices due to dumped prices.

t. Import price are so low that they appear to be lower than the variable cost of the domestic production indicating aggressive dumping.

u. In addition to the material injury and threat of injury, the dumped imports have also materially retarded the establishment of the domestic industry in India. The intense dumping of goods has resulted into erratic production of subject goods by TCL. In fact, the dumping is so intense that even after several attempts TCL had to shut down its plants after a brief run.

v. The domestic industry has increased its capacity in 2005 but the presence of dumped imports prevented the utilization of capacity so expanded. Due to dumped imports the domestic industry had to curtail its production in 2007-08. In fact, the capacity utilization was so low in 2007-08 that the domestic industry was unable to utilize capacity existing prior to the commencement of the dumped imports into India. Dumped imports had barred the domestic industry from commercializing its product.

viii. Injury to the domestic industry has been caused by dumped imports. The imports from Malaysia and Korea have increased as the domestic industry remained shut down due to large scale imports of dumped goods from the subject countries. However, the average price per MT from China was much lower than the average price per MT in Malaysia during all the months except April 2009, July 2009 and August 2009. The injury suffered by the domestic industry due to dumped imports is the cause of the increase in imports from non-subject countries.

a. Contraction in Demand**:** there has been consistence increase in demand of the product. Therefore contraction in demand is not the factor affecting the Domestic Industry.

b. Pattern of Consumption: there is no significant change in the pattern of consumption

c. Developments in Technology: there is no significant change in the technology.

d. Conditions of Competition: there are no trade restrictive practices or ant anti-competitive practices prevailing in India.

e. Export performance of the domestic industry**:** the Domestic Industry's financial or economic condition is not affected by its export performance. The data pertaining to export has been excluded from the preceding paragraph for the purpose of injury determination.

3. Submissions made by M/s Mysore Petrochemicals Ltd (MPL) – MPL have supported the request for enhancement of anti dumping duty filed by TCL. The company has however not provided any information relevant to the present investigations. MPL has not disputed the claim of the opposing interested parties that the product under consideration is a byproduct for MPL and MPL could not have suffered material injury from imports.

4. Submission made by associations

4.1 M/s. Polyester Resin Manufacturer's Association –

a) No evidence on Dumping on account of non-submission of requisite data within the prescribed time limit – TCL failed to submit any evidence regarding change in normal value, export price, landed value and non-injurious price of the domestic industry. Therefore, in the absence of evidence on dumping, the current review should be immediately terminated.

b) In the absence of information on domestic industry, there is no question of any dumping or injury analysis. Continuing ADD will have cascading effect on prices of the end product and the market competitiveness of the TCL.

c) TCL production had fallen by 94% since the original investigation. Also as per their 36th annual report, its plant was not operational for most of the parts in 2008-09. The downstream user industry has no other option but to import in view of the production curtailment.

d) No question of "injury" to TCL on account of its negligible domestic production of the subject goods.

e) Maleic Anhydride is a by-product of Pthalic Anhydride: it has been accepted by the Mysore Petrochemicals Ltd. (supporter in present investigations) at the earlier public hearing that Maleic Anhydride is a by-product of Pthalic Anhydride.

f) Review should be terminated on account of break in the causal link. Despite imposition of ADD, the domestic production was stopped on the ground that the prices of benzene were unusually high. This claim cannot be given credence as there was a global increase in the benzene prices

g) The injury is self inflicting. Market has expanded with the increase in demand but both domestic production and sales of the TCL have been abysmal in comparison to the increase in demand over the period of review.

h) The drastic drop of production is solely due to imports of subject goods from Malaysia. Imports from Malaysia since the imposition of ADD had significantly increased. The market share of both the imports from Malaysia as well as domestic producer has increased during POI

i) While there was no domestic production of the product. China and Indonesia are being subjected to anti dumping duty. Imports from Malaysia are controlled by TCL. TCL has thus created a monopoly. Injury to TCL is predominantly due to imports of subject goods from its own plant.

j) Given that the interested exporter Yabang in the original investigation already has a case pending before the CESTAT in regards to the issue of Non Market Economy, it is not cooperating in the present investigation.

4.2 <u>Submissions Made by Indian Plasticizers Manufacturers Association-</u>

i. None of the indigenous manufacturers have submitted the data for the above periods.

ii. TCL have been importing the product since Aug 2009 and that too in significant quantity. Imports of Maleic Anhydride have been through their Associates namely BMG Chemicals Pvt. Ltd to the tune of 1260 tonnes TCL and BMG Chemicals are importing MAN at other Ports in India too. Ranson Pvt. Ltd. Singapore is exporting MAN of TCL Malaysian Joint Venture to India. TCL are the major importer of PUC and do not qualify to be Domestic Industry.

iii. Solicitors of TCL have mentioned that MAN by TCL is based on unviable technology benzene. This has forced them to discontinue MAN production

since 2007. To meet the captive requirement, TCL imported the product as it was more economical and viable than producing.

iv. TCL has set up a Joint Venture in Malaysia for manufacture of MAN based on Butane since 2008. It is not understood why the same technology is not implemented in India. Had it been the case then the question of unviable Indian unit would not have arisen.

