

No. 15/26/2008-DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPARTMENT OF COMMERCE
DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES
223, UDYOG BHAWAN, NEW DELHI

Dated the June 29, 2010

FINAL FINDINGS

Subject: - Sunset Review of Anti- dumping duty on imports of Propylene Glycol originating in or exported from EU, Singapore, Korea RP and USA

BACKGROUND

1. **No. 15/26/2008-DGAD.** – Whereas having regard to the Customs Tariff Act, 1975 as amended from time to time (hereinafter referred to as the Act), and the Customs Tariff (Identification, Assessment and Collection of Antidumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, as amended from time to time (hereinafter referred to as the AD Rules), the definitive anti-dumping duty was originally imposed vide notification No.105/2004-Customs, dated the 8th October 2004 on import of Propylene Glycol (hereinafter also referred to as subject goods) originating in or exported from EU, Singapore, Korea RP and USA (hereinafter also referred to as subject countries).
2. And whereas, in view of the order of the Hon'ble Delhi High court in the matter of Indian Metal and Ferro Alloys Ltd v/s Designated Authority, Writ Petition (Civil) No. 16893 of 2006 and in accordance with Section 9 A (5) of the Act, read with Rule 23 of AD Rules, the Authority issued a public notice dated 31st March 2009, published in the Gazette of India, Extraordinary, initiating the Sunset review investigation to review the need for continued imposition of duties in force and to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.
3. And whereas, the antidumping duty as notified vide Notification No. 105/2004 dated 8th October 2004 was extended up to 7th July 2010 vide notification No.117/2009 dated 13th October 2009 in terms of Section 9 (A) (5) of the Act.

A. PROCEDURE

4. The procedure described herein below has been followed:
 - i. The Authority sent copies of the initiation notification, to all known exporters/ producers of the subject goods in the subject countries, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file the questionnaires' responses and make their views known in writing within the prescribed time limit.

- ii. The Embassies/High Commission of the subject countries in New Delhi were also informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise the exporters/producers from their country to respond to the questionnaires within the prescribed time. A copy of the letter and questionnaires was sent to Embassies/High Commission of the subject countries in accordance with Rule 6(3) of the AD Rules.
- iii. In response to the initiation notification, M/s. Manali Petrochemicals Ltd., Chennai responded and filed their submissions along with information/data, *inter alia*, seeking extension of the anti-dumping duties. The company submitted the information/data for undertaking the injury analysis.
- iv. In response to the initiation notification, the following exporters from subject countries have responded:
 - a. M/s Shell Eastern Petroleum Pte. Ltd.
 - b. M/s Dow Europe GmbH, Switzerland
 - c. M/s Dow Chemical Pacific (Singapore) Pte. Ltd.
- v. In response to the initiation notification, no other interested party has responded.
- vi. The Authority made available non-confidential version of the information/data and evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.
- vii. The Authority examined the information furnished by M/s. Manali Petrochemicals Ltd., Chennai to the extent possible on the basis of Generally Accepted Accounting Principles (GAAP) to analyze the injury suffered and to work out the cost of production, cost to make and sell the subject goods in India so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to the domestic industry.
- viii. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 25th February 2010. The parties which presented their views in the public hearing were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered, wherever found relevant, in this disclosure statement.
- ix. The period of investigation for the purpose of the present review is April 2008 – March 2009 (POI). However, injury analysis covers the periods April 2005-March 2006, April 2006-March 2007, April 2007-March 2008 and the POI.
- x. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant matter were disclosed to the known interested parties. The comments received on this disclosure statement have been duly considered in the final findings.
- xi. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide non-confidential version of the information filed on confidential basis.

- xii. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available'.
- xiii. In accordance with Rule 16 of the Rules supra, the essential facts/basis considered for these findings were disclosed to know interested parties on 21st June 2010. Responses filed by the interested parties have been duly considered in these findings.
- xiv. The relevant submissions of all the interested parties have been examined by the Authority and have been appropriately dealt with in these final findings.
- xv. *** In this statement represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.

B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE

- 5. The product involved in the original investigation was Propylene Glycol of all grades. This being a Sunset review, therefore, the investigation covers the product covered in the original investigation.
- 6. The subject goods are classified under Customs sub-heading no. 2905.3200 of the Customs Tariff Act, 1975. However, the subject goods are also cleared under Chapter Headings 2905.39. The classification is however indicative only and in no way binding on the scope of the present investigations.

