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**Government of India
Ministry of Commerce & Industry
Department of Commerce
(Directorate General of Anti-Dumping & Allied Duties)**

Notification

Jeevan Tara Building, 4th Floor
5, Parliament Street, New Delhi-110001
Dated 9th June, 2016

Final Findings

Subject: Anti-dumping investigation concerning imports of 'Purified Terephthalic Acid' (PTA), originating in or exported from China PR, Iran, Indonesia, Malaysia & Taiwan.

No.14/8/2015-DGAD: - Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time, (hereinafter also referred to as the Rules) thereof;

A. Background of the case

2. Whereas M/s MCC PTA India Corp. Pvt. Ltd (MCPI), and M/s Reliance Industries Limited (RIL) (hereinafter also referred to as the applicants) jointly filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975, as amended from time to time (hereinafter also referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter also referred to as the Rules), for initiation of anti-dumping investigation concerning imports of Purified Terephthalic Acid (hereinafter also referred to as the subject goods or PTA), originating in or exported from China PR, Iran, Indonesia, Malaysia & Taiwan (hereinafter also referred to as the subject countries), alleging dumping and consequent injury and requested for levy of anti-dumping duties on the imports of the subject goods, originating in or exported from the subject countries. The application was supported by M/s Indian Oil Corporation Limited (IOCL), another producer of the subject goods in the country.

3. And whereas, the Authority on the basis of sufficient evidence, submitted in the above stated application issued a public notice vide Notification No.14/8/2015-DGAD dated 18th June, 2015 published in the Gazette of India, Extraordinary, initiating the present investigation in accordance with the sub Rule 5 of the Rules, to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry. Although a joint application was filed by M/s MCC PTA India Corp. Pvt. Ltd (MCPI), and M/s Reliance Industries Limited (RIL), since M/s Reliance Industries Ltd has a subsidiary company in Malaysia which exported significant volume of subject goods to India during the POI, the Authority did not consider it appropriate to accept Reliance Industries Ltd as an eligible domestic industry in terms of Rule 2(b) of the Anti-dumping Rules. In the initiation notification, the Authority held that M/s MCC PTA India Corp. Pvt. Ltd (hereinafter also referred to as the applicant) constituted domestic industry within the meaning of Rule 2 (b) of the Anti-dumping Rules as eligible domestic industry and the application, after excluding M/s Reliance Industries Ltd, satisfied the criteria of standing in terms of Rule 5 (3) of the Rules supra.
4. And whereas, the Designated Authority having regard to the Act and the Rules, issued the preliminary findings vide Notification No.14/8/2015-DGAD dated 12th November, 2015, recommending imposition of provisional anti-dumping duties on the imports of the subject goods, originating in or exported from the subject countries. Accordingly, the Central Government vide Notification No.60/2015-Customs dated 10th December, 2015 imposed provisional anti-dumping duties on imports of the subject goods, originating in or exported from the subject countries. Presently, the imports of the subject goods, originating in or exported from Korea RP and Thailand, also attract anti-dumping duty.

A. PROCEDURE

5. The procedure described herein below has been followed by the Authority with regard to the subject investigation:
 - i. The Authority notified the embassies/representatives of the subject countries in India about the receipt of the present anti-dumping application before proceeding to initiate the investigation in accordance with Sub-Rule (5) of Rule 5 supra.
 - ii. The Authority sent a copy of the initiation notification dated 18th June, 2015 to the embassies/representatives of the subject countries in India, known producers/exporters from the subject countries, known importers/users and the domestic industry as per the addresses made

available by the applicants and requested them to make their views known in writing within 40 days of the initiation notification.

- iii. The Authority provided a copy of the non-confidential version of the application to the known producers/exporters and to the embassies/representatives of the subject countries in India in accordance with Rule 6(3) of the Rules supra.
- iv. The embassies/representatives of the subject countries in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the Rules with a request to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the producers/exporters was also sent to them along with the names and addresses of the known producers/exporters from the subject countries.
- v. The Authority sent exporter's questionnaires (EQ) to elicit relevant information to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the Rules:
 - a. BP Zhuhai Chemical Co. Ltd, China PR
 - b. Xianglu Petrochemicals Co., Ltd, China PR
 - c. Jiaying Petrochemical Co., Ltd., China PR
 - d. Zhejiang Yisheng Petrochemical Co., Ltd., China PR
 - e. Zhejiang Yuandong Petrochemical, China PR
 - f. Yisheng Dahua Petrochemical Co., Ltd., China PR
 - g. Hengli Petrochemical, China PR
 - h. Jinan Shijitongda Chemical Co., Ltd., China PR
 - i. Shahid Tondgooyan Petrochemical Company, Iran
 - j. Petrochemical Commercial Company(PCC), Iran
 - k. Malaysian Petrochemicals Association (MPA), Malaysia
 - l. Amoco Chemical, Malaysia
 - m. RP Chemicals (Malaysia) Sdn. Bhd, Malaysia
 - n. BP Taiwan Marketing Limited, Taiwan
 - o. China American Petrochemical Co., Ltd (CAPCO), Taiwan
 - p. Formosa BP Chemicals Corporation (FBPC), Taiwan
 - q. PT Amoco Mitsui PTA (AMI), Indonesia
 - r. PT Asia Pacific Fibers Tbk, Indonesia
 - s. PT Indorama Petrochemicals, Indonesia
- vi. The following producers/exporters from the subject countries filed exporters questionnaire response in the prescribed format:
 - a. Xianglu Petrochemicals Co. Ltd., China PR.

- b. Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR.
 - c. BP Zhuhai Chemical Company Limited, China PR.
 - d. Yisheng Dahua Petrochemical Co., Ltd, China PR.
 - e. Zhejiang Yisheng Petrochemical Co., Ltd, China PR.
 - f. Hainan Yisheng Petrochemical Co., Ltd, China PR.
 - g. Ningbo Hengyi Trading Co., Ltd, China PR.
 - h. Hengli Petrochemical (Dalian) Co., Ltd., China PR.
 - i. HongkongTianyi International Holding Company Limited, Hongkong.
 - j. BP Asia Ltd, Hongkong.
 - k. Oriental Petrochemicals (Taiwan) Co. Ltd, Taiwan.
 - l. Formosa Chemicals & Fibre Corporation, Taiwan.
 - m. Methyl Company Limited, Taiwan.
 - n. Itochu Taiwan Corporation, Taiwan (Sourced from Sourced from Oriental Petrochemical Taiwan Co Ltd, Taiwan).
 - o. China American Petrochemical Co., Ltd (CAPCO), Taiwan.
 - p. Dinowic Pte. Ltd., Singapore (Sourced from Formosa Chemicals & Fibre Corporation, Taiwan).
 - q. Mitsui & CO., Ltd, Japan (Sourced from Oriental Petrochemical Taiwan Co Ltd, Taiwan).
 - r. Daewoo International Corporation, Korea.
 - s. SK Networks Co. Ltd., Korea (Sourced from Oriental Petrochemical Taiwan Co Ltd, Taiwan.)
 - t. Hyosung Corporation, Korea.
 - u. SK Networks Co. Ltd., Korea (Sourced from Zhejiang Yisheng Petrochemical Co., Ltd, YishengDahua Petrochemical Co., Ltd and Hainan Yisheng Petrochemical Co., Ltd China PR)
 - v. PT. BP Petrochemicals, Indonesia.
 - w. Recron (Malaysia) Sdn. Bhd, Malaysia.
- vii. The following producers/exporters from China PR filed Market Economy Treatment (MET) questionnaire response and claimed MET:
- a. Zhejiang Yisheng Petrochemical Co. Ltd.
 - b. Ningbo Hengyi Trading Co. Ltd.
 - c. Yisheng Dahua Petrochemical Co. Ltd.
 - d. Hainan Yeshing Petrochemical Co. Ltd.
- viii. The Authority sent Importer's Questionnaires to the following known importers/users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
- a. Wellknown Polyster Ltd., Mumbai
 - b. JBF Industries Ltd., Mumbai
 - c. Alok Industries Ltd., Mumbai
 - d. Indo Rama Synthetics (India) Ltd., Gurgaon, Haryana

- e. The Bombay Dyeing & Mfg. Company Ltd., Mumbai
 - f. Dhunseri Petrochem & Tea Ltd., Kolkata
 - g. Garden Silk Mills Ltd., Mumbai
 - h. Filatex India Ltd., New Delhi
 - i. Jindal Poly Films Ltd., New Delhi
 - j. Nakoda Ltd., Mumbai
 - k. Sumeet Industries Ltd., Surat
 - l. Association of Synthetic Fiber Industry (ASFI), New Delhi.
 - m. PTA Users Association of India, New Delhi.
 - n. Easter Industries Ltd, Gurgaon, Haryana
 - o. Polyplex Corpn Ltd, G. B. Nagar, UP
- ix. The following importers/users filed importer's questionnaire response in the prescribed format:
- a. The Bombay Dyeing & Manufacturing Co. Ltd.
 - b. JBF Industries Ltd.
 - c. Indo-Rama Synthetics (India) Ltd.
 - d. Filatex India Ltd.
- x. Post-initiation, submissions have also been made by the domestic industry and other interested parties namely PTA Users Association on behalf of importers/users.
- xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xii. The petitioner had submitted the petition alleging dumping of the subject goods from the subject countries relying upon transaction wise imports data sourced from the DGCI&S and IBIS. The petitioner has relied upon import data provided by DGCI&S till February 2015 and IBIS for March 2015 due to unavailability of DGCI&S data beyond February 2015 at the time of filing the petition. The Authority has relied upon the said imports data provided by the petitioner for the purpose initiation of the present investigation.
- xiii. Post initiation, request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to provide details of imports of subject goods for the past three years, including the period of investigation. The Authority has relied upon DGCI&S data in the preliminary findings as well as final findings.
- xiv. The Non-injurious Price based on the cost of production and cost to make & sell the subject goods in India based on the information

furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) and Annexure III to the Anti-dumping Rules has been worked out so as to ascertain whether anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry.

- xv. Information provided by the domestic industry was verified by the Authority to the extent considered necessary. Only such verified information with necessary rectification, wherever applicable, has been relied upon for the purpose of present final finding.
- xvi. The Period of Investigation for the purpose of the present investigation is from 1st April 2014 to 31st March 2015 (12Months). The injury investigation period has however, been considered as the period from 1stApril 2011 to the end of the POI, i.e., 2011-12, 2012-13, 2013-14 and POI.
- xvii. In accordance with Rule 6(6) of the Anti-Dumping Rules, the Authority also provided opportunity to all the known interested parties to present their views orally in a public hearing held on 4th February, 2016. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The interested parties were advised to file written submission and rejoinder submission.
- xviii. The submissions made by the domestic industry and other interested parties during the course of the investigation and considered relevant have been examined and addressed by the Authority in this final finding.
- xix. 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 considered such interested parties as non-cooperative and recorded this final finding on the basis of the facts available.
- xx. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered 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 and the same were kept in the public file maintained by the Authority as per the Rules.

- xxi. In accordance with Rule 16 of Rules Supra, the essential facts of the investigation were disclosed to the known interested parties vide disclosure statement dated 2nd June, 2016 and comments received thereon, considered relevant by the Authority, have been addressed in this final finding.
- xxii. *** in this final finding represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxiii. The exchange rate adopted by the Authority for the subject investigation is 1 US \$ = Rs.61.69.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

6. The Product under Consideration (PUC) in the present investigation is Purified Terephthalic Acid (PTA), including its variants - Medium Quality Terephthalic Acid (MTA) and Qualified Terephthalic Acid (QTA). Purified Terephthalic Acid (PTA) is a white, free flowing crystalline powder, free from any visual contamination. Terephthalic Acid is an organic compound whose chemical formula is $C_6H_4(COOH)_2$. It sublimes at 402°C and is poorly soluble in water and alcohol. PTA is the primary raw material for the manufacturing of polyester chips which in turn is used in a number of applications in textiles, packaging, furnishings, consumer goods, resins and coatings. Since QTA, MTA and PTA are chemically the same product and further since they are interchangeably used, the scope of the product under consideration covers QTA and MTA as well. As claimed by the applicants and not disputed by interested parties, Di-Methyl Terephthalate (DMT) is chemically a different product and therefore not covered in the scope of the product under consideration. The product under consideration is classified under subheading 29173600 of the Customs Tariff Act. However, the customs classification is indicative only and in no way it is binding on the scope of the present investigation.

Submissions made by the Domestic industry

7. The submissions made by the domestic industry and considered relevant by the Authority with regard to product under consideration and like articles are as follows:
- i) The product under consideration in the present petition is Purified Terephthalic Acid, including its variants Medium Quality Terephthalic Acid (MTA) and Qualified Terephthalic Acid (QTA).
 - ii) PTA is a white, free-flowing crystalline powder free from any visual contamination. Terephthalic acid is an organic compound whose chemical

formula is $C_6H_4(COOH)_2$. It sublimes at $402^\circ C$ and is poorly soluble in water and alcohols.

- iii) It is classified under subheading 29173600 of the Customs Tariff Act.
- iv) PTA is a primary raw material in the manufacture of polyester chips which in turn has number of applications in textiles, packaging, furnishings, consumer goods, resins and coatings.
- v) MTA and QTA are chemically the same as PTA. The only difference between PTA, MTA and QTA is in the level of impurities present in the QTA and MTA. PTA, MTA & QTA are produced using the same production technology, plant & equipment, manufacturing process, raw materials. The three perform the same function. These fall under same customs classifications. In fact, producer such as SK Chemical produces MTA, but literature states PTA.
- vi) Although PTA and Di-Methyl Terephthalate (DMT) are interchangeably used in some applications, DMT is a chemically different product than PTA. The production technology, manufacturing process, plant & equipment, raw materials, technical specifications of DMT and PTA are different. DMT cannot replace/substitute PTA in all the applications.
- vii) There is no production of DMT in India, nor there import of DMT in India.
- viii) The product scope does not cover DMT, there being no imports into India and no production in India.
- ix) Since QTA, MTA and PTA are chemically the same product and further since they are interchangeably used, the scope of the product under consideration covers QTA and MTA as well.
- x) The subject goods produced by the domestic industry and that imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The consumers are using the two interchangeably. The consumers importing the product under consideration have also purchased the same from the domestic industry. Therefore, the subject goods produced and supplied by the applicant are like article to the product under consideration imported from subject countries.

Submissions made by Exporters, Importers, Users and other Interested Parties

8. No relevant submission has been made by the exporters, importers, users and other interested parties with regard to product under consideration and like article.

Examination of the Authority

9. The submissions made by the interested parties with regard to the scope of product under consideration and considered relevant by the Authority are examined and addressed as follows:
 - i. The product under consideration in the present investigation, as defined by the Authority in the initiation notification is Purified Terephthalic Acid (PTA), including its variants - Medium Quality Terephthalic Acid (MTA) and Qualified Terephthalic Acid (QTA). The PUC is a white, free flowing crystalline powder, free from any visual contamination. Terephthalic Acid is an organic compound whose chemical formula is $C_6H_4(COOH)_2$. It sublimes at $402^\circ C$ and is poorly soluble in water and alcohol. PTA is primary raw material in the manufacture of polyester chips which in turn is used in a number of applications in textile, packaging, furnishings, consumer goods, resins and coatings. Since QTA, MTA and PTA are chemically the same product and further since they are interchangeably used, the scope of the product under consideration covers QTA and MTA as well. The product under consideration is classified under subheading 29173600 of the Customs Tariff Act. However, the customs classification is indicative only and in no way it is binding on the scope of the present investigation.
 - ii. Di-Methyl Terephthalate (DMT) is chemically a different product and therefore not covered in the scope of the product under consideration.
 - iii. With regard to like article, Rule 2(d) of the AD Rules provides as under: -

"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;
 - iv. The Authority notes that the subject goods produced by the domestic industry and that imported from subject countries are comparable in terms of characteristics such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The two are technically and commercially substitutable. The

consumers are using the two interchangeably. The consumers importing the product under consideration are also purchasing the same from the domestic industry. In view of the same, the subject goods produced by the domestic industry are being treated as domestic like article to the product under consideration imported from subject countries in terms of the Rules.