v. TCL has malafide intentions of protecting and giving unjust benefit to Malaysian Joint Venture at the cost of Indian consumer industry. Their transaction price is null & void as it is a sister concern.

vi. The manufacturers do not come under anti dumping but under safeguards. The TCL should submit the detailed restructure plan to facilitate positive adjustment of the industry and the time period needed to remove the injury/market disruption of the domestic industry.

vii. The purpose of initial duty as well as review is to provide protection to the joint venture in Malaysia. The purchases shown are the imports from the Malaysia plant. Moreover MPL cannot be classified as a manufacturer of MAN as they obtain MAN as a by-product during the production of Phthalic Anhydride.

viii. TCL is a highly profitable company paying high dividends to its shareholders. TCL net profits has been Rs. 2585 Lakhs as per audited report ending 31.03.2010 against their losses of Rs. 4600 Lakhs during 2008 – 09. There is no injury to the local industry at present.

ix. As per Audited Financial Report of TCL for the quarter ended 31.03.2010, the Hon'ble High Court, Bombay has approved the write down of the amount of Investment of about Rs. 183 Lakhs made in the ordinary shares of TCL Industries (Malaysia) Sdn Bhd (TCLM) against the Reserves of the Company. The losses made by TCL Malaysian Joint Venture are being written down by TCL in India. This further confirms no injury to TCL/ local Industry. TCL has an exposure of Rs. 3769 lakhs, in TCL Industries (Malaysia) Sdn Bhd., on account of advances/ debtors which would be recovered in near future.

x. TCL been one of the largest producers in the world do not need any protection against imports from the government and have won export awards and therefore can compete internationally.

xi. India's requirements of Maleic Anhydride are more than 30,000 tonnes per annum and imports are inevitable.

xii. MAN is used for the production of Maleates. Imposition of ADD would lead to imports of Maleates, thus leading to closure of local industry and vast unemployment. Maleates can be substituted by Acrylates, Vinyl Acetate copolymers etc produced indigenously and likely to affect adversely the Maleates Industry.

5. Submissions made by Exporter M/s D.D.International on behalf of Shanxi Regent Works, China PR

i) The raw material prices of MAN has undergone a great change in the year 2009 as compared to the year 2008.

ii) Anti dumping duty has proved to be a serious block to exports.

iii) India has no domestic manufacturers.

iv) TCL has built a MA manufacturing facility in Malaysia.

v) Once TCL factory in Malaysia is closed it cannot meet the MA demand in India.

6. Submissions made on behalf of the Importers;

Importers namely M/s Jaydip Agencies, Mechemco Resins Pvt Ltd, Rachna Plasticizers, KLJ Silvassa Plast, Visen Industries have provided the information in respect of the imports made during the POI and previous two years as follows:

Qty in MT

Name of Importer	2006-07	2007-08	POI
Jaydip Agencies	***	***	***
Mechemco	***	***	***
Rachna Plasticizer	***	***	***
KLJ Silvassa	***	***	***
Visen	***	***	***
Total	1116.5	2593.1	2687.7

The imports made from subject countries namely China PR, Indonesia and Chinese Taipei during this period are as follows:

Qty in MT

Name of Importer	2006-07	2007-08	POI
Jaydip Agencies	***	***	***
Mechemco	***	***	***
Rachna Plasticizer	***	***	***
KLJ Silvassa	***	***	***
Visen	***	***	***
Total	1116.5	2353.1	1568.7

It has been submitted that majority of the imports are under advance license. Further, the sources of import have changed from subject countries to other countries namely Korea, Malaysia and Singapore. The imports from China during this period have also gone down substantially. The imports done by aforesaid importers together from China were 1116.5 Mt during 2006-07, 2353.1 MT during 2007-08 and 1472.75 MT during POI which comes to 981 MT on an annualized basis.

7. Rejoinders to the written submissions made subsequent to the Public Hearing

a) By Indian Chemical Council

The duty was inadequate for protecting the domestic industry as it was only a fraction of duty needed to provide adequate protection. Especially so, considering that most of the aggressive dumping took place during the period of 18 months when the investigation was on. The facts of this period were not considered while arriving at the Anti Dumping Duty. As a result, the only major gross route Maleic Anhydride producer in India had to idle the plant for two years. The ICC has reviewed the situation and recommends imposition of adequate protection against the dumping as required by the applicant so that the domestic industry can operate.

b) Polyester Resin Manufacturers' Association

i) There are more than 100 UP Resin Manufacturers in country spread all over India. Almost all resin manufacturers are in SSI sector (now SME's) directly employing more than 5000 people. These resins are used as main raw material in manufacturer of Fibreglass Reinforced Plastics (FRP). There are more than 2000 FRP manufacturers in our country employing over 500000 people.

ii) The current production of UPR in our country is 180000 TPA using over 20000 tons of Maleic Anhydride. Maleic Anhydride is an essential raw material for manufacture of Unsaturated Polyester Resins. The total consumption of Maleic Anhydride in our country is estimated at 40000 TPA.

