

Order No. 14/6/2009--DGAD
Department of Commerce
(Directorate General of Anti Dumping & Allied Duties)

10th April 2012

Subject: Post-Decisional Oral Hearing on Anti-dumping investigation concerning imports of 'Viscose Staple Fibre excluding Bamboo fibre' originating in or exported from China PR and Indonesia - Final Findings.

In pursuance of the Hon'ble Tribunal (CESTAT's) Final order No. AD/31-51/2011-AD dated 11th August, 2011, a Post-decisional hearing was held on 14th December, 2011 on the captioned subject, wherein the interested parties that had participated in the instant investigation were requested to participate.

2. Upon conclusion of the said hearing, the interested parties that had made their oral submissions were advised to file the written submissions within the stipulated time as per the AD Rules. They were also advised to file the rejoinders thereafter.

3. The written submissions and rejoinders filed by the interested parties, to the extent considered relevant, have been duly considered in this order. Submissions made by interested parties have been examined by the Authority as follows:

Written Submissions made on behalf of the domestic industry

4. The following submissions have been made on behalf of the domestic industry:

Product under consideration and like article

5. *The product under consideration is "Viscose Staple Fibre (VSF) excluding Bamboo fibre". Viscose Staple Fibre is described as "Viscose rayon staple fibre not carded/combed" under the Customs Tariff and is also known as "Rayon Fibre" in some markets. The product under consideration is classified under Custom Headings 5504.10.00. The Customs classification is indicative only and is in no way binding on the scope of the present investigation.*

6. *With regard to like article, Rule 2(d) of the AD rules provides as under:*

"like article " means an article, which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article, another article that although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

7. *The information made available to the Authority makes it amply clear that there is no material difference in the domestic like article and imported subject goods. Subject goods produced by domestic industry and 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. None of the opposing interested parties have raised any objection in this regard. Thus, subject goods*

produced by the domestic industry should be treated as like article to the subject goods imported from subject countries in accordance with the AD rules for the purpose of the present investigation.

Standing & Scope of Domestic Industry

8. *It has been argued that the petitioner does not satisfy the requirement of standing and Grasim does not constitute domestic industry within the meaning of the law.*
9. *Domestic industry submits that Grasim Industries Ltd. satisfies the requirement of standing and constitutes domestic industry within the meaning of the rules. Followings are relevant in this regard.*
 - a. *Rule 5 (3) in its relevant part provides as follows.*

(3) The designated Authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry :

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by 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 -

(i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a causal link between such dumped imports and the alleged injury,

to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

b. *It would be seen that the Authority is justified in initiating the investigations if domestic producers supporting the petition account for more than 25% of production, provided the application is supported by those domestic producers whose collective output constitute more than fifty percent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application. In the present case, admittedly, the petitioner is the sole producer of the product in the Country and therefore requirements of Rule 5(3) are fully met. The only issue that remains to be considered is whether the relationship of the petitioner with foreign producers is such as to disentitle the petitioner from being considered as domestic industry. Followings are relevant in this regard.*

c. *Rule 2(b) as it stood at the time of initiation was as follows.*

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

d. *The rule 2(b) was amended after the preliminary findings and before final findings. The amended rule is as follows –*

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

e. *The Rules have been further amended on 1st Dec., 2011. The present rule is as follows–*

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

- f. Thus, in a situation where the definition under Rule 2(b) was different at the time of initiation, final findings and at present, the Authority is required to first consider whether Rule 2(b) as amended in Budget 2010 will at all apply to investigations initiated prior to such amendment, particularly when the rules have now been further amended. Rule prevailing at the time of final findings is not the rule that was prevailing either at the time of initiation or now when the Designated Authority shall record the findings.*
- g. Admittedly, Rule 2(b) as applicable at the time of initiation clearly provided a discretion to the Designated Authority to consider a domestic producer as eligible or ineligible in certain situations. The ordinary rule under 2(b) is that the Designated Authority shall consider domestic producers as a whole as the domestic industry. It is only under certain situations mentioned under the rule 2(b) that the Designated Authority is required to consider whether such domestic producers who are themselves importers of the product or are related to exporters or importers of the product should be considered as ineligible domestic industry.*
- h. Assuming though not admitting that the Authority is required to apply rule 2(b) as amended during Budget 2010 in the present case, the domestic industry submits that considering either rules, Grasim Industries should be considered as eligible domestic industry.*
- i. Two kinds of exclusions have been provided under Rule 2(b) wherein the Designated Authority is required to consider whether such domestic producers should be considered as eligible or ineligible domestic producers. The two situations are -*
 - i. Domestic producer itself is an importer of the product under consideration;*
 - ii. Domestic producer is related to an exporter or an importer of the dumped product.*
- j. Undisputedly, Grasim Industries has not imported the product and therefore the first situation is not applicable in the present case.*
- k. As regards second situation, petitioner submits that the Rule 2(b) does not differentiate or distinguish domestic produces that may be related to exporters with the domestic producers who may be related to importers. Much emphasize*

