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F. No. 14/49/2016-DGAD  
Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(Directorate General of Anti Dumping & Allied Duties)  
4<sup>th</sup> Floor, Jeevan Tara Building, 5, Parliament Street, New Delhi 110001

**NOTIFICATION**

Dated the 25<sup>th</sup> January, 2018

**(Final Findings)**

**Subject: Anti-dumping investigation concerning imports of Polyester Staple Fibre from China PR, Indonesia, Malaysia and Thailand.**

1. 14/49/2016-DGAD: Whereas, M/s Alok Industries Ltd., M/s Indo Rama Synthetics (India) Ltd. and M/s The Bombay Dyeing & Mfg. Co. Ltd., (hereinafter referred to as the “applicant” or “domestic industry”) has filed an application before the Designated Authority (hereinafter also referred to as the Authority) in accordance with the Customs Tariff Act, 1975 as amended from time to time (hereinafter also referred to as the Act) and Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped articles and for Determination of injury) Rules, 1995 as amended from time to time (hereinafter also referred to as the Rules) for imposition of Anti-dumping duty on imports of “Non-dyed Polyester Staple Fibre (PSF) ranging from 0.6 to 6 Deniers (excluding recycled PSF and specialty fibers namely, Cationic Dyeable, Fire/Flame Retardant, Low Melt and Bi-component Fibres)” from China PR, Indonesia, Malaysia and Thailand.
2. Whereas, the Authority, on the basis of sufficient evidence submitted by the applicant, issued a Notification No. 14/49/2016-DGAD dated 2<sup>nd</sup> February 2017, published in the Gazette of India, initiating the subject investigations in accordance with the Rule 5 of the above Rules to determine existence, degree and effect of the alleged dumping of the subject goods, originating in or exported from China PR, Indonesia, Malaysia and Thailand (hereinafter also referred to as the Subject Countries) and to recommend the amount of anti- dumping duty, which, if levied, would be adequate to remove the alleged injury to the domestic industry.

**A. PROCEDURE**

3. The procedure described here under has been followed with regard to the subject investigation:

- i. The Authority notified the Embassy of the subject countries in India about the receipt of the anti-dumping application before proceeding to initiate the investigations in accordance with sub-rule (5) of Rule 5 supra.
- ii. The Authority issued a notification dated 2<sup>nd</sup> February, 2017, published in the Gazette of India Extraordinary, initiating anti-dumping investigation concerning imports of the subject goods from subject countries.
- iii. The Embassy of the subject countries in India was informed about the initiation of the investigations in accordance with Rule 6(2) of the Rules with a request to advise the exporters/producers from the subject countries to respond to the questionnaire within prescribed time limit.
- iv. The Authority sent exporter's questionnaires to elicit relevant information to the following known producers/exporters in the subject countries in accordance with Rule 6(4) of the Rules:
  - i. M/s Cixi Jiangnan Chemical Co., Ltd., China
  - ii. M/s Far Eastern Industries (Shanghai) Ltd., China
  - iii. M/s Ningbo Dafa Chemical Fiber Co., Ltd., China
  - iv. M/s P.T. Teijin Indonesia Fiber Corporation Tbk, (TIFICO), Indonesia
  - v. M/s P.T. Indorama Synthetics Tbk, Indonesia
  - vi. M/s P.T. Sulindafin, Indonesia
  - vii. M/s P.T. Branta Mulia Tbk, Indonesia
  - viii. M/s P.T. Indonesia, Toray Synthetics, Indonesia
  - ix. M/s Pen Fibre Sdn Bhd, Malaysia
  - x. M/s Recron (Malaysia) Sdn Bhd., Malaysia
  - xi. M/s Kangwal Polyester, Indonesia
- v. In response to the above notification, following exporters/ producers have submitted exporter questionnaire responses.
  - i. M/s Fujian Jingwei New Fiber Science And Technology Co. Ltd.China
  - ii. M/s Jiangyin Huahong Chemical Fiber Co. Ltd., China
  - iii. M/s Jiangyin Hailun Chemical Fiber Co. Ltd., China
  - iv. M/s Xiamen Xianglu Chemical Fiber Co. Ltd., China
  - v. M/s Xiamin MC Group (Hk) Corp. Ltd., China
  - vi. M/s Fujian Jinlun Fiber Shareholding Co. Ltd. (Jinlun), China
  - vii. M/s Fujian Zhengqi High-Tech Fiber Technology Co. Ltd., China
  - viii. M/s United Raw Material PTE Ltd., China
  - ix. M/s PT. Indo-Rama Synthetics Tbk, Indonesia
  - x. M/s Indorama Polyester Industries Public Co. Ltd., Thailand
  - xi. M/s Recron (Malaysia) Sdn Bhd., Malaysia
- vi. A Supplementary questionnaire on Market Economy conditions was also sent to the known producers/exporters in China PR and the Embassy of China PR in India with a request to provide relevant information to the Authority within the prescribed time limit.
- vii. Following responding producers/exporters from China have claimed MET:

- i. M/s Fujian Jingwei New Fiber Science And Technology Co. Ltd.  
China
  - ii. M/s Jiangyin Huahong Chemical Fiber Co. Ltd., China
  - iii. M/s Jiangyin Hailun Chemical Fiber Co. Ltd., China
- viii. The Authority sent Importer's Questionnaires to the following known importers/ users of subject goods in India calling for necessary information in accordance with Rule 6(4) of the Rules:
  - i. Arvind Limited
  - ii. Gulab Fibres
  - iii. Lambodhara Textiles Ltd
  - iv. Madura Coats Private Limited,
  - v. Rswm Limited
  - vi. Sree Ayyanar Spinning And Weaving Mills Ltd
  - vii. Vardhman Textiles Ltd.
  - viii. Vardhman Yarns And Threads Limited
  - ix. Wearit Global Limited
- ix. The following importers/users have submitted importers questionnaire responses:
  - i. M/s Banswara Syntex Limited
  - ii. M/s Madura India Private Limited
  - iii. M/s Arvind Limited
  - iv. M/s Vardhman Yarns & Threads
  - v. M/s Shree Shyam Distributers
  - vi. M/s Lakshmi Mills Company Limited
  - vii. M/s Welspun India Limited
  - viii. M/s Shree Rajasthan Syntex Limited
  - ix. M/s RSWM Limited
  - x. M/s Lambodhara Textiles Limited
  - xi. M/s Sutlej textiles & industries ltd
  - xii. M/S PKPN Spinning Mills P. Ltd
  - xiii. M/s Centwin Textile Mills (P) Ltd.
- x. The following parties have also made legal submissions against the petition and initiation of investigation.
  - i. M/s Vardhaman Yarns and Threads Limited
  - ii. M/s Arvind Limited
  - iii. M/s Madura Coats Private Limited
  - iv. M/s Longwaliya Yarns Ltd. Ludhiana
  - v. M/s Vishnu Lakshmi Mills Ltd
  - vi. M/s Suryalata Spinning Mills Association
  - vii. M/s Rugmini Ram Raghav Spinners Ltd
  - viii. M/s Indian Texpreneurs federation
  - ix. M/s The South India Spinners Association
  - x. M/s Southern India Mills Association
  - xi. M/s Suryavanshi Spinning Mills ltd

- xii. M/s Sri Kannapiran Mills Ltd
- xiii. M/s Suryalakshmi Cotton Mills Ltd

- xi. Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xii. Further information was sought from the applicant and other interested parties to the extent deemed necessary. Verification of the data provided by the domestic industry was conducted to the extent considered necessary for the purpose of the investigation.
- xiii. Information provided by the interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claims. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis and the same were kept in the public file maintained by the Authority as per the Rules.
- xiv. The Non-injurious Price based on the cost of production and cost to make and sell the subject goods in India based on the information furnished by the domestic industry on the basis of Generally Accepted Accounting Principles (GAAP) has been worked out so as to ascertain whether Anti-Dumping duty lower than the dumping margin would be sufficient to remove injury to the Domestic Industry;
- xv. The petition was filed on the basis of secondary source import data (IBIS data), the Authority had examined the same and found sufficient evidence for dumping and injury for initiation of investigation. The IBIS data was kept in the public file as a part of the petition. During the course of investigation, the Authority sought transaction by transaction import data for the injury period and POI from the Directorate General of Commercial Intelligence and Statistics (DGCI&S) and Directorate General of Systems & Data Management (DG Systems). The Authority has relied upon import data procured from DGCI&S for analysis of various parameters in the present investigation.
- xvi. Investigation was carried out for the period starting from 1st April 2015 to 30<sup>th</sup> September, 2016 (POI). The examination of trends, in the context of injury analysis, covered the period from April 2012-March 2013, April 2013-March 2014, April 2014-March 2015 and the Period of Investigation (POI).
- xvii. The Authority held oral hearing in terms of Rule 6(6) of the Anti-Dumping Rules on 23.11.2017, providing opportunity to the interested parties to present their views orally. The parties, who presented their views in the oral hearing, were requested to file written submissions of their views expressed orally by 30.11.2017, followed by rejoinder submissions by 7.12.2017.

- xviii. The submissions made by the interested parties considered relevant by the Authority have been addressed in this Final Findings. The submissions filed by Embassy of subject countries/Associations/Federations/Foundations has been duly considered and addressed appropriately.
- xix. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority considered such interested parties as non-cooperative and recorded these findings on the basis of the ‘facts available’
- xx. A Disclosure Statement was issued on 10.1.2018 containing essential facts under consideration of the Designated Authority, giving time up to 17.1.2018 to furnish comments, if any, on Disclosure Statement. The Authority has considered post disclosure comments received from interested parties appropriately.
- xxi. \*\*\* in this Final Findings represents information furnished by an interested party on confidential basis, and so considered by the Authority under the Rules.
- xxii. The exchange rate for the present investigation is 1 US \$ = Rs. 66.53

## **B. PRODUCT UNDER CONSIDERATION AND LIKE ARTICLE**

### **Views of the Domestic industry**

4. Following submissions have been made by the domestic industry with regard to product under consideration:
- i. The product under consideration in the present application is “Non-dyed Polyester Staple Fibre (PSF) ranging from 0.6 to 6 Deniers (excluding recycled PSF and specialty fibres namely, Cationic Dyeable, Fire/Flame Retardant, Low Melt and Bi-component Fibres”.
  - ii. The subject goods are predominantly used to spin yarn of 100% PSF or in blends with natural, artificial and/or synthetic staple fibres for manufacture of textiles, sewing thread, other industrial textiles and for non-woven applications, etc.
  - iii. Technical specifications of the subject PSF are defined in terms of their deniers, strength, lustres like semi dull, bright, semi bright, full dull etc., colour, cross section and cut length or staple length.
  - iv. According to the Domestic Industry, there is no difference in the subject goods produced by them and that imported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from subject countries are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods.
  - v. The subject products are classified under HS Code 5503 20 00, however, the goods are also imported under various other HS Codes. It is also submitted that

the custom classification is indicative only and in no way, it is binding upon the product scope.

- vi. The petitioner companies have indicated the dumping margin as well as price related analysis (like price undercutting and price underselling) separately for Super High Tenacity (SHT) and Semi-dull on the basis of their tenacity/structure. This was done due to the fact that the price variation of the non-speciality types is essentially on account of tenacity. However, there is insignificant variation in the cost and price structure on account of deniers, length, luster or cross-section as far as the PUC is concerned. Petitioner companies are agreeable to comparisons on the basis of above mentioned product types or aggregate analysis as considered fit by the Authority.