C. SCOPE OF DOMESTIC INDUSTRY & STANDING

Submissions made by Exporters, Importers, Users and other Interested Parties

10. The submissions made by the producers/exporters/importers/other interested parties during the course of this investigation with regard to scope of domestic industry & standing and considered relevant by the Authority are as follows:

- i. The authority's decision to exclude Reliance from the scope of domestic industry, due to exports of product under consideration to India by their subsidiary company in Malaysia, one of the subject countries, is incorrect and arbitrary. Exclusion of Reliance Industries Ltd (RIL) from the scope of domestic industry has vitiated the present investigation.
- ii. The DA has applied its discretion to exclude RIL from the scope of domestic industry without examining its behaviour. The Authority failed to note that RIL is one of the largest producers in India and its focus has not shifted to be an importer. The Authority has included such producers in Soda Ash final finding from Pakistan, Kenya, EU, Iran, Ukraine and USA and the previous findings on PTA.
- iii. The disqualification, if applicable should be in respect of Malaysia only. RIL may be included for the determination of injury and causal link in respect of imports from countries other than Malaysia.
- iv. In terms of Article 3.3 of AD Agreement, the Designated Authority ought to have initiated separate investigations for each subject country and could have determined 'domestic industry' separately.
- v. The certification with the application which states that MCC PTA India Corp. Pvt. Ltd, India (MCPL) is not related to an exporter or producer from any of the subject countries is untrue. Mitsubishi Chemical Corporation (MCC), Japan has majority shareholding in MCC PTA India Corp. Pvt. Ltd, India, Ningbo MCC, China and PT MC, Indonesia. Thus, MCC PTA India Corp. Pvt. Ltd, India, Ningbo MCC, China and PT MC, Indonesia are related parties. The related producers China and Indonesia may have exported significant quantity through the related exporters to India to its own related importers. It is possible

that the other shareholders of MCPL who are involved in trading activities are importing quantities at low assessable value and selling it at a high price. Thus MCC PTA India Corp. Pvt. Ltd, India should be excluded from the scope of Domestic Industry.

- vi. Despite representations, authority has not clarified whether data of IOCL has been considered. Mere support without data by IOCL indicates that imports of subject goods have not affected IOCL.

Submissions made by the Domestic industry

11. The submissions made by the domestic industry during the course of the investigation with regard to scope of domestic industry & standing and considered relevant by the Authority are as follows:

- i. The petition for initiation of present investigation was filed by M/s MCC PTA India Corp. Pvt. Ltd (MCPI) and M/s Reliance Industries Limited (RIL) and requested the Authority to consider both the petitioner companies as a domestic industry. However, Designated Authority found it appropriate to consider only MCPI as domestic industry. MCPI is eligible domestic industry and the production of MCPI constitutes major proportion in the total Indian production.
- ii. Regarding exclusion of RIL from the scope of Domestic Industry, domestic industry is not determined qua country under investigation. Domestic industry is determined qua like article produced in India. Referred and relied upon are several past cases wherein one of the domestic producers was considered ineligible due to its relationship with the exporter in one of the subject countries. Yet, the injury analysis was done for one domestic industry.
- iii. Parties contending that RIL is eligible domestic industry for countries other than Malaysia, had contended in the previous investigation that MCPI should be treated ineligible because of alleged relationship with Korean producer and never contended that this ineligibility should be qua Korea only.
- iv. The DA is required to consider the domestic industry as the domestic industry exists. The mere fact that the MCPI is operating at a lower level of capacity utilization as compared to other producers has no bearing on its status as domestic industry as per the rules.
- v. Since Reliance is considered ineligible, its data cannot be considered for determination of standing.

- vi. There is no legal requirement that the company supporting the petition should also provide information. Therefore, the contention that authority should call for data of IOCL and examine the same is irrelevant.
- vii. MCPI has no related entity either in China or in Indonesia. It is submitted in this regard that under companies' act, the companies are required to disclose the followings – (a) companies under same management; and (b) details of parties who are related, or where control exists and with whom transactions have taken place. The annual report contains information with regard to (a) companies which are subsidiaries, (b) Companies associated or key management personnel of the company and their relatives, (c) companies over which key management personnel exercise significant influence. In compliance with the above, the company has disclosed as follows

Names of related company and related party relationship

- Related parties where control exists
Holding company—Mitsubishi Chemical Corporation, Japan
Ultimate Holding Company—Mitsubishi Chemical Holding Corporation, Japan
- Related parties with whom transaction have taken place during the year:
Holding company—Mitsubishi Chemical Corporation, Japan
Fellow Subsidiaries—Mitsubishi Chemical Engineering Corp
Mitsubishi Chemical Singapore Pte Ltd
MCC PTA Asia Pacific Pte Ltd
Ryoka System Inc
MEC Techno Co Ltd
Mitsubishi Rayon Co Ltd

Notwithstanding, the mere fact of relationship does not prejudice the present position in any manner. It must be established that the relationship is such as to disentitle a domestic producer from being treated as a domestic industry.

- viii. Ningbo MCC, China and PT MC, Indonesia have not exported the product under consideration to India during the POI. It is well established legal position that (a) mere relationship with producers is entirely immaterial. The Rules require relationship with exporters. These companies have not exported to India and therefore are not

exporters of the subject goods, (b) imports/exports during the POI alone are relevant.

- ix. If dumping is happening from more than one country and if cumulative assessment is justified, the DA should initiate combined investigation. Notwithstanding, in the context of cumulative assessment, in fact, WTO member countries have proposed that even if separate investigations are being conducted for one product, the DA should be permitted to assess injury cumulatively from imports under investigation through two different investigations. It would thus be seen that even in a theoretical situation where the authority would have initiated separate investigations against different set of countries, the authority could (and should) still have assessed injury to the domestic industry cumulatively. The conditions for cumulation specified under the rules are fully met in the present case. Further, in particular, it is submitted that the requirement of the WTO Agreement with regard to inter se competition amongst the exporting countries is also fully met in present case.
- x. The fact that one of the domestic producers is treated as ineligible in respect of one of the subject countries, the authorities not required to decumulate the injury assessment. Nothing under the rules can be interpreted to imply that the authorities are required to decumulate assessment of injury in the present circumstances.
- xi. A decision to include or exclude a company cannot be taken on the basis of whether it benefits one party or goes against other party. It has to be an unbiased decision. Assuming though not accepting, even if the injury margin determined only for MCPI is higher, that does not entitle the Designated Authority to include RIL when it has been determined as ineligible domestic industry.

Examination of the Authority

12. The application for initiation of the present investigation was jointly filed by MCPI and RIL on behalf of the domestic industry. Apart from the above domestic producers there is one more producer of PTA in India, namely Indian Oil Corporation Limited (IOCL), which supported the application. MCPI furnished a declaration in the application stating that they have not imported the PUC from the subject countries. They further declared that they are not related either to any exporter or producer of the PUC in the subject countries or any importer of the PUC in India. However, the co-applicant i.e. RIL furnished a declaration stating that they have imported insignificant volume of subject goods from Malaysia through an unrelated Malaysian trader under Advance Authorization Scheme.

They further declared that they have an associate company in Malaysia as the sole producer of the subject goods in Malaysia and also a subsidiary company in Malaysia who exported the subject goods to India during the POI.

13. The legal position as laid down under Rule 2(b) of Anti-dumping Rules is 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”

14. As noted in the initiation notification itself, Reliance Industries Ltd has a subsidiary company in Malaysia which has exported significant volume of subject goods to India during the POI. On the basis of examination of the information and declaration furnished by the applicants and taking in to account the relevant legal position, the Authority did not consider it appropriate to accept Reliance Industries Ltd as an eligible domestic industry.

15. As regards MCC PTA India Corp. Pvt. Ltd (MCPI), on the basis of the information furnished in the rejoinder submissions at the post oral hearing stage, the Authority notes that MCPI has group companies in China and Indonesia namely Ningbo MCC, China and PT MC, Indonesia. However, neither of the above named companies in China and Indonesia is stated to have exported the subject goods to India during April, 2011 to March, 2015.

16. As per the provisions laid down under Rule 2 (b) of the Rules, domestic producers cannot be treated as domestic industry when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof. In the instant case, the interested parties, which alleged the relationship of MCPI with Ningbo MCC, China and PT MC, Indonesia, have not established with substantiated documentary proof that the said Chinese and Indonesian companies have exported the product under consideration to India during the POI. Post hearing, MCPI has furnished information that Ningbo MCC, China and PT MC, Indonesia are their group companies, but informed that the said companies have not exported the product under consideration to India during April, 2011 to March, 2015. In view of the above position, as per the

Rules, the fact that Ningbo MCC, China and PT MC, Indonesia are group companies of MCPI does not vitiate the eligibility of MCPI as domestic industry.

17. The contention of certain opposite interested parties that authority should conduct injury analysis by including RIL for the subject countries other than Malaysia is not acceptable as per Rules. When more than one country is involved in an anti-dumping investigation and dumped imports are alleged to be responsible for causing injury to the domestic industry, injury analysis will have to be done in a cumulative manner. Any domestic producer which is declared ineligible for being treated as domestic industry as per the Rules cannot be treated as a domestic industry in respect of certain subject countries for only injury analysis. The law states that the injury to the domestic industry has to be determined cumulatively which means the domestic industry has to be determined with respect to product under consideration from subject countries as a whole. There cannot be domestic industry separately for separate subject countries. As per the laid down Rules, injury on account of dumping of the subject goods from the subject countries is to be determined in respect of domestic industry only. In the present case, RIL has been disqualified as an eligible domestic industry for the reasons well explained in this final finding.
18. As regards the contention that the authority's decision to exclude Reliance from the scope of domestic industry has vitiated the present investigation, the Authority notes that Reliance Industries Ltd was excluded from the purview of domestic industry at the initiation stage itself on account of having a related entity in Malaysia, which is not only the sole producer of the product under consideration in the said country, but also exported significant volume of product under consideration to India during the POI. Rather, the Authority notes that inclusion of RIL as domestic industry would have vitiated present investigation since a partner in unfair trade would have benefited from the imposition of remedial measure and same action of Authority would not only have contravened the established legal position but also encouraged the same interested parties to oppose the action of the Authority.
19. As regards the contention that DA has applied its discretion to exclude RIL from the scope of domestic industry without examining its behaviour as primarily a domestic producer and not an importer, the Authority notes that as per Rule 2(b) of Rules, when a domestic producer is inter alia related to the exporters or importers of the alleged dumped article, such domestic producers cannot as such be treated as domestic industry. In the instant case, RIL's related company in Malaysia is the sole producer of subject goods and exported significant volume to India during the POI. Thus, as per the Rules and jurisprudence, RIL being related

to the exporter of subject goods from Malaysia, can by no means be considered as domestic industry in the present investigation.

20. As regards the contention that ineligibility of RIL should be in respect of Malaysia only and no other subject countries, the Authority notes that present investigation is in respect of subject countries consisting of China, Iran, Indonesia, Malaysia and Taiwan. As per the Rules, the subject countries are determined with reference to a specified period of investigation during which the export of subject goods from the subject countries is determined as above *de minimus* level.
21. As regards the contention that in terms of Article 3.3 of AD Agreement, the Designated Authority ought to have initiated separate investigations for each subject country, the Authority notes that the scope of domestic industry is not determined qua country under investigation, but qua like article produced in India. Moreover, the contention that injury and causal link analysis should be done by the Authority in respect of imports from subject countries excluding Malaysia, is not appropriate under the law.
22. In view of the above position, the Authority notes that MCC PTA India Corp. Pvt. Ltd is the only eligible domestic producer in the present investigation, which constitutes domestic industry within the meaning of Rule 2(b) of the Rules and the application satisfies the criteria of standing in terms of Rule 5 (3) of the Rules supra.

D. CONFIDENTIALITY

Submissions made by Exporters, Importers, Users and other Interested Parties

23. The following are the submissions made by the exporters, importers, users and other interested parties regarding confidentiality during the course of the investigation and considered relevant by the Authority:
- i. The domestic industry has claimed excessive confidentiality without providing any legitimate reasons.
 - ii. The domestic industry has claimed to have submitted plant wise injury information. The same is however, not made available in public file for inspection to interest parties. The Authority is requested to make available the said information in public file.
 - iii. The Authority is bound to disclose the evidences relied upon for the determination of non-injurious price. The Authority has not disclosed information concerning IOCL, DGCI&S import statistics in excel form, verification reports of domestic industry and percentage of return on capital employed considered for determination of injury analysis.

- iv. Both original / raw and sorted transaction wise import statistics IBIS data, copies of Platts used for PX price, adjustments for export price and other information submitted by domestic industry should be disclosed as per the guidelines of Trade Notice No. 2 of 2004.
- v. The Authority has relied upon DGCI&S imports statistics which is not made available to interested parties in soft version in excel format. Authority should provide the said information in soft copy in excel format.

Submissions made by the Domestic industry

24. The submissions made by the domestic industry with regard to confidentiality during the course of the investigation and considered relevant by the Authority are as follows:

- i. The responding exporters have resorted to excessive confidentiality which has completely prevented petitioners from offering their comments and defending their interests. The Authority should direct these exporters to sufficiently disclose information in public version filed by them or reject the questionnaire responses.
- ii. No interested party has been able to point out any specific instance of information which has been claimed confidential and confidentiality of which is not justified under the rules.
- iii. The petitioner has only claimed those information as confidential, which has been permitted under the rules as per consistent practice of the Authority and which are business sensitive information and otherwise not available in the public domain.
- iv. The petitioner has provided sufficient non confidential summaries to the information provided except for those which are not susceptible to summarization unlike the responding interested parties who have resorted to excessive confidential information.
- v. As regards evidence regarding raw material cost, the petitioners have provided the details in the non-confidential version of the petition. As regards adjustments on export price, the same is third party information and petitioner is not obliged to provide the same.
- vi. The transaction-wise DGCIS imports data has been furnished to the authority for making available in public file.

EXAMINATION BY THE AUTHORITY

25. With regard to confidentiality of information, Rule 7 of Anti-dumping Rules provides as follows: -

Confidential information: (1) Notwithstanding anything contained in sub-rules and (7) of rule 6, sub-rule (2), (3) (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorization of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarization is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalized or summary form, it may disregard such information.

26. Information provided by the 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 confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file. The Authority notes that any information which is available in the public domain cannot be treated as confidential.
27. Regarding the submission of opposite parties that the transaction-wise DGCIS imports data should be made available, the Authority notes that the transaction-wise DGCIS imports data contains business sensitive confidential information and therefore the said data cannot be divulged. However, the domestic industry vide letter dated 16.10.2015 has submitted the non-confidential version of the said data and the same has been placed in public file.

E. MISCELLANEOUS SUBMISSIONS

Submissions made by Exporters, Importers, Users and other Interested Parties

28. The miscellaneous submissions by the producers/exporters/importers/ other interested parties and considered relevant by the Authority are as follows:

- i. The data submitted by the domestic industry in the application was misleading and erroneous. The designated authority initiated the investigation on the basis of faulty application submitted by the petitioners. The designated authority is under the obligation to examine the adequacy and accuracy of the evidences before initiating an investigation.
- ii. No hearing before preliminary finding is a violation of natural justice. The Authority is requested to provide oral hearing after making available all the documents relied upon by the Designated Authority.
- iii. The fact of the present investigation and legal provision does not warrant imposition of ADD on retrospective basis. There are no merits in the claim of the domestic industry for retrospective imposition of anti-dumping duty. The domestic industry has made a blanket claim of history of dumping from all subject countries, including China PR. However, the Authority itself has determined no dumping against China PR in the previous investigation. In terms of Section 9(3) of the CTA and AD Agreement, the present case has no ingredients to be even considered for retrospective levy of anti-dumping duties.
- iv. There is huge demand supply gap in India. The imposition of duty is harmful for downstream consumers.
- v. The domestic PTA producers have increased PTA price after imposition of anti-dumping duty.
- vi. There is huge expansion of PTA production capacity in India despite claimed losses by domestic industry.
- vii. Domestic PTA producers are getting adequate protection due to nil customs duty on imports of PX and 5% customs duty on imports of PTA.
- viii. Cheap imports and decreased exports of manmade fibre and fabrics has reduced the capacity utilisation and squeezed the margin of domestic manmade fibre manufacturers. MMF Fibre industry is garnering foreign currency and generating mass employment especially to women workforce.

- ix. The domestic industry has established that the imports from Malaysia are above de minimus and are at dumped prices. It is presumptive on the part of the interested parties that the investigations shall be terminated

Submissions made by the Domestic industry

29. The miscellaneous submissions made by the domestic industry during the course of the investigation and considered relevant by the Authority are as follows:

- i. The petitioners have provided all the relevant information sufficient for initiation or determination in the present investigation. The Designated Authority has satisfied himself on the accuracy and adequacy of information on the basis of the confidential data of the domestic industry. The decision of the Designated Authority for initiation of the investigation is based on the confidential data.
- ii. Section 9 A (3) is with reference to history of dumping of the product and not dumping from a country. The previous investigation has established that there is a history of dumping of the product and the claim of the domestic industry for retrospective duty is valid and legal. Petitioners request the Designated Authority to consider retrospective imposition of anti-dumping duty.