C. STANDING & SCOPE OF THE DOMESTIC INDUSTRY

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

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

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

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

9. In the present review investigation, M/s Manali Petrochemicals Ltd. has responded to the initiation notification. The Authority notes that M/s Manali Petrochemicals Ltd. is the sole producer of the subject goods in India and thus accounts for 100% of the Indian production. Therefore, M/s Manali Petrochemicals Ltd. constitutes 'domestic industry' within the meaning of the AD Rules.
10. No comments have been received from any interested party on the issues of 'Standing' or the status of the M/s Manali Petrochemicals Ltd. being considered as the domestic industry. Therefore, M/s Manali Petrochemicals Ltd. who represents the total production of the subject goods in India constitutes the domestic industry for the purpose of the current investigation.

11. Comments on disclosure statement from interested parties

11.1 Comments of Domestic Industry

- a. The written submissions and the rejoinder submissions are reiterated.
- b. The conclusions drawn by the Authority in the disclosure statement are not appropriate in view of the fact that the duty in the original investigation was recommended based on the reference price. It is, therefore, requested that this fact may be considered in the final findings and the duties may be extended for another term of five years which would be in the interest of the domestic industry.
- c. In the disclosure statement DGAD proposes to consider the profitability of the domestic industry based on the cost of the penultimate inputs. Such an approach is against the directions of the Hon'ble supreme court of India wherein it has been clearly stated that the injury of the concerned product is to be analyzed by taking into account the market value of the penultimate inputs as taking the cost of the inputs into account would lead to an analysis based on information of products other than the subject goods.

11.2 Comments of M/s Shell Eastern Petroleum Pte Ltd. (SEPL)

- a. The original investigation covered only goods classifiable under Customs Tariffs Code 29053200, *i.e.*, Propylene Glycol (Propane-1, 2-diol). Whereas in the present sunset review, the Authority has broadened the scope to include goods classifiable under Customs Tariffs Code 290539. It is a well established law that the scope of the product under investigation cannot be amended during the sunset review investigation and the product under investigation shall be restricted to the same product as was considered during the original investigation. It is submitted to the Authority that the present review investigation shall be restricted to products classified under Custom Tariffs Code 29053200 only.
- b. The Authority has stated that Shell Chemicals Seraya (Pte.) Ltd (SCSL), a 100% subsidiary of SEPL, as a separate legal entity and that the raw material procured from SCSL was not at arm's length. In this regard, it is submitted that SCSL is not operating as an independent entity. Though it is a separate legal entity, it is operating as a fully integrated cost centre. The entire production of SCSL is absorbed by SEPL and SCSL does not sell its production to any other party.

- c. In the original investigation, DGAD has taken the actual costs reported by SEPL considering SCSL as an integrated cost centre. The position continues to remain the same as it was during the original investigation.
- d. In view of such volatility experienced during the POI from month to month, it is not appropriate to calculate a single weighted average dumping margin for the POI as a whole. If the dumping margin is calculated on a month to month basis, it will show a significantly different trend.
- e. Even though the imports have increased during the investigation period, it should be noted that the landed value of imports have also remained significantly higher than the reference price fixed by the Authority in the original investigation.
- f. Examination of likelihood of continuance or recurrence of dumping and injury by the Authority reveals that the withdrawal of duties will not lead to recurrence of injury to the domestic industry. The capacity utilization has been more than 100% throughout the injury period, profits and return on capital employed have also shown increasing trend during the investigation period. We request the Authority to recommend termination of the existing duties.

11.3 Comments of Ministry of Trade & Industry, Singapore.(MTI)

MTI, in brief, has stated the following:

- The existing AD duties were imposed in October, 2004 in the form of a reference price. However, market conditions changed as the duties came into force, and the average export prices from Singapore to India have remained significantly high throughout the past five years – being even at certain times higher by over 50% of the reference price fixed by India. *DE facto* then, the duties have been inoperative and their withdrawal would not cause an adverse impact to the market;
- From the Disclosure Statement issued by the Designated Authority, we observe that the Indian domestic industry is in very good operational and financial health. It has achieved a capacity utilization level of 121% (paragraph 37 of the Disclosure Statement) and has even been able to realise a 37% return on capital employed (paragraph 52 of the Disclosure Statement). It is therefore questionable if the withdrawal of the *de facto* inoperative duties would lead to recurrence of material injury to India’s healthy domestic industry;
- We have observed that one of Singapore exporters of the product under consideration, M/s. Shell Eastern Petroleum Pte. Ltd. (“SEPL”), has fully cooperated with the DGAD in this case; and
- We note from SEPL’s submissions that their dumping margin has been negative, particularly, when the export prices and normal values have been compared on a monthly basis. Singapore, therefore, requests that the Designated Authority carefully examine SEPL’s claims in order to establish accurate dumping margins.