### **Views of the Opposing Interested Parties**

5. Following submissions have been made by the other interested parties with regard to Product Under Consideration:
  - i. The product under consideration is very broad and inaccurately defined considering the fact that the scope of the product under consideration covers multiple applications meant for various sectors.
  - ii. The PUC has been incorrectly classified into Semi-dull and High Tenacity deliberately by the domestic industry for Price Effect and Dumping Analysis.
  - iii. The “recycled PSF, non-dyed or dyed/coloured” should be clearly excluded from the scope of the product under consideration involved in the present investigation. The imports namely “100% Recycled Polyester Staple Fiber made from waste pet bottle flakes (Plastic Waste)” should be mentioned in the exclusion category.

### **Examination by the Authority**

6. The Product under Consideration is “Non-dyed Polyester Staple Fibre (PSF) ranging from 0.6 to 6 Deniers, excluding recycled PSF and specialty fibres namely, Cationic Dyeable, Fire/Flame Retardant, Low Melt and Bi-component Fibres”. It is clear that 100% Recycled Polyester Staple Fiber Made from Waste Pet Bottle Flakes (Plastic Waste)” is not covered in the scope of the PUC under the present investigation.
7. The above products are manufactured in various specifications defined in terms of their deniers, strength, lustres (like semi dull, bright, semi bright, full dull etc.), colour, cross section and cut length or staple length. The subject goods are predominantly used to spin yarn of 100% PSF or in blends with natural, artificial and/or synthetic staple fibres for manufacture of textiles, sewing thread, other industrial textiles, non-woven applications, etc.
8. The Authority had not notified any PCN or product types, nor did any interested party suggest the same. However, during the course of investigation, the examination of import data (from DGCI&S) and verification of domestic

industry/exporters, it was noted that the subject goods could be broadly categorized as Semi-Dull polyester staple fiber and Super High-Tenacity polyester staple fiber. Further, in-depth examination of costing indicated that the difference in the cost of two categories of the products is less than 5% and hence the Authority decided that there is no need to undertake separate dumping and injury analysis.

9. Product under consideration is classified under HS Code 5503 20 00. However, the customs classification is indicative and not binding on the scope of the product under consideration in the present investigation.
10. The Authority notes from the information available on record that the Product under consideration produced by the domestic industry and imported from the subject countries are comparable in terms of physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. The goods produced by the domestic industry and imported from the subject countries are like articles in terms of the Rules. The two are technically and commercially substitutable. Thus, the Authority holds that goods produced by the applicant domestic industry are like article to the product under consideration imported from subject countries in accordance with the AD Rules.

### **C. SCOPE OF DOMESTIC INDUSTRY & STANDING**

#### **Views of the Domestic industry**

11. Following submissions have been made by the domestic industry with regard to scope and standing of the domestic industry:
  - i. There are total four producers in India who are producing the subject goods namely M/s Alok Industries Ltd., M/s Indo Rama Synthetics (India) Ltd., M/s The Bombay Dyeing & Mfg. Co. Ltd. (Petitioners herein) and Ms. Reliance Industries Limited.
  - ii. That the only other producer of the subject goods apart from the petitioners herein, i.e. M/s Reliance Industries Limited, has a related producer/exporter in Malaysia namely M/s Recron (Malaysia) Sdn Bhd, who has exported the subject goods to India during the period of investigation. Therefore, Reliance Industries Ltd. should not be considered as a part of the Domestic Industry in terms of the Rule 2(b).
  - iii. In view of the fact that M/s Reliance Industries Ltd. is an ineligible producer, the applicants constitutes 100% of the total production of the eligible domestic producers in the country.
  - iv. The applicants have not imported the product under consideration. The applicants are not related to any importer or exporter of the product under consideration from the subject countries. In any case, there is no such relationship that would attract possibilities of exclusion under Rule 2(b).
  - v. Apart from the producers mentioned above, there is no other known producer of product under consideration in India. The petition satisfies the requirement of

standing under the Rules. Further, the applicant constitutes domestic industry within the meaning of the Anti-Dumping Rules.

- vi. The claims of the interested parties that Reliance Industries Ltd. should not be excluded from the scope of domestic industry because its related party 'Recron' has exported insignificant quantities of product under consideration during the period of investigation is misplaced. There are two conditions for eligibility of a domestic producer in terms of Rule 2(b) i.e., relationship of the producer with exporter/importer of subject goods and imports by the domestic producer. As a matter of fact the criteria regarding quantity has been applied by Authority invariably in the context of the second part i.e., the imports by the domestic producer. However, it is submitted that quantity is not a relevant criteria with respect to relationship of the domestic producer with exporter/importer of subject goods in terms of Explanation i(a) of Rule 2(b). Since Recron is a 100% subsidiary of Reliance, inclusion of Reliance in the scope of domestic industry is not permissible in terms of Rule 2(b).
- vii. The opposing parties have completely misinterpreted the Explanation to Rule 5(3) of the Rules. Under the provisions of Rule 5(3) there is no requirement which necessarily makes 50%+ support to the petition mandatory, especially when there is no opposition to the petition. As per the provision of Rule 5(3) the petitioner/s is/are required to have minimum of 25% of the share in the total production of the subject goods or the like articles in the country. However, it is for the purpose of deciding the support or opposition to the petition that the Rule further requires support by 50%+ portion of the domestic industry "either supporting or opposing the petition". In view of the fact that in the present case there has been no support/opposition to the petition, the requirement of 50% test becomes non-applicable.
- viii. Further, it has been supported by findings of the WTO panel that the arguments of the interested parties that the domestic industry necessarily need to have more than 50% of share in total domestic production is legally flawed and misplaced. In the context of the Anti-Dumping Agreement, the panel in Argentina - Poultry case had an occasion to consider whether or not the phrase "a major proportion" implies that the "domestic industry" refers to domestic producers whose collective output constitutes the majority, that is, more than 50 percent, of domestic total production. The panel considered different dictionary definitions and noted that the word "major" is also defined as "important, serious, or significant". The Panel therefore found that "an interpretation that defines the domestic industry in terms of domestic producers of an important, serious or significant proportion of total domestic production is permissible. The observations made thereunder by Panel in Argentina –Poultry are as under:

*7.341 In considering these different dictionary definitions, we note that the word "major" is also defined as "important, serious, or significant". Accordingly, an interpretation that defines the domestic industry in terms of domestic producers of an important, serious or significant proportion of total*

*domestic production is permissible. Indeed, this approach is entirely consistent with the Spanish version of Article 4.1, which refers to producers representing “una proporción importante” of domestic production. Furthermore, Article 4.1 does not define the “domestic industry” in terms of producers of the major proportion of total domestic production. Instead, Article 4.1 refers to producers of a major proportion of total domestic production. If Article 4.1 had referred to the major proportion, the requirement would clearly have been to define the “domestic industry” as producers constituting 50+ per cent of total domestic production. However, the reference to a major proportion suggests that there may be more than one “major proportion” for the purpose of defining “domestic industry”. In the event of multiple “major proportions”, it is inconceivable that each individual “major proportion” could – or must – exceed 50 per cent. This therefore supports our finding that it is permissible to define the “domestic industry” in terms of domestic producers of an important, serious or significant proportion of total domestic production. For these reasons, we find that Article 4.1 of the AD Agreement does not require Members to define the “domestic industry” in terms of domestic producers representing the majority, or 50+ per cent, of total domestic production.*

*7.342 There is nothing on the record to suggest that, in the circumstances of this case, 46 per cent of total domestic production is not an important, serious or significant proportion of total domestic production. Accordingly, we reject Brazil's claim that Argentina violated Article 4.1 of the AD Agreement by defining "domestic industry" in terms of domestic producers representing 46 per cent of total domestic production. (emphasis added)*

- ix. Further, the panel in the safeguard case of *US — Wheat Gluten* had the occasion to examine the link between the phrase “a major proportion” and the question of data coverage:

*“[T]he Agreement expressly envisages that, in certain circumstances, the ‘domestic industry’ may consist of those domestic producers ‘whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products’. This implies that complete data coverage may not always be possible and is not required. While the fullest possible data coverage is required in order to maximize the accuracy of the investigation, there may be circumstances in a particular case which do not allow an investigating Authority to obtain such coverage.”*

- x. The interested parties had also filed a Writ petition in Hon’ble Madras High Court seeking quashing of the initiation on the grounds of inadequate standing of the domestic industry in terms of the Rules. The Hon’ble Court decided not to interfere with the proceedings of the present case and only directed the Authority

to hold a hearing of the interested parties and proceed with the case as per the provisions of law. The interested parties are attempting to misguide the Authority by presenting the outcome of the case in a distorted manner with a motive to change the course of investigation.

### **Views of the opposing interested parties**

12. Following submissions have been made by the other interested parties with regard to standing and scope of domestic industry:
- i. The petition is not maintainable and the present investigation ought to be terminated as the threshold requirement of Domestic industry standing of the petitioner has not been met with.
  - ii. For the purpose of initiating the investigation, one of the major producers, M/s Reliance industries limited has not been included.
  - iii. M/s Reliance industries limited has been intentionally excluded from the scope of domestic industry in view of the fact that they have reported substantial profits from the sales of product under consideration in the domestic market during the period of investigation.
  - iv. Reliance cannot be excluded merely on the ground that they have a related exporter/importer in the subject country, such a view is against the view taken by the Authority in the recent case of soda ash.
  - v. The Applicants lack the requisite domestic industry standing for maintaining the present Application since Reliance Industries Ltd. ("RIL"), which is a major producer of PUC in India, has neither filed nor supported the present Application.
  - vi. The total exports of Product under consideration from Recron, the related producer of RIL in Malaysia have been minimal. Therefore, the exclusion of Reliance is impermissible under law.
  - vii. It is submitted that while the Applicants have stated in their Application that RIL cannot be considered a part of the domestic industry on account of its relatedness with Recron, a related exporter, on the contrary, one of the Applicants, i.e., M/s Indo Rama Synthetic (India) Ltd., has filed the present Application in the capacity of representing the domestic industry despite it being related to an exporter, namely, M/s P.T. Indorama Synthetics Tbk. Indonesia.
  - viii. It is submitted that in the past, this Authority has itself considered the volume of total imports from a related exporter in relation to the total imports of PUC, total domestic production of PUC and the total demand of PUC, when determining whether or not the imports from the related exporter is significant so as to warrant exclusion of a domestic producer with a related exporter from the ambit of domestic industry.
  - ix. The exclusion of RIL, which holds the *major proportion* of total domestic production of PUC in India, without testing such exclusion against the tests provided Rule 2(b)(1)(c), is a patent error in law and jurisdiction.
  - x. With regard to the interpretation of the phrase *major proportion* in the definition of *domestic* industry, it may be noted that the WTO Appellate

Body in its finding dated 18 January 2016 in *Definitive Anti-Dumping Measures on Certain Iron & Steel Fasteners from China*, has observed that while establishing whether applicants hold a *major proportion* of the domestic production of PUC so as to constitute domestic industry, Authority has to be careful that this does not introduce a material risk of distortion of injury. It was further observed that the lower the proportion of domestic production, the more sensitive an investigating Authority will have to be to ensure that the proportion used substantially reflects the total production of the producers as a whole.