iii) Presently there is no Maleic Anhydride production in our country and the entire requirement is met through imports.

iv) After the levy of anti dumping duty, M/S Thirumalai Chemicals had promised to not only maintain production of approximately 12000 TPA but also increase it to 18000 MTA to partially meet the requirement of domestic market. Instead they totally stopped their plant after the imposition of Anti dumping duty, and started supplying from their plant in Malaysia which had no antidumping duty.

v) TCL, Malaysia routed this product through their trading arm Ranson PTE. Ltd., Singapore and further through their agent in India, BMG Chemicals Pvt., Ltd. Thus, they have almost monopolised the Indian market.

vi) The other producers on whom antidumping duty was levied, lost their interest in Indian market to such an extent that many a times, they have refused to quote the prices. However, they supply materials to neighbouring countries and to the Middle East Unsaturated Polyester resin producers. The producers thus, enjoy a cost Advantage and are easily able to sell the material in the Indian market as can be seen from increased imports of UPR after levy of antidumping duty. This has

badly affected the domestic producers of UPR and if the situation continues they may be forced to close down.

vii) We feel that M/S TCL has not represented fairly to the Government and it appears that they had no intention of starting their plant in India but instead seek protection so as to facilitate and support their Malaysian manufacturing operations.

c) By the domestic industry:

A. <u>In respect of the Written submission filed by Polyester Resin Manufacturer's Association (PRMA):</u>

(i) **<u>Re-para 4 to 8</u>**: PRMA has made the very general statement that TCL had not submitted any evidence and information in connection with the change in circumstances that may lead to a review of the duty in force include factors such as change in Normal Value, Export price, landed price and Non-injurious price of the domestic industry. It is submitted that TCL has submitted the detailed information with respect to change in circumstances vide its letter dated 1st September, 2009.

(ii) **<u>Re Para 9 to 11:</u>** PRMA has quoted some decisions of the authority namely Mid-Term review Anti-dumping investigation in the matter relating to imports of Ethylene-Propylene-Non-Conjugated-Diene-monomer (EPDM) Rubber originating in or exported from European Union, USA, China PR and Brazil and Final Findings dated August 6, 2009 issued by DGAD in Saudi Basic industries and Ors. V. Designated Authority, Ministry of Finance, 2006 ECR 106 (Tri-Delhi) to support its contention that no question of "injury" to the Domestic Producer arises on account of its negligible domestic production of the subject goods.

(iii) It is submitted that PRMA has quoted a very limited portion of the decisions as per their requirements. However, if the decisions are considered properly, it can be established that the above mentioned decisions does not apply in the instant investigation.

(iv) In both the above mentioned cases, the domestic industry has stopped production and they did not have any inclination to restart their production.

However, in the current investigation, it is not so. The domestic industry had not stopped the production. In fact, TCL had made several attempts to re-start but could not compete with dumped imports and had to shutdown plant after brief runs. It should also be noted that the TCL intends to start its production to reap the benefit of its investment.

(v) Further, the domestic industry's intention to restart its production is corroborated with the fact that TCL the plant is being maintained in running condition and all the employees are still on the rolls of the company and the plant and machinery is standing idle but for the brief periods during which production took place. TCL has no intention of stopping the production or disposing of the plant and machinery. It is only a temporary market set back that TCL is not able to produce MAN. With a little assistance from Government of India in the form of adequate antidumping duty against dumped imports that cause havoc in the Indian market, TCL will be right back in the business within a very short period.

(vi) **Re-para 12:** In the production process of Pthalic Anydride, either of Maleic Anhydride (MAN) or Fumaric Acid can be obtained as a by-product. While Mysore Petrochemicals Ltd produces MAN in the production process of Pthalic Anydride, TCL produces Fumaric Acid as a by-product in production process of Pthalic Anydride. It is submitted that TCL has not recovered MAN as a by-product in the production process of Pthalic

(vii) Anydride. TCL has set up a separate plant for the production of the MAN and the same can be verified by the authority. We hereby extend our invitation to the authority to verify the existence of the MAN plant at our factory premises.

(viii) **Re-para 13 to 22:** PRMA has contended that the review should be terminated on account of a break of casual link as TCL has plummeted its production during POR in order to make way for imports from their plant in Malaysia. The investment by TCL in its Indian plant is far higher than the investment in TCL Malaysia. Further, TCL Malaysia is under liquidation process. Hence, it is highly irrational and illogical to believe that domestic industry will shut down its profitable venture to protect the company which is already undergoing liquidation process.

(ix) However, as the Malaysian company itself is under liquidation process, one cannot say that we had stopped production in the Indian plant just to import the goods from Malaysian plant. Even if Malaysian plant uses better and more efficient feedstock, it would be imprudent to stop production in India and rely upon Malaysian production as the company is

already in liquidation. Therefore, there is no merit in their argument that TCL has closed the Indian plant only to import from their Malaysian plant.

(x) Re-para 23**:** PRMA has made certain unsubstantiated allegations. The facts speak otherwise. If suppliers from the subject countries had refused to export goods to Indian customers, import volumes would have fallen. On the contrary, import volumes have increased by over 97% in the past 4 years. Thus, there is no merit in their argument.