11.4 Examination by the Authority on Comments received on Disclosure Statement

- a. In the Reliance Judgement, Hon'ble Supreme Court has opined that "... for the purpose of determination of NIP, the DA is always required to take into consideration the transfer price (market value) of the inputs and not their actual cost of captive production...." The NIP has been determined accordingly.
- b. As regard the claim of M/s Shell for computation of Normal value considering the actual cost of Propylene Oxide as reported by SEPL considering SCSL as an independent cost centre, the Authority notes that SCSL has a distinct legal personality and it has not been demonstrated that the transactions of sale of Propylene Oxide from SCSL to SEPL were at arms' length. Therefore, the Cost of sales was re-computed considering the sale prices of major raw material to independent buyers and by adopting other costs as per their data.

DUMPING MARGIN

Likelihood of Continuation or Recurrence of Dumping

12. In the present case, except the following exporters/ producers, no other exporter/ producer from the subject countries has responded:
 - a. M/s Shell Eastern Petroleum Pte. Ltd.
 - b. M/s Dow Europe GmbH, Switzerland
 - c. M/s Dow Chemical Pacific (Singapore) Pte. Ltd.

E.1. Submissions made by the Domestic Industry

13. The domestic industry has made the following submissions:
 - a. The exporters have provided completely deficient responses and claimed excessive confidentiality and the response filed them is not a replica of the confidential version.
 - b. Propylene oxide sourced by M/s Shell Eastern Petroleum Pte. Ltd. (SEPL) from related 100% subsidiaries Shell Chemicals Seraya (Pte.) Ltd (SCSL) and Shell Seraya Pioneer Ltd. (SSPL) for the purpose of determination of cost of production cannot be taken at the cost but ought to be taken at arm's length price i.e. market price. SEPL has treated SCSL as integrated cost centre but not SSPL. SCSL is a separate legal entity and cannot be treated as fully integrated cost centre by SEPL.
 - c. M/s Dow Europe GmbH, Switzerland and M/s Dow Chemical Pacific (Singapore) Pte. Ltd. have not provided the information for all the related companies who are engaged in the activity of the subject goods whereas legally they are required to give the information for all the related parties. It is submitted that Dow Chemical has its plants in as many as 17 countries in Europe and several other plants world over.

E.2. Examination by the Authority

14. Except M/s Shell Eastern Petroleum Pte. Ltd. (SEPL), neither any other exporter/producer has filed the questionnaires' response in the form and manner prescribed, nor has any interested party offered any comment or submissions with regard to the Normal value, Export price and determination of the dumping margin.
- 14.1 While M/s Dow Europe GmbH, Switzerland and M/s Dow Chemical Pacific (Singapore) Pte. Ltd. responded to the exporter's questionnaire but the same was found to be grossly deficient and hence a detailed deficiency letter was sent to them. However, no response was filed by them in response thereto. Not only this, they did not even participate in the Public hearing held on 25th February 2010.

E.3. Determination of Normal Value for Co-operative exporters/producers

M/s Shell Eastern Petroleum Pte. Ltd. (SEPL)

15. In respect of Singapore, only M/s Shell Eastern Petroleum Pte. Ltd. (SEPL) Singapore has filed their questionnaire's response in the form and manner prescribed. A perusal of the response shows that the respondent has claimed the determination of the Normal value on the basis of their domestic sales. It is seen that they have procured the major raw material from its affiliate. Though, it was claimed that the affiliate was not an independent profit centre, but it is noted that the affiliate has a distinct legal personality. Besides, it has not been demonstrated the transactions were at arms' length. Therefore, the Cost of sales was re-computed considering the sale prices of major raw material to independent buyers and by adopting other costs as per their data. Thereafter, the domestic sales have been compared with the cost of sales to determine the profitable sales for applying the 80:20 test. It is seen that only ***% of the domestic sales were made at a profit. Hence, the same have been considered for determination of the Normal value. The adjustments as claimed have been accepted. Thus, the Normal value works out as *** US \$/MT.

Normal value for Non-cooperative exporters/producers

16. As stated, except M/s Shell Eastern Petroleum Pte. Ltd. (SEPL) Singapore, none of the exporters/producers from the subject countries has cooperated with the Authority in this investigation.
17. In view of the above, the Authority has constructed the Normal values, in respect of the subject countries except Singapore, by adopting the international prices of the major raw material as reported in World Trade Atlas data, consumption factor of domestic industry and conversion cost of domestic industry. The Normal values so determined work out as US\$ *** per MT (for bulk) and US\$ *** per MT (for packed) for EU; US\$ *** per MT (for bulk) and US\$ *** per MT (for packed) for Korea RP; and US\$ *** per MT (for bulk) and US\$ *** per MT (for packed) for USA.