was placed at the time of hearing stating that the decisions referred by the domestic industry does not pertain to a situation of relationship with an exporter and all cases referred by the domestic industry concerns situations where domestic producers are related to importers. Petitioner submits that the rules have not distinguished and have not placed differently situations of domestic producers who may be related to exporters from a situation of domestic producers who may be related to importers. Such being the case, decisions wherein domestic producers may be related to importers are equally relevant and applicable for the present case.

- l. *The petitioner admitted relationship at the time of initiation of investigations. The petitioner, in alternate to the submissions earlier made, submits that the Authority may consider whether at all petitioner is related to the exporter. It was emphasized at the time of hearing that had the nature of relationship between the foreign producers and domestic industry was fully known to the Authority, the Authority would not have even initiated the investigations. The domestic industry, however, points out that the fact that Authority has even after an elaborate finding on this issue itself established that the situation in any case could not have been different at the time of initiation. In any case, full relevant factual information is on record of the Authority and the same is relied upon.*
- m. **The parameters adopted for exercise of discretion** – *It has been argued that the parameters adopted by the Authority for exercising discretion are without any legal basis and are contrary to the settled law on the subject. The petitioner strongly disputes and disagrees. As far as the alleged “settled law” on the subject is concerned, no such material has been placed before the Authority. The interested parties are trying to base their cases on mere statements. As far as the parameters adopted by the Authority are concerned, petitioner has provided elaborate material covering relevant extracts from a number of leading text books on anti-dumping, number of decisions of the European Commission and a number of decisions of the Designated Authority. The petitioner has provided a large number of cases relating to those situations where petitioner was related to an exporter or an importer or itself was an importer of the product concerned.*
- n. *The emerging jurisprudence is summarized below.*
 - i. *Is the behaviour of the related parties distinct and different as compared to unrelated parties;*
 - ii. *Whether there is some evidence to show that such related producer triggered or intensified dumping in the Indian market;*
 - iii. *Is the related domestic producer shielded from effects of dumping or unduly benefited from it;*
 - iv. *Is the related domestic producer seeking to stifle the competition in the Indian market;*
 - v. *Is there a case of self-inflicted injury?*
 - vi. *the impact of the exports, if any, made by the related party in a given case. Whether such related party had exported the product to India during the period, if so, what is the impact thereof on the claims of injury. If not, whether there is any other ground still justifying its exclusion. In case the related party*

has also exported the subject goods, then the following also need to be evaluated:

- *The volume of exports made by such related party;*
- *The purpose of such exports made by the related party;*
- *Whether there is any evidence to show that injury to the domestic industry was attributable to such exports by the related party;*
- *Whether the general emphasis of the related domestic producer was on the production of the subject goods or whether the general emphasis gradually or steadily shifted to imports;*
- *Whether the volume of exports by such related parties were such that the related exporter is gradually or steadily substituting the unrelated domestic producers' market;*
- *Any other factor which might have been brought to the notice of the Authority by the interested parties during the course of the proceedings.*

o. Exports by the Chinese related producers – It has been alleged that the Designated Authority failed to appreciate that one of the reasons of limiting POI to 6 months could be that the related party may have more than negligible exports to India prior to July 2008. Petitioner however submits that –

i. No such certification in fact has been prescribed under the application proforma. Much has been argued with regard to the form and manner prescribed by the Authority and yet it has been argued that no certificate has been provided by the Chinese related producers, even when there is no such prescribed requirement.

ii. The applicant is required to provide relevant information, which has been provided and its accuracy has been certified. It is now for the interested party to establish that the claims made by the domestic industry are incorrect.

iii. A certificate has in fact been provided from the Chinese producers only to remove the unnecessary doubt attempted to have been created.

iv. Petitioner submits that it is a mere imagination that the six months investigation period has been proposed by the petitioner for this reason. The exporter's questionnaire prescribed by the Authority requires information not only for the period of investigation but also for the preceding years. The information filed by the exporter, which has also been verified by the Authority, clearly establishes that the exports made by the related party prior to the period of investigation were not more than negligible.