EXAMINATION BY THE AUTHORITY

30. The contention of the opposing interested parties that initiation of the investigation is bad in law due to misleading data furnished by the applicant and improper evaluation of data by the Authority is without any basis. The present investigation was initiated after satisfying oneself prima facie about the accuracy and adequacy of the data furnished by the petitioners and the existence of dumping, injury and causal link.

31. As regards the contention that no hearing was provided before preliminary finding in violation of principle of natural justice, the Authority notes that there is no provision under the Rules to mandate that hearing is required to be provided before issuance of preliminary finding. In fact, as per the Rules, it is not mandatory on the part of the Authority to provide hearing to the interested parties. Nevertheless, the Authority provided opportunity to all the known interested parties to present their views orally in a public hearing held on 4th February, 2016. The parties, which presented their views orally in the public hearing, were requested to file written submissions of the views expressed orally. The interested parties were also provided opportunity to file rejoinder submissions.

32. As regards the contention that there is huge demand supply gap in India and since imports of PTA is inevitable, imposition of anti-dumping duty is harmful for downstream industries, the Authority notes that there is no legal provision mandating the domestic industry to meet the entire demand in the country. Further, the purpose of anti-dumping duty is not to prevent imports.

33. As regards the request for retrospective imposition of anti-dumping duty, Section 9A(3) of Customs Tariff Act provides as follows:

If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied,

the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

34. Imposition of retrospective duties in the present case is not justified in view of the facts that it is not a case of massive dumping. The petitioner has not established their claim for retrospective imposition of duty on the basis of the requirements as laid down under Section 9 A (3) of the Customs Tariff Act.

35. As regards the submission that domestic PTA producers have increased PTA prices after the imposition of anti-dumping duty, the Authority notes that the basic purpose of anti-dumping measure is to provide level playing field to the domestic industry vis-a-vis the unfair trading practice of dumping. It is obvious that the domestic industry which suffered price injury on account of dumping would try to make up for its losses by increasing its prices after imposition of the anti-dumping duty.

36. As regards the submission that there is a huge expansion of PTA capacity in India, despite the claim of losses by the domestic producers in their application, the Authority notes that the Annexure- II to Anti-dumping Rules explains the guiding principles for determination of injury to the domestic industry. This annexure obligates the Authority to examine the impact of the dumped imports on the various economic parameters of the domestic industry, including the ability of domestic industry to raise capital investments. Thus, if the existing domestic industry is having ability to raise capital investments to expand production capacity, the same may be considered as a part of injury analysis. However, no particular injury parameter be considered as conclusive, for the overall injury analysis.
37. As regards the submission that the domestic PTA producers are getting adequate protection due to nil custom duty on the major raw material i.e. PX and 5 per cent custom duty on imports of PTA, the Authority notes that existence of customs duty on imports of raw materials does not authorise the foreign exporters to export the subject goods at dumped prices.
38. The interested parties have submitted that cheap imports and decreased exports of man-made fibre and fabrics has reduced the capacity utilisation and squeezed the margins of domestic MMF manufacturers. They have further contended that MMF Fibre industry is garnering foreign currency and generating mass employment especially to women workforce. In this regard, the Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers. It is recognized that the imposition of anti-dumping duties might affect the cost of the downstream products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, since as per the principle of lesser duty rule, the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. As far as a cheap import of MMF is concerned, the domestic MMF producers may seek available remedy under the law.

F. MARKET ECONOMY TREATMENT (MET), NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN

Submissions made by Exporters, Importers, Users and other Interested Parties

39. The following submission have been made by the producers/exporters/importers/ other interested parties during the course of this investigation and considered relevant by the Authority:

- i. The Authority must consider Annex II of AD Agreement for determination of normal value and export price for non-responding producers/exporters.
- ii. The normal value for market economy country must be determined as per the price prevailing in respective countries. Construction of normal value on basis of information submitted by MCC PTA is contrary to law and settled practice.
- iii. Export from exporting country or territory is complete when goods are exported from the subject country. Goods are exported once goods are cleared from the Customs territory of the exporting country
- iv. The denial of individual margins on the ground of non-filing of response by unrelated traders who have exported goods of responding producers/exporters is contrary to Customs Tariff Act, 1975, Anti-dumping Rules and WTO Anti-dumping Agreement.
- v. It is not mandatory that all the exporters/traders involved in the transactions shall file the EQ responses. The law does not permit authority to reject export price of a fully cooperating producer/ exporter on the ground that some of its exports transactions are made through an unrelated Traders who have not cooperated with the Authority.
- vi. It is sufficient if the exporter has provided information, as is reasonably available to him and Authority cannot force the exporter to provide any information which is beyond its control.
- vii. As per the exporter's questionnaire format, the exporter should forward the questionnaire format to the producer of subject goods. The EQ format and the AD Rules do not mandate, either the applicant domestic industry to provide information for all the domestic producers nor requires the exporter to provide information of all unrelated exporters. Such a requirement is not supported by any legal provision.
- viii. In terms of Section 9A(b) of Customs Tariff Act, 1975, the investigating authorities are required to construct the Export Price as price to first independent buyer whether located in India or outside India. The practice adopted by Indian Authority is contrary to law and the international practices. The Designated Authority may determine the export price and dumping margins, irrespective of non-filing of EQR by unrelated trader.
- ix. Export price cannot be rejected without fulfilling the prescribed condition under Section 9 A (1) of the Act and Rule 6 (8) of AD Rules. Further, in terms of Section 9A (6A) of CTA, the margins of dumping shall be

determined on the basis of records concerning normal value and export price maintained and information provided, by such exporter or producer.

- x. The normal value for subject countries should be determined in terms of Article 2.2.2 which provides that the profit estimates for construction of normal value must be based on profits normally realised by the producer/exporters in subject country. In cases where the producer/exporter is running into losses, the Designated Authority cannot add profits for constructing normal value.
- xi. The normal value for China PR can be determined as per the Annex 1 to the AD Rules by considering the normal value of any of the responding producer in market economy country. For market economy countries, the normal value must be determined as per Article 2.2.2 of the AD Agreement
- xii. The decline in export price of subject goods during POI is on account of reduced price of crude oil. The price of PTA also follows the price of PX, which is dependent on price of crude oil.
- xiii. The Authority has not disclosed the basis for determination of normal value, ex-factory export price and landed value. Such non-disclosure of essential facts curtails the right of interested parties to make their claim.
- xiv. The Authority has not disclosed the methodology and evidences considered for determination of dumping margins. The same may be made available in public file for making necessary submissions.
- xv. In terms of AD Rules, the normal value and export price must be determined on the basis of records maintained by the responding producer/exporter. In a situation where the sales by the exporter below cost are more than 20 per cent of total domestic sales, the same are required to be excluded while determining the normal value, otherwise not.
- xvi. The Domestic producers have not provided evidence regarding the prices prevailing in a market economy third country or the reasons for impossibility to provide the said information. The Domestic producers instead of adducing any evidence in respect of prices in the domestic market just stated that they are unable to get price in the domestic markets of those countries.
- xvii. The Domestic producers have not provided information about the value of domestic production of the like product accounted for by domestic producers. The Application has provided the Normal Value based on

assumed cost of production. Such an attempt is clearly inconsistent with the requirement of the law.

- xviii. In terms of Section 9A(6A), the margins of dumping must be determined on the basis of records maintained concerning the normal value and export price. Only exception to Section 9A(6A) i.e. application of facts, is available is applicable when the producer/exporter does not provide the information.
- xix. An attempt has been made to compare prices on monthly basis by ignoring the fact of time lag in delivery of the goods by exporters. It is an admitted fact that prices are negotiated based on international price and time lag in delivery will further affect the comparison in prices by such fashion.

Submissions made by the Domestic Industry

40. Submissions made by the domestic industry with regard to MET, Normal value, export price and dumping margin during the course of the investigation and considered relevant by the Authority are as follows:

- i. None of the Chinese producers can satisfy market economy status. None of the WTO Member countries have granted market economy status to Chinese producers on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub paragraph 8(3). China is a non-market economy. No country has granted market economy country status to China after following detailed evaluation procedure and examination.
- ii. China PR is a non-market economy and the same has been held in number of investigations by the Indian authority and other investigating authorities. The normal value for china PR should be determined as per the Annex 1 to the AD Rules.
- iii. The rule has distinguished and differentiated between producer and exporter and entitles both the producer and exporter to claim individual dumping margin. This, however, does not mean that the exporter is entitled for dumping margin even if producer does not respond.
- iv. The rule is with regard to individual dumping margin and therefore implies existence of individual normal value and individual export price. The individual normal value implies association of producer concerned. Thus, any situation where an exporter demands individual dumping margin, the exporter has to ensure questionnaire response from the producer concerned. Further, if such producer has sold the goods through any other

channel, dumping margin cannot be determined unless all sales of the producers have eventual export to India are included in determination of dumping margin.

- v. By resorting to partial questionnaire response, the dumping margin can easily be manipulated. Further, such manipulation of dumping margin can easily be dubbed as inability to get cooperation from the party concerned. There is no way to differentiate and distinguish between the bonafide difficulty and a malafide intention of not filing questionnaire response.
- vi. In a situation where the legal identity of producer and exporter are different, the export price is the price at which good have been exported by the exporter to India. There is an assumption on the part of interested party that the price at which the said exporter bought the material is not lower than the price at which goods were invoiced on to Indian importer. However, there is no basis for such assumptions. The price at which goods were eventually invoiced onto Indian importer can be materially different from the price at which goods were invoiced onto the exporter.
- vii. Absence of necessary and sufficient information preventing determination of dumping margin is different from a situation where information may not be ideal in all respects. In a situation where the price at which goods have been invoiced to an Indian customer itself is not available, the authority is prevented from determining export price. It is a mere presumption that the price at which producer sold to an exporter in the International market is sufficient to determine the price at which such independent trader exported to India. The price at which goods were invoiced to Indian customer constitutes the export price and unless the questionnaire response is filed by such party who is involved in exports of the product to India, the export price is not sufficiently and accurately established. Since this information is germane to entire determination of individual dumping margin, in the absence of this information, it must be concluded that the export price has not been established by the producer and therefore dumping margin cannot be determined.
- viii. The argument of the interested party tantamounts to a contention that only physical flow of material is sufficient. For determination of export price, mere physical flow of product is insufficient. Flow of documents is equally important. In fact, the flow of documents acquires added importance for determination of export price, as this is a price which forms the basis for determination of dumping and injury margin. Thus, the exporter is required to establish the price at which goods were invoiced onto the Indian

customers. Unless this price is established, the claim of export price is incomplete.

- ix. As regard reference to Section 9(A)1(B) petitioner submits that the same is highly misplaced. If export price is to be considered as price at which article is exported to India, such price cannot be established without showing the price at which goods have been invoiced onto Indian customers. In fact, the company is not exporter of product under consideration. The company is only a producer of product under consideration in Taiwan, whose goods have been exported to India by an exporter in Taiwan, Japan, Hong Kong and Korea. It is the exporter in Taiwan, Hong Kong, Japan, Korea and any other country who has invoiced the product to Indian customs who has introduced dumping in the Indian market along with the producer concerned. In other words, both the producer and exporter are relevant to establish dumping. Thus, this clearly falls in a situation where questionnaire responses have been filed with "no export price". This export price can only be established when the exporter files a response and shows the price at which goods have been invoiced.
- x. The Authority must reject the EQ Responses where the producer/exporters have not provided comprehensive sales channel of all exports to India. The behaviour of a trading entity to file EQ response in respect of the export of goods from one source while not filing EQ response in respect of export of goods sourced from other sources cannot be said to be cooperative.
- xi. For the purpose of determination of individual dumping margins there is relevance of "export price" and not "producer's price". The response of trader is utmost important for determination of export price and individual dumping margin.
- xii. The dumping margin determined by the Designated Authority in the preliminary findings is grossly low.
- xiii. The PX costs claimed by the exporters cannot be considered to reasonably represent the costs associated with production and sale of the product under consideration.
- xiv. Efforts were made to get evidence of price of product concerned in the domestic market of subject countries. There is sufficient reason to consider that the producers in these countries could not have been selling the product under consideration at prices above cost of production, or domestic prices are significantly higher. It is thus, evident that the selling

price in the domestic market of the exporting countries may not be in the ordinary course of trade during this period.

- xv. The prices prevailing in the domestic market of the exporting countries are not in the ordinary course of trade for the reason that the said price does not permit recovery of cost of production in the domestic market. Faced with high PX prices, low product prices, and additional capacities being brought on line in China and other countries in the region, PTA producers in the region are running into significant financial losses.
- xvi. Considering the conversion cost from Paraxylene to PTA at the least at US\$140-150 per MT for these foreign producers and further considering the PTA and Paraxylene prices prevailing during the period of investigation, the exporters could not have recovered their cost of production while exporting to India. Thus, if selling prices in the domestic market are comparable or lower than export price to India, it follows that the exporters are suffering financial losses.

Examination of the Authority

41. As regards the contention that denial of individual margins to the respondent exporters on the ground of non-filing of exporters questionnaire response by unrelated exporters/traders who have exported goods of responding producers/exporters is contrary to Customs Tariff Act, 1975, Anti-dumping Rules and WTO Anti-dumping Agreement, the Authority notes that no law encourages defaulters who do not cooperate and thereby deprive the Authority of complete information for enabling him to arrive at a judicious decision. In the present investigation, many exporters/traders, including the related ones, who are involved in substantial export transactions with India during the POI, have not filed exporter's questionnaire response. Surprisingly, some of them, while filing exporters questionnaire response in respect of the exports of goods of one producer, have opted to abstain from filing exporters questionnaire response in respect of the goods sourced from the other related producers in the same country. The detailed position was explained by the Authority in the preliminary finding. At the post PF stage, the concerned traders/exporters could have filed complete information. Even the concerned respondent producers, who have claimed individual margins in the present investigation, could have ensured filing of complete information by their traders/exporters. Despite opportunities provided by the Authority, many parties involved in substantial export transactions with India during the POI, did not file EQ response with complete information. Lack of complete participation of exporters limits the authority's scope to determine dumping margin meaningfully. Therefore, without complete information being

filed by the producers/exporters involved in the transactions, it is neither feasible nor desirable for the Authority to determine individual margins.

42. Determination of normal value and export price is relevant for determination of dumping margin. In case of any producer, who does not fully cooperate and demonstrate complete information before the Authority concerning its sales, through both direct and indirect channels, it is not relevant to determine either normal value nor export price, since in such cases determination of individual margins is irrelevant.
43. As regards the contention that decline in export price of subject goods during POI is on account of reduced price of crude oil, the Authority notes that PTA is not a product of crude oil per se. Therefore, it is not correct to attribute fluctuation of price of PTA, if any, to the fluctuations in crude oil prices. However, due to wide fluctuation of prices of PX, resulting in fluctuation in the prices of PTA, the Authority considers it appropriate to make month wise analysis in the present investigation.
44. As regards the contention that Authority has not disclosed the basis for determination of normal value, ex-factory export price and landed value, Authority notes that the methodology for determination of all these basic elements of the investigation has been adequately explained in the relevant portions of the preliminary finding as well as this final finding.
45. As regards the contention that petitioner has not provided evidence regarding the prices prevailing in a market economy third country, it is already noted in the preliminary finding that the domestic industry, despite their best efforts, could not gather the said information. They further submitted that there is sufficient reason to consider that the producers in these countries could not have been selling the product under consideration at prices above cost of production, or domestic prices are significantly higher resultantly may not be in the ordinary course of trade during this period. However, the respondents failed to provide such information.
46. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the Rules.

47. As per Paragraph 8 of Annexure I of the Anti-dumping Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The responding exporters/ producers of the subject goods from People's Republic of China are required to furnish necessary information/sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:

- a. the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;
- b. the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy, system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;
- c. such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and
- d. the exchange rate conversions are carried out at the market rate.

48. The Authority notes that pursuant to the initiation of the present investigation, the following Chinese producers/exporters have filed only exporters questionnaire response and have not rebutted the non-market economy presumption:

- a. Xianglu Petrochemicals Co. Ltd., China PR.
- b. Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR.
- c. BP Zhuhai Chemical Company Limited, China PR.
- d. Hengli Petrochemical (Dalian) Co., Ltd., China PR.

