

No.15/9/2005-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)
NOTIFICATION

New Delhi, the 18th June 2007

Final Findings

Subject: Antidumping investigation concerning imports of Partially Oriented Yarn (POY) from Thailand, Indonesia, Malaysia and Chinese Taipei- Final Findings of Sunset Review

Having regard to the Customs Tariff Act 1975 as amended in 1995 (hereinafter 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, (hereinafter referred to as the Rules) thereof:

1. Whereas M/s Association of Synthetic Fibre Industries (hereinafter referred to as the Applicant) on behalf of domestic producers namely M/s Arfees Industries Ltd., M/s Appollo Fibres Ltd., M/s Central India Polyesters Ltd., M/s Century Enka Ltd., M/s Filatex Industries Ltd., M/s Garden Silk Mills Ltd., M/s Indo Rama Synthetics (India) Ltd., M/s JBF Ltd., M/s Modern Petrofils Ltd., M/s Nakoda Textiles Industries Ltd., M/s Recron Synthetics Ltd. and M/s Welspun Syntex Ltd, filed an application before the Designated Authority (hereinafter also referred to as the Authority), in response to alert letter wherein the applicants requested the Authority to continue the anti dumping duty beyond the original period of five years alleging likelihood of continued dumping and injury on account of import of subject goods from subject countries along with the prima facie evidence. It was also stated that withdrawal of anti dumping duties on subject goods from subject countries would result in continuation or recurrence of dumping and injury and the domestic industry requested the Authority for initiation of sunset review of anti dumping duty imposed on the subject goods.

2. And whereas the Authority on the basis of sufficient evidence submitted by the applicants on behalf of the domestic industry, issued a public notice dated 20th December 2005 published in the Gazette of India, Extraordinary initiating sunset review of anti dumping duty imposed

on the subject goods originating in or exported from the subject countries to determine whether withdrawal of anti dumping duties on subject goods from subject countries would result in continuation or recurrence of dumping and injury in accordance with the Customs Tariff Act and the AD Rules,

A. PROCEDURE

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

ii) The Authority forwarded copy of the said public notice to the known exporters, importers/users and to the applicants and gave them an opportunity to make their views known in writing within forty days from the date of the publication of initiation notification in accordance with the Rule 6(2):

iii) According to sub-rule (3) of Rule 6 supra, the Authority provided a copy of the application to the known exporters/manufacturers from subject countries and Embassies of subject countries in India;

iv) In response to the initiation notification none of the exporters/producers from subject countries with the exception of M/s Hualon Corporation, Malaysia and M/s Polysindo from Indonesia responded to the exporters questionnaire. Their information was subsequently verified by the Authority after conducting the on site verification at the premises of the cooperating exporters and a verification report was issued to the cooperating exporters for their comments. No comments were received within the stipulated date following the issuance of verification report from these two exporters.

v) The Embassies of the subject countries were informed about the initiation of the investigation in accordance with Rule 6(2) with a request to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time. A copy of the letter, application and questionnaire was sent to the exporters was also sent to them;

vi) A questionnaire was sent to the following known importers/user associations of the subject goods for necessary information in accordance with Rule 6(4):

1. All India Texturisers Association, Mumbai
2. South Gujarat Texturisers Welfare Association, Surat
3. Suntex India

4. Galaxy Textiles
5. Harmony Yarns PVT. Ltd.
6. AVM Exports
7. Garg Tex-O-Fab Ltd.
8. Boghara Polyfab Private Ltd.
9. Silvassa Industries Ltd.
10. Beekaylon Synthetics Ltd.
11. Alok Industries Ltd.
12. Bajari Filaments P Ltd.
13. Sidhvan Yarns Ltd.
14. Crimplon Yarns
15. Uni Tex Texturisers
16. Unify Texturisers
17. Ghoomtex (India) Pvt Ltd.
18. Mehratex India P Ltd.
19. SRV Polytex Pvt. Ltd.
20. Synfab Sales and Industries Ltd.

vii) In response to the above notification M/s All India Texturisers' Association, Mumbai and Federation of Indian Art Silk Weaving Industry (FIASWI) have filed their submissions. Their submissions have been taken into account and examined to the extent they have relevant to the anti dumping investigations.

viii) A copy of the non-confidential application was also provided to other interested parties, wherever requested.

ix) The Authority kept available non-confidential version of the evidence presented by various interested parties in the form of a public file maintained by the Authority and kept open for inspection by the interested parties as per Rule 6(7).

x) Cost investigations were conducted to work out optimum cost of production and cost to make and sell the subject goods in India on the basis of Generally Accepted Accounting Principles (GAAP) and the information furnished by the applicant so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.

xi) A public hearing was held on 23rd August 2006 under the chairmanship of Designated Authority, which was attended by representatives of the Domestic Industry and other interested parties. However, during the process of the hearing, one interested party argued that they did not get the notice of the public hearing in time and hence they requested another public hearing. Following the request of the

interested party, the Authority agreed for another hearing, which was held on 20th September 2006. The parties attending the public hearing were requested to file written submissions of views expressed orally. The Authority in this finding has considered the written submissions and rejoinders thus received from interested parties.

xii) **** in this notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the Rules on merits. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings was disclosed to known interested parties on 26th April, 2007 and comments received on the same by various interested parties are duly considered in Final Findings.

xiii) Investigation was carried out for the period starting from 1 April 2004 to 30th June 2005 (15 months) i.e. the period of investigation (POI). The examination of trends in the context of injury analysis covered the period 2001-02, 2002-03, 2003-04 and the POI.

B. PRODUCT UNDER CONSIDERATION, LIKE ARTICLE AND DOMESTIC INDUSTRY:

B1: PRODUCT UNDER CONSIDERATION

4. The product under consideration in the present application is Partially Oriented Yarn generally known as POY. It falls under the Custom Tariff Heading 5402 (with customs subheading now as 5402 4600) . However, the Customs classification is indicative only and is in no way binding on the scope of the present investigation. It is a yarn of polyester and is an intermediate, which is subject to further processing, for example, texturing or draw twisting, to make it suitable for weaving or knitting into fabrics. It has been contended by the importers and users that the applicant has not specified the denier for which the anti-dumping duty is sought as the same are produced in a wide range. It has also been argued that the subject goods are manufactured from various processes and raw material and the subject goods should be classified as per the source raw material.

5. On the other hand, it has been claimed by the applicants that the subject goods specified in the application cover all types of denier and there is no need that the denier of the subject goods is to be specified in the application. They have therefore contended that the submission of the importers and the users is baseless and devoid of any merit.

6. The issue raised by various interested parties have been examined and after examination, it is noted that the application by the domestic industry has been made covering all deniers. Further, the Designated Authority has also carried out the analysis considering the entire product under consideration. Therefore, the Authority does not find any merit in the argument of the importers for examining any particular denier of the product under consideration. With regards to the submissions of the interested parties that Teflon treated polyester yarns and polyester nano technology yarns are not produced by the petitioners and hence should be taken outside the scope of the product under consideration, it is noted by Authority that noted that these yarns are not covered under the scope of POY as these products have been further processed. Further, it is also noted that there have been no submissions by the exporters from subject country with regards to the various grades and types/deniers of the product under consideration exported by them to India and that sold in the exporting country except M/s Hualon and M/s Polysindo. Out of the two cooperating exporters, M/s Hualon Corporation has also not argued. Further, none of the importers have submitted any information along with the evidence to the Authority or requested the Authority for denier wise examination of the product under consideration. The Authority has considered the views expressed on the issue and holds that the product under consideration does not suffer from any infirmity as claimed by the importers/users. Thus, the product under consideration as defined in the original investigations and as mentioned in the preceding paragraph is confirmed in the final findings.

B2: LIKE ARTICLE

7. Rule 2(d) of AD Rules defines Like Article as

“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.”