10. The application was filed by the Association of Man Made Fibre Industry of India on behalf of the domestic industry. M/s Grasim Industries Ltd. is the sole producer of the Like Article in India and has provided the relevant information concerning the injury and costing in this regard. There is no other producer of the like article in

India. Authority has rightly held in the finding that the production of M/s Grasim Industries Ltd. accounts for a major proportion of the domestic production as the production of M/s Grasim Industries Ltd. is more than 50% of Indian production.

11. The petitioner stated that it has affiliated companies in Indonesia and China producing & selling the product, namely Birla Jingwai Fibres Company Limited, China and PT Indo Bharat Rayon, Indonesia. The relationship between these entities is given in the table below:

<i>SN</i>	<i>Name of the entity</i>	<i>Common directors</i>
<i>1</i>	<i>Grasim Industries Ltd</i>	<i>Mr. Kumar Manglam Birla Ms. Rajshree Birla Mr. S K Jain</i>
<i>2</i>	<i>Birla Jingwai Fibres Company Limited, China</i>	<i>Mr. S K Jain</i>
<i>3</i>	<i>PT Indo Bharat Rayon, Indonesia</i>	<i>Mr. Kumar Manglam Birla Ms. Rajshree Birla Mr. S K Jain</i>

12. Since petitioner itself had stated that these entities are related producers in the subject countries, the basis on which these companies are related became irrelevant. Further, the rules require information with regard to “exporters” and not merely with regard to “producers”. These producers are largely selling their products either in the respective domestic markets or exporting to third countries. In general, there are no exports to India. In particular, the Chinese company has not exported the product to India, whereas the Indonesian Company has exported small quantity to India, which is less than 3% of imports and negligible with reference to Indian production. The exports have been made because some customers of the petitioner required imported material under duty exemption schemes. Relevant evidence has been provided to the Designated Authority on confidential basis¹. Since the volumes of these imports are quite small, hence the Authority has rightly considered that the petitioner should not be considered ineligible under the Rules.

13. It is rightly held by the Authority that the application satisfied the requirements of Rule 2(b) and Rule 5(3) of the AD Rules and therefore, M/s Grasim Industries Ltd. is being treated as ‘domestic industry’ within the meaning of Rule 2(b) of the AD Rules.

14. An issue that arises for consideration and determination in the present case is in a situation where a producer is related to an exporter in one of the exporting countries, should that producer be considered as eligible domestic industry. In

¹ In fact, other parties to the investigations concede that the imports of VSF are almost 90% under advance licence category

other words, whether the Designated Authority has discretion under the Rule 2(b), and if so, how the discretion is required to be applied. Even when the Designated Authority has issued a preliminary findings and final findings after due consideration of facts and law, in view of challenge on this account, petitioner has done detailed research on this issue by referring to various text books, practices of other investigating Authorities and decisions taken by other investigating Authorities. These have been discussed herein below.

- a. *It would be recalled that the anti dumping rules were amended in 1999, wherein one of the amendments related to the definition of domestic industry. The Rule (2(b)) prior to this amendment was as follows:*

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

- b. *The rule after the amendment is as follows:*

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

- c. *The rule 2(b) was amended after the preliminary findings and before final findings. The amended rule is as follows –*

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

- d. *The Rules have been further amended on 1st Dec., 2011. The present rule is as follows–*

“(b) “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except

*when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in such case the term 'domestic industry' **may be construed as referring to the rest of the producers**"*

- e. It is evident that the rule was amended with a view to provide a discretion to the Designated Authority to decide on merits whether a company who is importing the product under consideration or which is related to an exporter or importer should be included or excluded for the determination of the domestic industry.*
- f. Not all kinds of imports are condemned under Rule 2(b). Thus, Rule 2(b) has been amended with the sole objective of providing a discretion to the Designated Authority to decide whether to include or exclude a company who has itself imported the alleged dumped product, or who is related to an exporter or importer of the subject goods. Such a discretion has been exercised in an even manner by the Designated Authority in the instant case. Followings are relevant in this regard.*