As no other exporter/producer from Singapore except M/s Shell Eastern Petroleum Pte. Ltd. (SEPL) Singapore has responded to the Questionnaire. The Authority has determined their Normal value based on the facts available on record.

E.4. Export Price for Co-operative exporters/producers

18. As stated, except M/s Shell Eastern Petroleum Pte. Ltd. (SEPL) Singapore, none of the exporters/producers from the subject countries has cooperated with the Authority in this investigation.
19. The information/data submitted by M/s Shell Eastern Petroleum Pte. Ltd. (SEPL) Singapore and verified by the Authority is being relied upon for the determination of the export price. The adjustments claimed have been accepted, as noted during the spot verification. Thus, the Authority has determined the export price for the exporter as US \$ *** per MT.
20. The Authority notes that except M/s Shell Eastern Petroleum Pte. Ltd. (SEPL) Singapore, none of the exporters / producers from the subject countries has cooperated with the Authority in this investigation. In view of non-cooperation by the exporters / producers in EU, the Authority has considered information and facts available on record.

E.5 Likelihood of continuation of dumping

Dumping Margin during the POI

In US \$ per MT

	USA		KOREA		European Union		Singapore (SEPL)	
Subject goods	Bulk	Packed	Bulk	Packed	Bulk	Packed	Bulk	Packed
Normal Value	***	***	***	***	***	***	***	***
Export Price	***	***	***	***	***	***	***	***
Dumping Margin	***	***	***	***	***	***	***	***
Dumping Margin %	0-5 %	0-5%	(0-5)%	(0-5)%	(5-10)%	(5-10)%	20-25 %	15-20 %

21. **Recurrence of Dumping**: The Authority notes that anti-dumping duty in force has been practically ineffective as it was based on reference price, whereas the cost of production has significantly changed over time. Thus, there does not appear to be any significant change in the price behaviour of the subject goods from the subject countries, if the anti-dumping duty ceases to operate.

F. INJURY ASSESSMENT

22. The Authority notes that this being a Sunset review of the anti-dumping duty already in force, likelihood of continuation or recurrence of material injury needs to be examined in the context of actual or likely imports of the subject goods from the subject countries.

F.1 Likelihood of Continuation or Recurrence of Injury

F.2 Views of Domestic Industry

- a. The volume of dumped imports from the subject countries have increased and have not only registered an increase in absolute terms but also increased in relation to total imports, demand and domestic production.
- b. The increase in the domestic selling prices is substantially lower than the increase in the cost of production which is a clear indication that the domestic prices have been suppressed by the dumped imports from the subject countries.
- c. The market share of domestic industry has declined from 67.23% in 2005-2006 to 53.96% during the period of investigation due to the presence of dumped imports.
- d. The production of the domestic industry has declined from a peak of 16875 MT in 2007-2008 to 16069 MT during the period of investigation. Similarly, the capacity utilization of the domestic industry has also declined over the injury investigation period.
- e. The sales volume of the domestic industry has declined in the period of investigation from a peak level in the year 2007-08.
- f. The inventories in the POI as compared to the preceding year have gone up from 1% to 4% when expressed as a percentage of sales as well as in absolute terms.
- g. The landed value of the product under consideration from the subject countries is much lower than the prices the domestic industry ought to have realized on the sales of the subject goods.
- h. The profitability, return on investment and cash flow in the present investigation calculated in accordance with the decision of the Hon'ble Supreme Court in the Reliance Industries are negative in the POI.
- i. Under the circumstances, it would not be feasible for the Domestic Industry to make any further investments in this business.
- j. In SSR investigation, the Authority has to reach a conclusion that there is no possibility of any injury to the domestic industry from the dumped imports from the subject countries before deciding not to extend the anti-dumping duties. Thus, the level of improvement in the various injury factors per se during the period of investigation is not directly relevant. If the exporters from the subject countries continue to dump, it is a clear indicator that injury to the domestic industry would recur or continue once the duties are removed.
- k. The dumping margin from each of the subject countries is significant during the period of investigation. It indicates that the dumping has not ceased to exist from any of the sources on which anti-dumping duties were imposed initially. As would be seen from the injury factors, injury to the domestic industry continues despite the imposition of anti-dumping duties and there is a clear case for enhancement of duties. Further, it is also clear that if anti-dumping duties are removed, the impact of dumping would be much more serious as the domestic industry would be forced to match the prices offered by the exporters resulting in direct losses and injury to the domestic industry. The exporters from the subject countries have also indulged in the dumping during the years prior to POI. This shows beyond an iota of doubt that there is no change in the pricing behaviour of the exporters and they will continue to export at dumped prices.
- l. The consistent increase and significant imports from the subject countries during the injury investigation period give a clear and strong indication about the likely future behaviour of the exporters from subject countries. It is certain 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.