The applicants have claimed that the subject goods, which are being dumped into India, are identical to the goods produced by the domestic industry. There are no differences either in the technical specifications, quality, functions or end-uses of the dumped imports and the domestically produced subject good. The Authority notes that neither the exporters nor the interested parties have disputed the fact that there is any difference in the dumped goods and the product under consideration manufactured by the domestic industry. The Authority observes that the

imported goods are used by the user industry interchangeably with the goods produced by the domestic industry. The subject goods produced by the domestic industry and produced by the subject countries being technically and commercially substitutable, are 'like articles' under the Anti Dumping Rules. Therefore, for the purpose of the present investigation, the subject goods produced by the applicants in India are being treated as 'Like Articles' to the subject goods being imported from the subject country.

B3: DOMESTIC INDUSTRY

8. Rule 2(b) defines domestic industry as under:-

(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry:

It is noted that the application has been filed by M/s Association of Synthetic Fibre Industry, New Delhi on behalf of domestic industry comprising of the following producers of subject goods in India:

- I. Arfees Industries Ltd.
- II. Apollo Fibres Ltd.
- III. Central India Polyesters Ltd.
- IV. Century Enka Ltd.
- V. Filatex Industries Ltd.
- VI. Garden Silk Mills Ltd.
- VII. Indo Rama Synthetics (India) Ltd
- VIII. JBF Ltd.
- IX. Modern Petrofils Ltd.
- X. Nakoda Textiles Industries Ltd.
- XI. Recron Synthetics Limited
- XII. Welspun Syntex Ltd.

9. The Authority notes that the application has also been supported by the following producers:

- a. Reliance industries Ltd.
- b. Sanghi Polyesters Ltd.

- c. Nova Petrochemicals Ltd.
- d. Gokulanand Petrofibres
- e. Rajvi Petrochem (P) Ltd.

10. From the examination of the information submitted by the applicants, it is noted that the collective production of the aforesaid producers constitutes a major proportion of the total domestic production of the like article and therefore they represented the domestic industry within the meaning of Rule 2(b) of the Rules supra.

B4: PERIOD OF INVESTIGATION

11. Various interested parties have also stated that the POI should be taken as 12 months i.e. 2004-05 and not 15 months as taken by the Authority in this investigation. The issue has been examined and it is considered that it is the established practice of this Directorate to consider the period of investigation as latest as possible (to the date of initiation) and that the gap between the last day of the period of investigation and the date of initiation should not be more than 6 months. It is noted by the Authority that had the period of investigation been taken as 2004-05, the gap between the period of investigation and the date of initiation would have been more than 6 months and not in conformity with the policy. Thus, the Authority's decision to take POI of 15 months in this case is borne out of the practice of the Authority to keep the POI as close to the initiation as possible and in any case not later than 6 months from the date of POI and also taking into account easier availability of the information of the domestic industry in the form of the one full financial year. It was also noted that there are a large number of the domestic industries in this investigation and taking 9 months data out of the 12 months financial year data would have created difficulties for the Authority as well as to the domestic industry.

C. CONTINUATION OF DUMPING FROM SUBJECT COUNTRIES- DETERMINATION OF DUMPING MARGIN

C1 : NORMAL VALUE FOR CHINESE TAIPEI AND THAILAND

12. There was no cooperation from any of the producers and exporters from these two countries. A few producers and exporters from Thailand did ask some queries and asked for extension, but in the end despite the

repeated reminders from the Authority, there was no response. The producer's exporters from Thailand who made themselves known during the POI were reminded of the fact that as per Para 1 of the Annexure II of the agreement of Anti Dumping, if the information is not supplied within a stipulated time, the Authorities would be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry. Despite the repeated reminders, response to the exporters questionnaire in the form and manner as stated in the questionnaire was not received from any interested parties and hence the Authority proceeded to determine the determine the normal value on the basis of best facts available as per Rule 6(8) of the Anti dumping rules. With regard to these two subject countries, the Authority has determined normal values for the subject goods in Thailand and Chinese Taipei considering constructed cost of production including selling, general and administrative overheads and reasonable profit for subject countries. The constructed normal values for all producers and exporters from Thailand is determined as US \$ ****/MT while that of Chinese Taipei is US \$ ****/MT.

C2: EXPORT PRICE FOR CHINESE TAIPEI AND THAILAND

13. In the application submitted for initiation of investigation, the applicant had worked out export price based on the DGCI&S import data. The Authority examined the import data from DGCI&S and it was found that the volume and value of the imports of subject goods is reflected under Custom Tariff Heading 5402.42, which is a dedicated code for the product under consideration. Further, during the public hearing and submissions made by the various interested parties, it was pointed out that the while determining the volume and value of import, the Authority had taken into account many transactions relating to the imports of yarns other than POY. After the public hearing, the Authority reexamined the transaction wise information pertaining to import of product under consideration from subject countries and it was found that though the ITC HS classification is a dedicated code for the product under consideration, it did have some transactions of spin drawn yarn and fully drawn yarn and others. After the examination, the Authority has reworked the volume and value of imports of subject goods from subject countries and following the reexamination, the CIF export price for all producers and exporters from Thailand as per the DGCI&S transaction wise import data was determined as US \$ ****/MT. After considering price adjustments on account of marine insurance, commission, ocean freight, bank charges & port expenses, the net export price comes to

(US \$ **** per MT). With regards to imports from Chinese Taipei, the CIF export price for all producers and exporters from Chinese Taipei as per the DGCI&S transaction wise import data was determined as US \$ ****/MT. After considering price adjustments on account of marine insurance, commission, ocean freight, bank charges & port expenses, the net export price comes to (US \$ **** per MT).

C3: DUMPING MARGIN FOR CHINESE TAIPEI AND THAILAND

14. Considering the constructed normal value and the net export price determined at the ex factory level, as detailed above, dumping margin has been determined, which comes to (US \$ **** per MT) for all producers and exporters from Thailand and which works out as 13.75% of net export price. The dumping margin for all producers and exporters for Chinese Taipei using the same methodology as in the case of Thailand is determined as US \$ ****/MT which works out as 49.71% of the net export price.

C4: NORMAL VALUE FOR POLYSINDO, INDONESIA

15. M/s Polysindo produces the following five products: POY of different deniers, Textured Yarn (DTY), Fully Oriented Yarn (FOY), and Fibre Chip. While the production of four of the five major products takes place at Kaliwungu, the production of chip takes place at another location viz. Karawang. It is recalled that M/s Polysindo had submitted the information to the exporters questionnaire stating the denier, filaments and their types and they had requested the Authority to determine their dumping margin as per the PCN (product control number). It was also submitted that they did not have any export sales to India during the POI and they exported only one type of subject goods in the global market. During the examination of the exporters questionnaire, it was first determined that whether the total domestic sales of the subject goods with regard to their PCN (Product control nomenclature) by the producers/exporters in the subject country was representative when compared to their total sales of the subject goods (for the same PCN) concerned sold in the exporting country. Thereafter, it was examined whether their sales (PCN wise) are under ordinary course of trade in terms of Rule 2 of the annexure I to the anti dumping rules. The exporters have provided transaction wise details of sales made in home market. The information has been relied upon to determine separate weighted average selling price for each type of subject goods

considering denier and category, of the subject goods sold in the home market. In case sales volume in the domestic market of a particular type of subject goods (in this case, only one type) is more than 5% of exports to all countries of the world , the domestic price has been considered. The cost of production claimed by the exporters have been admitted after suitable modification (during the verification tour). It may be added that separate costs of manufacturing of the subject goods solely in terms of the above type were accepted by the Authority after suitable modifications (a copy of the confidential copy of the verification report detailing the factual elements of the normal value were disclosed to the exporter and no comments have since been made by the exporter).