B. <u>In respect of written submission filed by Indian Plasticizers Manufacturers Association (IPMA):</u>

i. Imports by TCL: TCL has been importing substantial quantities from its related entity in Malaysia and being an importer it does not qualify as domestic industry and should be declared as an ineligible domestic producer for the purpose of rule 2(b). With regard to imports of the product concerned from Malaysia, Domestic Industry submits that Malaysia is not a subject country. Since Malaysia is not a subject country, the exclusion clause provided under Rule 2 (b) is not attracted at all. In view of the same, imports from Malaysia shall have no impact on the outcome of this investigation.

ii. **<u>Benzene Vs. Butane Plant:</u>** IPMA has claimed that we have mentioned the manufacture of MAN using Benzene technology is unviable is wrong. We have stated that while the prices of Benzene have increased, the landed value of MAN has not increased. This has prevented the domestic industry from increasing prices of MAN in commensurate with the increase in its cost of production.

iii. Further, the issue of use of Benzene vs. Butane in the production of MAN had also been raised in the original investigation. In the original investigation, it was held that since exporters, themselves, use Benzene route, they cannot claim that the Indian domestic producer should not use Benzene route. In the current investigation, none of the

exporter has co-operated or provides any information which proves that they are using Butane for the production of MAN. When, both the exporter and the domestic industry are using the same technology, the question of usage of Butane does not arise.

iv. TCL has a minority stake in its joint venture in TCLM. The minority stake in the related entity –TCLM does not mean that TCL should also use the same technology as used by Malaysian company.

v. **Imports from TCLM**: IPMA claim that TCL have mala-fide intention of protecting and giving unjust benefit to Malaysian Joint Venture at the cost of Indian consumer industry is untenable. In addition to the submissions made in the preceding paragraphs, it should be noted that Malaysian JV is not a new venture. It has been in operation for more than 14 years. During all these years, TCL has been manufacturing the product concerned with some minimal or sporadic imports of the product concerned from Malaysia. It is submitted that imports from TCL has increased recently only during 2008-09. But, the reason for importation of product concerned from Malaysia is continuous dumping of MAN from the subject countries and not as projected by IPMA.

vi. IPMA claims that there is no injury to the domestic industry as their profits had increased. It must be noted that the profits of the company as a whole has increased as their operations relating to other products such as Phthalic Anhydride, fumaric acid and other food acids. Since the MAN plant is shut down except for intermittent production, TCL did not earn any money on its operations relating to MAN.

vii. Further, IPMA states that the losses suffered by TCL Malaysia joint venture are being written down by TCL India and accordingly there is no injury to the domestic industry. This argument lacks basic understanding what injury is in an antidumping investigation. TCL has never claimed that they are suffering losses on account of writing down

the value of investment in the Malaysian JV. The loss on this account has not been loaded to the loss on the Indian operations relating to MAN. This issue has nothing to do with the injury suffered by the domestic industry on account of dumped imports from the subject countries.

viii. **No-provision is required for TCL's exposure in TCLM**: TCL's expectation of recovery of its exposure of Rs 3769 lakhs in TCLM on account of advances/debtors does not mean that TCLM's operations are viable. The investment as share capital and loan are different. While the investment in share capital is part of the capital of a company, the loan and advance are liabilities of a company. Under the liquidation process, the settlement of loan and advances are given preference over the owner's capital. TCL expects that although, the net worth of TCLM has eroded, the assets of TCLM are sufficient to meet its liabilities. Hence, TCL has not considered it necessary to create the provision for the same.

EXAMINATION BY THE AUTHORITY

8. The Authority notes that no response has been submitted either by any producer/ exporter from the subject countries except by M/s D. D. International, as detailed above. Moreover the applicant domestic industry has stopped production and the other domestic producer has not provided costing and injury related information. In view of this, the Authority considers that it is not necessary to determine whether the current imports are at dumped prices and if so, what is the extent of dumping, as the Authority considers that determination of injury to the domestic industry is not relevant to the present investigations as there is insufficient information on record to determine whether the domestic industry in India has suffered injury within the meaning of Rule 11.

9. The product under consideration involved in the original investigation and also in the present review application is Maleic Anhydride (MAN) originating in or exported from the China PR, Chinese Taipei and Indonesia.

10. The product under consideration is 'Maleic Anhydride (MAN) (also referred to as subject goods). MAN is an organic acide anhydride ($C_2H_4O_3$), generally available in pillow shaped briquette form or in molten form. Both forms are

considered within the product under consideration in the investigation. MAN is used to manufacture a wide range of products like unsaturated polyester resins, alkyd resins, paper sizing chemicals, insecticides and fine chemicals. MAN is classified under ITC (HC) subheading 29171400. However, the customs classification is indicative only and is in no way binding on the scope of present investigation.

11. The authority notes that none of the interested parties has raised any argument on the issue of product under consideration. The Authority, therefore, has considered the same scope of the product under consideration as was considered in the final findings earlier notified. Further, the Authority proposes to hold that the goods produced by the domestic industry are like articles of the subject goods imported from the subject countries.