- xi. In the WTO Panel Finding in *China - Anti-Dumping and Countervailing Duty Measures on Broiler Products from The United States*, the Panel noted that an investigating Authority is not allowed to ignore the situation of other domestic producers in its injury determination. An investigating Authority will make its analysis under Articles 3.2 and 3.4 with reference to the defined domestic industry, but will still need to assess the situation of other domestic producers in its evaluation of whether it is the impact of the subject imports that have explanatory force for the changes in the various economic factors and whether the strength of other domestic producers could be a possible separate cause of injury to the defined domestic industry.
- xii. According to Article 5.4 of the ADA and the Explanation to Rule 5(3) of the Rules, an application must be supported by domestic producers whose collective output constitutes *more than 50% of the total production* of the 'like product' expressing either support for or opposition to the application.
- xiii. It is submitted that in the Explanation under Rule 5(3)(b) it is categorically stated that the Applicants shall only be considered as Domestic Industry if the collective output of the Applicants is more than 50% of the total Domestic Producers. Hence, in the case at hand the Applicants themselves admit that their share in the domestic production is only 43% which is much less than the limit prescribed under law.
- xiv. The judgement of Madras HC in *Nirma Ltd. V. Saint Gobain Glass India Ltd.* held that the amendment in Sec 2(b) has not taken away discretionary power from DA. However, it is again reiterated that the learned DA is required to carry out an analysis accurately and adequately of the data while using its discretionary power and pass a speaking order while conducting the prima facie determination and failure to do the same amounts to the initiation notification being bad in law.
- xv. The DA has full discretion to adjudge the "Domestic Industry" and in a case such as the present one where the majority share i.e. more than 50% belongs to a party who might be related to an importer should be included in the purview of "Domestic Industry". It will not be out of context here to mention that as per the Applicants they enjoy only 43% of the total domestic production of the PUC. Hence it is already admitted by the Applicants that they do not have the requisite 50%.
- xvi. The following three conditions have to be clearly rebutted by the complainants to prove themselves as DI :

- a) Not an importer itself – Reliance is not an importer
  - b) Not related to importers – Reliance is not related to importers
- xvii. Recron has insignificant export of PUC to India– Perusal of exporter questionnaire of M/S Recron indicates that it has insignificant exports in India to independent customers when compared to the domestic production of it's related company Reliance Industries Limited which establishes Reliance as genuine producer in India.
- xviii. The importers had challenged the initiation notification dated 02.02.2017 before the Hon'ble Madras High Court by way of Writ Petition no. 17926/2017, 17927/2017 and 17937/2017. The Hon'ble court has decided the matter and the relevant part of the order is reproduced herein below for ready reference:

*“24.It is interesting to take note the decision in the case of Arun Kumar and others vs. Union of India and others reported in (2007) 1 SCC 732, wherein the Honble Supreme Court explained the term jurisdictional fact. Jurisdictional fact is a fact which must exist before a court, tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an Authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, Authority or officer cannot act. If a court or Authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no Authority can confer upon itself jurisdiction which it otherwise does not possess.*

*25.Thus, in the light of the above decision, if at the inception of an enquiry by a Tribunal or an Authority, a challenge has been made to the jurisdiction, the Tribunal/Authority has to take a decision as to whether or not to act and give a ruling on the preliminary or collateral issue, but such ruling is not a conclusion. Above all, the rules are clear, especially Rule 12 of the Customs Tariff Rules and there is no necessity for this Court to issue any direction to the first respondent to decide the matter in a particular manner nor it would be right in doing so, as he is cast with a statutory duty to determine the injury based on relevant consideration, which undoubtedly would mean as to whether the fifth respondent has to be excluded from the proceedings or not. It would be sufficient to direct the first respondent to hear all the interested parties including the petitioners/association and the individual writ petitioner as well as other petitioner and proceed in accordance with law.”*

- xix. From the bare perusal of the aforesaid order it is evident that the Hon'ble High Court has held that the Learned DA has to first satisfy itself with the issue of jurisdiction, which can be done by making the said point as a preliminary issue.

## Examination of the Authority

13. Rule 2 (b) of the AD rules 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 such case the term ‘domestic industry’ may be construed as referring to the rest of the producers”*

14. The application has been filed by M/s Alok Industries Ltd., M/s Indo Rama Synthetics (India) Ltd. and M/s The Bombay Dyeing & Mfg. Co. Ltd. as domestic producers of the product under consideration. The Authority had noted the fact stated in the petition that the fourth producer M/s Reliance industry Ltd. is having a related party in one of the subject countries and hence is not eligible to be a domestic industry in terms of Rule 2(b). The three petitioner companies have neither imported the subject goods nor are related to any of the exporters or importers of the subject goods from subject countries. The fact of their relationship with other Indorama companies in Indonesia and Thailand has been verified from the documents submitted by the petitioner company and also the exporters there who have fully co-operated in the investigation. M/s P.T. Indorama Synthetics Tbk, Indonesia and M/s Indorama Polyester Industries PCL, Thailand are related to each other but are not related to the Indian petitioner company M/s Indo Rama Synthetics (India) Ltd.
15. It was observed by the Authority that M/s Recron Malaysia Sdn Bhd, Malaysia is a 100% subsidiary of Reliance Industries Ltd, India. This fact was verified from the documents submitted by the exporter, hence the fact of relationship is fully established. Further, the details of exports made by M/s Recron Malaysia Sdn Bhd were verified from DGCI&S data. The details of exports by M/s Recron Malaysia to India and import by Reliance Industries are as below.

SN	Particulars	Quantity (in MT)	Imports by Reliance Quantity (in Kgs)
1	China	52,261	743
2	Indonesia	10,900	-
3	Malaysia	5,251	-
3a	<b>Exports by M/s Recron Sdn Bhd</b>	274	-
4	Thailand	6,867	-
5	Total Subject Countries	75,279	743
6	Other Countries	8,901	7,600
7	Total Imports	84,181	8,343

16. The data clearly indicates that M/s Recron, Malaysia has exported to India to the end-users of the subject goods as well as M/s Reliance Industries Ltd., India has made imports from China. Therefore, the Authority was within their right in terms

of Rule 2(b) to exclude M/s Reliance from the scope of domestic industry at the time of initiation.

17. The petitioners had clear standing to file the present petition when examined in terms of Rule 5(3) of the Rules. The share of three producers forming the domestic industry constitute 49% of the Indian production during the POI and M/s. Reliance Industries Ltd. constitute 51% of the Indian production, who had neither submitted data nor opposed the petition. Since there was no opposition to the petition, the three producers namely, M/s Alok Industries Ltd., M/s Indo Rama Synthetics (India) Ltd. and M/s The Bombay Dyeing & Mfg. Co. Ltd have clear standing which was above the eligible limit of 25% as required under Rule 5(3).
18. Subsequent to the initiation, the Authority received several representations from the importers/users stating that data pertaining to costing and finance should be called for analysis from M/s Reliance Industries Ltd. and they should be treated as the domestic industry for the purpose of present investigation as it will have great implication on overall cost/financial data leading to injury analysis.
19. Keeping in view the specific request of the importers/users to consider the costing and financial data of M/s Reliance Industries while calculating domestic industry pricing; the Authority wrote a letter to M/s Reliance Industries, seeking information regarding their production, exports, imports, costing and financial data. In response to the letter, M/s Reliance Industries Ltd. stated that :

*“since the sole exporter of Malaysia M/s Recron Malaysia Sdn Bhd is a related company being our wholly owned subsidiary. Therefore, we are not part of the domestic industry.*

*However, we have no objection to domestic industry pursuing the case and your proceeding with the matter.”*

20. Further, the examination of import data had revealed that M/s Reliance Industries Ltd. has imported the subject goods from China during the POI (detailed in above para), which is also one of the subject countries in the present investigation, rendering them ineligible as domestic industry under Rule 2(b).
21. In view of the admitted fact that Reliance Industries Ltd. has a related exporter (100% Subsidiary) in one of the subject countries combined with the fact that Reliance Industries Ltd. has also imported the subject goods from China during the POI, the Authority considers it appropriate to not treat M/s Reliance Industries Ltd as eligible Domestic Industry and consider the rest of the domestic producers as ‘Domestic Industry’ in terms of the proviso to Rule 2(b). Further, it is noted that the applicants also have clear standing in terms of Rule 5(3).
22. The submission of the interested parties regarding the requirement of more than 50% support to the petition, is not relevant in the present case where there is no opposition to the petition and the petitioner companies are holding around 49% portion of domestic industry.

23. The case on WTO jurisprudence in the subject matter as quoted by opposing interested parties was noted and it is observed that the standing in the present case is lawful and has been arrived at with due caution. The Appellate Body Report in *EC – Fasteners* relied upon by interested parties merely states that "a major proportion" should serve as a "substantial reflection of the total domestic production". This does not imply that the "major proportion" ought to be the total production by itself or even closer to the total production. Interestingly, the Appellate Body in the same case has also cautioned that "the lower the proportion, the more sensitive an investigating Authority will have to be to ensure that the proportion used substantially reflects the total production of the producers as a whole", thereby implying that a lower proportion can also be sufficient to fulfill the requirement of Article 4.1(c) so long as it ensures that it should substantially reflect the total domestic production.
24. The decision of the Hon'ble Madras High Court has been thoroughly understood and it is clear that the Hon'ble Court decided to not issue any specific directions to the Authority and has left it to the Authority to determine the injury based on relevant consideration in terms of relevant Rules. The Hon'ble Court has only considered it sufficient to direct the Authority to hear all the interested parties, which has been duly complied with by the Authority by holding an oral hearing on 23.11.2017 inviting all the interested parties to attend the hearing and present their case orally followed by written submissions. The said opportunity of hearing has been availed by all the concerned interested parties, personally and/or through their legal representatives/associations.
25. In view of the above, after detailed examination the Authority has decided that the petitioner companies constitute eligible domestic industry in terms of Rule 2(b). Further, the petitioner companies also have the standing in terms of Rule 5(3) to file the present petition.

#### **D. ISSUES RELATING TO CONFIDENTIALITY**

##### **Views of the Domestic industry**

26. The submissions made by domestic industry are as follows:
  - i. The petitioner has claimed only such information as confidential, the confidentiality of which has been permitted under the rules and as per consistent practice of the Authority.
  - ii. The petitioner has provided proper non-confidential version of the application. No interested party has been able to point out any specific instance of information where confidentiality has been claimed which is not justified under the Rules.
  - iii. Information such as volume of exports to India, gross volume of sales in domestic market, production, sales, average price for exports to India have been provided in an indexed form as the information is business proprietary information and hence confidential in nature.

- iv. None of the exporters has provided the non-confidential version of their responses which is an exact replica of their confidential version. They have kept all the volume related information confidential. They have also not provided any statement of claim of confidentiality. Further, the responses are in stark violation of the specific guidelines issued by the Designated Authority with regard to the procedure to be followed for filing of non-confidential version of the exporter's questionnaire responses. The Domestic Industry, therefore, request the Authority to disregard the submissions of the interested parties and also to reject the responses of exporters and deny them the individual treatment.

#### **Views of the opposing interested parties**

27. The various submissions made by the producers/exporters/importers/other interested parties during the course of the present investigation with regard to confidentiality and considered relevant by the Authority are as follows:
  - i. The petition suffers from excessive confidentiality. The petition provides absolutely no information with respect to volume related information also.
  - ii. The domestic industry has claimed and has been allowed excessive confidentiality in the sense that they have not made available their annual report in the public file.
  - iii. Domestic Industry has also not provided sufficient details of their costing.

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

28. The Authority made available non confidential version of the information provided by various parties to all interested parties through the public file containing non-confidential version of evidences submitted by various interested parties for inspection as per Rule 6(7).
29. Information provided by the interested parties on confidential basis was examined with regard to the justification of their claims and the specific provisions of law as interpreted by the Hon'ble Supreme Court. On being satisfied, the Authority has accepted the confidentiality claims, wherever warranted and such information has been considered confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis was directed to provide sufficient non confidential version of the information filed on confidential basis. The Authority made available the non-confidential version of the evidences submitted by various interested parties in the form of public file.