- m. There is every possibility that the severe dumping from the subject countries would continue and recur and further deteriorate the position of the domestic industry and increase its losses if the duties are not extended.

F.3 Views of Exporters

- a. The market share of the domestic industry fell mainly due to its inability to meet the rising demand. Further, it did not have adequate capacity to meet the rising demand for the product.
- b. The capacity utilisation of the domestic industry is in excess of 100% for each year during the review period. There is a difference between the capacity figures reported in the annual report and in the response of the domestic industry.
- c. There are no losses incurred by the domestic industry as there is a profit as per publicly available information. There is no price underselling.
- d. There is no effect on its ability to raise capital investments as it has earned profits and also declared dividend in previous years.
- e. Due to inadequate domestic supply, domestic users of propylene glycol have no choice but to import the subject goods.

F.4 Examination by the Authority

- 23. The Authority has taken note of the arguments on injury examination and addressed the issues raised at appropriate places. The Authority has examined the injury parameters objectively taking into account the facts and the submissions of the interested parties.
- 24. Annexure-II of the AD Rules provide for an objective examination of both (a) the volume of dumped imports and the effect of the dumped imports on prices in the domestic market for the like products; and (b) the consequent impact of these imports on domestic producers of such products. With regard to the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports, either in absolute term or relative to production or consumption in India. With regard to the price effect of the dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in India, or whether the effect of such imports is otherwise to depress the prices to a significant degree, or prevent price increases, which would have otherwise occurred to a significant degree.
- 25. As regards the impact of the dumped imports on the domestic industry para (iv) of Annexure-II of the AD Rules states as follows.

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

F.5 Likelihood of Continuation of Injury

26. The Authority has first examined whether there is likelihood of continuation of injury to the domestic industry on the basis its performance during the period of investigation (POI).
27. For the purpose of current injury analysis the Authority has examined the volume and prices effects of imports of the subject goods from subject countries on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal link between dumping and injury, if any.

F.6 Volume effect

Assessment of Demand

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

	Unit	2005-06	2006-07	2007-08	2008-09
Imports from Subject Countries	MT	5384	9077	12956	11184
Imports from Other Countries	MT	2089	3199	1648	2018
Total imports	MT	7473	12276	14604	13201
Sale of domestic industry	MT	15331	16359	17502	15473
Demand	MT	22804	28635	32106	28674

29. The Authority notes that the demand has shown a positive trend and increased significantly in the period of investigation as compared to the base year. The growth in demand during period of investigation over the base year was about 25.75 %.

Import volumes and market share

30. Annexure-II (ii) of the AD Rules provides that “while examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports either in absolute term or relative to production or consumption in India ...”. Thus, with regard to the volume of the dumped imports, it has been examined whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India.
31. The table below summarises the position with regard to import volumes and market share: -

	Unit	2005-06	2006-07	2007-08	2008-09
Imports from					
Subject Countries	MT	5384	9077	12956	11184

Other Countries	MT	2089	3199	1648	2018
Total Imports	MT	7,473	12,276	14,604	13,201
Indian Production	MT	15,950	16,426	16,875	16,069
Demand	MT	22,804	28,635	32,106	28,674
Subject imports in relation to					
Total Imports	%	72.05%	73.94%	88.72%	84.72%
Production	%	33.75%	55.26%	76.78%	69.60%
Consumption	%	23.61%	31.70%	40.35%	39.00%
Market share of domestic industry in demand	%	67.23%	57.13%	54.51%	53.96%

From the above, the Authority notes that:

- (i) The volume of imports of the subject goods from the subject countries in absolute terms has increased significantly in the period of investigation as compared to the base year.
- (ii) Imports from the subject countries have increased significantly in POI in relation to the total imports, production and consumption in India.
- (iii) The share of the domestic industry has declined significantly in the period of investigation as compared to the base year.

Price effect of the dumped imports on the Domestic Industry

32. In order to ascertain the price effect of the imports of the subject goods from the subject countries on the domestic industry, the Authority has examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In order to assess the extent of price undercutting, the Authority has compared the net sales realization of the domestic industry with the landed price of imports. The net sales realization was arrived, after deducting all rebates and taxes.