16. For the determination of the ordinary course of trade test, the cost of production of the product concerned was examined with reference to the records maintained by the producer. Further, all domestic sales transactions were examined with reference to the cost of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade or not. Thus only the profitable transactions have been taken into consideration for the determination of normal value for the cooperating exporter where sales below costs exceed 20%. The net ex-factory domestic selling price was US \$ **** per kg.

C5: EXPORT PRICE FOR POLYSINDO, INDONESIA

17. There were no exports to India during POI. In the absence of the export sales to India, the Authority determined the export price of the subject goods to other countries for the purpose of determining the likelihood of dumping (likely dumping margin). It was noted that M/s Polysindo reported **** transactions in Appendix 3C for the export sale to other countries. From Invoice price, various expenses incurred by Polysindo were deducted to arrive at the Ex factory selling price. The adjustments claimed include commission, inland insurance, inland freight, ocean freight, ocean insurance and bank charges/interest. After verification of all the adjustments, ex factory net export price was determined as US \$ ****/per kg.

In the comments to disclosure statement, the exporter stated that the adoption of weighted average export price of all the exports made by Polysindo during POI to countries other than India may not appear to reflect the market reality that had prevailed in India. In their opinion the Authority should have considered their export price to Argentina, as the

economic development in Argentina is comparable to that of India. The dumping margin in this case would be negative and there would be no likelihood of recurrence of dumping if the measures are repealed for this exporter.

The Authority notes that the exporter has not cited any reasons or authority of law as to why a particular country is to be adopted for the purpose of determination of export price in the absence of exports by the exporter during the POI. The exporter has also not provided any details or evidence regarding the market conditions or prevailing in Argentina or any other reason to justify their claim. Only a bare statement has been made that the level of economic development of Argentina and India are similar. In the absence of any supportive data or legal provisions, the Authority does not find it appropriate to take export price of any particular country.

C6: DUMPING MARGIN FOR POLYSINDO, INDONESIA

18. For the purpose of a fair comparison between normal value and the export price, the Authority has determined both the normal value and export price at ex-factory level. Both the normal value and export price pertains to the same period. Both the prices are free of taxes. Thus, the Authority considers that the comparison made constitutes a fair comparison. Considering the normal value and the net export price determined as detailed above, dumping margin has been determined, which comes to (US \$ **** per MT) which works out as 8.77% of net export price.

C7: DUMPING MARGIN FOR OTHER EXPORTERS FROM INDONESIA

19. The weighted average export price has been determined by taking the lowest price of the subject goods of the cooperating exporter. The weighted average normal value determined for the subject country has been compared with the net export prices determined for the non-cooperating exporters from the subject country to arrive at the dumping margin for non-cooperating exporters, which works out after adjustments as US\$ ****/MT or 12.12%.

C8: NORMAL VALUE FOR M/S HUALON CORPORATION, MALAYSIA

20. M/s. Hualon Corporation has its factory at Nilai, Kuala Lumpur where it manufactures range of products including the product under consideration. The products manufactured by M/s. Hualon are derived from direct spinning process (taking PTA plus MEG as a feedstock and then converting it to Polymer and thereafter to subject goods directly) and also from chips spinning process (taking the same feedstock and converting it to polymer and then to chips and thereafter the subject goods). It was also seen that the company manufactures product in the different deniers, filament, cross section, luster, color and grades and these could be further separated into fully drawn yarn, POY and other man-made filament yarns. The production of subject goods is carried out at the facility called Nilai near Kuala Lumpur. It was noted that the M/s Hualon had a domestic sales in sufficient quantities as compared to the export sales to India hence the domestic sales as given in the appendix 1 was accepted for verification as it fell within the purview of sufficient domestic sales as defined in the footnote to Article 2 of the Agreement on Antidumping. Further, it was verified from the records that they have made 24 transactions in the domestic market and there is no adjustments claimed by Hualon in the form of discounts or credit in their domestic sales for arriving at the ex factory price for sales made in the domestic market.

21. It may also be noted that the exporter had not given separate cost of production with regard to different grades produced by it nor it had claimed determination of dumping margin based on different grades produced by it which are sold in the domestic market and also exported to India and other countries. Based on this information, the net ex-factory domestic selling price as mentioned above pertains to all the grades of the POY manufactured by the exporter. The information pertaining to domestic sales was thus fully verified and the net domestic selling price was determined as US \$ ****/Kg.

C9: EXPORT PRICE FOR M/S HUALON CORPORATION, MALAYSIA

22. After verifying the records, it was determined that the firm had exported **** MTs of subject goods during the period of investigation at a gross invoice value of US \$ ****. From Invoice price, various expenses incurred by M/s Hualon were deducted to arrive at the Ex factory selling price. The adjustments claimed include commission, inland insurance, inland freight, ocean freight, ocean insurance and bank charges/interest. After verification of all the adjustments, ex factory net export price was determined as US \$ **** per kg.

C10: DUMPING MARGIN FOR M/S HUALON CORPORATION, MALAYSIA

23. For the purpose of a fair comparison between normal value and the export price, the Authority has determined both the normal value and export price at ex-factory level. Both the normal value and export price pertains to the same period. Both the prices are free of taxes. Thus, the Authority considers that the comparison made constitutes a fair comparison. Considering the normal value and the net export price determined as detailed above, dumping margin has been determined, which comes to (US \$ ****per MT) which works out as 5.88% of net export price.

C11: DUMPING MARGIN FOR NON COOPERATING EXPORTERS FROM MALAYSIA

24. Export prices for the other non-cooperative exporters from the subject country has been determined based on the lowest transaction prices of the cooperating exporter. The weighted average normal value determined for the subject country has been compared with the net export prices determined for the non-cooperating exporters from the subject country to arrive at the dumping margin for non-cooperating exporters, which works out after adjustments as US\$ ****/MT or 16.10%.

	Normal value	Net Export Price	DM	DM%
M/s Hualon	****	****	****	5.88
M/s Polysindo	****	****	****	8.77
Other Exporters Malaysia	****	****	****	16.10
Other Exporters Indonesia	****	****	****	12.12
All Exporters Chinese Taipei	****	****	****	49.71
All Exporters Thailand	****	****	****	13.75

D. INJURY AND CAUSAL LINK

25. As per annexure-II (iii), in cases where imports of a product from more than one country are being simultaneously subjected to Anti-

dumping investigation, the Authority is required to cumulatively assess effect of such imports, only when it determines that (a) the margin of dumping established in relation to imports from each country is more than 2% expressed as percentage of export price and the volume of the imports from each country is 3% of the imports of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic article.

26. The Authority notes that the margin of dumping in respect of each of the subject country is more than 2% and the volume of imports from each country is also more than 3%.

27. As far as the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product, the Authority notes that:

- (i) The subject goods have been imported from the subject countries under the same tariff classifications;
- (ii) The imported subject goods are commercial and technical substitutes of the domestically produced POY .
- (ii) The subject goods have been imported by the end users and other importers and the goods have entered the commerce of the country through similar channels;

28. Therefore, the Authority is of the view that the exports made from the subject countries compete in the same market, as these are similar products.

29. In view of the above, the Authority holds that it is appropriate to cumulatively assess the effect of dumped imports of the subject goods from the subject countries, on the domestically produced like article in the light of conditions of competition between the imported products and the like domestic product. Therefore, for the purpose of injury and causal link analysis, as discussed above, the dumped imports from the subject countries have been cumulated for examination of volume and price effects of dumped imports of the subject goods from the subject countries on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any. The Rules provide for examination of the impact of dumped imports on the domestic industry on the basis of evaluation of all relevant economic factors and indices having bearing on the state of domestic industry. For the purpose of this examination, the

applicants constitute the domestic industry within the meaning of the term as defined under Rule 2(b) of the Rules.