12. The Authority examined the various applicable statutory provisions in the light of the arguments raised by the interested parties. The Authority observes as follows with regard to various legal provisions:

(a) The present investigations are being conducted under Section 9A(5) and Rule 23, which provides as follows

> ***23. Review.*** *- (1) The designated authority shall, from time to time, review the need for the continued imposition of the anti-dumping duty and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty recommend to the Central Government for its withdrawal.*
>
> *(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.*
>
> *(3) The provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be mutatis mutandis applicable in the case of review.*

(b) It is noted that the provisions of Rule 11 are fully applicable in case of midterm reviews as well. Rule 11 provides as follows

> ***11. Determination of injury.*** *- (1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.*
>
> *(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to*

establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(c) It is observed that the Authority is required to determine injury to the domestic industry. Further, manner of determining injury to the domestic industry has been described in detail under Rule 11 and Annexure II to the Rules.

(d) Rule 2(b) defines domestic industry and provides 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 which case [such producers may be deemed] not to form part of domestic industry

13. Having regard to various legal provisions, it is to be noted that-

(a) the Authority is required to determine injury to the domestic industry in the present case. TCL also concedes that the Authority is required to determine injury to the domestic industry in the present case. TCL has in fact pleaded the dumped imports have caused injury to the domestic industry. TCL has argued that the dumped imports have led to continued material injury and are retarding establishment of domestic industry in India,

(b) Rule 11 provides determination of injury in respect of "domestic industry". Such domestic industry has been defined under Rule 2(b) as domestic producers whose collective output constitutes "a major proportion" in Indian production.

(c) Some of the interested parties arguing revocation of anti dumping duties have argued that TCL has resorted to significant imports of the product under consideration from Malaysia. The Authority considers it unnecessary to consider whether imports made by TCL from Malaysia should be examined in the light of discretionary exclusion provision under Rule 2(b), as the Authority observes that the same will not alter the present determination.

(d) Only TCL has participated in the present investigations and has argued that imports of the product under consideration have caused injury to the domestic industry on the basis of information pertaining solely to TCL. It is not the argument of TCL that the dumped imports have caused injury to other domestic producers. Mysore Petrochemicals Ltd (MPL) has neither provided any injury information to the Authority nor claimed that the imports have caused injury to MPL.

(e) Since MPL has not cooperated with the Authority and has not provided injury information, the Authority has been constrained to consider whether TCL constitutes domestic industry within the meaning of Rule 2(b) and whether injury to the domestic industry can be determined based solely on information provided by TCL. The Authority is constrained to note that TCL cannot be considered "domestic industry" within the meaning of Rule 2(b), as production of TCL constitutes a meagre 19.6 % of Indian production as per the table below:

	Production			
Year	TCL	MPCL	Total	TCL % in Total Production
2005-06	***	***	***	81.0%
2006-07	***	***	***	79.8%
2007-08	***	***	***	43.3%
2008-09	***	***	***	22.7%
POI	***	***	***	19.6%
POI-Annualized	***	***	***	19.6%

Thus, the production of TCL does not constitute a major proportion in the Indian production.

(f) With regard to the argument of TCL that dumping has prevented the company from producing and selling the product, the Authority notes that the issue is relevant to injury determination and not in deciding scope of the domestic industry. Only quantum of Indian production is relevant in deciding scope of domestic industry. Undisputedly, the

quantum of Indian production during the POI was 4310 MT, of which only *** MT is accounted for by TCL, rest all being held by MPL.

(g) The facts of the present investigation does not require the Authority to consider whether the proviso to Rule 2(b) dealing with segmented markets is relevant to the present case; nor the present industry is a fragmented industry involving large number of producers.

(h) TCL and MPL have been operating in the same domestic market. Undisputedly, MPL has almost maintained its production and market share whereas TCL has got reduced to mere 1.57% market share in consumption in India. It remained unexplained how MPL has been able to maintain its production and market share under the same market situations.

(i) It is clarified that Rule 5 is not applicable to the present review. Standing of the petitioner is not required to be seen in the present investigations. However, injury to the domestic industry under Rule 11 (which is undisputedly applicable in case of reviews) and standing of the applicants under Rule 5 are two distinct and different requirements.

14. Comments to the Disclosure Statement

a) M/s Indian Plasticizers Manufacturers Association have reiterated their earlier submissions and have stated that M/s Indian Chemical Council have never participated in the anti dumping proceeding either in the earlier or Review Investigations but have submitted a rejoinder to the written submissions. Further, the liquidation of their Malaysia unit could be due to mismanagement, financial constraints and other extraneous factors. The manufacture of Maleate Plasticizers, unsaturated Polyester Resins etc, major consumers of MAN are in the Small Scale Sector.

b) M/s. Polyester Resin Manufacturer's Association have reiterated their earlier submissions and have submitted that the information forming the basis for the initiation as presented by TCL remains inaccurate and inadequate. Further, there is no causal link between the alleged dumped imports of the subject goods by the subject countries and the alleged injury to the Domestic Industry as the Petitioner's Indian operations have drastically plummeted during the injury period to make way for the imports from Malaysia and Singapore. Since there is no Domestic Industry, there is no question of any dumping or injury analysis. The continued imposition of anti dumping duty on the subject goods has had

cascading effects on the prices of the end products and adversely affect the market competitiveness of the domestic manufacturers of the end products.