### **E. MISCELLANEOUS ISSUES**

#### **Views of the Domestic Industry**

30. The submissions of domestic industry parties are summarized as follows:

- i. The responding producers have withheld vital information regarding their related parties involved in the production, sales and procurement of inputs therefore their response should be rejected and they should not be granted individual dumping margin.
- ii. The subject goods constitute around 45-50% of the total cost of the yarn which is then consumed in shirting, suiting and other garments.. The impact of imposition of anti-dumping duty is insignificant compared to the cost of the finished goods, e.g., a duty of 10% on the subject goods will entail increase in fabric cost in the range of 0.57- 1.3 % in case of shirting and 1.2 -2.3 % in case of suiting.

### **Views of the opposing interested parties**

31. The submissions of various interested parties are summarized as follows:

- i. The petition filed by the petitioners is based on unreliable and inaccurate data.
- ii. Reason for increase in imports of product under consideration during the period of investigation is quality issues in the product supplied by the petitioners.
- iii. Application filed by the domestic industry is deficient as it lacks the evidence and the information as required under the law and therefore, the same cannot be considered as a valid and fully documented application. In terms of Rule 5(3) of the Anti-dumping Rules, the Hon'ble Designated Authority is obligated not to initiate an anti-dumping investigation unless (a) it determines that the application has been made by or on behalf of the domestic industry and (b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding dumping, injury and causal link to justify initiation. The determinations that the application has been made by or on behalf of the domestic industry producing the like product and there is dumping, injury and causal link are the conditions precedent which ought to be fulfilled prior to the initiation of the investigation.
- iv. The domestic industry has used unrealistic and unreliable import figures in the application filed by them.
- v. The Soft Copy of Import data in excel file has not been provided. Also, domestic industry has not provided the copy of Original/Raw transaction-wise import data obtained from IBIS.
- vi. If anti-dumping duty is levied on PSF, then 5% duty on the PSF will raise the price to the tune of around Rs.5 and 10% duty will raise the price to the tune of around Rs. 10.5 affecting the yarn industry. As the cost of yarn in international market will remain unaffected, it is only the Indian market that will suffer by the levy of duty and the yarn industry will have to bear the brunt of this imposition of duty. This in turn will create extra cost and

- burden for the Indian industry as a whole and not just limited to PSF or PUC which will have a cascading impact on the industry.
- vii. The total demand of the subject goods are more than the production of the Domestic Industry, thus imports are inevitable.

### **Examination by the Authority**

32. The miscellaneous submissions have been examined as under:

- i. The contention that the petition filed by the domestic industry is based on incorrect data, is baseless and unsubstantiated. In any case, it may be mentioned that the Authority had initiated the investigations after being fully satisfied about the evidence presented by the Domestic Industry and when Authority had arrived at prima facie conclusion that there is sufficient evidence to justify the initiation of the investigation. The Authority also satisfied itself about the accuracy and the adequacy of the data/information which was necessary to initiate investigations in terms of Rule 5. Therefore, the Authority does not find any merit in the submission made by the interested parties.
- ii. The contention that the increase in imports during the period of investigation was on account of quality issues in respect of the products sold by the domestic industry is unsubstantiated. In any case, the Authority has already considered that the goods offered by the domestic industry and the imported goods are 'like articles' and they compete in the same market. Further, the Authority has consistently held that quality *per se* is not a determinative factor for the purpose of anti-dumping investigations.
- iii. As regards the submission of the interested parties regarding imports data (DGCI&S), the Authority notes that a printed copy of the imports data was kept in the public file, available for inspection by the interested parties, and the records show that most of the interested parties have taken the copy of data for their records. Also, it is a practice of the Authority to authorise the parties to collect DGCI&S import data (in soft copy) on receipt of a request by interested parties, however, none of the interested parties have submitted any request to the Authority asking for imports data in the present investigation at any time.
- iv. As regards the soft copy of the IBIS data, the Authority notes that IBIS data was a part of the petition filed by the domestic industry. A soft copy of the petition was provided to all the listed interested parties and to other interested parties upon request. A copy of the petition was also kept in the public file which was open for inspection by the interested parties. Therefore, the contentions of the interested parties regarding present issue are baseless.
- v. The domestic industry has given detailed calculations for the impact of Anti Dumping Duty on the downstream industry and it is noted that the impact is not significant. Further it is noted that anti-dumping duty is to ensure fair trade and provide a level-playing field to the domestic industry.

- vi. The total demand in POI (18 months) is 1,209,242 MT which is a sum of total domestic sales (applicants and others) and total imports (subject countries and others). The total installed capacity in India is sufficient to cater the present demand, moreover, the idea of Anti-dumping duties is not to block imports but rather create a fair and level playing field for exporters and Domestic Industry.

## **F. NORMAL VALUE, EXPORT PRICE AND DUMPING MARGIN**

### **Normal Value**

#### **Views of the Domestic industry**

33. The submissions made by domestic industry are as follows:

- i. In terms of Para 8 of Annexure I of the anti-dumping rules, China has to be presumed to be a Non-market Economy Country unless the concerned firms/producers/exporters are able to rebut the said presumption based on the criteria spelt out in Para 8(3). This is also in line with the position taken by the Authority in previous cases, and by investigating authorities in other countries. Chinese producers' cost and price cannot be relied upon for determination of normal value. The domestic industry respectfully submit that
- ii. China PR should be treated as nonmarket economy country for the following reasons:
  - a) Market economy status cannot be given unless the responding Chinese exporters establish that the prices of major inputs substantially reflect market values.
  - b) Market economy treatment must be rejected in such situations where Chinese exporters are unable to establish that their books are consistent with International Accounting Standards (IAS). The requirement on insisting compliance with International Accounting Standards is to ensure accuracy and adequacy of revenues and expenses, assets and liabilities expressed in the annual report.
  - c) Market economy status cannot be granted unless the responding Chinese exporters pass the test in respect of each and every parameter laid down under the rules. Contrarily, while examining material injury existence of a single parameter is considered sufficient to establish such injury. In other words, where one parameter is sufficient to establish existence of injury, failure to pass one single parameter is sufficient to reject the claim of market economy status.
  - d) It is not for the Authority to establish that the responding companies are operating under market economy environment and are entitled for market economy treatment. But it is for the responding Chinese exporters to establish that they are operating under market economy conditions.
  - e) Market economy status cannot be granted unless the responding company and its group as a whole make the claim. If one or more companies forming part of the group have not filed the response, market economy status must be rejected.

- f) It has been submitted that the normal value for China in such a case can be determined only in accordance with the provisions of para 7 of the Annexure I to Anti-dumping Rules without invoking proviso to 8(2) in view of the aforementioned facts and circumstances.
- g) The normal value in China can thus be determined on the basis of (a) import price from third country into India, (b) selling price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit. It is also submitted that since these options for determination of normal value are available, the Designated Authority may not kindly consider "any other basis" because this is required to be applied only when other basis listed under the law cannot be applied.
- h) Exporters namely Fujian Jingwei, Jiangyin Huahong and Jiangyin Hailun, have only claimed the MET status which too is not complete and hence liable to be rejected. China is a non-market economy country. None of the exporters satisfy each and every condition to qualify for grant of market economy status.
- i) The Chinese exporters have also withheld information regarding related parties and the company shares and which can influence the decisions of the company through its board of directors. In view thereof, the Domestic Industry requested the Authority to reject the MET claim of the company.
- j) The responding producers from China have not provided their complete value chain as their related entities in China have not participated in the investigation.
- k) The responding producers/exporters from China have conveniently omitted to provide any information as to the subsidies received by them by the Government of China. The balance sheet of the Chinese producers and the investigations carried out by United States in the case of Fine denier PSF clearly show that the Chinese producers have taken benefit from the subsidies provided by the Chinese Government. The omission of such critical piece of information by the Chinese producers amounts to misleading the Authority and renders all the information filed by them dubious. Therefore, the same must be rejected for the want of complete and correct information.
- l) Para 8(2) of Annexure-I leaves no choice for the Designated Authority but to presume China to be a Non-Market Economy country. However, the same is open to rebuttal by the Chinese firms under the provision of Para 8(3).
- m) The Designated Authority is a creation of the statute and has to perform its obligations and exercise the powers as specifically assigned to it under the specific provisions of the statute. Therefore, unless the provisions of Para 8 are amended, it is imperative for the Designated Authority to operate as per the procedure mentioned in Para 8 and presume China as a Non-Market Economy country.
- n) The significant extent of continued government intervention in certain important sectors of the Chinese economy warrants maintaining China's designation as a Non-Market Economy country. It is a known fact that China's economy is controlled by the state forces and there is a significant interference and control of the state machinery in the country's economy. The grant of Market Economy

status under China's accession to the WTO is not automated but contingent upon China's compliance with the preconditions mentioned in the Accession Protocol.

- o) As for Indonesia, the responding producer/exporter, M/s. PT. Indo-rama synthetics TBK, Indonesia has furnished incomplete information regarding related parties, shareholdings, and raw material supply. They have not provided information about its related companies supplying major raw materials used to produce the subject goods. Their website clearly shows that the company has a related party, PT. Indorama Petrochemicals which is a manufacturer of Purified Terephthalic Acid, the major raw material for the production of subject goods. PT. Indo-Rama Synthetics TBK has not provided their complete value chain as their related entities have not participated in the investigation. Therefore the Authority is requested to reject their response and not consider them for individual dumping/injury margin.
- p) As for Thailand, the responding producer/exporter M/S Indorama Polyester Industries Public Co. Ltd. has not provided their complete value chain as their related entities have not participated in the investigation. The response filed by responding producer/exporter, M/S Indorama Polyester Industries Public Co. Ltd. clearly reveals that they have bought raw materials from their related parties. They have not provided information about its related companies supplying the main raw materials used to produce the subject goods. Therefore, the information submitted by them as to costs etc. cannot be trusted. Therefore the Authority is requested to reject their response and not consider them for individual dumping/injury margin.

### **Views of the Opposing Interested Parties**

34. The following interested parties from China, Indonesia, Thailand, and Malaysia have filed detailed responses and submissions with regard to Normal Value and export price.

1. M/s Fujian Jingwei New Fiber Science And Technology Co. Ltd, China
2. M/s Jiangyin Huahong Chemical Fiber Co. Ltd., China
3. M/s Jiangyin Hailun Chemical Fiber Co. Ltd., China
4. M/s Xiamen Xianglu Chemical Fiber Co. Ltd., China
5. M/s Xiamen MC Group (HK) Corp. Ltd., China
6. M/s Fujian Jinlun Fiber Shareholding Co. Ltd., China
7. M/s Fujian Zhengqi High-Tech Fiber Technology Co. Ltd., China
8. M/s United Raw Material PTE Ltd., China
9. M/s PT. Indo-Rama Synthetics Tbk, Indonesia
10. M/s Indorama Polyester Industries Public Co. Ltd., Thailand
11. M/s Recron (Malaysia) Sdn Bhd., Malaysia

35. Following parties from China PR have claimed Marker Economy Treatment:

1. M/s Fujian Jingwei New Fiber Science And Technology Co. Ltd.
2. M/s Jiangyin Huahong Chemical Fiber Co. Ltd.
3. M/s Jiangyin Hailun Chemical Fiber Co. Ltd

36. In addition to their claim of market economy treatment, the parties have stated that as per Section 15(a) (ii) of protocol on the Accession of the China PR to the WTO expired on December, 2016 and after that date, India no longer has legal basis under the agreements of the WTO to calculate normal value in anti-dumping investigation of Chinese products using the non-requirements of agreement on implementation of article VI of the general agreement on tariff and trade, 1994 and other covered agreements.