30. The domestic industry have submitted that share of imports from China has increased manifold not only in relation to total imports but also in comparison to total demand and total production during the period of investigation as compared to the base year April 01-March 02. It was submitted that the dumped imports from subject countries have affected the domestic prices and the price undercutting and underselling is significant during the period of investigation. The domestic industry has alleged that the market share, capacity utilization, profitability, return on investment, cash flow, growth etc. have declined over the injury investigation period. The sales of the domestic industry have increased, however the increase in sales is less than the increase in demand. Further, the domestic industry had alleged that the margin of dumping from subject countries is also significant during the period of investigation, which shows the difficulties being faced by the domestic. Industry in disposing of the subject goods.

31. On the other hand, the importers and the user associations submitted that the prices of POY have also come down for other countries and the demand for POY is high right from the year 2001-02 as compared to indigenous production and the indigenous industry has tremendously benefited by creating shortage. It has also been submitted that the decline in market share of the domestic industry is insignificant and sales volume of the domestic industry has increased as a result of increase in demand. Further, it was also submitted that there is no injury with respect to employment and wages and as per the balance sheets of the domestic producers, they are not making losses and most of the companies are profit-making concerns.

32. The importers and user associations have also submitted that the inventories of the petitioners during the period of investigation were in fact lower than from the previous years. Further, the prices of raw material are low and POY prices are high in India as compared to subject countries where raw material prices are high and POY prices are low. It was also held that almost all the companies are increasing their capacities which indicates that the import of POY has not affected the indigenous industry at all.

In the comments to disclosure statement, M/s All India Texturisers Association has stated that the volume of imports have come down in POI as a share of total imports and also as share of total domestic production. Price undercutting analysis is to be made with respect to

price of domestic integrated units. Increase in selling price is more than the increase in landed values.

The Authority notes that the decline in imports or negligible imports or the improvement in any particular injury factor in case of sunset review is not per se relevant as the analysis of injury is to be seen with reference to level of duties already in existence. It is also noted that in case of sunset review investigation, the thrust is mainly on the analysis of likelihood of continuance or recurrence of injury to the domestic industry.

EXAMINATION BY THE AUTHORITY

33. Article 3.1 of the ADA and Annexure II of the AD Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products. The authority is required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

34. The Authority has taken note of the arguments of the interested parties on injury examination aspect and addressed the issues raised at appropriate places in this final findings statement to the extent these arguments are considered relevant to the investigations. The Authority has examined the injury parameters objectively taking into account the facts before it and the arguments of the interested parties.

35. The Authority also notes that the Hon'ble Supreme Court, in the Reliance Industries Vs Designated Authority held that the Authority is required to carry out the determination of the injury and NIP for the 'domestic industry as whole' and not in respect of any particular company or enterprise. Therefore, in compliance with the above orders, the Authority called for cost and injury information from all the other known domestic producers. However, these producers have declined to provide any information on the above subject on the basis of their interpretation of the said judgment. It has been argued by the other known producer that the said judgment of the Hon'ble Court does not require inclusion of all domestic producers in the NIP and injury determination. Further, the other domestic producer has argued that the

Designated Authority is interpreting the words “domestic industry as a whole” used by the Hon’ble Supreme Court in its judgment to mean the “domestic producers as a whole”. In this connection, it has been submitted that the Hon’ble Court in that judgment has held that the injury as well as NIP has to be determined for the “domestic industry as a whole” and not in respect of any particular company or enterprise. In the same paragraph, the Hon’ble Supreme Court refers to the definition of domestic industry under Rule 2(b). Throughout the discussions, the Supreme Court has used the words “domestic industry as a whole” and not “domestic producers as a whole”. Further, at no stage has the Supreme Court held that the term “domestic industry” has to be interpreted in any manner different from the definition provided in Rule 2(b). On the other hand, as stated earlier, the Court has clearly referred to the definition of “domestic industry” in the same paragraph.

36. The Authority notes that the above interpretation of the Judgment of the Hon’ble Court may not be in conformity with the said judgment as the review application filed by the Authority has been dismissed by the Hon’ble Court. Therefore, the Authority has proceeded with the determination of the injury and NIP for the domestic industry as a whole to include all domestic producers of the subject goods to the extent the same was reasonably available. It is noted that there are a number of other very small domestic producers apart from M/s Reliance Industries Ltd. who is one of the major producer of the subject goods in India having a share of approximately 33% in the total domestic production. The Authority has examined the cost and injury information of the major producer M/s Reliance Industries Ltd. from its Cost Audit Reports as available with the Cost Audit Branch of the Ministry of Company Affairs. For the other very small domestic producers, the cost and injury information is not available in the form of Cost Audit Reports or in any other form. It is also noted that these other very small producers collectively accounts for a share of 14% in the total domestic production. Therefore, the impact of these very small producers would not be significant. Accordingly, the injury examination has been carried out taking into account the information in respect of 11 known producers of the subject goods accounting for about 86% of the total domestic production in India. It is also noted that with respect to each of injury parameters ‘domestic industry as a whole’ includes the information of M/s Reliance industries Ltd. (with a total share of 86% which includes M/s RIL share of 33%) but not of all the producers in India. The term ‘domestic industry’ includes only the applicant producers (having a share of 52%). The injury analysis for all the injury parameters for the domestic industry as a whole could not be made as the requisite information for some of the injury parameters was not available with the Authority, which has been

clearly indicated while making the injury analysis for each factor in the following paragraphs.

37. An analysis of the injury parameters as envisaged under the Rules has been carried out in the following paragraphs:

Volume of Imports

i) The Authority has examined the volume of imports from the subject country on the basis of the imports of subject goods as reflected by the official statistics published by the DGCI&S. As already mentioned earlier, the Authority has reexamined the transaction wise analysis of the imports of subject goods from subject countries and on the basis of reexamination, the figures of the volume and value of imports of subject goods have been revised. It is observed that that the share of subject country in total imports has decreased to 11% (during the POI) of the imports made in the base year.

	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Imports from Subject Countries (MT)	33256	41046	15891	3856
Imports from Other Country-Attracting ADD	1461	1455	8693	32132
Imports from Other Remaining Countries	4797	2886	2253	1413
Total Imports (MT)	39514	45387	26837	37401

	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Imports from Subject Countries (MT)	100	123.43	47.78	11.59

Imports from Other Country-Attracting ADD	100	99.59	595.00	2199.32
Imports from Other Remaining Countries	100	60.17	46.97	29.46
Total Imports (MT)	100	114.86	67.92	94.65

Market share of Imports from subject country in the total imports and demand

ii) The Authority finds that the imports from subject countries in comparison to total demand in India have decreased to a level of .50% from a level of over 5% during the base year. The trend in percentage increase from year to year is shown in the table below. In the total imports, it has declined to 10% during the POI from a high of 84% during the base year.

<u>Total Demand</u>				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Total Demand (MT)	646810	683470	708597	766477
Trend	100	106	110	119

Share of Imports

	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Imports from Subject Countries (MT)				
Indonesia	13421	24075	2812	228
Malaysia	4456	3220	4922	821
Chinese Taipei	9995	9719	5261	691
Thailand	5383	4032	2896	2116

Total Subject Countries	33256	41046	15891	3856
Imports from Other Country-Attracting ADD	1461	1455	8693	32132
Imports from Other Remaining Countries	4797	2886	2253	1413
Total Imports (MT)	39514	45387	26837	37401
Total Domestic Sales	607296	638083	681760	729076
Total Demand (MT)	646810	683470	708597	766477
% Share of Imports from Subject Countries:				
Total Imports	84%	90%	59%	10%
Total Demand (MT)	5.14%	6.01%	2.24%	0.50%
% Share of Imports from Other Country-Attracting ADD				
Total Imports	3.70%	3.21%	32.39%	85.91%
Total Demand (MT)	0.23%	0.21%	1.23%	4.19%
% Share of Imports from Other Remaining Countries in:				
Total Imports	12.14%	6.36%	8.40%	3.78%
Total Demand (MT)	0.74%	0.42%	0.32%	0.18%

Imports from subject country as % of domestic production:

iii) The Authority notes that dumped imports from subject countries as percentage of domestic production of the domestic producers have declined from a level of 4.24% in the year 2001-02 to 0.41% during the period of investigation.