c) M/s Thirumalai Chemicals Ltd (TCL),

i. It is submitted that the statements of the Authority in respect of composition of Domestic industry inherently contradict each other. At one hand, the Authority agrees that the standing requirement as envisaged under Rule 5 is not required to be fulfilled in a Review Investigation. However, on other hand, the Authority states that since TCL accounts only for 19.6% of total production during POI, it cannot determine injury for a domestic industry within Rule 2(b). The purpose of anti-dumping duty is to accord continued protection to domestic producers of like product who have suffered or likely to suffer material injury.

ii. The Authority has failed to appreciate the distinction between the production routes followed by MPL and TCL. The subject goods i.e. MAN is produced by MPL as a by-product while producing Phthalic Anhydride. Therefore, the cost of production of MAN for MPL is minimal and it is able to sell it to its customers at quite low prices. Whereas, TCL produces MAN as an independent product. It operates a dedicated plant solely for the production of MAN. The total amount of investment made in this plant is worth approximately Rs. *** crores today. Therefore, it is unfair to judge the performance of TCL as against MPL.

iii. Further, even if it is assumed that TCL does not constitute domestic industry within Rule 2(b), the same does not preclude the continuation of anti-dumping duty. The anti-dumping protection is also accorded in cases where dumped imports cause material retardation of establishment of a domestic industry. The domestic industry is striving hard to increase its production in the Indian market and to find place for its indigenous manufactured product in India. However, the dumped imports from subject countries had barred the domestic industry from commercialization of its production. Hence, the dumped imports have not only caused the injury to the domestic industry, but it has also

materially retarded the establishment of the domestic industry. The Authority has not examined this aspect of the case at all.

iv. Furthermore, the Authority is not obligated to assess present injury in a review investigation. Therefore, the fact that TCL constitutes only 19.6% of total production is of no consequence for injury assessment. The Hon'ble Supreme Court, in Rishiroop Polymers Pvt Ltd. v Designated Authority, 2006 (196) E.L.T. 385 (S.C.), has considered the purpose and scope of review in following terms:

Otherwise also, we are of the opinion that scope of the review inquiry by the Designated Authority is limited to the satisfaction as to whether there is justification for continued imposition of such duty on the information received by it. By its very nature, the review inquiry would be limited to see as to whether the conditions which existed at the time of imposition of anti-dumping duty have altered to such an extent that there is no longer justification for continued imposition of the duty. The inquiry is limited to the change in the various parameters like the normal value, export price, dumping margin, fixation of non-injury price and injury to domestic industry. The said inquiry has to be limited to the information received with respect to change in the various parameters. The entire purpose of the review inquiry is not to see whether there is a need for imposition of anti-dumping duty but to see whether in the absence of such continuance, dumping would increase and the domestic industry suffer.

v. A review by its very nature is limited to examination of "changed circumstances" to determine the need for continued imposition of anti-dumping duty. In the present case, it is apparent on the face of it that TCL is not able to manufacture subject goods due to intense dumping of goods. The fact that TCL's production has been erratic further strengthens the justification for continued imposition of duty at a higher rate. Should the Authority take the opposite view it would have disastrous consequences not only in this case but also in future cases. Taking advantage of such a view, any exporters would further intensify their dumping after original investigation and systematically

kill the domestic producers. Upon complete or partial stoppage of production, the exporter would request for initiating a mid-term review arguing that there is no need for continuation of duty as there is no domestic industry at all. This would go against the very purpose of trade remedy measures like anti-dumping law. In fact, the Canada International Trade Tribunal was faced with a similar question in an Anti-dumping Review Investigation u/s 76(2) of the Special Import Measures Act concerning imports of Carbon Steel Welded Pipe (Finding attached as Annexure-I). In that case, even after 17 years of protection of anti-dumping duty, the domestic industry had closed plants and its financial condition was largely poor. The Tribunal held as follows:

> "With respect to the issue of injury, the Tribunal noted that, throughout the 1990s, the domestic industry had closed plants and rationalized production and, at the same time, made substantial investments in new, state-of-the-art production facilities. Nonetheless, sales had been stagnant, the industry had been operating at low levels of capacity, and its overall financial performance had been poor. In fact, the Tribunal noted that the standard pipe industry in Canada had had a few good years over the last two decades, despite the protection afforded by 17 years of anti-dumping duties on Korean pipe. This fact suggested to the Tribunal that there were problems within the industry that went beyond what could be rectified by anti-dumping measures. In the Tribunal's view, continuing the order would not have automatically improved the domestic industry's current performance; however, rescinding the order would have almost certainly made the industry materially worse off."