### **Examination by the Authority**

37. The Authority sent questionnaires to the known exporters from the subject countries, advising them to provide information in the form and manner prescribed. Several producers and exporters from the subject countries have filed the prescribed questionnaire responses.
38. It was alleged by the domestic industry in their application that Chinese companies continue to operate on non-market economic conditions. Based on the claims of the domestic industry, the Authority advised the producers/exporters in China to respond to the notice of initiation and provide information relevant to determination of their market economy status to demonstrate that they are operating under market economy conditions. The Authority sent copies of the supplementary questionnaire to all the known producers/ exporters from China for providing sufficient information. The Authority also requested Government of China to advise the producers/exporters in their country to provide all the relevant information.
39. The following producers from China, along with some of their exporters/traders, have filed the prescribed questionnaire responses.
1. M/s Fujian Jingwei New Fiber Science And Technology Co. Ltd.
  2. M/s Jiangyin Huahong Chemical Fiber Co. Ltd. along with its trader M/s United Raw Material PTE Ltd.
  3. M/s Jiangyin Hailun Chemical Fiber Co. Ltd.
  4. M/s Xiamen Xianglu Chemical Fiber Co. Ltd.
  5. M/s Fujian Jinlun Fiber Shareholding Co. Ltd. along with its traders M/s United Raw Material PTE Ltd. and M/s Xiamen MC Group (HK) Corp. Ltd.
  6. M/s Fujian Zhengqi High-Tech Fiber Technology Co. Ltd.
40. The Supplementary questionnaire response was filed by the following producers/ exporters from China.
1. M/s Fujian Jingwei New Fiber Science And Technology Co. Ltd.(Jingwei)
  2. M/s Jiangyin Huahong Chemical Fiber Co. Ltd.

### 3. M/s Jiangyin Hailun Chemical Fiber Co. Ltd.

41. The domestic industry made another representation post initiation, stating that the Chinese companies are not operating under the market economy conditions and there is significant government control in Chinese market. Therefore, their cost cannot be trusted for the computation of normal value.
42. The Authority has taken cognizance of the information provided by the respondent Chinese companies who have filed MET supplementary questionnaire response wherein they have sought to rebut the presumptions as mentioned in para 8 of Annexure 1 of the Anti-dumping Rules. The Authority notes that the responding companies have failed to provide sufficient evidence to establish that they are operating under market economy conditions.
43. The Authority further notes that the responding companies have not provided sufficient details in their response in respect of their Holding/group companies, the source of raw materials, reliability of exchange rates and other relevant information to establish that they are operating under market conditions. In view of the above, the Authority cannot grant market economy treatment to the above stated respondent Chinese companies.
44. The Authority therefore, holds that none of the producers/exporters from China PR has been found to be operating under market economy conditions for determination of normal value in China in terms of Para-6 of Annexure-1 to the Rules. Under the circumstances, the Authority is not in a position to apply Para 8 of Annexure 1 of the Rules to the above named Chinese companies and the Authority has to proceed in accordance with Para 7 of Annexure - I to the Rules.
45. The Authority notes that for determination of normal value based on third country cost and prices, the complete and exhaustive data on domestic sales or third country export sales, as well as cost of production and cooperation of such producers in third country is required. No such information with regard to prices and costs prevalent in these markets have been provided either by the applicant or by the responding exporters, nor any publicly available information could be accessed, nor the responding Chinese companies have made any claim with regard to an appropriate market economy third country at this stage. Therefore, for the purpose of determination of Normal Value, the Authority proceeds to construct the normal value based on any other reasonable basis.
46. The Authority constructed the Normal Value for China PR on available facts basis in terms of second proviso of Para 7 of Annexure 1 to the AD Rules. Accordingly, the ex-works Normal Value of the product under consideration is determined based on constructed costs of production, duly adjusted to include selling, general & administrative costs and profits. The constructed normal value determined is as mentioned in the dumping margin table below.

**I. EXPORT PRICE IN CASE OF CHINA PR**

**M/s Jiangyin Huahong Chemical Fiber Co., Ltd.,**

47. M/s Jiangyin Huahong Chemical Fiber Co., Ltd has filed Exporters Questionnaire Response claiming themselves a producer and exporter of subject goods from China PR. From the Appendix-2 filed by M/s Jiangyin Huahong Chemical Fiber Co., Ltd., it is noted that they have exported \*\*\* MT of the subject goods to India during the POI, out of this \*\*\* MT has been exported directly and \*\*\* MT has been exported through unrelated exporters/traders, namely, M/s United Raw Material, Singapore (\*\*\* MT) and M/s Triveni Spinning Mil, Nepal (\*\*\* MT). M/s United Raw Material, Singapore, in turn has exported (\*\*\* MT) directly to India and rest (\*\*\* MT) has been exported through another trader namely M/s Astral Overseas Pte Ltd., Singapore, who have not filed Exporters Questionnaire responses with the Authority.
48. The Authority examined the Exporters Questionnaire response and noted response has been filed for majority of the quantity exported to India directly or indirectly, and accepted the quantity for which Exporters Questionnaire responses have been filed. The exports details furnished by producer have been considered for determining ex-factory export price for grant of individual dumping and injury margin. The exporter has claimed adjustment on account of inland freight, ocean freight, overseas freight, bank charges, credit and the same have been accepted after necessary verification. The net export price is determined as below.

Constructed Normal value USD/MT	Net Export Price USD/MT
***	***

**M/s Fujian Jinlun Fiber Shareholding Co., Ltd.,**

49. M/s Fujian Jinlun Fiber Shareholding Co., Ltd., China PR has filed Exporters Questionnaire Response claiming themselves a producer and exporter of subject goods from China PR. From the Appendix-2 filed, M/s Fujian Jinlun Fiber Shareholding Co., Ltd., China PR has exported \*\*\* MT of the subject goods to India during the POI, out of this \*\*\* MT has been exported directly and \*\*\* MT has been exported through unrelated exporters/traders namely M/s United Raw Material, Singapore (\*\*\* MT), M/s Triveni Spinning Mil, Nepal (\*\*\* MT), M/S Reliance Spinning Mills Ltd., Nepal (\*\*\* MT) and M/s Xiamen MC Group (HK) Corp. Ltd., Hong Kong (\*\*\* MT). Only M/s Triveni Spinning Mil, Nepal (\*\*\* MT) and M/S Reliance Spinning Mills Ltd., Nepal (\*\*\* MT) have not filed their Exporters Questionnaire responses with the Authority.

50. The Authority examined the Exporters Questionnaire response and noted response has been filed for majority of the quantity exported to India directly or indirectly, and accepted the quantity for which Exporters Questionnaire responses have been filed. The exports details furnished by producer have been considered for determining ex-factory export price for grant of individual dumping and injury margin. The exporter has claimed adjustment on account of inland freight, ocean freight, overseas freight, bank charges, credit and the same have been accepted after necessary verification. The net export price is determined as below.

Constructed Normal value USD/MT	Net Export Price USD/MT
***	***

**M/s Fujian Zhengqi High-tech Fiber Technology Co., Ltd.**

51. M/s Fujian Zhengqi High-tech Fiber Technology Co. Ltd., China PR has filed Exporters Questionnaire Response claiming themselves a producer and exporter of subject goods from China PR. From the Appendix-2 filed by M/s Fujian Zhengqi High-tech Fiber Technology Co. Ltd., it is noted that they have exported \*\*\* MT of the subject goods to India during the POI, out of this \*\*\* MT has been exported directly and \*\*\* MT has been exported through exporter/trader namely M/s Tionale Pte., Ltd., Singapore who has not filed Exporters Questionnaire responses with the Authority.

52. The Authority examined the Exporters Questionnaire response and noted response has been filed for majority of the quantity exported to India directly or indirectly, and accepted the quantity for which Exporters Questionnaire responses have been filed. The exports details furnished by producer have been considered for determining ex-factory export price for grant of individual dumping and injury margin. The exporter has claimed adjustment on account of inland freight, ocean freight, overseas freight, bank charges, credit and the same have been accepted after necessary verification. The net export price is determined as below.

Constructed Normal value USD/MT	Net Export Price USD/MT
***	***

**M/s Jiangyin Hailun Chemical Fibre Co. Ltd. China PR**

53. M/s Jiangyin Hailun Chemical Fiber Co., Ltd. has filed EQ Response claiming themselves a producer and exporter of subject goods from China PR. From the Appendix-2 filed by M/s Jiangyin Hailun Chemical Fiber Co., Ltd., it is noted that

they have exported a total of \*\*\* MT of the subject goods during the POI. Out of which the direct exports by them in the POI were \*\*\* MT and remaining exports of \*\*\* MT were through unrelated traders, who has not filed the response.

54. The Authority examined the Exporters Questionnaire response and noted response has been filed for majority of the quantity exported to India directly or indirectly, and accepted the quantity for which Exporters Questionnaire responses have been filed. The exports details furnished by producer have been considered for determining ex-factory export price for grant of individual dumping and injury margin. The exporter has claimed adjustment on account of inland freight, ocean freight, overseas freight, bank charges, credit and the same have been accepted after necessary verification. The net export price is determined as below.

Constructed Normal value USD/MT	Net Export Price USD/MT
***	***

**M/s Fujian Jingwei New Fiber Science & Technology Co. Ltd**

55. M/s Fujian Jingwei New Fiber Science & Technology Co. Ltd has filed Exporters Questionnaire Response claiming themselves a producer of subject goods from China PR. From the Appendix-2 filed by M/s M/s Fujian Jingwei New Fiber Science & Technology Co. Ltd., it is noted that they have exported entire quantity of the subject goods to India through an unrelated exporter M/s MGSGC & S LLC DBA Seven Hills Imports, USA, during the POI. Further, it is noted that the exporter/trader has not filed its Exporters Questionnaire responses with Authority. In absence of the complete response by the producer and the exporter, the Authority is unable to accept the response for grant of individual dumping and injury margin.

**M/s Xiamen Xianglu Chemical Fiber Co., Ltd.**

56. Xiamen Xianglu Chemical Fiber Co., Ltd. has filed Exporters Questionnaire Response claiming themselves a producer and exporter of subject goods from China PR. From the Appendix-2 filed it is noted that they have exported a total of 2424MT of the subject goods to India during the POI. Out of which the direct exports by them were 2% and remaining 98% exports were through unrelated traders, who have not filed its Exporters Questionnaire responses with Authority. In absence of the complete response by the producer and the exporter, the Authority is unable to accept the response for grant of individual dumping and injury margin.

**II. INDONESIA**

**Normal Value for M/s PT. Indo-Rama Synthetics Tbk, Indonesia**

57. The questionnaire response filed by the exporter has been examined. The same is complete and in order. The cost of production was determined on the basis of

verified information of the producer and domestic sale transactions were examined and found that the domestic sales are in the ordinary course of trade. Therefore, the Authority has proceeded to determine the normal value based on complete domestic sales data. Producer has claimed adjustment on account of transportation, credit cost, insurance and the same have been accepted after necessary verification. The normal value is to be determined as below.

**Export price in case of M/s PT. Indo-Rama Synthetics Tbk, Indonesia**

58. During the POI, M/s PT. Indo-Rama Synthetics Tbk, Indonesia, has exported the subject goods to India directly. The exporter has claimed adjustment on account of commission, inland transportation, overseas transportation, bank charges, credit cost and the same have been accepted after necessary verification. The net export price is to be determined as below.

Normal value USD/MT	Net export Price USD/MT
***	***

**III. THAILAND**

**Normal value and Export Price for M/s Indorama Polyester Industries PCL,**

59. The questionnaire response filed by the exporter has been examined. The same is complete and in order. The cost of production was determined on the basis of verified information of the producer and domestic sale transactions were examined and found that the domestic sales are in the ordinary course of trade. Therefore, the Authority has proceeded to determine the normal value based on complete domestic sales data. Producer has claimed adjustment on account of transportation, credit cost, insurance and the same have been accepted after necessary verification. The normal value is to be determined as below.