	Unit	2005-06	2006-07	2007-08	2008-09
Net Sales Realization	Rs./MT	***	***	***	***
Landed Price from Subject Countries	Rs./MT	***	***	***	***
Price undercutting amount	Rs./MT	***	***	***	***
Price undercutting %	%	***	***	***	***
Price undercutting range	% Range	(0-5)%	0-5%	5-10%	(0-5)%

33. From the above, the Authority notes that while the imports from the subject countries were undercutting the prices of the domestic industry in the 2006-07 and 2007-08 periods, but a negative price undercutting is seen during the POI.

Price suppression/depression

34. In order to assess whether the imports from the subject countries were suppressing/depressing the prices of the domestic industry, the Authority has compared the cost of production and the net selling price of the domestic industry along with the landed price of imports over the injury period, which is given in the following table:

	Unit	2005-06	2006-07	2007-08	2008-09
Cost of Production	Rs./MT	***	***	***	***
Trend	Indexed	100	102	103	115
Net Selling price	Rs./MT	***	***	***	***
Trend	Indexed	100	98	93	108
Average Landed Price of imports from Subject Countries	Rs./MT	***	***	***	***
Trend	Indexed	100	97	88	114

35. The Authority notes that whereas both the cost of production and the net selling price increased over the injury period, the increase in the net selling price was much lower than the increase in the cost of production.

Economic Parameters relating to the Domestic Industry

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

Production, sales, capacity and capacity utilization

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

	Unit	2005-06	2006-07	2007-08	2008-09

Installed Capacity	MT	13250	13250	13250	13250
Trend	Indexed	100	100	100	100
Production	MT	15950	16426	16875	16069
Trend	Indexed	100	103	106	101
Capacity Utilization (%)	%	120%	124%	127%	121%
Trend	Indexed	100	103	106	101
Sales volumes	MT	***	***	***	***
Trend	Indexed	100	105	112	100
Domestic Sales	MT	***	***	***	***
Trend	Indexed	100	107	114	101

The above data shows that:

- a) The production, capacity utilization and sales of the domestic industry have increased up to 2007-08 but declined thereafter in the 2008-09, the period of investigation.
- b) The domestic industry has been able to produce more than its capacity level from 2005-06 to 2008-09. In other words, capacity utilization is more than 100% throughout the injury period.

Profitability

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

	Unit	2005-06	2006-07	2007-08	2008-09
Cost of Sales	Rs./MT	***	***	***	***
Trend	Indexed	100	102	103	116
Domestic Selling Price	Rs./MT	***	***	***	***
Trend	Indexed	100	98	93	108
Profit/Loss	Rs./MT	***	***	***	***
Trend	Indexed	100	82	45	71

Profit/Loss on domestic sales	Rs.Lacs	***	***	***	***
	Indexed	100	88	51	71
Interest	Rs.Lacs	***	***	***	***
Profit before Interest	Rs./Lacs	***	***	***	***
Trend	Indexed	100	87	51	73
Net Fixed Assets	Rs./Lacs	***	***	***	***
Trend	Indexed	100	84	59	138
Working Capital	Rs./Lacs	***	***	***	***
Trend	Indexed	100	119	100	45
Capital Employed – NFA	Rs./Lacs	***	***	***	***
Trend	Indexed	100	103	81	87
Return on Capital Employed (NFA Basis)	%	***	***	***	***
Trend	Indexed	100	85	63	84
Depreciation	Rs./Lacs	***	***	***	***
Cash Profit	Rs./Lacs	***	***	***	***
Trend	Indexed	100	88	52	72

39. The Authority notes that the profitability of the domestic industry has been declining till 2007-08 but has then improved during the POI. The return on capital employed and cash profits have followed the same trend as that of profits.
40. It is seen from the above table that on a year to year basis, the domestic industry was not able to increase the domestic selling prices in line with the increase in the cost of sales. The increase in cost of sales is much higher than the increase in net selling price of the domestic industry. However, inspite of this, the domestic industry is able to realize ***% return on capital employed during the period of investigation.

Market share

41. A comparison of the market share of the domestic producers and the imports from the subject countries in total demand of the subject goods in India shows that although the demand for the product has shown positive trend, yet the market share of domestic industry has declined significantly over the injury period, whereas the share of the subject countries has increased. But this needs to be seen in the context of over 100% capacity utilisation.