vi. In the above investigation, the Tribunal also found that there were other reasons than dumping which had also caused injury to the domestic industry. Yet the Tribunal was of the view that removal of anti-dumping duty would certainly further aggravate the situation of the domestic industry. Therefore, it would be unreasonable on part of the Authority to conclude that the there is no need for continued imposition of anti-dumping duty just because TCL's production volume and its share in the total Indian production has declined. All that the Authority is required to see whether in the absence of anti-dumping

duty, dumping would increase and TCL would suffer further injury. It is evident that if the anti-dumping duty is withdrawn, the dumping would further intensify and the TCL would be systematically eradicated from the market. The fact that TCL's production has been falling actually proves the serious and alarming state of injury caused to TCL.

vii. The above contention is further buttressed in the light of the Appellate Body Report in United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina, WT/DS268/AB/R

> 279. The lack of a sufficient textual basis to apply Article 3 to likelihood-of-injury determinations is not surprising given "the different nature and purpose of original investigations, on the one hand, and sunset reviews, on the other hand", which the Appellate Body emphasized in US – Corrosion-Resistant Steel Sunset Review. Original investigations require an investigating authority, in order to impose an anti-dumping duty, to make a determination of the existence of dumping in accordance with Article 2, and subsequently to determine, in accordance with Article 3, whether the domestic industry is facing injury or a threat thereof at the time of the original investigation. In contrast, Article 11.3 requires an investigating authority, in order to maintain an anti-dumping duty, to review an anti-dumping duty order that has already been established—following the prerequisite determinations of dumping and injury—so as to determine whether that order should be continued or revoked.
>
> 280. Given the absence of textual cross-references, and given the different nature and purpose of these two determinations, we are of the view that, for the "review" of a determination of injury that has already been established in accordance with Article 3, Article 11.3 does not require that injury again be determined in accordance with Article 3. We therefore conclude that investigating authorities are not mandated to follow the provisions of Article 3 when making a likelihood-of-injury determination.

viii. Under the Indian Anti-dumping Law, a mid-term review is carried out pursuant to the mandate provided in Section 9A(5) of the Customs Tariff Act, 1975. The said provision is akin to Article 11.3 of WTO: AD Agreement. In fact, Indian law has not distinguished the mid-term review and sunset review as it appears in the AD Agreement. Thus, Section 9A (5) which is akin to Article 11.3 applies to mid-term reviews also. Therefore, in the light of the Report of the

Appellate Body, the Authority is not required to re-determine injury that was already established in the original investigation. Therefore, the question of finding a domestic injury in terms of Rule 2(b) also does not arise as there is no need to re-establish injury as it is done in an original investigation.

ix. In the light of the foregoing facts and legal arguments, it is submitted that the circumstances prevailing at the time of the original investigation has materially changed. The subject countries have indulged in even more intensified dumping of subject goods. Dumped goods have caused material injury to the domestic industry. Dumping has also materially retarded the establishment of the domestic industry. Hence, it is requested the Authority may suitably increase the present levels of anti-dumping duty in order to protect the domestic industry.

15. Examination by the Authority

The arguments raised by TCL in response to disclosure statement have been examined by the Authority and the Authority notes as follows:

a) TCL has argued that the statement of the Authority is contradicting in as much as the Authority agreed that the standing requirement is not pre-requisite under Rule 5 and at the same time, the Authority cannot determine injury to the domestic industry because production of TCL is only 19.6% of total production. The Authority holds that there is no contradiction in the said statement. Standing requirements under Rule 5 and scope of domestic industry under Rule 2(b) are two different requirements. Since rule 23 does not refer to Rule 5, the Authority concluded that standing is not a requirement under the Rules for the purpose of initiation of Mid Term Review. However, it is only with regard to an application field before the Designated Authority requesting initiation of investigations. Since Rule 23 does not refer to Rule 5, the Authority is justified in initiating the investigations regardless of the share of petitioner's production in Indian production. However, if share of petitioner's production does not constitute a major proportion in Indian production within the meaning of Rules, such petitioner cannot constitute the domestic industry within the definition of Rule 2(b). The Authority has consistently taken the view that if share of petitioner is below 25%, such share cannot constitute a major proportion within the meaning of Rule 2(b), barring the exceptions given in rule 2(b) itself. In the instant case, admittedly, there are two producers of the product under consideration. Production of other company is above 80% and the petitioner's production is below 25%. The Authority is therefore, unable to consider the petitioner as domestic industry for the purpose of Rule 2(b). Further, as noted elsewhere, the Authority is required to determine injury after defining domestic industry and thereafter assessing injury to such domestic industry. Since in the instant case, the Authority is unable to

consider TCL as a domestic industry, the Authority is unable to determine injury to the domestic industry.

b) With regard to difference in production routes followed by TCL and MPL, the Authority notes that Rule 2(b) does not distinguish between different routes leading to production of the product concerned. Rule 2(b) refers to “production” and thus routes of production are wholly irrelevant. Even if the production is through by product route, it is nevertheless constitutes production for the purpose of anti-dumping rules. Thus the production routes are entirely immaterial in defining scope of domestic industry.