**Export price in case of M/s Indorama Polyester Industries PCL, Thailand**

60. During the POI, M/s Indorama Polyester Industries PCL, Thailand, has exported the subject goods to India during POI directly only. The exporter has claimed adjustment on account of commission, inland freight, ocean freight, oceans insurance, bank charges, credit cost, other expenses, export incentive and the same have been accepted after necessary verification. The normal value & net export price was calculated average basis and same is as below.

Normal value USD/MT	Net Export Price USD/MT
***	***

#### IV. MALAYSIA

##### Normal value and Export Price for M/s Recron Malaysia Sdn Bhd

61. M/s Recron Malaysia Sdn Bhd. has filed exporter questionnaire response. The same was examined and it is found that they have not sold the subject goods in Malaysia as is also clear from the Appendix 1 filed by them. Therefore, the normal value has been constructed on the basis of the cost of production of the exporters after due verification.

##### Export price in case of M/s Recron Malaysia Sdn Bhd

62. During the POI, M/s Recron Malaysia Sdn Bhd, has shipped the subject goods directly to India. All the supporting export documents were made available for verification. The exporter has claimed adjustment on account of commission, inland freight, ocean freight, oceans insurance, bank charges, credit cost, other expenses, export incentive and the same have been accepted after necessary verification. The normal value & net export price was calculated average basis and same is as below.

Constructed Normal value USD/MT	Net export Price USD/MT
***	****

#### DUMPING MARGIN

63. The dumping margin for subject goods has been determined by comparing normal value (constructed wherever the actual normal value is not available/acceptable) and net export price at ex-factory level for the subject goods.

SN.	Producer	Exporter	NV/C	NEP	Dumping Margin		
			NV	USD/	USD/MT	USD/MT	%
			USD/MT	MT			
<b>CHINA</b>							
1	M/s Jiangyin Huahong Chemical Fiber Co. Ltd., China	1. M/s Jiangyin Huahong Chemical Fiber Co. Ltd., China 2. M/s United Raw Material PTE Ltd.	***	***	***	***	15-25
2	M/s Jiangyin Hailun Chemical Fiber Co. Ltd.,	M/s Jiangyin Hailun Chemical Fiber Co. Ltd.,	***	***	***	***	15-25
3	M/s Fujian Jinlun Fiber Shareholding Co. Ltd.	1. M/s Fujian Jinlun Fiber Shareholding Co. Ltd. 2. M/s Xiamen MC Group (Hk) Corp. Ltd., 3. M/s United Raw Material PTE Ltd.	***	***	***	***	20-30
4	M/s Fujian	M/s Fujian Zhengqi High-	***	***	***	***	20-30

SN.	Producer	Exporter	NV/C NV	NEP	Dumping Margin		
	Zhengqi High-Tech Fiber Technology Co. Ltd.	Tech Fiber Technology Co. Ltd.					
<b>INDONESIA</b>							
5	Pt. Indo-Rama Synthetics Tbk, Indonesia	Pt. Indo-Rama Synthetics Tbk, Indonesia	***	***	***	***	15-25
<b>THAILAND</b>							
6	Indorama Polyester Industries Public Co. Ltd., Thailand	Indorama Polyester Industries Public Co. Ltd., Thailand	***	***	***	***	1-10
<b>MALAYSIA</b>							
7	M/s Recron Malaysia Sdn Bhd.	M/s Recron Malaysia Sdn Bhd	***	***	***	***	15-25

64. It is seen that the dumping margin for the subject goods is above de-minimus from all the subject countries.

#### **G. METHODOLOGY FOR INJURY ASSESSMENT AND EXAMINATION OF INJURY AND CAUSAL LINK**

##### **Views of the Domestic Industry**

65. The following are the injury related submissions made by the domestic industry during the course of the present investigation and considered relevant by the Authority:

- i. Imports of the product under consideration have shown increase over the years with a significant increase in POI.
- ii. Market share of subject countries in demand is significant. Market share of the domestic industry has decreased in the POI as compared to the base year. The same is due to significant imports from subject countries;
- iii. Domestic industry prices, reflect the effect of the prices that are being offered by the importers in the domestic market;
- iv. The price underselling, price undercutting is positive and substantial. Further, the Domestic Industry is suffering from price depression as they are not able to increase its prices to reasonable terms. The main reason for this is high volume of imports from subject countries that too at dumped and injurious prices.
- v. Performance of the domestic industry has steeply deteriorated in terms of profits, return on investments and cash profits to a very significant extent.
- vi. The decline in profitability of the domestic industry was due to significant increase in the import volume at non-remunerative prices from subject countries.

- vii. The decrease in selling price was more than the decrease in cost of production and thus the dumped imports are creating price suppression effect on the domestic industry.
- viii. The domestic industry has suffered material injury in connection with dumping of subject goods from subject countries. Further, the domestic industry is threatened with continued injury, should the present condition continue

### **Views of the opposing interested parties**

66. The following are the injury related submissions made by the opposing interested parties during the course of the present investigation and considered relevant by the Authority :
- i. The Domestic Industry is not suffering any injury and has improved throughout the injury investigation period;
  - ii. From the data furnished by the petitioners, they have failed to show any injury on account of allegedly dumped imports.
  - iii. The petitioners have adopted the method of cumulative assessment of injury in the present case, which in present circumstances is inappropriate.
  - iv. Requirement of positive evidence and objective examination by the investigating Authority in injury analysis under Article 3.1 of ADA, concerning three factors: firstly, volume of dumped imports; secondly, the effect of the dumped imports on prices in the domestic market for like products, and; thirdly, the consequent impact of these imports on domestic producers of like products is obligatory on investigating Authority.
  - v. The evidence submitted by applicants could not support a “significant” increase of imports either in absolute terms or in relative terms under Article 3.2.
  - vi. Any injury allegedly suffered by the domestic industry has been caused by factors other than imports from the subject countries

### **Examination by the Authority**

67. The impact of the dumped imports on the domestic industry is to be examined in terms of Para (iii) and (iv) of Annexure-II of the AD Rules.
68. The injury analysis made by the Authority hereunder addresses the various submissions made by the interested parties during the course of the present investigations and considered relevant by the Authority.
69. The Authority computed the non-injurious price in accordance with Annexure 3 to the Anti-dumping Rules and the established practices of the DGAD.

70. For the examination of the impact of imports on the domestic industry in India, the Authority has considered such indices having a bearing on the state of the industry as production, capacity utilization, sales quantum, stock, profitability, net sales realization, the magnitude and margin of dumping etc. in accordance with Annexure II of the Rules supra.

## I. Assessment of Demand

71. For this purpose, demand or apparent consumption of the subject goods in India is taken as the sum of domestic sales of all Indian producers and imports from all sources. Since the POI is for 18 months (April 2015 to September 2016), the data for POI has been annualized for effective comparison for earlier periods.

Particulars	Units	2012-13	2013-14	2014-15	POI	POI-A
Imports from subject countries	MT	8,411	24,876	44,409	75,279	50,186
Imports from other countries	MT	2,584	3,780	4,224	8,901	5,934
Total Imports	MT	10,995	28,656	48,633	84,181	56,120
Domestic Sales-Applicants	MT	228,540	248,652	270,509	440,012	293,341
Domestic Sales-Others	MT	486,050	462,500	447,400	685,050	456,700
Total Domestic Sales	MT	714,590	711,152	717,909	1,125,062	750,041
Total Demand (MT)	MT	725,585	739,808	766,542	1,209,242	806,161
Trend	Indexed	100	102	106	167	111

72. The Authority notes that the total demand in India has increased in POI and over the entire injury period.

## II. Volume Effect of Dumped Imports

### Import Volume and Market Share in Imports

73. With regard to the volume of the dumped imports, the Authority is required to consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in India. For the purpose of injury analysis, the Authority has relied on the import data procured from DGCI&S. Since the POI is for 18 months (April, 2015 to September, 2016), the data for POI then been annualised for effective comparison with earlier periods. The volume of imports of the subject goods from the subject countries has been analysed as under:

Particulars	Units	2012-13	2013-14	2014-15	POI (April 2015- Sept 2016)	POI- A
Imports from China	MT	6,261	20,632	33,956	52,261	34,841
Imports from Indonesia	MT	0	135	4,344	10,900	7,267

Imports from Malaysia	MT	2,046	1,999	2,204	5,251	3,501
Imports from Thailand	MT	104	2,111	3,904	6,867	4,578
Imports from subject countries	MT	8,411	24,876	44,409	75,279	50,186
Trend	Indexed	100	296	528	895	597
Imports from other countries	MT	2,584	3,780	4,224	8,901	5,934
Trend	Indexed	100	146	163	344	230
Total Imports	MT	10,995	28,656	48,633	84,181	56,120
Trend	Indexed	100	261	442	766	510
<b>Share in Total Imports</b>						
Of Subject Countries	%	76	87	91	89	76
Of Other Countries	%	24	13	9	11	24

74. The share of imports from subject countries in total imports is around 89%. The balance 11% of the imports are from South Korea and Taiwan besides others are having insignificant share. The imports from South Korea and Taiwan are at higher prices not causing injury to the domestic industry. It is noted from the above table that imports of the subject goods from the subject countries have increased significantly in absolute terms during the injury period and the POI, however, the share of imports from subject countries in total imports has not shown any significant changes during POI (annualized) as compared to the previous years.

### **III. Price Effect of Dumped Imports on the Domestic Industry**

75. With regard to the effect of the dumped imports on prices, it is required to be analyzed whether there has been a significant price undercutting by the alleged dumped imports as compared to the price of the like products in India, or whether the effect of such imports is otherwise to depress prices or prevent price increases, which otherwise would have occurred in the normal course. The impact on the prices of the domestic industry on account of the dumped imports from subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any.

#### **a. Price Undercutting**

76. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the landed price of imports (as per DGCI&S data) has been compared with net sales realization of the domestic industry.

<b>Particulars</b>	<b>Unit</b>	<b>Total</b>
Landed Price of Imports from Subject Countries	Rs/MT	71,856
Net Selling Price	Rs/MT	***
Price Undercutting	Rs/MT	(***)
Price Undercutting	%	(***)
Price Undercutting	Range	(5)-5

77. The analysis indicates that the landed value of imports from all the subject countries (cumulatively) is higher than the net selling price of DI in India and hence price undercutting is negative.

**b. Price Underselling**

78. Price underselling suffered by the domestic industry has been examined by comparison of landed price of imports with NIP.

<b>Particulars</b>	<b>Unit</b>	<b>Total</b>
Landed Value of imports from Subject Countries	Rs/MT	71856
NIP	Rs/MT	***
Price Underselling	Rs/MT	***
Price Underselling	%	***
Price Underselling	Range	1-10

79. It is noted that the imports from subject countries are landing at price lower than the NIP and hence there is a positive underselling.

**c. Price Suppression and Depression**

80. In order to determine whether the dumped imports are suppressing or depressing the domestic prices and whether the effect of such imports is to suppress prices to a significant degree or prevent price increases which otherwise would have occurred in normal course, the petitioner has given data of cost of sales and selling prices and considered the changes in the costs and prices over the injury period, as detailed below:

<b>Particulars</b>	<b>Unit</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>POI-A</b>
Landed Value of Imports of Subject countries	Rs./MT	93,138	98,959	88,634	71,856
Index	Indexed	100	106	95	77
Cost of Sales	Rs./MT	***	***	***	***
Trend	Indexed	100	107	92	78
Domestic Selling Price	Rs./MT	***	***	***	***
Trend	Indexed	100	105	94	79

81. It is seen that the cost of sales of Domestic Industry for subject goods is decreasing during the entire injury period and POI except a hike in year 2013-14. The selling price of the Domestic Industry is also decreasing. Further, it is noted that the selling price is below the cost of sales during the POI as well as the injury period. The landed value of imports (as per DGCI&S data) are below the cost of sales and the domestic industry's selling price is below the landed value of imports. This indicates that the prices of the Domestic Industry are suppressed and depressed. However, the fact that the other producer holds a major market share is also important in deciding the prevailing market prices in turn affecting the prices of domestic industry.