49. The Authority further notes that the following Chinese producers/exporters filed exporters questionnaire response along with market economy questionnaire responses and sought to rebut the non-market economy presumption:

- a. Hainan Yisheng Petrochemical Co. Ltd.
- b. Zhejiang Yisheng Petrochemical Co. Ltd.
- c. Ningbo Hengyi Trading Co. Ltd.
- d. Yisheng Dahua Petrochemical Co. Ltd.

50. As per the available information, the Authority notes that Hainan Yisheng Petrochemical Co. Ltd, Zhejiang Yisheng Petrochemical Co. Ltd, Ningbo Hengyi Trading Co. Ltd and Yisheng Dahua Petrochemical Co. Ltd are related entities and are involved in the production/sales of the subject goods. While Zhejiang Yisheng Petrochemical Co. Ltd, Hainan Yisheng Petrochemical Co. Ltd and Yisheng Dahua Petrochemical Co. Ltd., are producers/exporters of PTA, Ningbo Hengyi Trading Co. Ltd is a trading company. Zhejiang Yisheng is a subsidiary of Zhejiang Hengyi, which is wholly owned by Hengyi Petrochemical Co., Ltd, which is a state-owned company.
51. As per the auditor's report furnished by the Company, Zhejiang Yisheng Petrochemical Co., Ltd. was set up in 2003 as a Chinese-foreign joint venture funded by Zhejiang Hengyi Group Co., Ltd. China PR, Rongsheng Chemical Fiber Group Co., Ltd. China PR, and Hong Kong Development Investment Co., Ltd. as per the approval of Ningbo Municipal People's Government. It has been stated that the ultimate parent company of the entire group is Zhejiang Hengyi Group Co., Ltd.
52. The Authority notes that the companies have gone through several ownership changes over the years, the details of which have not been furnished by the respondent companies. Further, the ultimate parent company of the entire group is stated to be Zhejiang Hengyi Group Co., Ltd, which has not filed MET response. As per the web based information, the Authority notes that Zhejiang Hengyi Group Co. Ltd was founded on October 18, 1994. Hengyi's core businesses are PTA (Purified Terephthalic Acid) manufacturing, polyester spinning and chemical fiber elasticizing. Further, Zhejiang Rongsheng Holding Group, which is also a shareholder, was established in 1989 and is involved in the subject goods through its subsidiaries, has over 10 subsidiaries, including PTA production bases in Ningbo, Dalian and Hainan. Further, as per the web based information, Yisheng Dahua Petrochemical Co. Ltd, one of the related respondent group companies in the present investigation was set up by Hengyi Group, Rongsheng Group and the State owned enterprise Dahua Group.
53. The Authority has taken cognizance of the information provided by the respondent Chinese companies who have filed MET response with which they sought to rebut the presumptions as mentioned in para 8 of Annexure 1 of the Anti-dumping Rules and Non Market Economy questionnaire sent to them regarding grant of market economy status to their company. However, the responding companies have failed to provide sufficient evidence inter alia concerning state ownership and control and its impact on the cost and prices and

business decisions of the company, transformation of ownership from time to time, evaluation of assets, etc. The Authority further notes that the responding companies have not provided sufficient details in their response in respect of their Holding/group companies and other relevant information to establish their market economy claim. Post PF also, the above stated companies, who claimed market economy, have not furnished adequate proof with documentary support to rebut the non-market presumption of the Authority. Moreover, the above stated Chinese failed to demonstrate with documentary support complete exports information before the authority. In view of the above position, Authority does not grant market economy treatment to the above stated Chinese companies.

G. Determination of Normal Value

G.1. Determination of Normal Value for producers and exporters in China PR

54. The Authority notes that none of the producers/exporters from China PR have been found to be operating under market economy condition for determination of normal value in China in terms of Para-6 of Annexure-1 to the Rules. Under the circumstances, the Authority is not in a position to apply Para 8 of Annexure 1 to the Rules and has to proceed in accordance with Para 7 of Annexure - I to the Rules.

55. Paragraph-7 of *the* Annexure-1 to the Anti-dumping Rules provides as follows:

“In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin”.

56. According to these Rules, the normal value in China PR can be determined on any of the following basis:

- a) On the basis of the price in a market economy third country, or
- b) The constructed value in a market economy third country, or
- c) The price from such a third country to other countries, including India.
- d) If the normal value cannot be determined on the basis of the alternatives mentioned above, the Designated Authority may determine the normal value on any other reasonable basis including the price

actually paid or payable in India for the like product duly adjusted to include reasonable profit margin.

57. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the domestic industry or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies have made any claim with supportive documents with regard to an appropriate market economy third country at this stage.

58. The Authority, therefore, proceeds to construct the normal value for China PR based on any other reasonable basis, relying upon available facts, in terms of second proviso of Para 7 of Annexure 1 to the Anti-dumping Rules. Due to wide fluctuation of raw material prices, the Authority considers it appropriate to make month wise analysis of cost and price for the purpose of ordinary course of trade analysis. Accordingly, the weighted average ex-works Normal Value of the product under consideration for China PR has been determined based on constructed costs of production, duly adjusted to include selling, general & administrative costs and profits as US\$^{***}/MT.

G.2. Determination of Normal Value for producers and exporters in Iran, Indonesia, Malaysia & Taiwan

59. Under section 9A (1) (c), the normal value in relation to an article means:

(i) The comparable price, in the ordinary course of trade, for the like article, when meant for consumption in the exporting country or territory as determined in accordance with the rules made under sub-section (6), or

(ii) When there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either:

(a) Comparable representative price of the like article when exported from the exporting country or territory or an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) The cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

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

Taiwan

60. The Authority notes that consequent upon issue of the initiation notification, the following producers/exporters from Taiwan have filed exporters questionnaire response:

- a. Oriental Petrochemicals (Taiwan) Co. Ltd (OPTC), Taiwan (Producer).
- b. Formosa Chemicals & Fibre Corporation (FCFC), Taiwan (Producer).
- c. China American Petrochemical Co., Ltd (CAPCO), Taiwan (Producer)
- d. Methyl Company Limited, Taiwan (Sourced from Oriental Petrochemical Taiwan Co Ltd, Taiwan).
- e. Itochu Taiwan Corporation, Taiwan (Sourced from Oriental Petrochemical Taiwan Co Ltd, Taiwan).
- f. Dinowic Pte. Ltd., Singapore (Sourced from Formosa Chemicals & Fibre Corporation, Taiwan).
- g. Mitsui & CO., Ltd, Japan (Sourced from Oriental Petrochemical Taiwan Co Ltd, Taiwan).
- h. SK Networks Co. Ltd., Korea (Sourced from Oriental Petrochemical Taiwan Co Ltd, Taiwan.)

Normal value of co-operating exporters

Normal value of Formosa Chemicals & Fibre Corporation (FCFC), Taiwan

61. From the exporter's questionnaire (EQ) response, the Authority notes that Formosa Chemicals & Fibre Corporation (FCFC), Taiwan is a producer/exporter of subject goods. As per information available in the EQ response, during the POI, in the domestic market of Taiwan, FCFC has sold the subject goods directly to end-users. In the domestic market, during the POI, FCFC has sold *** MT of subject goods for the total invoice value of NTD ***, out of which ***MT worth of NTD *** were sold to its affiliated parties and *** MT of worth of NTD *** were sold to unaffiliated parties.

62. The Authority notes that the domestic sales of FCFC are in sufficient volumes. Month-wise cost of productions of FCFC was determined based on the information available in the EQ response. Accordingly, all domestic sales transactions of FCFC have been considered for determination of normal value. In the present investigation, due to wide fluctuation of raw material prices, the Authority considers it appropriate to make month wise analysis of cost and price for the purpose of ordinary course of trade. For working out normal value for FCFC, 80/20 test has been conducted and for those month in which profit making is above 80%, the average ex-factory price of domestic sale of that particular month has been considered as normal value and in those months where profit making is below 80%, only profit making sales quantity has been considered to reach normal value. There are a few months in which there is no/ negligible profit making sale in domestic market, the normal value for these month has been worked out at Cost+SGA+Profit basis. FCFC has claimed adjustments on account of rebate, inland freight, and credit cost on monthly basis and the same has been allowed. Accordingly, on monthly analysis basis, the weighted average normal value has been worked out for FCFC as US\$ ***/MT.

Normal value of China American Petrochemical Co Ltd, Taiwan

63. Pursuant to the initiation of present investigation, exporter questionnaire response was filed by China American Petrochemical Co Ltd (CAPCO), Taiwan along with its related trading company BP Asia Ltd (BPAL), Hong Kong. Exporter questionnaire response has also been filed by its other related companies namely PT BP Petrochemicals, Indonesia and BP Zhuhai Chemical Company Limited, China PR in the present investigation. Subsequently, the concerned producers/exporters filed revised data.

64. During the POI, CAPCO sold ***MT of the subject goods in the domestic market of Taiwan. In the present investigation, due to wide fluctuation of raw material prices, the Authority considers it appropriate to make month wise analysis of cost and price for the purpose of ordinary course of trade. Out of the total sales in domestic market, only 1.55% of domestic sales are found to be profitable, hence the same has been treated as sales not in ordinary course of trade. Accordingly, only Cost+SGA+Profit of respective month has been considered for determination of normal value. The exporter has claimed adjustment on account of inland transportation which has been allowed. No other expense has been claimed by the exporter on the domestic selling price of the trading Company. Accordingly, the weighted average normal value for CAPCO, Taiwan has been worked out as US\$***/MT.

Normal Value of Oriental Petrochemical (Taiwan) Co Ltd.

65. From the EQ response, the Authority notes that Oriental Petrochemicals (Taiwan) Co. Ltd (OPTC), Taiwan is a producer of subject goods from Taiwan. As stated in the EQ response, during the POI, in the domestic market of Taiwan, OPTC has sold the subject goods through two channels i.e. (a) directly to end-users in the home market which purchase the product concerned for producing downstream products and (b) traders which purchased the product concerned for resale to end-users.
66. As regards exports to India, as stated in the EQ response, during the POI, OPTC sold the subject goods to India entirely through trading entities, the details of which are given in the relevant portions of this final finding. While the product concerned has been shipped by OPTC directly to India, the commercial invoicing has been done through the trading companies. The Authority notes that out of the total claimed exports of *** MT of product concerned by OPTC during POI to India, only *** MT accounting for a mere 33% of the total claimed exports have been brought before the Authority by OPTC and other trading entities involved in the exports by filing EQ responses and the balance exports have gone unrepresented.
67. Determination of normal value and export price is relevant for determination of dumping margin. In case of any producer, who does not fully cooperate and does not demonstrate complete information before the Authority concerning its sales, through both direct and indirect channels, it is not relevant to determine either normal value nor export price, since in such cases determination of individual margins is irrelevant. Thus, in view of the above position, without complete information being filed, it is neither feasible nor desirable to determine normal value for Oriental Petrochemicals (Taiwan) Co. Ltd, Taiwan.

Normal Value for Non Cooperative exporters from Taiwan

68. The Authority notes that no other producer/exporter from Taiwan has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Taiwan, the Authority has determined the weighted average normal value on the basis of best available information as US\$***/MT.

Indonesia

Normal Value of PT BP Petrochemicals, Indonesia (BPPI)

69. Pursuant to the initiation of the present investigation, PT BP Petrochemicals, Indonesia (BPPI) along with its related trading company in Hong Kong namely BP Asia Ltd, Hong Kong (BPAL) filed exporter's questionnaire response. Exporter questionnaire response has also been filed by its other related

companies namely China American Petrochemical Co Ltd (CAPCO), Taiwan and BP Zhuhai Chemical Company Limited, China PR in the present investigation.

70. During the POI, BPPI sold ***MT of the subject goods in domestic market. In the present investigation, due to wide fluctuation of raw material prices, the Authority considers it appropriate to make month wise analysis of cost and price for the purpose of ordinary course of trade. Out of the total sales in domestic market, only ***% of domestic sales are found to be profitable. Accordingly, only profitable domestic sales transactions of BPPI have been considered for determination of normal value. The exporter has claimed adjustments on account of inland transportation which has been allowed. No other expense has been claimed by the exporter on the domestic selling price of the trading Company. Accordingly, the weighted average normal value for the above producers/exporters has been worked out as US\$***/MT.

Normal Value for Non Cooperative exporters from Indonesia

71. The Authority notes that no other exporter/producer from Indonesia has responded in present investigation. For all the non-cooperative exporters/producers in Indonesia, the Authority determined the weighted average normal value, on the basis of best available information, as US\$ ***/MT.

Malaysia

Normal value of Recron Malaysia Sdn Bhd, Malaysia

72. As stated in the exporter's questionnaire response, Recron Malaysia Sdn Bhd, Malaysia is a producer/exporter of product concerned from Malaysia. As stated in the EQ response, Recron Malaysia has sold the product concerned in the domestic market as well as to India and other countries both directly and also through distributors/traders. While examining the EQ response filed by the Company, the Authority noted that many vital information concerning costing and injury and also details of related entities engaged in production and sales of subject goods, etc have not been provided. Deficiency letter was issued to Recron Malaysia Sdn Bhd, Malaysia requesting to furnish the required information. But, in response to the deficiency letter issued by the Authority, Recron Malaysia expressed its inability to furnish the required information within the stipulated time and informed that they would provide further information in due course and after issuance of preliminary findings. They further informed that the Authority may consider preliminary findings on the basis of questionnaire response itself or apply best available information, wherever necessary. However, post PF also Recon Malaysia Sdn Bhd did not furnish any relevant information. Consequently, and in view of the above position, in the absence of

complete information, the Authority does not determine normal value for Recon Malaysia Sdn Bhd, Malaysia.

Normal Value for Non Cooperative exporters from Malaysia

73. The Authority notes that no other producer/exporter from Malaysia has responded in the present investigation. For all the non-cooperative producers/exporters in Malaysia, the Authority has determined the weighted average normal value on the basis of best available information as US\$^{***}/MT.

Determination of Normal Value for producers and exporters in Iran

74. The Authority notes that no producer/exporter from Iran has filed exporter's questionnaire response in the present investigation. Therefore, for all the producers/exporters in Iran, the Authority determined the weighted average normal value, on the basis of best available information, as US\$^{***}/MT.

EXPORT PRICE

Determination of Export Price for Exporters in China PR

75. The Authority notes that the following Chinese producers/ exporters have filed exporters questionnaire response in the present investigation:

- a. BP Zhuhai Chemical Company Limited, China PR.
- b. Zhejiang Yisheng Petrochemical Co. Ltd.
- c. Hainan Yisheng Petrochemical Co. Ltd.
- d. Ningbo Hengyi Trading Co. Ltd.
- e. Yisheng Dahua Petrochemical Co. Ltd.
- f. Xianglu Petrochemicals Co. Ltd., China PR.
- g. Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR.
- h. BP Zhuhai Chemical Company Limited, China PR.
- i. Hengli Petrochemical (Dalian) Co., Ltd., China PR.

BP Zhuhai Chemical Company Limited, China PR (BPZ).

76. Pursuant to initiation of the present investigation, exporter questionnaire response has been filed by BP Zhuhai Chemical Company Limited, China PR along with its other related companies namely China American Petrochemical Co Ltd (CAPCO), Taiwan, PT BP Petrochemicals, Indonesia and BP Asia Ltd, Hong Kong (BPAL). From the EQ response and subsequent revised information filed by BP Zhuhai Chemical Company Limited, China PR, the Authority notes that the Company is a producer of the product concerned. The Authority further notes that BPZ, China PR had exported to India, during the POI, ^{***} MT of the subject goods for the total invoice value of US\$ ^{***}, through its related company BPAL, Hong Kong. As per the information available in the EQ response, the export

sales of BPZ to India were on CFR basis and are on 90 days LC terms. After considering the adjustments claimed by BPZ, China PR and BPAL, Hong Kong on account of inland transportation, Ocean Freight, Port handling charges and commission, the Authority has determined the ex- factory export price for BP Zhuhai Chemical Company Limited, China PR and BP Asia Ltd, Hong Kong as US\$***/MT.

Zhejiang Yisheng Petrochemical Co. Ltd, Hainan Yisheng Petrochemical Co. Ltd, Yisheng Dahua Petrochemical Co. Ltd., Ningbo Hengyi Trading Co. Ltd.