c) With regard to the argument of TCL that even if it does not constitute domestic industry, the same does not preclude continuation of anti-dumping duties and the rules recognize ‘material retardation to establishment of domestic industry”, the Authority notes that the current application has been filed by TCL for seeking upward revision of anti-dumping duties and by different users associations namely M/s Indian Plasticizers Manufacturers Association and M/s Polyester Resin Manufacturer’s Association seeking withdrawal of anti-dumping duties. Even if it is appreciated that Rules permit continuation of anti-dumping duties and Rules recommends material retardation to establishment of the domestic industry as a form of injury, both provisions pre-suppose consideration of the “domestic industry” by the Authority. Even material retardation to establishment of domestic industry pre-supposes a determination with regard to a “domestic industry”. Further, continued injury to the domestic industry also pre-supposes a determination with regard to “scope of domestic industry”. In other words, no anti-dumping duties can be extended/enhanced or modified unless the Authority is able to establish a “domestic industry” within the meaning of Rule 2(b), whose data can be relied upon for determination of injury. In the instant case, the Authority is unable to establish companies whose data can be relied upon to determine injury. While TCL production is below the minimum threshold of 25%, other domestic producer has not cooperated with the Authority with relevant injury information. Since the Authority is unable to define the constituents of domestic industry in the present case, the Authority is precluded from considering whether domestic industry has suffered or is likely to suffer injury.

d) With regard to the argument that the dumped imports have barred the domestic industry from commercializing the production, Authority notes that TCL has failed to establish existence of domestic industry within the meaning of Rule 2(b). Further, the question of commercialization of production cannot be considered for a company which is already in commercial production and who subsequently curtailed its production.

e) With regard to the decision of the Hon'ble Supreme Court in Rishiroop Polymers Pvt Ltd. v Designated Authority by TCL, the Authority notes that the said decision is based on “constitution of domestic industry”. But, in the instant case, the Authority is unable to constitute a domestic industry, question of application of Hon'ble Supreme Court decision will not arise.

f) With regard to TCL argument that intensified dumping of the product is resulting in erratic production by TCL and the same justifies continued imposition of anti-dumping duties at higher rate, the Authority notes that consideration of TCL data for the purpose of assessing injury is feasible only if the Authority comes to a conclusion that TCL constitutes domestic industry within the meaning of Rule 2(b). Given the conclusion of the Authority that TCL does not constitute domestic industry, performance of TCL is wholly irrelevant.

g) TCL has drawn attention of the Authority to the decision of the Canadian authorities in the matter of carbon steel welded pipes case. The Authority however holds that TCL has not established that the said decision of the Canadian authorities is without defining a domestic industry and its constituents in that case. In the present case, as stated before, the Authority is not able to establish scope of domestic industry whose injury can be examined.

h) TCL has argued that the Authority is required to consider whether dumping would increase in the absence of anti-dumping duties and whether TCL would suffer further injury. The Authority, however, notes that the Rules do not envisage examining injury to a company. The rules envisage examination of "injury to the domestic industry". The domestic industry for the purpose is required to be defined/constituted having regard to the requirements of Rule 2(b).

i) TCL has referred to the decision of the WTO in the matter of United States – Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina the Authority holds that the said decision is again based on positive determination with regard to "domestic industry". In the present case, however, the Authority is unable to determine the domestic industry whose injury can be examined.

j) TCL has argued that Section 9A(5) is akin to Article 11.3, the Designated Authority and Indian law has not distinguished between Mid Term Review and Sunset Review. The Authority considers that the issue is entirely irrelevant. The Authority is required to define/determine the scope of domestic industry whether it is a fresh investigation or a Mid Term Review or a Sunset Review. If the constitution of domestic industry itself cannot be established, the Authority cannot establish existence or otherwise of injury to the domestic industry.

16. Conclusion

After careful consideration of submissions made by various interested parties and TCL in particular, including their comments on disclosure statement and having regard to legal provisions, the Authority holds that the Rules require examination of "injury to the domestic industry" in the present case, for which the Authority is required to define/ determine "domestic industry". In the present case, production of TCL not being a major proportion in Indian production, the Authority is unable to consider TCL as a domestic industry. The only other domestic manufacturer

commands production of above 80% of the Indian production and has not participated in the present investigation and has not provided any information relevant to assessment of injury to the domestic industry. The Authority, therefore, is unable to determine whether the alleged intensified dumping of the product is causing or is likely to cause injury to the domestic industry in any of its form laid down under the Rules. Further, in the light of the foregoing, the Authority is unable to determine whether such imports of the product under consideration have caused injury to the domestic industry in the absence of sufficient injury information from "domestic industry". In view of the same, the Authority has not made determination with regard to the extent/degree of dumping from the subject countries, nor has the Authority examined whether the possible injury is because of apparent dumped imports.

17. FINDINGS

a. The Authority, after considering the foregoing and as well as the comments on the disclosure statement, concludes that there is no domestic industry affected from the imports from the subject countries.

b. In view of the above, the Designated Authority considers it appropriate to recommend discontinuation of Anti-dumping duty in force in respect of the subject goods originating in or exported from the subject countries as notified vide Notification No. 105/2008-Customs dated 18th September 2008 in terms of Section 9 (A) (5) of the Act.

c. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

P.K. Chaudhery
The Designated Authority