Share of Imports

	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Imports from Subject Countries (MT)				
Indonesia	13421	24075	2812	228
Malaysia	4456	3220	4922	821

Chinese Taipei	9995	9719	5261	691
Thailand	5383	4032	2896	2116
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Imports from Other Remaining Countries	4797	2886	2253	1413
Total Imports (MT)	39514	45387	26837	37401
Total Domestic Sales	607296	638083	681760	729076
Total Demand (MT)	646810	683470	708597	766477
Total Domestic Production	784460	840065	900245	936775
% Share of Imports from Subject Countries:				
Total Domestic Production	4.24%	4.89%	1.77%	0.41%
% Share of Imports from Other Country-Attracting ADD				
Total Domestic Production	0.19%	0.17%	0.97%	3.43%
% Share of Imports from Other Remaining Countries in:				
Total Domestic Production	0.61%	0.34%	0.25%	0.15%

Effect of Dumped Imports on prices in the domestic market for like products:

Price Undercutting

iv) With regard to the effect of the dumped imports on domestic prices, it has been examined 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. A comparison for product concerned was made between the landed value of exported product and the average selling price of the domestic industry for domestic market net of all rebates and taxes for sales made to unrelated customers, at the same level of trade. The prices of the domestic

industry were determined at the ex factory level. The CIF prices of the subject country concerned were adjusted for post importation applicable duties. This comparison showed that during the period of investigation, the subject goods originating in subject country was sold in the Indian market at prices which undercut the domestic industry's prices when expressed as a percentage of the domestic selling prices of the domestic industry as is evident from the table below.

In order to assess the effect of imports on the domestic market an analysis of import prices over the injury period was made. It was noted that the exporters from subject countries have decreased their prices and the landed value has increased by 16% while the domestic selling prices have also increased during this period by 30%. Thus, the price undercutting has significantly increased during the injury period and remains significant during the POI with the exception of Thailand, which shows negative price undercutting.

Price Undercutting				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Selling Price Rs. / MT-Domestic Industry as a Whole	****	****	****	****
Indexed	100	112	120	130
Landed Value Rs. / MT				
Indonesia	46829	61182	62986	59588
Malaysia	71756	74040	61709	63434
Chinese Taipei	61116	59130	55451	54905
Thailand	62111	59356	62254	71886
Subject Countries	56937	61525	59962	66317
Indexed	100	108	105	116
Price Undercutting Rs. / MT				
Indonesia	****	****	****	****
Malaysia	****	****	****	****
Chinese Taipei	****	****	****	****
Thailand	****	****	****	****
Subject Countries	****	****	****	****

Price Undercutting (%)				
Indonesia	****	****	****	****
Malaysia	****	****	****	****
Chinese Taipei	****	****	****	****
Thailand	****	****	****	****
Subject Countries	****	****	****	****
Price Undercutting (%) -Range				
Indonesia	17% to 1%	-8 to 5%	1% to 8%	8% to 20%
Malaysia	-50% to -15%	-40 to -10%	1% to 11%	5% to 14%
Chinese Taipei	-25% to -5%	-10 to 1%	8% to 20%	15% to 28%
Thailand	-26% to -6%	-12 to 1%	1% to 10%	-8% to 5%
Subject Countries	-12% to 1%	-8 to 5%	1% to 15%	4% to 16%

M/s All India Texturisers Association has also stated by quoting the decision of the CESTAT in Appeal No. C-848-849/05-AD dated 3rd August 2006 that the issue of price undercutting causing injury would be meaningless in case volume of dumped imports is insignificant in its comparison with the domestic production and domestic consumption.

The Authority notes that the abovementioned decision by the Hon'ble CESTAT in Forum of Acrylic Fibre Manufacturers Vs. Designated Authority 2006 (202) ELT 257 has been rendered in the case of mid-term review investigation. It is however noted that in a sunset review investigation, the continuance or recurrence of injury has to be 'likely' and the injury analysis has to focus on the future or likelihood situation of the domestic industry in terms of continuance or recurrence of injury if duties are allowed to expire.

Price depression and Suppression

v) There has been no decline in the selling price of the domestic industry during the injury period. Therefore no price depression has been caused to the domestic industry. However, it is seen that the landed price from subject countries have not increased in the same proportion as compared to the cost of production of the subject goods of the domestic

industry implying that the domestic industry has suffered price suppression on account of dumped imports from subject countries.

	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Cost of Production Rs. / MT-Domestic Industry as a Whole	****	****	****	****
Indexed	100	108	104	132
Increase Year to Year		****	****	****
Indexed		100	-58	591
Selling Price Rs. / MT-Domestic Industry as a Whole	****	****	****	****
Indexed	100	112	120	130
Increase Year to Year		****	****	****
Indexed		100	76	112
Landed Value from Subject Countries Rs. / MT				
Indonesia	46829	61182	62986	59588
Malaysia	71756	74040	61709	63434
Chinese Taipei	61116	59130	55451	54905
Thailand	62111	59356	62254	71886
Total Subject Countries	56937	61525	59962	66317
Indexed	100	108	105	116

Price underselling

vi) The Authority has also examined the claim of the petitioner that the domestic industry is suffering on account of the price underselling from the sale of subject goods. The Authority notes that price underselling is an important indicator to make an assessment of the injury. The Authority has worked out the Non-injurious price for the product under consideration and compared the same with the landed value to arrive at the extent of price underselling. The analysis shows a significant level of incidence of price underselling causing injury to the domestic industry from the dumped imports from subject country.

Price Underselling	
	POI (Annualised)
Non Injurious Price Rs. / MT	*****
Landed Value Rs. / MT	
Indonesia	59588
Malaysia	63434
Chinese Taipei	54905
Thailand	71886
Subject Countries	66317
Price Underselling Rs. / MT	
Indonesia	****
Malaysia	****
Chinese Taipei	****
Thailand	****
Subject Countries	****
Price Underselling (%)	
Indonesia	****
Malaysia	****
Chinese Taipei	****
Thailand	****
Subject Countries	****
Price Underselling (%) - Range	
Indonesia	12% to 30%
Malaysia	15% to 28%
Chinese Taipei	20% to 39%
Thailand	3% to 12%
Subject Countries	8% to 22%

Situation of the Domestic Industry

vii) For the examination of the impact of the imports on the domestic industry in India, the Authority considered such indices having a bearing on the state of the industry as production, capacity utilisation, sales quantum, stock, profitability, net sales realisation, the magnitude and margin of dumping, etc. in accordance with Annexure II (iv) of the Rules supra. In line with the Supreme Court Judgment, the Authority has proceeded with the determination of the injury and NIP for the domestic industry as a whole to include all domestic producers of the subject goods to the extent the same was relevant and reasonably available. It

is noted that there are a number of other very small domestic producers apart from M/s Reliance Industries Ltd. who is one of the major producer of the subject goods in India having a share of approximately 33% in the total domestic production. The Authority has examined the cost and injury information of the major producer M/s Reliance Industries Ltd. from its Cost Audit Reports as available with the Cost Audit Branch of the Ministry of Company Affairs. For the other very small domestic producers, the cost and injury information is not available in the form of Cost Audit Reports or in any other form. It is also noted that these other very small producers collectively accounts for a share of 14% in the total domestic production. Therefore, the impact of these very small producers would not be significant. Accordingly, the injury examination has been carried out taking into account the information in respect of 11 known producers of the subject goods accounting for about 86% of the total domestic production in India. It is also noted that with respect to each of injury parameters 'domestic industry as a whole' includes the information of M/s Reliance industries Ltd. but not of all the producers in India. The term 'domestic industry' includes only the applicant producers. The injury analysis for all the injury parameters for the domestic industry as a whole could not be made as the requisite information for some of the injury parameters was not available with the Authority, which has been clearly indicated while making the injury analysis for each factor in the following paragraphs.