**IV. Economic Parameters of the Domestic Industry**

82. Annexure II to the Anti-dumping Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on

domestic producers of such products. With regard to consequent impact of these imports on domestic producers of such products, the Anti-dumping 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.

83. The various injury parameters relating to the domestic industry are discussed herein below:

**a. Market share:**

84. The details of imports, domestic sales and the market share of the domestic industry is as below:

SN	Particulars	Unit	2012-13	2013-14	2014-15	POI-A
1	Total Domestic Sale	MT	714,590	711,152	717,909	750,041
1a	Domestic Sales-Applicants	MT	228,540	248,652	270,509	293,341
1b	Domestic Sales-Others	MT	486,050	462,500	447,400	456,700
1c	Trend	Indexed	100	100	100	105
2	Imports from Subject Countries	MT	8,411	24,876	44,409	50,186
3	Imports from Other Countries	MT	2,584	3,780	4,224	5,934
4	Total Imports	MT	10,995	28,656	48,633	56,120
5	Total Demand	MT	725,585	739,808	766,542	806,161
5a	Trend	Trend	100	102	106	111
6	Market share in Demand					
6a	Of (Total)Domestic Sales	%	98.48	96.13	93.66	93.04
6b	Of DI Sales		31.49	33.61	35.28	36.38
6c	Of Imports from Subject countries	%	1.16	3.36	5.79	6.23
6d	Of Imports from Other Countries	%	0.36	0.51	0.55	0.74

85. The imports of the subject goods from subject countries have increased significantly from base year to POI in absolute terms. The total demand in India has shown a consistent increase, however, the market share of domestic sales (all producers) in total demand has decreased during POI as compared to the preceding years whereas market share of petitioners and imports from subject countries have increased during the same period.

**b. Profitability:**

86. The Domestic Industry stated that cost of sales has declined in the POI, as are the selling prices. It is seen that the selling price saw a substantial downward trend and the same consistently remained below the cost of sales of the Domestic Industry

resulting into continued losses during the entire injury period. The Domestic Industry has also submitted that they were forced to match the post landing discounted prices offered by the exporters.

Particulars	Unit	2012-13	2013-14	2014-15	POI-A
Cost of sales	Rs./MT	***	***	***	***
Trend	Indexed	100	107	92	78
Selling price	Rs./MT	***	***	***	***
Trend	Indexed	100	105	94	79
Profit/Loss	Rs./MT	(***)	(***)	(***)	(***)
Trend	Indexed	(100)	(124)	(68)	(71)
Profit/Loss	Rs. Lacs	(***)	(***)	(***)	(***)
Trend	Indexed	(100)	(135)	(81)	(136)

87. The data indicates that the DI is suffering continued losses during the entire injury period and POI which is on account of selling price being lower than the cost of sales of DI. However, the other producer in India is holding a substantial share of the market and must also be held responsible for controlling the price structure along with the imports into the country.

**c. Return on Investment:**

88. The return on investment has seen significantly negative trend as can be seen from the table below:

Particulars	Unit	2012-13	2013-14	2014-15	POI-A
ROI	%	(***)	(***)	(***)	(***)
Trend	Indexed	(100)	(265)	(190)	(319)

89. The domestic industry has increased its installed capacity and production continuously during the entire injury period and POI inspite of consistent negative ROI, therefore, the negative return on investment is not a conclusive indicator of adverse impact of injury due to dumping.

**d. Production and Capacity Utilization:**

90. It has been stated that the production of the Domestic Industry has increased in the POI as compared to the base year which is largely due to the fact that the demand has also increased. The domestic industry is operating at their full capacity, despite the fact that there has been a substantial increase in demand in the country.

Particulars	Unit	2012-13	2013-14	2014-15	POI -A
Capacity	MT	441,102	497,862	504,450	505,110
Trend	Indexed	100	113	114	115
Total Production	MT	308,207	322,487	337,117	350,108
Trend	Indexed	100	105	109	114

Capacity Utilization	%	69.87	64.77	66.83	69.31
Trend	Indexed	100	93	96	99

91. The installed capacity of the domestic industry has increased during the entire injury period and POI when compared to the base year and previous years. The production of subject goods is also increasing during the entire injury period and POI which could be in response to the increase in demand. There is no indication of any adverse impact of injury due to dumping.

**e. Sales Volumes:**

92. It is noted that the sales volume of the Domestic Industry has increased in the POI as compared to the base year which is largely due to the fact that the demand in the country has increased. It is also noted that exports by DI have decreased, however, the present analysis has taken into account the analysis of domestic sales only, and therefore, the analysis is not impacted by the exports.

Particulars	Unit	2012-13	2013-14	2014-15	POI -A
Domestic	MT	228,540	248,652	270,509	293,341
Trend	Indexed	100	109	118	128
Exports	MT	***	***	***	***
Trend	Indexed	100	98	91	76

**f. Inventories:**

93. The data relating to inventory of the subject goods is shown in the following table:

Particulars	Unit	2012-13	2013-14	2014-15	POI-A
Inventory	MT	***	***	***	***
Trend	Indexed	100	106	89	56

94. From the above, it is noted that the average inventory situation of the Domestic Industry has improved during the injury period indicating better market placement of the domestic industry hence do not indicate any adverse impact of injury due to dumping.

**g. Productivity, Employment and Wages:**

95. It has been stated that the number of employees engaged by the Domestic Industry decreased in the injury investigation period inspite of increase in production. The domestic industry has claimed that this is because they have to cut the costs to match the prices offered by the dumped imports. However, the wages paid to them has increased during the POI

Particulars	Unit	2012-13	2013-14	2014-15	POI -A
Production (MT)	MT	308,207	322,487	337,117	350,108
Employees	Number	***	***	***	***

Trend	Indexed	100	108	98	62
Production/employee	MT/No.	***	***	***	***
Trend	Indexed	100	97	112	123
Wages/employee	Rs. /Employee	***	***	***	***
Trend	Indexed	100	101	117	190

96. It is noted from the above table that the production and productivity per employee has improved during the injury period and POI. The increase in productivity per employee indicates better efficiencies and increase in wages could be in response to the progressive state of normal market conditions with time and hence do not indicate any adverse impact of injury due to dumping.

**h. Magnitude of Dumping and Dumping Margin:**

97. Magnitude of dumping is an indicator of the extent to which the dumped imports can cause injury to the domestic industry. The analysis shows that the dumping margin determined against subject countries is above *de minimis* and significant.

**i. Growth:**

98. There was positive growth of the domestic industry in terms of production and sales in the POI as compared to the base year. However, profits, cash profit as well as ROI remained negative in the POI as compared to the preceding years despite significant increase in demand. The domestic industry has contended that with increase in demand, the domestic industry had expected growth in profits, comfortable cash flow and increase in return on investments. However, the domestic industry was not able to achieve the same due to the presence of the dumped imports from subject countries at non-remunerative prices.

**j. Factors Affecting Domestic Price**

99. The examination indicates that there is a healthy demand in India for the subject goods. Even though Domestic Industry holds a major share of the market, they claim that import prices are directly affecting the prices of the domestic industry in the domestic market. However, the fact that the other Indian producer, who holds a major market share, is also an extremely important player impacting the market prices of the subject goods. The information given by the user industry shows that the prices of M/s Reliance Industries Ltd. (non-petitioner producer) are consistently higher than the import prices and still they hold majority share of Indian demand. It is noted that the landed value of subject goods from subject countries are below non-injurious price of the domestic industry. Further, landed value of PUC from subject countries had suppressed / depressed the prices of the Domestic Industry causing financial losses to them. The imports of the product under consideration from countries other than subject countries are minor in quantities and not injuring the domestic industry as the prices offered by these

countries are significantly higher. Demand for the product is showing an increase trend and, therefore, could not have been a factor responsible for price depression and suppression faced by the domestic industry. In view thereof, the imports and supplies of the other producer (non-petitioner producer), are shaping the price structure of the subject goods of domestic industry in India.

#### **H. OTHER KNOWN FACTORS & CAUSAL LINK**

100. Having examined the existence of material injury, volume and price effects of dumped imports on the prices of the domestic industry, in terms of its price underselling and price suppression, and depression effects, other indicative parameters listed under the Rules and Agreement on Anti-dumping, the Authority proceeded to see whether any factor, other than the dumped imports could have contributed to injury to the domestic industry.

##### **a. Volume and prices of imports from third countries**

101. During POI, imports of the subject goods from countries other than the subject countries are not significant in volume and were reported at high prices. Therefore, the imports from other countries cannot be considered to have caused injury to the domestic industry.

##### **b. Contraction in demand:**

102. There has been a constant rise in demand of the product concerned throughout the injury period. Therefore, decline in demand is not a possible reason of injury to the Domestic Industry.

##### **c. Changes in the pattern of consumption: -**

103. The pattern of consumption with regard to the product under consideration has not undergone material change and therefore could not have been the cause for the injury suffered by the domestic industry.

##### **d. Trade restrictive practices of and competition between the foreign and domestic producers: -**

104. The Authority notes that there is no trade restrictive practice, which could have contributed to the injury to the domestic industry.

##### **e. Developments in technology: -**

105. The Authority also notes that technology for production of the product has not undergone any change. Developments in technology are, therefore, not a factor of injury to the domestic industry.

##### **f. Export performance:**

106. The injury analysis has been done by the Authority taking into consideration their domestic operations only. Therefore, performance in the export market has not affected the present injury analysis.

##### **g. Performance of other products being produced and sold by the domestic industry:**

107. Claimed injury to the domestic industry has been analysed on account of product under consideration only. Therefore, performance of other products being

produced and sold by the domestic industry has not affected the present injury analysis.

#### **h. Other Producers in India**

108. There is another major producer of subject goods in India who has not joined the petition. However, the evidence available on record indicates that it plays a very significant role in deciding the market prices of the subject goods.