(A) Emerging jurisprudence as clarified in the text books:-

- (a) Extracts from 'DUMPING AND SUBSIDIES-The Law and Procedures Governing the Imposition of Anti-dumping and Countervailing Duties in the European Community – by M/s. Clive Stanbrook and Philip Bentley, Kumer Law International, 3rd Edition*

5.1.3 Community producers who are related to exporters/ importers or are importers of the product.

Community producers may not wish to support a complaint because they are related to the exporters or importers, or are themselves importers of the allegedly dumped or subsidized product. In such cases, it is considered that the remaining Community producers should not be prevented from making a complaint just because they cannot raise the necessary proportion of support. Thus the rule is modified so that the Community Authorities may treat the Community industry as meaning those producers who are not related to exporters or importers and are not importers themselves of the offending product. The Community Authorities retain discretion in this matter, it would seem that the 50% and the 25% rules still apply to the producers left after the exclusion of those who are related to exporters etc. It would make nonsense to say otherwise, as the following example shows. If 51% of Community production was related to the exporters they would voice their opposition and it would be impossible for the unrelated producers ever to bring an anti-dumping or anti-subsidy complaint. Unlike Regulation (EEC) No.2423/88, Regulation (EC) No.384/96 and Regulation (EC) No.3284/94 provide a definition of "related"...

....

It would appear that provided that the reason for importing the product is essentially defensive, the Community Authorities will not exclude the

producer. There are many cases where the Community Authorities have held that the producer was importing the allegedly offending product simply to try to defend a position in market increasingly affected by dumping or subsidies. For example, in Copper Sulphate from Yugoslavia, the Community Authorities found that –

...

The Community Authorities consider it to be a legitimate act of commercial self protection for Community producers to make purchases to “stay on the market with as” full a range of models as possible or even to protect market niches which would have disappeared without sales of the models in question.

.....One of the factors that will be important in this respect will be the balance of the business of the company as between manufacturing and importing. If the company is predominantly in manufacturing and assembly in the Community market with some supplemental business importing products then it is likely to be included. On the other hand, if a Community producer closes down its production and imports instead or the general emphasis of his business is on imports, he will be excluded. Exclusion will be likely if, on examination it appears that by importing products, a company has “shielded” itself from the effects of dumping. This will also be likely if it appears that producers have in some way participated in the dumping practice or unduly benefited from it. To include such companies would lead to a distorting effect on injury findings.

It appears to be the Community Authorities practice to exclude a Community producer who imports the product subject to investigation but does not cooperate because in such circumstances, the Community Authorities cannot determine whether the Community producer was acting defensively or for some other reason.

(b) *Extracts from –A Handbook on Anti-dumping Investigations – by Judith Czako, Johann Human and Jorge Miranda, Cambridge University Press, page 234*

Exclusion of related producers

... ..

The AD Agreement does not list any specific test or criteria to be applied in determining whether related producers or importers should be excluded from the definition of the domestic industry. Investigating Authorities generally address the related party issue on a case-by-case basis. Among the criteria that have been considered by Members in deciding whether to exclude related parties are –

- *The percentage of domestic production of the product in question that is accounted for by the related producers;*
- *Whether imports of the product in question by the related producers allow them to benefit, or serve to shield them, from the effects of dumping;*

- *Whether exclusion of the related parties would unduly skew the data for the remaining members of the industry;*
- *The level or long-term nature of the commitment shown by the producer to domestic production, as opposed to importing activities*
- *The ratio of import shipments to domestic production for the related producers.*

(c) ***Extracts from Appendix-F, Antidumping and Countervailing Duty Handbook – Publication 3482, 9th Edition, United States International Trade Commission, page App. F-33:***

..... Thus, for example, if a US producer is related to a foreign exporter and the foreign exporter directs its exports to the United States so as not to compete with the related US producer, the Commission may determine that appropriate circumstances exist to exclude the related US producer from the domestic industry.

The Commission has examined the following factors in determining whether appropriate circumstances exist to exclude a related party:

- (i) *the percentage of domestic production attributable to the related producer;*
- (ii) *the reason the related producer has decided to import the article under investigation, i.e. to benefit from the unfair trade practice or to enable it to continue production and compete in the domestic market; and*
- (iii) *the position of the related producer vis-à-vis the rest of the industry, i.e. whether inclusion or exclusion of the related party will show the data for the rest of the industry.*

(B) *Various decisions of the investigating authorities*

Domestic industry also refers to and relies on European Commission practice. The paper book presented at the time of oral hearing may kindly be referred in this regard. European Commission considers following parameters while deciding when to include a community producer who has itself imported the subject goods.