Market Share in Demand	Unit	2005-06	2006-07	2007-08	2008-09
Subject Countries	%	23.61%	31.70%	40.35%	39%
Other Countries	%	9.16%	11.17%	5.13%	7.04%
Domestic industry	%	67.23%	57.13%	54.51%	53.96%

Employment and Wages

42. The position with regard to employment and wages is as follows:

	2005-06	2006-07	2007-08	2008-09
Employment No	***	***	***	***
Indexed	100	100	100	100
Wages Rs. Lacs	***	***	***	***
Indexed	100	126	128	140

Productivity

43. The Productivity of the domestic industry, as reflected in terms of production per employee as well as production per day, is given in the following table

	Unit	2005-06	2006-07	2007-08	2008-09
Production	MT	15950	16426	16875	16069
Employment	NO.	***	***	***	***
Productivity	MT/No.	***	***	***	***
Trend	Indexed	100	103	106	101

44. It is observed that the productivity of the domestic industry improved till 2007-08 but has declined thereafter. The number of employees has remained constant throughout the injury investigation period and apparently there is no impact on the wages paid to them over the same period. However, the Authority notes that the domestic industry is a

multi-product company and hence the employment by the domestic industry and wages paid to them may not be a correct parameter to evaluate the injury in the instant matter.

Inventories

	Unit	2005-06	2006-07	2007-08	2008-09
Inventory in MT	MT	***	***	***	***
Trend	Indexed	100	112	63	48
Sales in MT	MT	***	***	***	***
Inventory for no. of days sales	Days	***	***	***	***
Trend	Indexed	100	106	56	48

45. It is seen that the average inventory in terms of number of days’ sales has declined over the injury period. In the base year, it was equivalent to *** days whereas in POI it decreased to *** days.

Ability to raise capital investment

46. There have been no capacity additions during the period of investigation. In view of sufficient profits earned by the domestic industry during the period of investigation, the ability to raise capital investments may not be adversely affected.

Magnitude of Margin of Dumping

47. The Authority notes that while there are positive dumping margins in respect of USA and Singapore but the same are negative in respect of Korea RP and European Union.

48. Growth

The Authority notes that Growth of the domestic industry in terms of parameters like production, sales, capacity utilization has been positive till 2007-08. However during the POI, a decline has been observed in these parameters. The profitability of the domestic industry has been declining up to 2007-08 but then improved during POI. The return on capital employed and cash profits followed the same trend as that of profits.

Likelihood of continuation or recurrence of injury

49. The following factors have been brought before the Authority by the domestic industry for examination of likelihood of continuation or recurrence of injury to the domestic industry. The domestic industry has, *inter alia*, submitted the following:

- (i) That the producers from the subject countries are dumping the material in the Indian market. Though there is an increase in raw material prices, the export price of the exporters has not shown proportionate increase indicating absorption of cost by the exporters.
- (ii) That in case the duties are discontinued the injury to the domestic industry would recur.
- (iii) That the landed price of imports from each of the subject countries is much lower than the price domestic industry ought to get.
- (iv) That volume of the imports from the subject countries has increased in spite of the antidumping duty in existence.
- (v) That the producers are holding significant surplus capacities and their domestic demand is significantly below the capacities created by them.

Examination by the Authority

- 50. The Authority has examined the likelihood of continuance or recurrence of dumping and injury in the following paragraphs.
- 51. The Authority notes that although the imports from subject countries have continued and increased yet its impact in volume terms is not visible as the domestic industry has been able to produce more than its capacity level from 2005-06 to 2008-09 (that is throughout the injury period). Imports have apparently not impacted the sales as well.
- 52. As regards the impact of the imports on the prices of the domestic industry, even that is not apparent as the domestic industry has been able to realise *** % return on capital employed (on NFA Basis).
- 53. While the domestic industry has contended that exporters/producers in the subject countries are likely to resort to dumping of the subject goods in the Indian market due to the excess capacities in the subject countries but this claim has not been substantiated by them.
- 54. It has not been demonstrated by domestic industry that the cessation of the anti-dumping duty would lead to likelihood of recurrence of injury to the domestic industry and continued imposition of the duty is necessary to offset dumping.

F.4 Causal Link

- 55. With regard to Causal link, the domestic Industry has submitted that it is a settled position of law that Causal link analysis is not required to be done in Sunset reviews. In this connection, they have relied upon the following excerpts from the Appellate Body decision in the case of Oil Country Tubular Goods from Mexico (WT/DS282/AB/R dated 2 November 2005):

“118. We therefore agree with Mexico that this fundamental principle is expressed in Article VI of the GATT 1994 and in various provisions of the Anti-Dumping Agreement. The United States does not question this principle per se. However, this does not mean that a causal link between dumping and injury is required to be

established anew in a "review" conducted under Article 11.3 of the Anti-Dumping Agreement. This is because the "review" contemplated in Article 11.3 is a "distinct" process with a "different" purpose from the original investigation."