### **I. MAGNITUDE OF INJURY AND INJURY MARGIN**

109. The non-injurious price of the subject goods produced by the domestic industry as determined by the Authority in terms of Annexure III to the AD Rules has been compared with the landed value of the exports from the subject countries for determination of injury margin during the POI and the injury margin so worked out is as under:

SN.	Producer	Exporter	Landed Value	NIP	Injury Margin		
			USD/MT	USD/MT	USD/MT	%	Range
<b>CHINA PR</b>							
1	M/s Jiangyin Huahong Chemical Fiber Co. Ltd., China	1. M/s Jiangyin Huahong Chemical Fiber Co. Ltd., China 2. M/s United Raw Material PTE Ltd	***	***	***	***	5-15
3	M/s Jiangyin Hailun Chemical Fiber Co. Ltd.,	M/s Jiangyin Hailun Chemical Fiber Co. Ltd.,	***	***	***	***	5-15
4	M/s Fujian Jinlun Fiber Shareholding Co. Ltd.	1. M/s Fujian Jinlun Fiber Shareholding Co. Ltd. 2. M/s Xiamen MC Group (HK) Corp. Ltd., 3. M/s United Raw Material PTE Ltd.	***	***	***	***	10-20
7	M/s Fujian Zhengqi High-Tech Fiber Technology Co. Ltd.	M/s Fujian Zhengqi High-Tech Fiber Technology Co. Ltd.	***	***	***	***	10-20
<b>INDONESIA</b>							
8	Pt. Indo-Rama Synthetics Tbk, Indonesia	Pt. Indo-Rama Synthetics Tbk, Indonesia	***	***	***	***	1-10
<b>THAILAND</b>							
9	Indorama Polyester Industries Public Co. Ltd., Thailand	Indorama Polyester Industries Public Co. Ltd., Thailand	***	***	(***)	(***)	(5)-5
<b>MALAYSIA</b>							
10	M/s Recron Malaysia Sdn Bhd.	M/s Recron Malaysia Sdn Bhd.	***	***	***	***	5-15

### **J. POST DISCLOSURE COMMENTS**

110. The post disclosure submissions have been received from the interested parties. The issues raised therein have already been raised earlier during the investigation and also addressed appropriately. However, for the sake of clarity the submissions by the interested parties are being examined as below:

### **Submissions made by the Domestic industry**

111. The Domestic Industry made the following submissions:

- a. Demand as well as market share have to be examined in the context of the entire market and not only for the Domestic Industry. It is, therefore, clear that market share as a factor of injury is also showing injury to the Domestic Industry as the share of all the domestic producers has fallen.
- b. The prices of PSF in the domestic market are determined on an import parity basis. The market is extremely competitive internationally and it is not possible for any producer in India, small or major, to fix its prices without consideration of the international prices at which the goods can be imported into India. The pricing dynamics remain the same for the petitioner companies as well as the non-petitioner companies as they are essentially competing in the same market under exactly the same conditions. The landed value of the subject goods is suppressing depressing the prices of the Domestic Industry, causing losses to them and exactly the same mechanism is in place even for the non-petitioner producer.
- c. The imports constitute only about 7% of the total demand, has no bearing on the fact that the prices in the domestic market are determined on the basis of the import prices. The imports constitute more than 14% in relation to domestic production in the country which is sufficient to influence the prices in the market.
- d. The negative rate of return is a function of lower price realization and is in no way connected with the fact that the installed capacity and production have gone up.
- e. As regards inventories and wages per employee, it appears that the figures for the POI have not been annualized which may kindly be corrected.

### **Submissions made by the opposing interested parties**

112. The submissions of various opposing interested parties are summarized as follows:

- a. The Authority may clearly clarify that “recycled PSF, non dyed or coloured are excluded from the scope of PUC”. It may also be made a part of duty table note so as to avoid any confusions at the end of customs authorities at the time of clearance of the material if the Authority recommends any duty in this matter.
- b. M/s PT Indorama Petrochemicals, Indonesia is related to the applicant by virtue of having common control as defined under the Companies Act 2013 as evident from the Annual Report of the applicant for the year 2016-17. Therefore, it is essential for the Authority to lift the veil of corporate cross ownership among the Lohia family members who are the beneficial owners of the Indorama Group in India as well as the subject countries.
- c. Non-consideration of RIL as domestic industry will certainly result in material risk of distortion of injury. It is a major producer of PUC in India and the focus of RIL continues to be on production of PUC and it has not shifted its focus to trading in the imported PUC. The small volume of PUC exported by Recron during the POI has been used for captive consumption by the mills. RIL cannot be said to have

- unduly benefited from dumping and hence its exclusion had to be examined by the Authority in terms of Article 4.1(i) of the Anti-Dumping Agreement.
- d. The Authority has failed to comply with the findings made by the Hon'ble High Court of Madras Order dated 20 November 2017 since no examination/analysis had been undertaken to determine that the effect of the relationship of RIL with Recron is such as to cause the producers to behave differently from non-related producers. Moreover, Rule 2(b)(1) of the Rules is the enacting part and contains a deeming as to when exporters or importers are related. There has to be further reason to believe that the parties had factually exercised restraint in the course of dealings.
  - e. The PDF/hard copy of the import data cannot be regarded as sufficient evidence for the allegation of imports.
  - f. The domestic industry considered the various import transactions in the IBIS import data with the same or similar description both as PUC and as well as NPUC by defying all logics and principles of consistency and fairness and also concealed the complete product description in the various import transactions.
  - g. M/s Jiangyin Hailun Chemical Fiber Co. Ltd. requested the Authority to determine the normal value on the basis of their records instead of constructing the normal value. It is further submitted that the Authority may also consider the information from Thailand for the determination of normal value for the Chinese exporters. With regard to the determination of constructed normal value, it is requested to consider raw material prices for PTA and MEG on the basis of average monthly prices reported in PCI reports details of which have already been provided vide our earlier submissions. The consumption norms for raw materials, other cost and profit may be taken on the basis of the information from Thailand producers participating in the current investigation.
  - h. M/s Xiamen Xianglu Chemical Fibre Co. Ltd has submitted that the authority has arbitrarily rejected their response on ground of incomplete value chain, however, none of the responding producer/exporter from china has provided complete value chain. It is further submitted that M/s Tionale Pte. Ltd. and M/s United Raw Material Pte Ltd. are unrelated independent companies, therefore, Xiamen Xianglu Chemical Fibre Co. Ltd could not coerce or make it mandatory for unrelated traders to participate in the aforesaid anti-dumping investigation. The Authority must determine individual dumping margin for Xiamen Xianglu, based on its response to exporter's questionnaire response. In fact the authority must reject the response filed by united raw material PTE Ltd. since they have filed partial / incomplete exporter questionnaire response and concealed information concerning invoicing of goods exported by M/s Xiamen Xianglu Chemical Fibre Co. Ltd.
  - i. Several users/ downstream manufacturers/ industries/ associations have submitted that the domestic consumption of PSF in the manufacture of Man Made Fibre Textiles is 800,000 MT per annum. The structure of PSF manufacturing industry allows them to charge prices much higher than Import Parity Prices from the yarn spinning mills. Such prices are announced periodically disregarding the dynamics of demand and supply. This makes MMF yarn and fabrics more expensive, thereby

restricting the growth of the MMF Textile Industry in India. Any further protection by way of anti-dumping duties will only make the domestic price of PSF more expensive-enriching handful of manufacturers at the cost of growth in the downstream industries. Higher cost of PSF in India will also encourage imports of yarn and fabric thereby halting the growth/closure along the value chain. ADD of Rs. 8 per Kg translates to Rs. 640 crores per year and Rs. 3200 crores over a 5 years' period. This anti-dumping will lead to imports of PSF stopping and being replaced by a much larger value of value added yarn, fabric and garments.

- j. The analysis with regard to imports in comparison to domestic production and domestic consumption has not been made.
- k. The reduction in cost of the domestic industry is on account of reduction in the prices of major raw materials i.e. PTA and MEG in the backdrop of declining crude oil prices which clearly indicates that there is no price depression since the costs of PTA and MEG consist of over 80% of the costs of the PSF. It is further submitted that the domestic industry has not passed on the full reduction in cost to its customers as it is visible from the significant decline in losses to the domestic industry by 36% over the injury investigation period. It clearly indicates that there is no price depression also in the current investigation.
- l. The mere existence of the parallel pricing trends during the injury investigation period between subject imports and domestic prices per se does not constitute sufficient evidence to demonstrate the existence of price effect as there may be other factors that have pushed down both the domestic prices and import prices.
- m. The total domestic sales include the sales of Reliance Industries whereas in Part II the applicants have claimed for exclusion of Reliance Industries from the purview of the domestic industry. It clearly indicates that the domestic industry is making contradictory submissions and analysis with respect to standing and market share which ought not to be permitted.
- n. The domestic industry has made contradictory statements by stating, on one hand, that the domestic industry with a view to cut costs and to match the prices offered by the alleged imports reduced number of employees and whereas on the other hand it has been stated that the wages paid to the employees increased significantly by 23% over the injury investigation period. The computation of number of employees does not appear to be correct in the instant investigation since the applicant companies are multi-product companies. When the number of employees of the domestic industry was the highest in 2013-14, the wages were the least and when the number of employees was the lowest in POI, the wages were the highest. It clearly indicates that details of numbers of employees provided by the domestic industry are not correct and are misleading.
- o. The increased capacity in the recycled PSF industry also adversely impacted the PSF business. Sharing the same physical and chemical characteristics, recycled PSF is a powerful competitor of the products under consideration produced by the domestic industry.

- p. The domestic industry has failed to provide any evidence in support of their submission that the domestic industry was forced to match the post landing discounted prices offered by the exporters.
- q. The charging of higher prices in the domestic market by the applicant producers is also one more reason to indicate that they are in a position to dictate prices in the domestic market otherwise their sales in the export market could not have declined.
- r. The continued losses to the domestic industry are on account of the increase in cost due to the increase in depreciation cost, interest cost, wages cost, overheads etc. as result of the increase in the capacity of the domestic industry by 15% over the injury investigation period.
- s. The causal link analysis may be made for the whole industry after consideration of the available prices of Reliance Industries Limited and other domestic producers. The isolation of Reliance Industries Limited is not warranted even if it is excluded from the definition of the domestic industry. The impact of RIL dominance on the domestic prices and on the performance of the domestic industry ought to be distinguished and separated and not to be attributed to subject imports.
- t. Non-attribution examination of any other known factors also causing injury is also to be conducted and such injury ought not to be attributed to the subject imports.
- u. The NIP determined based on 22% as pre-tax return on average capital employed is highly inflated and is not based on real situations.

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

113. It is noted that the issues raised at post disclosure stage have already been examined by the Authority in above relevant paragraphs. The PUC has been clearly defined and is not likely to cause any confusion. The issue of DI standing and relation between interested parties involved in the present investigation has been discussed threadbare and all the concerns have been addressed in the preceding relevant paragraphs. The NIP and cost of production for the PUC has been determined as per the Rules and the practices followed in the Directorate. The corrections in inventory and wages have been rectified to reflect the same for annualized POI. Other parameters of import volume and value have been examined on the basis of the data furnished by the co-operative exporters from Indonesia, Malaysia and Thailand. As for China the normal value has been constructed as detailed in above paras. M/s Xiamen Xianglu Chemical Fibre Co. Ltd has not been granted individual dumping and injury margin in view of absence of complete information. The impact analysis of various related factors and non-attribution analysis has also been done in detail on the basis of information available in record. The extensive submissions made by the user industry regarding the comparative prices of the petitioner companies, non-petitioner (Indian) company and import prices of subject goods from subject countries have also been examined and analyzed appropriately.

## **K. CONCLUSIONS**

114. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding, the Authority concludes that:
- i. Though the import of PUC has increased during POI as compared to base year, however, the quantum is not substantial as compared to total demand in India. The share of imports is only 7% which is not significant enough to cause material injury to DI.
  - ii. The product under consideration has been exported to India from all the subject countries at dumped prices as compared to its normal value in the respective subject countries. However, the same are not solely responsible for causing material injury to the domestic industry as reflected by the analysis of various economic parameters.
  - iii. The injury analysis indicates that the domestic industry is suffering on some of the economic growth parameters. However, it could also be on account of other factors which are beyond the scope of the present antidumping investigation.
  - iv. The other producer in India, who has not joined the petition, holds the largest share of the demand and is playing a major role in the determination of prevailing prices of the subject goods as is clear from examination of the various submissions filed by the user industry.
  - v. The detailed examination of the available material in the present case indicates that there is insufficient evidence to conclusively establish that dumping has caused material injury to the domestic industry. It is evident by the positive growth in domestic industry's production capacity, production, sale volume, market share etc.

### **RECOMMENDATION**

115. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the AD Rules; it is established that the alleged imports are not solely responsible for causing material injury to the Domestic Industry. The Authority is of the view that imposition of antidumping duty is not warranted in the present investigation. Therefore, the Authority considers it appropriate to recommend termination of investigation in terms of Rule 14(b) of the Rules.

**(Sunil Kumar)**

**Additional Secretary & Designated Authority**