Sales and Market share of domestic producers:

viii) It is noted that sales of the domestic industry have increased and domestic industry as a whole have increased and the increased is in line with the increase in demand. Further, the Authority finds that the market share of the domestic industry and the imports from the subject countries in the demand of subject goods in India has been as under:

Sales (MT)	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Domestic Industry	307826	310022	324328	392195
Other Domestic Producers	202429	175147	234039	231456
Domestic	510255	485169	558367	623651

Industry as a Whole				
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Market Share of Domestic Industry

	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Sales (MT):				
Domestic Industry	307826	310022	324328	392195
Other Domestic Producers	202429	175147	234039	231456
Domestic Industry as a Whole	510255	485169	558367	623651
Total Demand (MT)	646810	683470	708597	766477
Market Share of:				
Domestic Industry (%)	48	45	46	51
Other Domestic Producers (%)	31	26	33	30
Domestic Industry as a Whole (%)	79	71	79	81

The Authority finds that the share of the domestic producers have increased marginally from 48% during 01-02 to 51% during the POI while the share of the domestic industry as a whole has increased by 2 percentage points over the same period. . It is also noted that over the same period the demand has grown by 18%. It shows that the domestic industry was able to achieve growth though marginally during the injury period. It is thus noted that the market share of the domestic industry has not been adversely affected because of dumped imports from subject country.

Production & Capacity Utilization:

:

<u>Production (MT)</u>				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Domestic Industry	385167	402651	423669	484734
Other Domestic Producers	269188	247679	255620	252412
Domestic Industry as a Whole	654355	650330	679289	737146
<u>Capacity (MT)</u>				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Domestic Industry	389425	428175	478196	513208
Other Domestic Producers	267174	275274	268450	261979
Domestic Industry as a Whole	656599	703449	746646	775188
<u>Capacity Utilisation%</u>				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Domestic Industry	98.91%	94.04%	88.60%	94.45%
Other Domestic Producers	100.75%	89.98%	95.22%	96.35%
Domestic Industry as a Whole	99.66%	92.45%	90.98%	95.09%

ix) The Authority finds that the capacity utilization of the domestic industry has declined from 98.91% in the year 2001-02 to 94.45% during the period of investigation. Thus, the decline of in the capacity utilization and on the other hand increase in dumped imports from subject country over the injury investigation period appears to have adversely affected the domestic industry.

Inventories:

x) The Authority notes that the level of inventories of the domestic industry has come down during the period of investigation while the inventories as a percentage of sales declined significantly during the injury period.

<u>Inventories</u>	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Sales (MT)- Domestic Industry	307826	310022	324328	392195
Inventories- Domestic Industry	29632	29605	21878	6887
Inventories as percentage of Sales	9.63%	9.55%	6.75%	1.76%
Indexed	100	99	70	18

Factors affecting Domestic Prices:

xi) The Authority notes that the level of price undercutting from each of the subject countries is significant with the exception of Thailand and two cooperating exporters, one each from Indonesia and Malaysia as a result of dumped imports from subject countries. However, price underselling on account of dumped imports from each of the subject countries and cumulatively also is significant as the landed value of imports from each of subject countries is significantly lower than the non-injurious price of the domestic industry. Though the landed value/MT of imports from subject countries have increased during the period of investigation as compared to the year 2001-2, the cost of raw material has increased much more as a result of the soaring crude oil prices. This clearly indicates that the effect of dumped imports on the domestic prices is much more than what is reflected from a plain analysis of the data. The Authority notes that apart from the applicants there are few other domestic producers of the subject goods in the domestic market in India catering to about 48% of the total production. However, the data of these producers (covering 33% of the total production which have been taken on board while determining the parameters for domestic industry as a

whole) do not show significant cost and price difference as compared to the domestic industry. Further, the injury investigation has also been carried out for the domestic industry as a whole (covering most of the injury parameters the information of which could be gathered), including the other known producers (covering a total of 86% of the domestic producers). The Authority also notes that the dumped imports from the subject countries have been found to have significant price undercutting and underselling effect (cumulatively) on the domestic industries prices. With regard to selling prices of the domestic industry, it is noted that the same have increased during the period of investigation as compared to the base year. Thus, the principal factor affecting the domestic prices appear to be the dumped prices of the subject goods from the subject country.

Magnitude of Margin of Dumping:

xii) The Authority finds that the magnitude of the margin of dumping for subject goods from the subject countries is significant.

Employment, Wages and Productivity :

xiii) The Authority notes that the domestic industry has added additional capacity and employed a number of persons. Accordingly, number of employees and wages paid to them has gone up during the injury investigation period. The Authority finds that the productivity per employee during the period of investigation has increased as compared to base year 2001-02. It is therefore noted that the loss of productivity is not a cause of injury to the Domestic Industry.

Employees, Wages and Productivity

	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Employees (Nos.)- Domestic Industry	3254	3398	3434	3758
Wages (Rs. Lacs)- Domestic Industry	3413	3521	3825	4495
Production of Domestic Industry	385167	402651	423669	484734
Productivity per employee / MT	118	118	123	129

Profitability:

xiv) The Authority notes that the domestic industry has not been able to achieve profits during the period of investigation. The Domestic Industry achieved a level of profit of 1.30% in the year 2001-2 which however, came down to a negative level of (0.99%) during the period of investigation as may be seen from the table given hereunder:

Profit /Loss (Rs. Lacs):				
Domestic Industry	****	****	****	****
Other Domestic Producers	****	****	****	****
Domestic Industry as a Whole	****	****	****	****
Domestic Industry	100	261	603	-103
Other Domestic Producers	-100	-66	198	-62
Domestic Industry as a Whole	-100	-27	359	-96
Profit /Loss (%):				
Domestic Industry	****	****	****	****
Other Domestic Producers	****	****	****	****
Domestic Industry as a Whole	****	****	****	****

Return on Investment (Capital Employed):

xv). The Authority notes that return on capital employed has also declined and followed the same trend as that of profitability. The domestic industry could earn ****% return on its investment during the period of investigation whereas it earned ****% return in the previous year 2003-04 and ****% during the base period.

<u>Return on Capital Employed</u>				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Capital Employed (Rs. Lacs)-Domestic	****	****	****	****

Industry				
Indexed	100	121	102	102
Profit / Loss before Interest (Rs. Lacs)- Domestic Industry	****	****	****	****
Indexed	100	98	134	25
ROCE (%) - Domestic Industry	****	****	****	****
Indexed	100	80.94	131.04	18.66

Actual and potential negative effect on cash flows:

xvi) The Authority finds that the cash profit / cash flow has also followed the same trend as that of the profitability and during the period and it has come down significantly during the POI as compared to the base year 2001-02.

Cash Profit	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Cash Profit (Rs. Lacs)- Domestic Industry	****	****	****	****
Indexed	100	138	190	90
Cash Profit Rs. / MT- Domestic Industry	****	****	****	****
Indexed	100	145	174	74

Growth:

xvii) The Authority notes that though the sales volume of the domestic industry has gone up during POI, yet growth in sales volume during POI is less than the previous year and growth in the total demand over the same period. It appears that the various parameters pertaining to operating performance of the domestic industry has suffered adversely. The various growth parameters are listed below.

<u>Growth</u>				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Demand		6	10	19
Production-Domestic Industry as a Whole		-1	4	9
Market Share-Domestic Industry as a Whole		-10	-0.11	3
Sales Volume-Domestic Industry as a Whole		-5	15	12
Profit- Domestic Industry as a whole		-28	336	-89
Cash Flow / MT-Domestic Industry as a whole		65	208	-79
ROCE-Domestic Industry		-19	62	-86

Ability to Raise Capital Investments:

xviii). The Authority finds that in view of the losses being suffered by the domestic industry on the product under consideration during the POI, the ability of the domestic industry to raise capital investment may be adversely affected in view of the negative profits of the domestic industry and declining returns during the period of investigation.