77. From the information available in the exporters questionnaire response, the Authority notes that Zhejiang Yisheng Petrochemical Co. Ltd., China PR, Hainan Yisheng Petrochemical Co. Ltd., China PR, Yisheng Dahua Petrochemical Co. Ltd., China PR and Ningbo Hengyi Trading Co. Ltd., China PR are related entities. While Zhejiang Yisheng Petrochemical Co. Ltd, Hainan Yisheng Petrochemical Co. Ltd., and Yisheng Dahua Petrochemical Co. Ltd., are producers/exporters of the product concerned, Ningbo Hengyi Trading Co. Ltd. is a trading company.

78. From the information available in the EQ response, the Authority notes that during the POI, Zhejiang Yisheng Petrochemical Co. Ltd., exported to India totally ***MT product concerned, out of which ***MT were exported to India directly and the balance ***MT were exported through various exporters/traders. The details of the transactions made through trading entities and the response position of the respective trading entities are as follows:

Sl. No	Name of the Trader	Volume of Export (MT)	Remarks
1	***, Korea	***	EQ response filed
2	***, Korea	***	EQ response filed
3	***, Hong Kong	***	EQ response filed
4	***, Korea	***	EQ response not filed
5	***, Korea	***	EQ response not filed
6	***, Shanghai, China	***	EQ response not filed
7	***, Hong Kong	***	EQ response not filed

79. The Authority notes that out of the total exports of *** MT product concerned to India by Zhejiang Yisheng during the POI, only *** MT has been brought before the Authority in the form of EQ responses filed by Zhejiang Yisheng Petrochemical Co. Ltd., China PR and the cooperative trading entities and the balance *** MT constituting 43% of the total exports by the Company have gone unrepresented.

80. From the information available in the EQ response filed by Hainan Yisheng Petrochemical Co. Ltd., China PR, the Authority notes that the Company has exported *** MT of the product concerned to India during the POI through only one channel i.e. through ***, Korea, which has filed EQ response. As per the EQ response, Hainan Yisheng has not made any direct export to India during the POI.
81. From the information available in the EQ responses filed by Yisheng Dahua Petrochemical Co. Ltd., China PR, the Authority notes that the Company has exported the product concerned to India through two channels i.e. directly as well as through trading entities. As per the information available in the EQ response, during the POI, Yisheng Dahua exported ***MT product concerned to India directly and *** MT through ***, Korea, which has also filed exporter's questionnaire response.
82. From the EQ response filed by Ningbo Hengyi Trading Co. Ltd, China PR the Authority notes that the said Company has not made any export of product concerned to India during the POI.
83. From the information available in the EQ responses filed by the above stated related Chinese producers and some of the involved trading entities, the Authority notes that 43% of the total exports made by the above stated related Chinese producers have gone unrepresented. Interestingly, ***, Korea and ***, Shanghai, related trading companies, have exported to India during the POI substantial volume of product concerned produced by the above stated related Chinese companies. But, while they have filed EQ response in respect of ***MT of product concerned produced by Yishing Dahua and *** MT of product concerned produced by Hainan Yisheng, they preferred not to file EQ response in respect of their substantial exports of *** MT of product concerned sourced from Zhejiang Yisheng. Moreover, in the information available in the partial EQ response filed by ***, Korea, it has claimed to have exported *** MT of product concerned sourcing only from Yishing Dahua. But, Yishing Dahua has declared in its response only export of *** MT through ***, Korea. This also indicates that ***, Korea has exported much larger volume of product concerned to India during the POI, either sourcing from the respondent Chinese companies or other Chinese producers which has not been brought before the Authority.
84. From the above position, the Authority notes that ***, Korea and ***, Shanghai, related trading companies, have exported the product concerned sourced from related Chinese companies. But, the related trading companies have preferred to file EQ response in respect of some transactions, while preferring not to bring

before the Authority remaining transactions involving much larger volume. Such behaviour by the related Chinese companies and the trading companies indicates deliberate attempt to keep sizable volume of exports beyond the scrutiny of the Authority with the obvious intent of gaining undue advantage.

85. Post PF also the defaulted entities did not file the required information and the exporter's questionnaire response. Consequently, and in view of the above position, the Authority does not determine individual export price and does not grant individual margins in respect of Zhejiang Yisheng Petrochemical Co. Ltd., Hainan Yisheng Petrochemical Co. Ltd., Yisheng Dahua Petrochemical Co. Ltd. and Ningbo Hengyi Trading Co. Ltd., China PR and the concerned respondent exporters/trading entities.

Hengli Petrochemical (Dalian) Co., Ltd., China PR

86. In the EQ response, Hengli Petrochemical (Dalian) Co., Ltd., China PR, producer/exporter, claimed that they have produced and exported product concerned to India during the POI only directly. But, from the transaction details available in the response, the Authority notes that they have exported to India during the POI directly and also through Hyosung Corporation, Korea. From the details available in the EQ response, the Authority notes that Hengli has exported to India during the POI a total quantity of ***MT, out of which *** MT were exported through Hyosung Corporation, Korea, a trading company. The Authority notes that in the present investigation, Hyosung Corporation, Korea has filed EQ response in respect of its exports of product concerned sourced from other Chinese producers namely Zhejiang Yisheng Petrochemical Co. Ltd., China PR. The behaviour of a trading entity to file EQ response in respect of the export of goods from one source while not filing EQ response in respect of export of goods sourced from other sources cannot be treated as above board and cannot be without the complicity of the concerned producers. Such behaviour by the concerned producers and exporters indicates deliberate attempt to keep sizable volume of exports beyond the scrutiny of the Authority with the obvious intent of gaining undue advantage. The defaulted exporter/trader did not file the exporter's questionnaire response along with the required information even after the lapse of more than six months from the date of issue of the preliminary finding. However, at the much belated stage and at the penultimate stage of this investigation, an exporter's questionnaire response has been filed by Hyosung Corporation, Korea on 31st May, 2016. The Authority notes that the anti-dumping investigation being a time bound process, the much belated exporter's questionnaire response filed by Hyosung Corporation, Korea cannot be accepted. Consequently, and in view of the above position, the Authority does

not determine individual export price and does not grant individual margins to Hengli Petrochemical (Dalian) Co., Ltd., China PR.

Xianglu Petrochemicals Co. Ltd., China PR and Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR.

87. From the information available in the EQ response, the Authority notes that Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR and Xianglu Petrochemicals Co. Ltd., China PR, are related producers. During the POI, both the companies exported the product concerned to India through distributors.
88. From the information available in the EQ response filed by Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR, the Authority notes that the Company exported *** MT of product concerned to India during the POI through ***, Korea. Although *** has filed EQ response in respect of the export of product concerned sourced from another Chinese producer namely Zhejiang Yisheng Petrochemical Co. Ltd., it preferred not to file EQ response in respect of the export of product concerned sourced from Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR.
89. Similarly, Xianglu Petrochemicals Co. Ltd., China PR has also exported ***MT of product concerned to India during the POI through ***, Korea (** MT), ***, Korea (** MT), and ***, Korea (**MT). The Authority notes that the sum total of exports mentioned against each involved trader is more than the claimed total export. Although ***, Korea and ***, Korea have filed EQ response in respect of their exports of product concerned sourced from Zhejiang Yisheng Petrochemical Co. Ltd., China PR, they preferred not to file EQ response in respect of their export of product concerned sourced from Xianglu Petrochemicals Co. Ltd., China PR. Further, ***, Korea, which has exported the product concerned sourced from both Zhejiang Yisheng Petrochemical Co. Ltd., China PR and Xianglu Petrochemicals Co. Ltd., China PR has not filed EQ response in respect of product concerned sourced from either sources.
90. The behaviour of a trading entity to file EQ response in respect of the export of goods from one source while not filing EQ response in respect of export of goods sourced from other sources cannot be viewed as above board and cannot be without the complicity of the concerned producers. Such behaviour by the concerned producers and exporters indicates deliberate attempt to keep sizable volume of exports beyond the scrutiny of the Authority with the obvious intent of gaining undue advantage.

91. Despite opportunities provided by the Authority, the defaulted exporters/traders involved in the substantial export transactions of subject goods to India during the POI, did not file the EQ response along with required information. Post PF also the position remains the same and the defaulted traders/exporters did not file the required information and the exporter's questionnaire response. Consequently, and in view of the above position, the Authority does not determine individual export price and does not grant individual margins to Xianglu Petrochemicals (Zhangzhou) Co. Ltd. China PR and Xianglu Petrochemicals Co. Ltd., China PR.

Non Cooperative exporters from China PR

92. The Authority notes that no other producer/exporter from China PR has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in China PR, the Authority has determined the export price as US\$^{***}/MT on the basis of best available information.

Determination of Export Price for Exporters in Taiwan

Formosa Chemicals & Fibre Corporation (FCFC), Taiwan

93. As per the information available in the exporter's questionnaire response, the Authority notes that Formosa Chemicals & Fibre Corporation (FCFC), Taiwan is a producer/exporter of subject goods. During the POI, as stated in the EQ response, FCFC has two channels of exports i.e. direct exports and exports made through trading entities.

94. From the information furnished in the EQ response, the Authority notes that during the POI, FCFC exported directly ^{***} MT of subject goods for Invoice value NTD ^{***}. FCFC has also exported product concerned through many other exporters by commercial invoicing, but shipped the goods directly, as per the details given below:

Sl. No	Name of the Trader	Volume of Export (MT)	Invoice Value	Remarks
1	^{***} , Taiwan	^{***}	NTD ^{***}	EQ response not filed
2	^{***} , Japan	^{***}	NTD ^{***}	Post PF, EQ response filed
3	^{***} Taiwan	^{***}	NTD ^{***}	EQ response filed
4	^{***} , Taiwan	^{***}	NTD ^{***}	EQ response filed

95. The Authority notes that pursuant to initiation of the investigation, EQ response has been filed by ^{***}, Taiwan and ^{***}. Post PF, ^{***}, Japan also filed exporter's questionnaire response, whereas ^{***}, Taiwan continued to be a defaulter, hence the quantity exported by ^{***}, Taiwan, has not been considered by the Authority.

96. Thus, out of the total export of ***MT of subject goods, questionnaire responses have been filed by FCFC and other involved trading entities for ***MT, which constitutes 84% of the total exports to India. The export sales of FCFC directly and through its unrelated trading companies are on FOB/CFR basis and are on LC at sight terms. For direct sales commission has been paid and there is no difference in packing condition of domestic and export sales. FCFC has claimed adjustment on account of commission, freight/ clearing fee, international insurance, inland freight, clearance and handling loading and ancillary expenses, trade promotion fee, harbour service fee, packing expenses and bank charges/discount interest/negotiation, on monthly basis and the same have been allowed by the Authority for determination of net export price. Accordingly, the weighted average ex-factory export price has been worked as US\$ ***/MT.

China American Petrochemical Co Ltd, Taiwan

97. Pursuant to initiation of present investigation, exporter questionnaire response was filed by China American Petrochemical Co Ltd (CAPCO), Taiwan along with its related trading company BP Asia Ltd (BPAL), Hong Kong. Exporter questionnaire response has also been filed by its other related companies namely PT BP Petrochemicals, Indonesia and BP Zhuhai Chemical Company Limited, China PR in the present investigation. As stated in the exporter's questionnaire response, during the POI, CAPCO had no direct exports to India and exported the entire volume of product concerned through its related trading company i.e. BP Asia Ltd (BPAL), Hong Kong. As claimed by CAPCO, during the POI it exported ***MT of subject goods for the total invoice value of US\$ ***to India through BPAL, Hong Kong.

98. The Authority notes that the export sales of China American Petrochemical Co Ltd (CAPCO), Taiwan via BP Asia Ltd (BPAL), Hong Kong are in CFR basis with 90 days LC terms. The claimed adjustments considered by the Authority are on account of inland freight, ocean freight, port handling charges and commission, wherever applicable, on monthly basis, and accordingly the ex-factory weighted average net export price has been determined as US\$***/MT.

Oriental Petrochemical (Taiwan) Co Ltd, Taiwan.

99. From the EQ response, the Authority notes that Oriental Petrochemicals (Taiwan) Co. Ltd (OPTC) is a producer of subject goods from Taiwan. As regards exports to India, during the POI, as stated in the EQ response, OPTC has only one channel of export i.e. through traders. While the product concerned has been

shipped by OPTC directly to India, the commercial invoicing has been done through the trading entities as mentioned below:

Sl. No	Name of the Trader	Volume of Export (MT)	Remarks
1	***, Taiwan	***	Exported *** MT directly, *** MT through *** and *** MT through ***.
2	***, Japan	***	
3	***, Korea	***	
4	*** Taiwan	***	*** MT directly and *** MT through ***, Hong Kong
5	***, Taiwan	***	
6	***, Taiwan	***	

100. First of all, the Authority notes that while EQ response has been filed by ***, Taiwan, ***, Japan, ***, Korea and ***, Taiwan, the other trading companies involved in the channel of exports of product concerned made by OPTC to India during the POI have not filed EQ response. From the information furnished in the EQ responses, the Authority notes that out of *** MT of exports made through ***, Taiwan, ***MT was further exported through ***and *** MT was exported through ***. While, ***, Taiwan has filed EQ response, the other sub trading entities involved in the transactions namely ***and ***have not filed EQ response in the present investigation and therefore such unrepresented transactions cannot be taken in to consideration. Thus, the total exports of product concerned made by OPTC through ***, Taiwan, for which EQ response has been filed, is *** MT.

101. Further, from the information available in the EQ responses, the Authority notes that during POI, OPTC exported ***MT of product concerned through ***, Taiwan, out of which ***MT was exported by ***directly and *** MT through another trading entity namely ***, Hong Kong, which has not filed EQ response in the present investigation. Further, while ***, Japan is involved in the commercial transactions, ***, Taiwan has filed the EQ response, which cannot be accepted. Therefore, such unrepresented transactions also cannot be taken in to consideration.

102. From the information available in the EQ responses filed and in view of the above position, the Authority notes that out of the total claimed exports of ***MT of product concerned by OPTC during POI to India, only *** MT accounting for a mere 33% of the total claimed exports have been brought before the Authority by OPTC and other trading entities involved in the exports and the balance exports have gone unrepresented. In view of the above position, the exports and export price claimed by OPTC cannot be considered as representative of OPTC.

103. The EQ responses filed by OPTC and the involved exporters were examined and deficiency letters issued. Despite the opportunity provided by the Authority, the concerned exporters did not file the EQ response and the complete information concerning exports of product concerned by OPTC to India during the POI was not brought before the Authority. Post PF also the defaulted exporters/traders did not file the required exporter's questionnaire response and the complete information concerning exports of product concerned of OPTC to India during the POI.

104. In view of the above position, in the absence of the complete information in respect of substantial volume of exports of subject goods made by OPTC to India during the POI, the Authority does not determine export price for and grant individual margins to OPTC.

Non Cooperative exporters from Taiwan

105. The Authority notes that no other producer/exporter from Taiwan has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Taiwan, the Authority has determined the net export price as US\$^{***}/MT on the basis of best available information.

Export Price of Indonesia

M/s PT BP Petrochemicals Indonesia

106. Pursuant to initiation of the present investigation, PT BP Petrochemicals, Indonesia along with its related trading company BP Asia Ltd, Hong Kong filed the exporter questionnaire response. Exporter questionnaire response has also been filed by its other related companies namely China American Petrochemical Co Ltd (CAPCO), Taiwan and BP Zhuhai Chemical Company Limited, China PR in the present investigation.

107. As per the exporter questionnaire response filed by PT BP Petrochemicals, Indonesia, during the POI, ^{***}MT of the subject goods for the total invoice value of US\$ ^{***}were exported through BP Asia Ltd, Hong Kong. From the information furnished, the Authority notes that the export sales were on CFR basis and are on 90 days LC terms. The claimed adjustments considered by the Authority are on account of inland transportation, Ocean Freight, Port handling charges, commission, wherever applicable, on monthly basis, and accordingly the ex-factory weighted average net export price has been determined as US\$^{***}/MT.

Non-cooperative Exporters from Indonesia

108. The Authority notes that no other producer/exporter from Indonesia has responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Indonesia, the Authority has determined the weighted average net export price as US\$^{***}/MT on the basis of best available information.