(a) *The ‘core business’ test*
To decide whether Community producers-importers should be given the status of producers or importers, the Commission considers in particular whether the companies operating in the Community supplemented their Community production or assembly activity with an additional activity based on imports or whether the companies were acting as importers with relatively limited additional production activity in the Community.

(b) *Importers are merely a defensive action against low-priced imports -The commission considers whether the imports were made for merely a defensive action against low priced imports.*

Petitioner has categorize the import made by a producer in following categories

- I. Imports by petitioner itself-from related exporter
 - II. Imports by petitioner itself-from unrelated exporter
 - III. Imports by petitioner itself-from Other than Subject country
 - IV. Imports by affiliated company in India from related exporter
 - V. Imports by affiliated company in India from unrelated exporter
 - VI. Relationship with exporter exported during POI
 - VII. Relationship with exporter no exports during POI
- Imports by petitioner itself-from related exporter
 1. Council Regulation (EC) No 423/97 of 3 March 1997 amending Regulation (EEC) No 3433/91 in respect of imports originating in Thailand and imposing definitive anti-dumping duties on imports of gas-fuelled, non- refillable pocket flint lighters originating in Thailand, the Philippines and Mexico. Official Journal L 065, 06/03/1997 P. 0001 – 0016.

D. COMMUNITY INDUSTRY

- a) *The investigation confirmed that the complainant Community producers, either represented by the EFLM (on whose behalf the request for an interim review in respect of Thai imports had been lodged) or acting separately in two distinct groups (one having lodged the complaint concerning imports originating in the Philippines and the other one the complaint concerning imports originating in Mexico), accounted in all cases for a major proportion of total Community production of the like product.*
- b) *During the course of the investigation carried out in respect of the above companies, it became apparent that two producers or groups of producers, namely Tokai Seiki GmbH, together with one of its sales subsidiary in the Community, and the companies belonging to the Swedish Match Group, were related respectively to the sole Mexican exporter and one Filipino exporter and were also importing the dumped product from the countries concerned.*

In these circumstances, the Commission examined whether, in the light of the provisions of Article 4 (1) (a) of the basic anti-dumping Regulation, these companies should be excluded from 'the Community industry'. In this respect, it should be recalled that Article 4 (1) (a) does not provide for the automatic exclusion of producers who are related to exporters and/or themselves importing the dumped products, but rather obliges the Commission to examine on a case-by-case basis whether the exclusion of any producer in this situation is warranted.

*As far as Tokai Seiki GmbH is concerned, it has firstly to be noted that this company had made it clear that it only supported the action against the Philippines and Thailand and that its cooperation as a potential Community producer was restricted to the investigations in respect of these two countries. **Secondly, the investigation showed that this producer was not only related to the sole Mexican exporter but also responsible for a very large proportion of the total imports into the Community of disposable flint lighters declared as originating in Mexico.***

*In this respect, it should be recalled that the investigations concerning Mexican and Filipino imports were carried out in the framework of a single proceeding (see recital 5) and that a cumulative assessment of the effect of the dumped imports from Thailand, the Philippines and Mexico was found to be warranted (see recitals 40 to 44). **In this context, it was considered that taking into account the situation of Tokai Seiki GmbH in the overall injury assessment was not appropriate since, given the importance of the Mexican imports concerned, it would have led to unreliable results. Accordingly, it was considered appropriate to exclude Tokai Seiki GmbH from 'the Community industry.'***

As regards the companies belonging to the Swedish Match Group, which are related to the Filipino exporter Swedish Match Philippines, Inc., it appeared appropriate to determine whether those companies (which were complainants in all three cases and fully cooperated in all three investigations) were primarily producers with an additional activity based on imports and merely supplementing their Community production, or whether they were importers with relatively limited additional production in the Community.

The investigation revealed that the import activity of the companies belonging to the Swedish Match Group in respect of the product concerned originating in the Philippines was extremely limited, thus underlining that the core of their operations relating to the product concerned firmly remained in the Community. Accordingly, it was considered appropriate to maintain the companies concerned within 'the Community industry'.

The injury findings set out below are therefore based on the information submitted by the cooperating companies other than Tokai Seiki GmbH, namely the producers belonging to the BIC Group and to the Swedish Match Group, and the Spanish company Flamagas.