E. CAUSAL LINK AND OTHER FACTORS

Effect of dumped imports

38. Between 2001-02 and the POI, the dumped imports from subject countries as percent of total import of subject goods have decreased to 11% of the imports made in the base year. However, while examining the price effect i.e. whether the dumped imports have significantly undercut the price of the subject good in India, the Authority found that the landed value of the subject goods from subject countries was lower than

the selling price of the domestic industry indicating that the dumped imports from subject countries have undercut the selling price of the domestic industry significantly. It is found that the price undercutting and the pricing behaviour of landed value of imports has forced the domestic industry to keep the domestic prices at an unremunerative level. The domestic industry could not increase the selling price to recover the full increase in cost of production due to dumped imports and had to suffer financial losses during the POI. The undercutting along with price suppression in effect eroded the profitability of the domestic industry. On the basis of the foregoing, it is held that the domestic industry has suffered material injury due to dumped imports from subject countries during the POI.

EFFECT OF OTHER FACTORS

Trade restrictive practice and competition between the foreign and domestic producers:

39. The Authority did not find any trade restrictive practices followed by the Indian producers and other competing industries. As regards the Domestic Industry's inability to fill the gap between the domestic demand and their own production, it is observed that the imposition of anti-dumping duties does not amount to any kind of restriction on suppliers and producers for supplying the subject goods in the domestic market, which could have contributed to the injury to the domestic industry. Moreover, it is also noted that the domestic industry has unutilized capacity to cater to the local demand if the competition in the market takes place at a fair price.

Contraction of demand or Changes in the pattern of consumption:

40. It is noted that there is no contraction in the demand during the period under consideration. On the contrary, the overall demand has increased during the POI. Therefore, the possible decline in demand is not a factor, which could have caused injury to the domestic industry.

Technology:

41. None of the interested party has submitted any evidence that the technology is a factor of injury to the domestic industry.

Export performance:

42. The Domestic Industry has exported the subject goods during the period of investigation as well as during previous years. The Authority notes that the export performance of the domestic industry has shown improvement. The profitability of the domestic and exports sales have been segregated for the purpose of the injury examination. Therefore, injury caused due to exports (if any) has not been attributed to the performance of the domestic industry in the domestic market.

Productivity:

43. The productivity of the domestic industry has improved during the period of investigation as compared to the base year 2001-02. The productivity *per se* could not be the cause of injury to the domestic industry.

Other arguments

44. It has been submitted by some interested parties that demand for POY is high right from the year 2001-02 as compared to indigenous production and the indigenous industry has tremendously benefited by creating shortage. The Authority has examined this statement and notes that the associations have merely made statements without evidence or cogent reasoning in support of their argument. With regards to their other arguments that as per the balance sheets of the domestic producers, they are not making losses and most of the companies are profit-making concerns, it is noted that anti-dumping investigations are product specific and any conclusions based on the balance sheet of the company which contains the information for other products also, is not appropriate. This position is clear from the plain language of the anti-dumping laws and the pronouncement of the Appellate Tribunal also. The Authority has indeed based its final findings on the basis of the records pertaining to the product under consideration, which have also been duly verified. With regards to the submissions of the interested parties that almost all the companies are increasing their capacities, which indicate that the import of POY has not affected the indigenous industry at all, it is noted that some of the applicants are indeed increasing their capacities, the fact which the interested parties have also admitted. It is also noted that the domestic industry has submitted that the decision to increase capacities was taken prior to the initiation of investigation and there is a specific lead time during which the domestic industry faced the injurious effect of dumping from China. The issue has been examined and it is noted that capacities are added to take advantage of the growing market and economies of scale. Therefore, the mere fact that some components of the domestic industry have increased their capacities does not lead to

the conclusion that they may not be suffering on account of the dumped imports from subject country. With regards to the submission of various interested parties that the excise duty on POY has been reduced over the years and the same has not been passed on to customers, it is noted that the analysis of the selling prices is always made at the ex-factory level. The ex-factory price does not include any element of excise duty or the expenses after clearance from the factory. Therefore, the statement of the federation is not relevant in this investigation.

F. CONCLUSION ON CONTINUATION OF INJURY AND CAUSAL LINK:

45. In view of the foregoing the Authority considers that the quantum of dumped imports of subject goods from the subject countries have declined in absolute terms as well as in relation to total demand and domestic production in India. More ever, parameters such as market share of the domestic industry in the total demand , sales, production, inventory have not shown any decline indicating that the absence of any significant volume injury to the domestic industry and also to domestic industry as a whole. However, the domestic industry has suffered significantly on account of the price effects as the price undercutting which was negative during the base year became positive and significant during the POI. The landed prices of the dumped subject goods from the subject country have shown a consistent decline in spite of the increase in the cost of production of the domestic industry indicates price suppression. It is also noted that the profitability of the domestic industry for product under consideration has become negative during the period of investigation and the return on investment and cash flows have been adversely affected and declined to a meager level in the period of investigation. The dumping margin from the subject country is considered significant. On the basis of the foregoing, it is held that the domestic industry has suffered material injury as envisaged under the Rules. No other factor, other than the dumped imports from subject country, have been brought to the notice of the Authority, that could have caused injury to the domestic industry

G. LIKELYHOOD OF CONTINUATION OF DUMPING AND INJURY

Low level of imports in POI and unutilized capacity of the exporters in the subject countries :

46. It has been submitted by the domestic industry that the imports from the subject countries are lower only during the period of investigation whereas for all the other years are significant and substantial not only as a share of total imports but also in relation to total demand and domestic production. It has also been submitted that the lower level of imports during the period of investigation as compared to other years is only due to the fact that the exporters from the subject countries have consciously and strategically reduced the exports with a view to avoid re-imposition of anti-dumping duties. The significant and substantial imports from the subject countries in the previous years prior to POI and lower imports in POI gives a clear and strong indication about the likely future behavior of the exporters from subject countries. It has been further submitted that the dumped imports from the subject countries in all probability would surge in case anti-dumping duties are lifted against the subject countries and the domestic industry would continue to be injured. No other comments have been received from any other interested parties in this investigation. In this review, one exporter from Indonesia and Thailand have cooperated and after examining their information, it is noted that these exporters have substantial unutilized capacity and likelihood of their continued dumping into Indian market remain strong.

Price undercutting and Price underselling:

48. It may be seen from the following table that the price underselling and price undercutting from the subject countries is significant during the period of investigation.

Price Undercutting				
	April 01 to March 02	April 02 to March 03	April 03 to March 04	POI (Annualised)
Selling Price Rs. / MT-Domestic Industry as a Whole	****	****	****	****
Indexed	100	112	120	130
Landed Value Rs. / MT				
Indonesia	46829	61182	62986	59588
Malaysia	71756	74040	61709	63434
Chinese Taipei	61116	59130	55451	54905
Thailand	62111	59356	62254	71886
Subject	56937	61525	59962	66317

Countries				
Indexed	100	108	105	116
Price Undercutting Rs. / MT				
Indonesia	****	****	****	****
Malaysia	****	****	****	****
Chinese Taipei	****	****	****	****
Thailand	****	****	****	****
Subject Countries	****	****	****	****
Price Undercutting (%)				
Indonesia	****	****	****	****
Malaysia	****	****	****	****
Chinese Taipei	****	****	****	****
Thailand	****	****	****	****
Subject Countries	****	****	****	****
Price Undercutting (%) -Range				
Indonesia	17% to 1%	-8 to 5%	1% to 8%	8% to 20%
Malaysia	-50% to -15%	-40 to -10%	1% to 11%	5% to 14%
Chinese Taipei	-25% to -5%	-10 to 1%	8% to 20%	15% to 28%
Thailand	-26% to -6%	-12 to 1%	1% to 10%	-8% to 5%
Subject Countries	-12% to 1%	-8 to 5%	1% to 15%	4% to 16%

47.