Export Price of Malaysia

Recron Malaysia SdnBhd, Malaysia

109. As stated in the exporter's questionnaire response, Recron Malaysia SdnBhd, Malaysia is a producer/exporter of product concerned from Malaysia. As stated in the EQ response, Recron Malaysia has sold the product concerned to India both directly and also through distributors/traders. While examining the EQ response filed by the Company, the Authority noted that many vital information concerning costing and injury and also details of related entities engaged in production and sales of subject goods, etc have not been provided. Deficiency letter was issued to Recron Malaysia SdnBhd, Malaysia requesting to furnish the required information. But, in response to the deficiency letter issued by the Authority, Recron Malaysia expressed its inability to furnish the required information within the stipulated time and informed that they would provide further information in due course and after issuance of preliminary findings. They further informed that the Authority may consider preliminary findings on the basis of questionnaire response itself or apply best available information, wherever necessary. However, post PF, despite opportunities provided by the Authority, Recron Malaysia has not furnished complete information. Consequently, and in view of the above position, in the absence of complete information, the Authority does not determine net export price for Recon Malaysia SdnBhd, Malaysia.

Export price of Non Cooperative exporters from Malaysia

110. The Authority notes that no other producer/exporter from Malaysia have responded to the Authority in the present investigation. For all the non-cooperative producers/exporters in Malaysia, the Authority has determined the weighted average net export price as US\$^{***}/MT on the basis of best available information.

Export price of Iran

111. The Authority notes that no producer/exporter from Iran has filed exporter's questionnaire response in the present investigation. Therefore, for all the producers/exporters in Iran, the Authority determines the weighted average net export price as US\$^{***}per MT on the basis of best available information.

DUMPING MARGIN

112. Considering the Normal Values and the Export Prices determined above, the dumping margins are calculated as below:

Sl. No	Channel of Export	Name of Producer	Exporter	Normal Value US/MT	Net Export Price US\$/MT	Dumping Margin US\$/MT	Dumping Margin %	Dumping Margin Range%
China PR								
1	China PR-India	BP Zhuhai Chemical Company Limited, China PR	BP Asia Ltd, Hong Kong	***	***	***	***	20-30
2	Any	All Other Producers	All Other Exporters	***	***	***	***	20- 30
Indonesia								
4	Indonesia -India	PT BP Petrochemicals, Indonesia	BP Asia Ltd, Hong Kong	***	***	***	***	10-20
5	Any	All Other Producers	All Other Exporters	***	***	***	***	25-35
Taiwan								
6	Taiwan-India	China American Petrochemical Co Ltd, Taiwan	BP Asia Ltd, Hong Kong	***	***	***	***	20-30
7	Taiwan-India	Formosa Chemicals & Fibre Corporation, Taiwan	Formosa Chemicals & Fibre Corporation, Taiwan	***	***	***	***	5-15
8	Taiwan-India	Formosa Chemicals & Fibre Corporation, Taiwan	Dinowik Pte Ltd, Singapore, Methyl Co., Ltd , Taiwan, Itochu Corporation Japan	***	***	***	***	5-15
9	Any	All Other Producers	All Other Exporters	***	***	***	***	10-20
Iran								
10	Any	All Other Producers	All Other Exporters	***	***	***	***	5-15
Malaysia								
11	Any	All Other Producers	All Other Exporters	***	***	***	***	15-25

H. INJURY AND CAUSAL LINK

Submissions made by Exporters, Importers, Users and other Interested Parties

113. The following submission have been made by the producers/exporters/importers/ other interested parties during the course of this investigation and considered relevant by the Authority:

- i. RIL and IOCL are operating at more than 100% capacity, whereas MCPL is operating at a capacity of 76% and incurring losses due to its inherent faulty technology. Further, MCPL has its own competitive disadvantages ranging from technology implementation issues to geographical disadvantages.
- ii. The sole cause of injury to MCPL is its faulty technology of production due to which it is operating at very low rate of capacity utilization and is not viable. Injury due to such cause cannot be attributed to any other cause including the alleged dumped imports. The Authority must seek petition filed by MCCPTA before BIFR for injury analysis.
- iii. DGAD has not clarified whether data of Indian Oil Corp. Ltd. (IOCL) has been considered or not.
- iv. Any injury that MCPL is suffering may be due to a shortage of PX, the primary raw material, leading to price rise of PX; however, the same price rise was not matched by PTA, which resulted in lesser margins for the Applicant Domestic Producers.
- v. The Authority needs to examine inter se competition among domestic producers who are earning profits, while MCC PTA is running into losses. The reason of losses to MCC PTA is on account of inter se competition between RIL and IOCL and faulty production technology of MCC PTA.
- vi. The imports under advance license may be excluded for a fair & just analysis of the impact of the imports on the domestic industry and conclusions in the current investigation.
- vii. The performance of domestic industry on account of the volume parameters such as production, capacity utilisation, sales and market share has improved. The performance of domestic industry on account of profitability, cash flows and ROCE is on account of factors other than imports from subject country.
- viii. There is no causal link between the imports from subject countries and the injury to the domestic industry. There are significantly higher imports from other countries attracting anti-dumping duty resulting in injury to

domestic industry. Import price of the subject country is much more than the import price of other countries and countries attracting Anti-dumping Duty. Any injury suffered by domestic industry is self-inflicted.

- ix. There is no price or volume injury to the domestic industry. The reduction in prices is in line with reduction in prices of raw material and international crude prices.
- x. The Price undercutting is estimated to be insignificant and there is no price suppression effect in the present investigation. There is no price injury to domestic industry. The MCC PTA plants overhead cost is exceptionally high due to high remuneration to high level managerial from Japan.
- xi. The Authority should examine actual and potential decline in various economic parameters for domestic producers as a whole, rather than restricting injury examination to the domestic industry alone.
- xii. It is well settled by the Designated Authority that difference in credit period and freight charges are not construed as part of NIP. It appears that the domestic industry do not agree with the legal provisions concerning determination of landed value and determination of injury margins.
- xiii. The respondent agrees that the PTA plant need to be operated at high rates to get viable. It is also noted that the 2ndPTA plant of MCC PTA is not functioning at high operating rates and the same is cause of injury. The PTA plants of other domestic producers are also operating at high rates and are running into profits. The Authority must consider the performance of IOCL to examine the reasons of losses to MCC PTA.
- xiv. The domestic industry has claimed excessive capacity as a reason for imposition of ADD. It is submitted that applicants have claimed material injury and threat of material injury both, which cannot exist concurrently. The domestic producer has also not claimed existence of capacities in any country except China PR. Moreover, merely existence of production capacity in itself is insufficient to conclude a finding on dumping from subject country.
- xv. The submissions of domestic industry concerning surplus production capacity are not relevant for the purpose of present investigation. The AD investigation is conducted by examining the existence of dumping, injury and causal link. The domestic industry has not substantiated their claim of existence of surplus production capacity.

- xvi. The production and sales volume of the domestic producers increased significantly and could not be increased further due to their production constrains. Therefore, the volume of the applicant domestic producers is not affected by the imports in any manner.
- xvii. The addition of production capacities and domestic industry sales itself establishes that the industry in India is perceiving very bright prospects for PTA market. No rational business house will contemplate installing facilities for commercial production if it is actually suffering material injury or having any threat of material injury.
- xviii. Import from Iran and Indonesia is below 4% as per the summary submitted by the applicant domestic producers. If the raw data is analysed, the import volume from both countries would be below 3%, i.e. de minimis, requiring immediate termination of the investigation.
- xix. The DA has not examined the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product before proceeding to assess cumulative effects on Domestic Industry.

Submissions made by domestic industry

114. The following submissions with regard to injury and causal link have been made by the domestic industry and considered relevant by the Authority:

- i. Injury margin determined by the Authority is low. The Authority has not considered difference in credit period between domestic industry and foreign suppliers and freight cost for determination of injury margin.
- ii. PTA plants, being petrochemical plant, are required to run at high operating rates. If the plants are not operated at high rate, they are not viable. The impact of dumping would not be necessarily visible in terms of volumes but would be found in respect of adverse price effect.
- iii. There has been a significant increase in dumped imports, both in absolute terms and relative to production and consumption in India. Imports are undercutting the domestic prices. Resultantly, the domestic industry is unable to increase its prices in response and to the extent of cost increases.
- iv. Imports are significantly suppressing and depressing the domestic prices, as the domestic industry is forced to align its prices with the import prices. As a result of dumped imports, the domestic industry has been forced to sell the product at loss-making prices.

- v. The domestic industry has not claimed volume injury. Moreover, existence of volume injury is not a pre-requisite for holding that the domestic industry has suffered injury. Being volume and price injury, even if one of the two exists, the authority shall record a finding of injury.
- vi. The designated authority may cumulatively assess the effect of such imports, in case imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations as per the conditions prescribed under Annexure II of the Anti-Dumping Rules.
- vii. Performance of the domestic industry improved in terms of production and capacity utilization. Despite improvement in production and capacity utilization; the domestic industry is faced with losses, cash losses and negative return on investment. Thus, positive improvements in production and capacity utilization did not help the domestic industry in improving its financial performance. Deterioration in price parameters far outweighs the improvements in production and capacity utilization. Inventories level of the domestic industry has also increased
- viii. It has been contended by the interested parties in the recently concluded investigations concerning Thailand and Korea that the decline in profitability, cash flow and return on investment for the domestic industry was on account of inability of MCPI to produce the product at optimum levels in the new plant. The petitioners have therefore determined profits, cash flow and return on investment separately for the two plants of MCPI.
- ix. Dumping of subject goods from subject countries is the cause of injury to the domestic industry.
- x. Imports from subject country and existence of surplus capacity are also posing threat of material injury to the domestic industry.
- xi. The domestic industry has not claimed volume injury. The domestic industry has claimed adverse price effect of dumping on the domestic industry.
- xii. Profits, cash flow and return on investment for the new plant of the MCPI will show deterioration even if the new plant is normated (had the plant produced at the level at which the old plant has produced).
- xiii. It is presumptive that RIL and IOCL are not suffering injury. In fact, RIL's information is on record of authority and the same clearly establishes that the company has suffered injury. As regards plant operating rates for RIL or IOCL, the petitioners have not claimed volume injury. The request for ADD is not based on the grounds that MCPI is not able to produce due to

dumping in the Country. The petitioners have claimed adverse price effects of imports.

- xiv. The DA is required to determine injury to the domestic industry considering the data relating to domestic industry defined under the law. There is no evidence on record with regard to IOCL and therefore DA cannot consider the same. The domestic industry is pricing its product by considering the import prices and not prices offered by IOCL.
- xv. Given the demand supply situation during POI, there was no necessity to resort to *inter se* competitions selling price of domestic industry is lower than the landed price of imports.
- xvi. The domestic industry has already established that even if the performance of the 2nd plant is normated, the domestic industry is still suffering injury. Further it is submitted that dumping need not be the only factor of injury. The Designated Authority has already determined NIP based on Annexure-III.
- xvii. BIFR report deals with sickness of the company and not with deterioration of the company. The present case concerns deterioration in performance and not sickness of the company. Deterioration in performance and sickness of the company are two different parameters
- xviii. At one place association has contended that MCPI could not produce due to technical problem, at other place, the association has contended that MCPI is suffering due to shortage of PX. The association has resorted to all sorts of misleading or contradictory statements. MCPI is not suffering due to shortage of PX. It is not established how non-availability of raw material is a cause of injury to the domestic industry.
- xix. The authority and investigating authorities globally, has been consistently examining actual performance of the domestic industry over the injury period. It is only in a situation where actual performance over the injury period does not show injury to the domestic industry that the authority shall examine potential situation with regard to various economic parameters
- xx. Present capacities in the Country are sufficient to meet the present and potential demand for the product in the Country. Despite good capacity utilization, RIL performance has also deteriorated in respect of parameters such as profits, return on investment and cash flows.
- xxi. When the price of the subject country has declined its volume has increased and when the price has increased its volume has declined. The change in the share of imports between present subject countries and

countries attracting ADD itself establishes that the consumers shift to the low price product, even if it dumped.

- xxii. Principles of fair comparison also demand that the domestic industry price be compared with the foreign producers' price at the same level. On this account as well, it is important that the domestic industry price and imported product price are considered with the same credit period. Further the selling price of the domestic industry should be compared with the landed price of imports after including the freight cost involved in case of domestic industry.
- xxiii. The petitioner does not dispute adjustments for time lag. The petitioner requests the Authority to undertake adjustments on the basis of time lag and determine price undercutting by comparing the invoice price of the imports for a month to the selling price of the domestic industry for the same month
- xxiv. Cost per MT on account of salary & wages is a meagre as against a loss during the POI. In any case, this can be a ground for difference in absolute performance of different companies. This cannot be a ground for deterioration in performance of the domestic industry over the years. With similar organization structure, the profitability of the domestic industry has deteriorated
- xxv. The petitioners have neither claimed injury on account of wages and salaries, nor do the rules specify that injury to the domestic industry should be visible in respect of all parameters.
- xxvi. MCPL was not suffering losses during the base year of previous investigation. The dumping of the product has led to deterioration of performance of the company. There is significant dumping of the product under consideration ever since this plant has commenced commercial production. The profitability of the PTA has declined globally with the intensifying dumping with decline in delta between PX and PTA.
- xxvii. The present investigation is against imports of PTA. And price of Paraxylene, being the raw material of PTA and the product concerned alone are the relevant and determining factors. The market prices of crude oil and naphtha are irrelevant to the present investigation. Only the fact of dumping is relevant.

Examination of the Authority

- 115. The submissions made by the domestic industry and other interested parties during the course of investigations with regard to injury and causal link and considered relevant by the Authority are examined and addressed as below:

- i. As regards the submission that MCPI suffered technical problems in their plant which is the real cause of injury, the Authority notes that it is a fact that MCPI suffered technical problems in their plant, but that cannot be interpreted as the only cause of injury. Moreover, MCPI has claimed adverse effects of imports on the parameters such as profits, cash flows, return on investment, etc. Further, while determining NIP, the impact of such factors has been taken into account.
- ii. As regards the submission that MCPI is suffering injury due to a shortage of PX, the primary raw material, leading to price rise of PX, the Authority notes that claimed injury to the domestic industry is not on account of volume effect. Therefore, shortage of major raw materials impacting production of subject goods by the domestic industry is not relevant.
- iii. As regards the submission that the reduction in prices of PTA is in line with reduction in prices of raw material and international crude prices, the Authority notes that PX and not Naphtha is a major raw material for the subject goods.
- iv. As regards the contention that M/s MCC PTA India Corp. Pvt Ltd has established the Plant at a disadvantageous place in comparison to other domestic producers and due to this reason they failed to compete with other domestic producers, the Authority notes that location of a plant and its associated advantages/disadvantages are not relevant under the anti-dumping law for injury analysis. The injury on account of dumping of subject goods from the subject countries has been established in the present final finding.
- v. As regards the contention that due to inter-se competition among the domestic producers, MCPI is suffering injury, the Authority notes that the submission is unsubstantiated. During the course of the investigation, nothing relevant was brought before the authority to establish that injury to the domestic industry is actually on account of inter-se competition among the domestic producers and not due to dumping.
- vi. As regards the submission that MCPL had reported it as sick company to the Board for Industrial and Financial Reconstruction, the Authority notes that BIFR report deals with sickness of the company and not with deterioration in the performance of the company on account of dumping.
- vii. The opposing parties have contended that the domestic industry has not established potential decline in various factors. In this regard, it is noted that only in a situation where actual performance over the injury period

does not show injury to the domestic industry, the authority is required to examine potential situation in respect of various economic parameters.

- viii. As regards the submission that RIL and IOCL are operating at more than 100% production capacity and no further supply is expected from them. MCPL, which is using faulty production technology, also cannot increase its production. The intent of anti-dumping duty is not to prevent imports. The user sector can always continue to import the subject goods at fair market price beyond the capacity of domestic industry. Designated Authority is required to consider domestic industry and not other domestic producers for assessment of injury. Further, the domestic industry has claimed adverse effects of imports on the parameters such as profits, cash flows, return on investment, etc.
- ix. As regards the submission that applicants claimed price undercutting based on the prices of the MCPL only, the Authority notes that the applicant domestic producer in the present investigation is MCPL who constitutes domestic industry under the Anti-dumping Rules. Therefore, in terms of the provisions laid down under the Anti-dumping Rules, the Authority is required to investigate and determine injury in respect of the domestic industry only.
- x. As regards the submission concerning non-consideration of IOCL data in the injury analysis, the Authority notes that on 1st June, 2016 IOCL has provided some data concerning production, sales and profitability of PUC during the POI. As claimed by IOCL, they have incurred substantial losses on the sales of PUC during the POI. Thus, the data submitted by IOCL indicates that the dumping of subject goods from the subject countries have injurious effect.
- xi. As regards the submission that the imports under advance license may be excluded for a fair & just analysis of the impact of the imports on the domestic industry and conclusions in the current investigation, the Authority notes that the imports made under duty exemption scheme cannot be considered to have not affected the price in the domestic market. An Advance license/authorisation holder has a choice either to import the inputs on a duty free basis or procure the same from indigenous sources by using the mechanism of Advance Release Order. The purpose of injury analysis is to examine and capture the effect of dumped imports on the domestic industry. Therefore, it would not be reasonable to exclude all duty free imports for the purpose of injury analysis.