"119. The Appellate Body has underlined that "[t]he nature of the determination to be made in a sunset review differs in certain essential respects from the nature of the determination to be made in an original investigation", and that "[t]he disciplines applicable to original investigations cannot, therefore, be automatically imported into review processes."

"X. Findings and Conclusions

219. For the reasons set forth in this Report, the Appellate Body:

(a) in relation to causation:

(b) finds that there is no requirement to establish the existence of a causal link between likely dumping and likely injury, as a matter of legal obligation, in a sunset review determination under Article 11.3 of the Anti-Dumping Agreement and that, therefore, the USITC was not required to demonstrate such a link in making its likelihood-of-injury determination in the sunset review at issue in this dispute;"

56. The Domestic Industry has further submitted that there are good technical and logical reasons for not applying the requirement of Causal link in a Sunset review case. Extension of the anti-dumping duties is envisaged even if there are no imports during the review investigation period. Further, the test for extension of the period of duties under Section 9A (5) is only to examine whether the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury.
57. The Authority has examined the submissions of the Domestic Industry with regard to the significance of Causal link in a Sunset review investigation. It is important to note under Section 9A(5), the Authority is required to examine the likelihood of dumping and injury and the need for continuation of duties irrespective of whether there have been any imports of the product under consideration during the review investigation period or not. This has also been the consistent practice of the Designated Authority and is also borne out from the jurisprudence on the issue.
58. Without going into the merits of the arguments put forth by the Domestic Industry, the Designated Authority has examined the Causal link aspect which is discussed in the following paragraphs.

Volume and Prices from the Other Countries

59. It is noted that the from the import statistics that the subject goods have been imported from one other country namely China PR in significant quantities at relatively cheaper prices. No explanation has been provided by the domestic industry as to why it does not consider that it is getting injured from these imports as against the imports from the subject countries.

Contraction in Demand and / or Change in Pattern of Consumption

60. It is noted that there is no contraction of demand. On the other hand, the demand of the subject goods has increased by about ***% in the period of investigation as compared to the base year. There is also no indication of any change in the consumption pattern as is apparent from the sales pattern of the Domestic Industry.

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

61. The import of the subject goods is not restricted in any manner and the same are freely importable in the country. The Domestic Industry competes with the landed prices of the subject goods. The price of the domestic Industry is determined by the landed price of the subject goods. Moreover, no evidence has been submitted by any interested party even to suggest that the conditions of competition between the foreign and the domestic producers have undergone any change.

Development of Technology and Export Performance

62. No party has raised any issue with regard to technology as being the cause of injury to the domestic Industry. There has been small quantum of exports of the subject goods by the domestic industry. In any case, the Authority has considered profitability and other price parameters only in respect of domestic operations.

Productivity

63. There is no decline in the productivity and the same has increased over the injury investigation period.

64. Magnitude of Injury Margin

- a. The non-injurious price has been determined for the domestic industry as a whole.
b. The non-injurious price determined has been compared with the weighted average landed value of the imports from the subject country for determination of injury margin as shown below:

65. Injury Margin Calculations

The details relating to injury margin are as follows:

	Unit	2008-09
Non Injurious Price	Rs./MT	***
Landed Price from Subject Countries		
EU	Rs./MT	***
Korea	Rs./MT	***
Singapore	Rs./MT	***
USA	Rs./MT	***

Injury Margin		
EU	Rs./MT	(***)
Korea	Rs./MT	***
Singapore	Rs./MT	***
USA	Rs./MT	(***)
Injury Margin %		
EU	%	(***)
Korea	%	***
Singapore	%	***
USA	%	(***)
Injury Margin Range		
EU	% Range	(7-12)
Korea	% Range	2-6
Singapore	% Range	12-18
USA	% Range	(1-5)

It is noted that the injury margin from Korea RP and Singapore is positive and the injury margin from EU and USA is negative.

FINAL FINDINGS

66. The Authority, after considering the foregoing and as well as the comments on the disclosure statement, concludes that there is no current injury to the domestic industry from the imports from the subject countries and also notes that there is no case of likelihood of recurrence of injury due to dumping of the subject goods in the instant matter.
67. In view of the above, the Designated Authority considers it appropriate to recommend discontinuation of Anti-dumping duty in force in respect of the subject goods originating in or exported from the subject countries as notified vide Notification No. 105/2004 dated 8th October 2004 and subsequently extended up to 7th July 2010 vide notification No.117/2009 dated 13th October 2009 in terms of Section 9 (A) (5) of the Act.
68. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

P.K. Chaudhery
The Designated Authority