Price Underselling	
	POI (Annualised)
Non Injurious Price Rs. / MT	****
Landed Value Rs. / MT	
Indonesia	59588
Malaysia	63434
Chinese Taipei	54905

Thailand	71886
Subject Countries	66317
Price Underselling Rs. / MT	
Indonesia	****
Malaysia	****
Chinese Taipei	****
Thailand	****
Subject Countries	****
Price Underselling (%)	
Indonesia	****
Malaysia	****
Chinese Taipei	****
Thailand	****
Subject Countries	****
Price Underselling (%) - Range	
Indonesia	12% to 30%
Malaysia	15% to 28%
Chinese Taipei	20% to 39%
Thailand	3% to 12%
Subject Countries	8% to 22%

49. The level of significant price underselling and undercutting during the period of investigation indicates the likely future behavior of the exporters from the subject countries regarding the pricing of the subject goods. It may be added that these undercutting and underselling have been determined without taking into account the existing anti dumping duties (while calculating the landed value) and this fact itself shows that undercutting and underselling margin are likely to increase should the anti dumping duties are allowed to expire.

High level of dumping margins:

50. It has already been noted that the dumping margin from each of the subject countries is significant in spite of anti-dumping duties being in existence. The significant level of dumping margin from subject countries in the period of investigation indicates the possibility that it would continue to adversely affect the performance of the domestic industry.

Negative profitability shows continued injury:

51. The losses during the period of investigation clearly strongly indicates that the domestic industry continues to be injured and there is every possibility that the significant dumping from the subject countries would continue and recur and further deteriorate the position of the domestic industry in terms of its losses and injury.

Conclusion on likelihood of continuation of dumping and injury

52. Thus, it may be seen from the above that there remains a strong possibility of likelihood of continuation of dumping of subject goods from subject countries and continued injury to the domestic industry should the present anti dumping duties are allowed to expire.

H. MAGNITUDE OF INJURY MARGIN

Determination of Non-injurious price

53. The Authority determined the non-injurious price for the domestic industry as a whole in accordance with the judgment of the Hon'ble Supreme Court of India as quoted earlier and a detailed disclosure of the methodology of determination of the NIP was made to the domestic industry.

54. The Authority notes that the Non-injurious price of the domestic industry as a whole has been determined in accordance with the judgment of the Hon'ble Supreme Court of India taking into account the guidelines and methodology set by the Hon'ble Supreme Court of India and the weighted average NIP for the domestic industry as a whole as been determines as Rs ****/per MT.

55. The non-injurious price determined by the Authority is the weighted average of all types of the subject goods produced by the domestic industry and the same has been compared with the weighted average landed value of the exports from the subject countries for determination of injury margin. The weighted average landed price of the exports from the subject countries and the injury margins have been worked out as follows:

Injury Margin Calculations

Company/Countries	IM	IM%
M/s Hualon	****	4-8%
M/s Polysindo	****	4-8%
Other Exporters Malaysia	****	10-15%

Other Exporters Indonesia	****	10-15%
All Exporters Chinese Taipei	****	30-40%
All Exporters Thailand	****	4-8%

I. INDIAN INDUSTRY'S INTEREST & OTHER ISSUES

56. The Authority holds 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 facilitate re-establish a situation of open and fair competition.

57. The Authority also recognizes that though 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 these anti-dumping measures. On the contrary, imposition of anti-dumping measures would eliminate the unfair advantages gained by the dumping practices and would prevent the decline of the domestic industry and help in maintaining availability of wider choice of the subject goods to the consumers.

J. Conclusions:

58. The Authority has, after perusing and considering the foregoing, come to the conclusion that:

1. Subject goods originating in or exported from subject countries have been exported to India below their normal values.
2. The domestic industry has suffered material injury.
3. The injury has been caused to the domestic industry by dumped imports of the subject goods from subject countries.

4. Anti dumping duties are required to be imposed in respect of imports from subject countries, as withdrawal thereof would lead to continuation of dumping and injury.
5. The Authority considers it appropriate to recommend the continuation of anti-dumping duty as modified on imports of subject goods from subject countries in the form and manner described in the table below.

K. Recommendations:

59. The Authority notes that the sunset review 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 link. Having initiated and conducted a final investigation into dumping, injury and causal link between dumping and injury to the domestic industry in terms of the Rules laid down and having definitively established positive dumping margin against the subject country, as well as material injury to the domestic industry caused by such dumped imports, the Authority is of the view that continuation of imposition of definitive duty is required to offset dumping and injury.

60. Therefore, Authority considers it necessary to recommend continuation of definitive anti-dumping duty on imports of subject goods from the subject countries in the form and manner described hereunder.

61. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the Customs Tariff Act, 1975. Accordingly, definitive antidumping duty equal to the amount indicated in Column 9 of the table below is recommended on all imports of Partially Oriented Yarn (POY) falling under chapter 54 of Custom Tariff Classification Act 1975, originating in or exported from subject countries .

Sl.	Heading	Description of goods	Specification	Country of origin	Country of Export	Producer	Exporter	Amount US\$/MT	Unit of	Currency
No									Measurement	
-1	-2	-3	-4	-5	-6	-7	-8	-9	-10	-11
1	5402	Partially Oriented Yarn	Any	Chinese Taipei	Chinese Taipei	Any	Any	461.52	MT	US\$
2	5402	Partially Oriented Yarn	Any	Chinese Taipei	Any other than Chinese Taipei	Any	Any	461.52	MT	US\$
3	5402	Partially Oriented Yarn	Any	Any other than subject countries	Chinese Taipei	Any	Any	461.52	MT	US\$
4	5402	Partially Oriented Yarn	Any	Thailand	Thailand	Any	Any	83.74	MT	US\$
5	5402	Partially Oriented Yarn	Any	Thailand	Any other than Thailand	Any	Any	83.74	MT	US\$
6	5402	Partially Oriented Yarn	-do-	Any other than subject countries	Thailand	Any	Any	83.74	MT	US\$
7	5402	Partially Oriented Yarn	Any	Indonesia	Indonesia	M/s PT Polysindo Eka Perkasa,	M/s PT Polysindo Eka Perkasa,	88.68	MT	US\$
8	5402	Partially Oriented Yarn	Any	Indonesia	Indonesia	Any other than M/s PT Polysindo Eka Perkasa,	Any other than M/s PT Polysindo Eka Perkasa,	140.05	MT	US\$
9	5402	Partially Oriented Yarn	Any	Indonesia	Any other than Indonesia	Any	Any	140.05	MT	US\$
10	5402	Partially Oriented Yarn	Any	Any other than subject countries	Indonesia	Any	Any	140.05	MT	US\$
11	5402	Partially Oriented Yarn	Any	Malaysia	Malaysia	M/s Hualon Corporation (M) Sdn BHD.	M/s Hualon Corporation (M) Sdn BHD.	74.13	MT	US\$
12	5402	Partially Oriented Yarn	Any	Malaysia	Malaysia	Any other than M/s Hualon Corporation (M) Sdn BHD.,	Any other than M/s Hualon Corporation (M) Sdn BHD.,	185.03	MT	US\$

13	5402	Partially Oriented Yarn	Any	Malaysia	Any other than Malaysia	Any	Any	185.03	MT	US\$
14	5402	Partially Oriented Yarn	Any	Any other than subject countries	Malaysia	Any	Any	185.03	MT	US\$

L FURTHER PROCEDURE

62. 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.

63. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

(R. Gopalan)
Designated Authority