- xii. As regards the submission that there is no causal link between the imports from subject countries and the injury to the domestic industry and injury suffered by domestic industry is self-inflicted, the Authority notes that the data analysed in the present final finding is self-explanatory and adequately shows that injury to the domestic industry is largely on account of imports of the subject goods from the subject countries.
- xiii. As regards the submission that Import from Iran and Indonesia is below 3%, i.e. de minimus, requiring immediate termination of the investigation. The Authority notes that it is not factually correct. Import from Iran and Indonesia is more than de minimus level. Transaction wise non confidential imports data has been furnished by the domestic industry and made available in the public file.
- xiv. As regards the contention of the opposite interested parties that the adjustments relating to credit cost and freight cost for the computation of NIP, as requested by the domestic industry, cannot be allowed, the Authority notes that the detailed guideline for computation of NIP is laid down under Annexure III of the Anti-dumping Rules and the same has been adopted while determining NIP in the present investigation.

Cumulative Assessment

116. Article 3.3 of WTO agreement and Annexure II para (iii) of the Anti-dumping Rules provides that in case where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigations, the Authority will cumulatively assess the effect of such imports, in case it determines that:
- a. *the margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent (or more) of the import of like article or where the export of individual countries is less than three percent, the imports collectively account for more than seven percent of the import of like article and*
 - b. *Cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.*
117. The domestic industry, in its submissions, has argued that exporters from more than one country are dumping the subject goods in the Indian market and margins of dumping from each of the subject countries are more than the limits prescribed above. Quantum of imports from each of the above countries is more than de-minimus limits. Therefore, cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly

compete with the like goods offered by the domestic industry in the Indian market. The other interested parties have argued that the Authority has not examined the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product before proceeding to assess cumulative effects on Domestic Industry.

118. The Authority notes that this investigation has been initiated against alleged dumping of the subject goods from China PR, Iran, Indonesia, Malaysia and Taiwan. Determination of the margins of dumping in the present final finding indicates that the margins of dumping for the subject goods from each of the subject countries mentioned herein above are more than de minimus. Further, the volume of imports from each of the subject countries is also more than the limits prescribed. CIF price range and the landed values at which the goods are being imported from the subject countries indicate a clear inter se competition between the imports from these sources in the Indian market. The imports from the subject countries are directly competing with the like goods offered by the domestic industry in the Indian market. Domestic producer and exporters from the subject countries are selling the like product to the same category of customers and both are competing in the same market. Both are being used by the consumers interchangeably. In view of the above position, the Authority holds that cumulative assessment of the effects of imports is appropriate in this case and accordingly, cumulative assessment of the effects of dumped imports from all dumped sources has been carried out in the present investigation to examine the injury and causal links.
119. Rule 11 of Antidumping Rules read with Annexure II provides that an injury determination shall involve examination of factors that may indicate injury to the domestic industry, “... *taking into account all relevant facts, including the volume of dumped imports, their effect on prices in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles...*” In considering the effect of the dumped imports on prices, it is considered necessary to examine whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the examination of the impact of the dumped imports on the domestic industry in India, indices having a bearing on the state of the industry such as production, capacity utilization, sales volume, stock, profitability, net sales realization, the magnitude and margin of dumping,

etc. have been considered in accordance with Annexure II of the Anti-Dumping Rules.

Volume Effect of the Dumped imports on the Domestic Industry

i) **Demand and market share**

120. Authority has defined, for the purpose of the present investigation, demand or apparent consumption of the product in India as the sum of domestic sales of the Indian Producers and imports from all sources. The demand so assessed is given in the table below. The Authority notes that the demand of the product under consideration has increased over the period.

Particulars	Units	2011-12	2012-13	2013-14	POI
Demand	MT	38,84,428	41,04,498	46,29,760	47,05,225
Trend	Index	100	106	119	121
Imports from Subject Countries	MT	47,816	29,517	1,30,187	3,86,361
Trend	Index	100	62	272	808
Import From Other Countries attracting duty	MT	5,11,137	5,86,986	8,18,335	6,57,644
Trend	Index	100	115	160	129
Import From Other Countries	MT	35,960	31,455	26,912	1,082
Trend	Index	100	87	75	3
Sale of Domestic Industry	MT	6,78,787	8,32,250	10,45,520	10,36,246
Trend	Index	100	123	154	153
Sale of Other producers	MT	26,10,727	26,24,290	26,08,805	26,23,892
Trend	Index	100	101	100	101

ii) **Market Share in Demand**

121. Considering imports from various sources and sales of the domestic industry, market share of subject imports in demand in India was examined. Whereas share of dumped imports from subject countries increased substantially, the share of domestic industry, although increased during the POI as compared to the base year, it is much less as compared to the increase in the share of dumped imports and increase in demand during the same period.

Particulars	Units	2011-12	2012-13	2013-14	POI
Import from Subject Countries	%	1.23	0.72	2.81	8.21
Import from Other Countries attracting	%	13.16	14.30	17.68	13.98

duty					
Import from Other Countries	%	0.93	0.77	0.58	0.02
Sale of Domestic Industry	%	17.47	20.28	22.58	22.02
Sale of Other producers	%	67.21	63.94	56.35	55.77

iii) **Import volume and market share**

122. The volume of imports of the subject goods from the subject countries is as under. It is observed from the above table that imports from subject countries increased significantly during the POI as compared to the base year.

Particulars	Unit	2011-12	2012-13	2013-14	POI
Volume					
Subject Countries	MT	47,816	29,517	1,30,187	3,86,361
Other countries attracting duty	MT	5,11,137	5,86,986	8,18,335	6,57,644
Other countries		35,960	31,455	26,912	1,082
Total imports	MT	5,94,913	6,47,958	9,75,434	10,45,087
Market Share in imports					
Subject Countries	%	8.04	4.56	13.35	36.97
Other countries attracting duty	%	85.92	90.59	83.89	62.93
Other countries	%	6.04	4.85	2.76	0.10

iv) **Share of imports in relation to production**

123. Authority notes that the imports from subject countries have increased in relation to the production in India, as is evident from the following table:

Particulars	Unit	2011-12	2012-13	2013-14	POI
Imports from Subject Countries	MT	47,816	29,517	1,30,187	3,86,361
Production of domestic industry	MT	6,80,710	8,42,597	10,34,602	10,47,777
Imports in relation to production of domestic industry.	%	7	4	13	37

v) **Capacity & capacity utilization**

124. Capacity and capacity utilization of the domestic industry over the injury period is given in the following table. It is observed that capacity utilization of the domestic industry increased during POI as compared to the base year.

Particulars	Unit	2011-12	2012-13	2013-14	POI
Capacity MT	MT	13,70,000	13,70,000	13,70,000	13,70,000

Production	MT	6,80,710	8,42,597	10,34,602	10,47,777
Capacity utilization	%	50	62	76	76

vi) **Production**

125. Production data of the domestic industry is given in the following table. It is observed that production of the domestic industry has increased due to increase in demand.

	Unit	2011-12	2012-13	2013-14	POI
Production	MT	6,80,710	8,42,597	10,34,602	10,47,777
Trend	Index	100	124	152	154
Demand	MT	38,84,428	41,04,498	46,29,760	47,05,225
Trend	Index	100	106	119	121
Production in relation to Demand	%	18	21	22	22

vii) **Sales volume**

126. Sales volume of the domestic industry is given in the following table. It is observed that sales of the domestic industry have increased during the POI as compared to the base year. Whereas share of dumped imports from subject countries increased substantially, the share of domestic industry, although increased during the POI as compared to the base year, it is much less as compared to the increase in the share of dumped imports and increase in demand during the same period.

	Unit	2011-12	2012-13	2013-14	POI
Domestic sales	MT	6,78,787	8,32,250	10,45,520	10,36,246
Trend	Index	100	123	154	153
Demand	MT	38,84,428	41,04,498	46,29,760	47,05,225
Trend	Index	100	106	119	121
Market Share of					
Domestic industry in demand	%	17	20	23	22

Price Effect of the Dumped imports on the Domestic Industry

127. With regard to the effect of the dumped imports on prices, the Designated Authority is required to consider whether there has been a significant price undercutting by the dumped imports as compared with the price of the like product 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. For the purpose of this analysis, the weighted average cost of sales (COP), weighted average Net Sales Realization

(NSR) and the Non-Injurious Price (NIP) of the domestic industry have been compared with the landed cost of imports from the subject countries.

i. Price Undercutting

128. The net sales realization has been arrived after deducting outward freight and taxes. Landed value of imports has been calculated by adding 1% handling charge and applicable basic customs duty including applicable cess to the CIF value of subject imports. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the price undercutting from the subject countries is positive during the POI. The Authority has determined the landed value of the subject goods at ex-port level and the net sales realization of the domestic industry at ex-factory level as per its established practice.

	Unit	2011-12	2012-13	2013-14	POI
Subject Countries					
Price undercutting	Rs./MT	***	***	(***)	***
Price undercutting	%	***	***	(***)	***
Range	%	0-10	0-10	(0-10)	0-10
China PR					
Price undercutting	Rs./MT	(***)	***	(***)	***
Price undercutting	%	(***)	***	(***)	***
Range	%	(15-25)	5-15	(0-10)	0-10
IRAN					
Price undercutting	Rs./MT	***	***	***	***
Price undercutting	%	***	***	***	***
Range	%	10-20	0-10	0-10	0-10
Malaysia					
Price undercutting	Rs./MT	(***)	(***)	***	***
Price undercutting	%	(***)	(***)	***	***
Range	%	(10-20)	(0-10)	5-15	0-10
Taiwan					
Price undercutting	Rs./MT	***	***	(***)	***
Price undercutting	%	***	***	(***)	(***)
Range	%	0-10	0-10	(0-10)	0-10
Indonesia					
Price undercutting	Rs./MT	-	-	(***)	***

	Unit	2011-12	2012-13	2013-14	POI
Price undercutting	%	-	-	(***)	(***)
Range	%	-	-	(0-10)	0-10

ii. Price Underselling

129. Authority notes that the price underselling is an important indicator of assessment of injury. Non injurious price has been worked out and compared with the landed value of the subject goods to arrive at the extent of price underselling. The non-injurious price has been determined considering the cost of production of the domestic industry for the product under consideration during the POI, in accordance with Annexure III of the Anti-dumping Rules. The weighted average NIP and Landed Value have been worked out on the basis of monthly import volume. The analysis shows that during the POI the landed value of subject imports were below the non-injurious price of the domestic industry as can be seen from the table below.

Particulars	Unit	China	Iran	Malaysia	Taiwan	Indonesia	ALL
Non Injurious Price	Rs./MT	***	***	***	***	***	***
Landed Value (POI)	Rs./MT	59,216	51,880	52,850	56,248	48,065	55,635
Price Underselling	Rs./MT	***	***	***	***	***	***
Underselling	%	***	***	***	***	***	***
Underselling	% Range	0-10	5-15	5-15	0-10	5-15	5-15

iii. Price suppression/depression

130. The Authority examined whether the effect of the dumped imports was to depress the prices of the like article in India, or prevent price increases which would have otherwise occurred.

Particulars	Unit	2011-12	2012-13	2013-14	POI
Cost of Sales	Rs./MT	***	***	***	***
Trend	Index	100	109	113	94
Selling Price	Rs./MT	***	***	***	***
Trend	Index	100	105	109	90
Landed value of imports (Subject countries as a whole)	Rs./MT	62,869	66,327	70,948	55,635
Trend	Index	100	106	113	88

131. The Authority notes that the cost of sales, selling price and landed value of imports have declined during the POI as compared to the preceding years. This shows that the prices were suppressed on account of dumped imports and the domestic industry was not able to hold its prices in proportion to decrease in costs.

Economic parameters of the domestic industry

i. Profit/Loss

132. The profitability of the domestic industry is given in the following table. It is seen that domestic industry is suffering losses throughout the injury period. The losses of the domestic industry increased significantly during the POI as compared to the base year. Cash losses as well as negative return on investment have also increased in the POI as compared to base year.

Particulars	Unit	2011-12	2012-13	2013-14	POI
Profits	Rs./Lakh	(***)	(***)	(***)	(***)
Trend	Index	(100)	(180)	(220)	(192)
Cash Profit	Rs./Lakh	(***)	(***)	(***)	(***)
Trend	Index	100	237	304	256
ROCE	%	(***)	(***)	(***)	(***)
Trend	Index	(100)	(191)	(243)	(236)

ii. Cash Flow

133. Authority has examined the trends in cash profits in order to examine the impact of dumping on cash flow situation of the domestic industry. Information regarding cash profit of the domestic industry is given in the following table. It is seen that the cash profits of the domestic industry declined from 2011-12.

	Unit	2011-12	2012-13	2013-14	POI
Cash profits	Rs./Lakh	(***)	(***)	(***)	(***)
Trend	Index	100	237	304	256

iii. Inventories

134. Inventories with the domestic industry moved as follows. It is noted that inventories with the domestic industry increased in the POI as compared to the base year as well as the previous year.

	Units	2011-12	2012-13	2013-14	POI
Average Stock	MT	***	***	***	***
Trend	Index	100	223	163	215

iv. Productivity

135. The Authority notes that productivity of the domestic industry has increased during the POI as compared to base year.

Particulars	Unit	2011-12	2012-13	2013-14	POI
Productivity per Employee	MT	***	***	***	***
Productivity per day	MT	***	***	***	***

v. Employment and Wages

136. It is seen from the table below that the employment level has declined during the POI as compared to the base year. Wages paid has increased.

Particulars	Unit	2011-12	2012-13	2013-14	POI
Employment	Nos.	***	***	***	***
Index	Trend	100	99	99	99
Wages	Rs/Lakh	***	***	***	***
Trend	Index	100	101	105	147

vi. Magnitude of Dumping

137. Magnitude of dumping as an indicator of the extent to which the dumped imports can cause injury to the domestic industry shows that the dumping margins determined in respect of the subject countries are above de-minimus.

vii. Growth

138. The Authority notes from the table below that growth of the domestic industry in respect of production, domestic sales, profit/loss, ROI, etc. have declined during the POI as compared to the growth achieved in 2010-11.

Particulars	Unit	2011-12	2012-13	2013-14	POI
Production	%		23.78	51.99	53.92
Domestic Sales Volume	%		22.61	54.03	52.66
Cost of Sales	%	-	8.75	12.62	(6.32)
Selling Price	%	-	4.75	9.47	(9.65)
Profit/ Loss per unit	%	-	(47.21)	(42.79)	(25.71)
Return on Capital Employed	%	-	(90.70)	(119.94)	(91.91)

viii. Ability to raise capital investment

139. It is noted that despite significant demand of the subject goods in the Country, the domestic industry has not been able to enhance its production capacity due

to continued adverse performance in respect of the product. Further, the applicant is suffering significant financial losses as a result of dumping of the subject goods from the subject countries.

ix. Factors Affecting Domestic Prices

140. The examination of the import prices from the subject countries and other countries, change in the cost structure, competition in the domestic market, factors other than dumped imports that might be affecting the prices of the domestic industry in the domestic market, etc. shows that the landed value of imported material from the subject countries is below the non-injurious price of the domestic industry, causing significant price underselling in the Indian market. It is also noted that the demand for the subject goods was showing significant increase during the injury period including the POI and therefore it could not have been a factor affecting domestic prices. Thus, the principal factor affecting the domestic prices is the landed value of the imports of dumped subject goods from subject countries.

I. Conclusion on material injury

141. In view of the above, the Authority concludes that the dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India. However, imports of the subject goods from the subject countries are undercutting and underselling the prices of the domestic industry in the market. The imports were suppressing the prices of the domestic industry. With regard to consequent impact of the dumped imports on the domestic industry, it is found that though demand for the subject goods increased significantly, the production and sales of the domestic industry has not increased in proportion to the increase in demand. Resultantly, the domestic industry did not increase its market share to the extent of increase in demand. Losses suffered by the domestic industry increased during POI. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits marked negative growths in POI. Growth in respect of price parameters shows an adverse impact on the domestic industry. It is thus concluded that the domestic industry has suffered material injury.

J. CAUSAL LINK AND OTHER FACTORS

142. Having examined the existence of material injury, effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression effects, other indicative parameters listed under the Indian Rules and Agreement on Anti-Dumping have been examined to see whether any other

factor, other than the dumped imports could have contributed to injury to the domestic industry. Accordingly, the following parameters have been examined: -

(a) Volume and prices of imports from third countries

143. During POI, imports of the subject goods from countries other than the subject countries have been either insignificant in volume or already attracting anti-dumping duty. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

(b) Trade restrictive practices of and competition between the foreign and domestic producers

144. There is no evidence of trade restrictive practices of and competition between the foreign producers and domestic producers causing injury to the domestic industry.

(c) Contraction of demand or Changes in the pattern of consumption

145. The Authority notes that demand for the product showed significant increase during the injury period and also during POI. The Authority thus concludes that injury to the domestic industry was not due to contraction in demand.

(d) Development in Technology

146. None of the interested parties have furnished any evidence to demonstrate significant changes in technology that could have caused injury to the domestic industry.

(e) Export performance of Domestic Industry

147. Performance of the domestic industry has been segregated for domestic and export market. Therefore, any possible decline in export performance is not a cause of injury to the domestic industry.

(f) Productivity of the Domestic Industry

148. Productivity of the domestic industry has increased during the POI. However, profitability of the domestic industry showed declining trend.

149. From the foregoing, the Authority concludes that there is no evidence of injury being caused to the domestic industry due to other factors.

K. FACTORS ESTABLISHING CAUSAL LINK

150. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated over the injury period. The causal link between dumped imports and the injury to the domestic industry is established on the following grounds:

- i The dumped imports of the subject goods from the subject countries have increased in absolute terms as also in relation to production and consumption of the subject goods in India.
- ii The imports are suppressing the prices of the domestic industry.
- iii Losses of the domestic industry increased. Return on capital employed and cash profits followed the same trend as that of profits. Both return on capital employed and cash profits marked negative growths in POI on account of dumped imports.
- iv The financial performance of the domestic industry has deteriorated in respect profit, return on capital employed and cash flow, due to dumped imports.

151. Thus the Authority concludes that the domestic industry suffered material injury due to dumped imports of the subject goods, originating in or exported from the subject countries.

L. MAGNITUDE OF INJURY AND INJURY MARGIN

152. The Authority has determined non-injurious price for the domestic industry on the basis of monthly analysis and principles laid down in the Rules, as amended. The non-injurious price so determined has been compared with the landed prices of imports from the subject countries. The weighted average injury margins are as below:

S. No.	Subject Country	Producer	Exporter	Non Injurious Price US\$./MT	Landed Value US\$./MT	Injury Margin US\$./MT	Injury Margin %	Injury Margin Range (%)
China PR								
1	China PR-India	BP Zhuhai Chemical Company Ltd., China PR	BP Asia Ltd, Hong Kong	***	***	***	***	5-15
2	Any	All Other Producers	All Other Exporters	***	***	***	***	5-15
Indonesia								
3	Indonesia	PT BP Petrochemicals, Indonesia	BP Asia Ltd, Hong Kong	***	***	***	***	5-15
4	Any	All Other Producers	All Other Exporters	***	***	***	***	25-35
Taiwan								

S. No.	Subject Country	Producer	Exporter	Non Injurious Price US\$/MT	Landed Value US\$/MT	Injury Margin US\$/MT	Injury Margin %	Injury Margin Range (%)
5	Taiwan	China American Petrochemical Co Ltd, Taiwan	BP Asia Ltd, Hong Kong	***	***	***	***	10-20
6	Taiwan	Formosa Chemicals & Fibre Corporation, Taiwan	Formosa Chemicals & Fibre Corporation, Taiwan	***	***	***	***	10-20
7	Taiwan	Formosa Chemicals & Fibre Corporation, Taiwan	Dinowik Pte Ltd, Singapore, Methyl Co., Ltd , Taiwan, Itochu Corporation Japan	***	***	***	***	10-20
8	Any	All Other Producers	All Other Exporters	***	***	***	***	25-35
Iran								
9	Any	All Other Producers	All Other Exporters	***	***	***	***	5-15
Malaysia								
10	Any	All Other Producers	All Other Exporters	***	***	***	***	5-15

M. Post Disclosure Comments

Exporters/Importers/Other Interested Parties

153. The following are the post disclosure comments made by the exporters/importers/other interested parties:

- i. Time given by the authority to comment on the disclosure statement is grossly inadequate.
- ii. Article 3.3 does not mandate cumulative assessment of the effect of imports from all subject countries compulsorily from the stage of initiation itself. Authority should have initiated separate investigations qua the subject countries and determined the domestic industry with respect thereof.
- iii. RIL is not a “partner in unfair trade” since it has not turned into a trader or behaved otherwise which mandates its exclusion.
- iv. MCPI should have substantiated the absence of imports from subject countries by their related entities. Mere statements cannot be considered as reliable proof

- v. Injury suffered by MCPI is reflective of its faulty production line and is in stark contrast to both RIL & IOCL which have not shown any injury suffered. The designated authority should reconsider its determination, even at the cost of terminating this investigation and re-initiating another investigation.
- vi. DGCI&S data in requested format has not been provided. Moreover, IOCL data has also not been provided. Full opportunity must be provided to the interested parties for examination of relied upon data upon which such a crucial finding is being made.
- vii. M/s Hengli Petrochemical (Dalian) Co. Ltd., China (Hengli) and M/s Hyosung Corporation, Korea (Hyosung) submitted their questionnaire response within time limits after initiation and before the issuance of preliminary findings. However, the questionnaire response of Hyosung did not include the details of exports to India of the goods manufacture by Hengli due to confidentiality reasons. Non-determination of individual dumping margin for Hengli is not in accordance with law.

Domestic Industry

154. The following are the post disclosure comments made by the domestic industry:

- i. Anti-dumping duty should be imposed retrospectively. The parameters laid down for the imposition of retrospective anti-dumping duty are fully met in the present case.
- ii. Anti dumping duty should be imposed upto the full extent of dumping margin and not restricted to the injury margin. Despite imposition of interim anti-dumping duty, volume of imports has increased significantly. Performance of the consumer has also improved significantly.
- iii. The dumping margin should not and cannot be determined unless all entities relevant to production and sale of the product under consideration are before the Authority even if some of the entities are unrelated.
- iv. Wherever questionnaire responses are grossly deficient, the authority should reject the same. The opportunity to provide supplementary information cannot be used to complete a significantly deficient questionnaire response.

- v. The working capital of MCPI has been determined as negative without excluding interest bearing purchase from the current liabilities. If current liabilities include any interest bearing loans, the same should be excluded from the liabilities for determining working capital.
- vi. The rules provide for ignoring the impact of revaluation of fixed assets. The Authority should consider return on capital employed on the basis of original value of the assets and not reduce the same by impairment of assets.
- vii. Determination of non injurious price is inappropriate and is against the object and intent of the dumping law, as interpreted by the Hon'ble Supreme Court in the matter of Reliance Industries Ltd. vs. Designated Authority
- viii. The injury margin determined is understated for the reason that the comparison between NIP and import price is unfair, as the two figures are not at the same level. There is a difference in credit period between the domestic industry and foreign producers and the same has not been taken into account while determining injury margin.
- ix. The margin of dumping should be more than what has been determined in the disclosure statement, considering the price at which the goods were exported and reasonable level of cost of production of the goods during the investigation period and also the valuation of paraxylene.
- x. In view of significant decline in the import price post POI, it is vital to recommend combination form of duty. The Authority may recommend a benchmark and specify that the quantum of duty shall be difference between the benchmark and landed price of imports, subject to certain minimum quantum of duty.
- xi. The duty should be imposed in terms of US\$ as Rupee has depreciated significantly. The depreciation of INR has impacted the costs of the raw materials, utilities and other costs.

EXAMINATION BY THE AUTHORITY

155. The post disclosure comments made by the interested parties are mostly reiterations of their earlier submissions. Nevertheless, even at the cost of repetition, the Authority examines the following comments considered relevant:

- i. As regards the submission that the time granted by the Authority for disclosure comments is inadequate, the Authority notes that the anti-dumping investigations are time bound and reasonable time has been granted to the interested parties for furnishing comments on the disclosure statement.
- ii. The contention of certain opposite interested parties that Authority should have initiated separate investigations qua the subject countries and determined the domestic industry with respect thereof, the Authority once again notes that when more than one country is involved in an anti-dumping investigation and dumped imports are alleged to be responsible for causing injury to the domestic industry, injury analysis will have to be done in a cumulative manner.
- iii. As regards the submission that RIL is not a “partner in unfair trade” since it has not turned into a trader or behaved otherwise which mandates its exclusion, the Authority notes that this issue has been explicitly and adequately addressed at the disclosure stage. The Authority notes that Reliance Industries Ltd was excluded from the purview of domestic industry at the initiation stage itself on account of having a related entity in Malaysia, which is not only the sole producer of the product under consideration in the said country, but also exported significant volume of product under consideration to India during the POI.
- iv. As regards the submission that MCPI should have substantiated the absence of imports from subject countries by their related entities, the Authority notes that the opposing interested parties could also have substantiated their allegation. Nevertheless, the Authority notes that as per available information, Ningbo MCC, China and PT MC, Indonesia, the related parties of MCC PTA India Corp. Pvt. Ltd, have not made any export of the product under consideration to India during the POI.
- v. As regards the submission that Injury suffered by MCPI is reflective of its faulty production line, the Authority notes that the non-injurious price for

the domestic industry has been determined in terms of Annexure III of the AD Rules after taking in to account all such factors.

- vi. As regards the submission that relied upon data has not been provided, the Authority reiterates that the transaction-wise DGCIS imports data contains business sensitive confidential information and therefore the said data cannot be divulged. However, the domestic industry vide letter dated 16.10.2015 submitted the non-confidential version of the said data and the same has been placed in public file. As regards providing IOCL data to the interested parties, the Authority notes that on 1st June, 2016 IOCL has provided some data concerning production, sales and profitability of PUC during the POI on confidential basis. In view of the confidential nature of the said data, the Authority could not disclose the same as per the Rules. Moreover, the said data has not been considered by the Authority for injury analysis in the present investigation.
- viii. Post disclosure, Hyosung Corporation, Korea has acknowledged that they did not file exporter's questionnaire response in respect of exports of product under consideration pertaining to Hengli, China within the prescribed time limit due to confidentiality reasons. In this regard, the Authority notes that anti-dumping investigations being time bound processes, it is neither feasible nor desirable on the part of the Authority to accept and process such belated exporter's questionnaire responses.
- ix. As regards the submission of domestic industry that anti-dumping duty should be imposed retrospectively, the Authority notes that imposition of retrospective duties in the present case is not justified in view of the fact that it is not a case of massive dumping. The petitioners have not established their claim for retrospective imposition of anti-dumping duty on the basis of the requirements as laid down under Anti-dumping Rules.
- x. As regards the contention of domestic industry that anti-dumping duty should be imposed upto the full extent of dumping margin, the Authority notes that India follows lesser duty rule and accordingly lesser of margin of dumping and the margin of injury are being recommended so as to remove the injury to the domestic industry.
- xi. As regards the submissions of the domestic industry concerning determination of non-injurious price (NIP), the Authority notes that the detailed guidelines for computation of NIP is laid down under Annexure III

of the Anti-dumping Rules and the same has been adopted while determining NIP in the present investigation.

- xii. As regards the submission of the domestic industry concerning form of duty, the Authority notes that as per the Anti-dumping Rules, the mandate of the Designated Authority is to determine the existence, degree and effect of the alleged dumping and to recommend the amount of anti-dumping duty, which, if levied, would be adequate to remove the injury to the domestic industry. Accordingly, suitability of the form of the anti-dumping measures is decided by taking in to consideration the facts of a case.

N. CONCLUSIONS:

156. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority concludes that:
 - a. The product under consideration has been exported to India from subject countries below its normal value, thus resulting in dumping.
 - b. The domestic industry has suffered material injury due to dumping of the product under consideration from the subject countries.
 - c. The material injury has been caused by the dumped imports from the subject countries.

O. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

157. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the domestic industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and, therefore, would not affect the availability of the products to the consumers.
158. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the anti-dumping measures, particularly if the levy of the anti-dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. On the contrary, imposition of anti-dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers

of the subject goods. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

P. RECOMMENDATIONS

159. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspect of dumping, injury and causal links. Having initiated and conducted the investigation into dumping, injury and causal links in terms of the provisions laid down under the Anti-dumping Rules and having established positive dumping margin as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that imposition of definitive anti-dumping duty is required to offset dumping and injury. Therefore, Authority considers it necessary and recommends imposition of anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder from the date of issue of the notification of imposition of provisional duty by the Central Government vide Notification No.60/2015-Customs (ADD) dated 10th December, 2015.

160. 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 the margin of injury, so as to remove the injury to the domestic industry. Accordingly, anti-dumping duty equal to the amount mentioned in Col 8 of the table below is recommended to be imposed from the date of imposition of provisional duties, on all imports of subject goods originating in or exported from subject countries i.e. China PR, Iran, Indonesia and Malaysia and Taiwan.

Duty Table

S. No	Heading/ Subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1.	29173600	Purified Terephthalic Acid	China PR	China PR	BP Zhuhai Chemical Company Ltd., China PR	BP Asia Ltd, Hong Kong	95.70	MT	US\$
2.	do	do	China PR	China PR	Any combination other than mentioned in SI No-1 above		97.60	MT	US\$
3.	-do-	-do-	China PR	Any country other than those subject to Anti-dumping duty	Any	Any	97.60	MT	US\$

S. No	Heading/ Subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty Amount	Unit	Currency
4.	-do-	-do-	Any country other than those subject to Anti-dumping duty	China PR	Any	Any	97.60	MT	US\$
5.	-do-	-do-	Indonesia	Indonesia	PT BP Petrochemicals, Indonesia	BP Asia Ltd., Hong Kong	83.08	MT	US\$
6.	do	do	Indonesia	Indonesia	Any combination other than mentioned in SI No-5 above		168.76	MT	US\$
7.	-do-	-do-	Indonesia	Any country other than those subject to Anti-dumping duty	Any	Any	168.76	MT	US\$
8.	-do-	-do-	Any country other than those subject to Anti-dumping duty	Indonesia	Any	Any	168.76	MT	US\$
9.	-do-	-do-	Taiwan	Taiwan	China American Petrochemical Co. Ltd., Taiwan	BP Asia Ltd., Hong Kong	136.72	MT	US\$
10.	-do-	-do-	Taiwan	Taiwan	Formosa Chemicals & Fibre Corporation, Taiwan	Formosa Chemicals & Fibre Corporation Taiwan, Dinowic Pte Ltd., Singapore Methyl Co., Ltd., Taiwan, Itochu Corporation Japan	85.87	MT	US\$
11.	do	do	Taiwan	Taiwan	Any combination other than mentioned in SI No-9 and 10 above		153.60	MT	US\$
12.	-do-	-do-	Taiwan	Any country other than those subject to Anti-dumping duty	Any	Any	153.60	MT	US\$
13.	-do-	-do-	Any country other than those subject to Anti-dumping	Taiwan	Any	Any	153.60	MT	US\$

S. No	Heading/ Subheading	Description of goods	Country of origin	Country of export	Producer	Exporter	Duty Amount	Unit	Currency
			duty						
14.	-do-	-do-	Iran	Iran	Any	Any	102.86	MT	US\$
15.	-do-	-do-	Iran	Any country other than those subject to Anti-dumping duty	Any	Any	102.86	MT	US\$
16.	-do-	-do-	Any country other than those subject to Anti-dumping duty	Iran	Any	Any	102.86	MT	US\$
17.	-do-	-do-	Malaysia	Malaysia	Any	Any	98.48	MT	US\$
18.	-do-	-do-	Malaysia	Any country other than those subject to Anti-dumping duty	Any	Any	98.48	MT	US\$
19.	-do-	-do-	Any country other than those subject to Anti-dumping duty	Malaysia	Any	Any	98.48	MT	US\$

Q. FURTHER PROCEDURE

161. Subject to the above, the Preliminary Finding notified vide notification of even No. dated 12th November, 2015 in respect of China PR, Iran, Indonesia, Malaysia and Taiwan is hereby confirmed.
162. 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.

A. K. Bhalla

Additional Secretary & Designated Authority