2. *COMMISSION REGULATION (EC) No 2318/95 of 27 September 1995 imposing a provisional anti-dumping duty on imports of certain tube or pipe fittings, of iron or steel, originating in the People's Republic of China, Croatia and Thailand and terminating the anti-dumping proceeding in respect of imports of these fittings, originating in the Slovak Republic and Taiwan. Official Journal L 234, 03/10/1995 P.0004- 0015.*

D. COMMUNITY INDUSTRY

(37) Since not all producers established in the Community participated in the investigation and one Community producer was found to manufacture special tube or pipe fittings not subject to the proceeding, the Commission had to examine whether the complainants constitute a major proportion of the total Community production of the like product. It also had to take into consideration the fact that one of the complainant Community producers in the United Kingdom imported the allegedly dumped products from an exporter in Thailand which, in addition, is a related party.

(38) *With regard to the imports of the complainant UK producer, the examination of the facts showed that almost all producers in this particular branch of the industry rely to a certain degree on the purchase of fitting types which are outside their manufacturing programme. In fact, fittings producers have to offer a complete range of product types in order to satisfy the requirements of the customers and thus to compete in the market.*

It was indeed established that the complainant UK producer in question imported during the investigation period the product under investigation from a related exporter in Thailand for which dumping was found. The level of these imports, however, was found not to exceed 2 % of the total sales made by the UK producer on the Community market. In addition, the imported quantities consisted mainly of product types not manufactured by this producer to complement its range of products and were imported solely to defend its market position. It is therefore considered that, although they are related parties, such a low level of imports could not have shielded the UK producer from the effects of dumping nor have been any substantial benefit to it, and that there are no reasonable grounds for excluding this producer from the definition 'Community industry.'

In the course of the investigation, one of the complainant Italian producers withdrew from the complaint on the grounds that the products it manufactured were not exported by the exporting countries concerned.

As to the determination of the share of the output of the producers represented in complaint, the Commission used the information submitted together with further data provided during the on-the-spot investigation by the complainant producers which by far are the largest producers established in the Community. The Commission also used reliable market research data.

On the basis of the above considerations, the share of the total Community production held by the complainant producers during the investigation period was calculated at 85 %, thus amounting to a major proportion of total Community production.

3. Council Regulation (EC) No 2022/95 of 16 August 1995 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia Official Journal L 198, 23/08/1995 P.0001-0014

C. COMMUNITY INDUSTRY

The complainant producers account for 94 % of the Community production of ammonium nitrate and therefore constitute the Community industry in accordance with Article 4 (5) of Regulation (EEC) No 2423/88.

EFIA, representing the Community importers, alleged that Hydro Fertilizers Ltd (UK) should be excluded from the Community industry because it allegedly imported ammonium nitrate from Russia and Lithuania through Fertrachem UK, a related company. However, it was established that no such imports were made during the investigation period by Fertrachem. It was also alleged that BASF, another complainant producer, should be excluded on the same grounds, since it allegedly imported Russian and Lithuanian ammonium nitrate into the Community through a related company, Kali (UK) Ltd. It was established that Kali (UK) Ltd did import ammonium nitrate from Lithuania and Russia during the investigation period, and had no agreement with any

company related to BASF, either directly or through a subsidiary during this period, and had no agreement with any company related to BASF as regards purchases of ammonium nitrate.

There is consequently no justification for considering the exclusion of either Hydro Fertilizers Ltd (UK) or BASF from the Community industry.

4. COMMISSION REGULATION (EC) No 823/95 of 10 April 1995 imposing a provisional anti-dumping duty on imports of disodium carbonate originating in the United States of America Official Journal L 083 , 13/04/1995 P. 0008 – 0018

D. COMMUNITY INDUSTRY

Some United States exporters and the representatives of the major processing industry in the Community, the glass industry, argued that two of the complainant companies were related to United States exporters, had themselves imported American soda ash during the period of investigation and should therefore not be considered as part of the Community industry in the light of Article 4 (5) of the Basic Regulation.

In this respect, it should be recalled that Article 4 (5) does not provide for the automatic exclusion of producers related to the exporters or producers who are themselves importing the allegedly dumped product, but rather imposes on the Community institutions the obligation to examine on a case-by-case basis whether the exclusion of any producer in this situation is warranted.

Accordingly, the Commission considered whether those two Community producers, were merely supplementing their Community production with an additional activity based on imports, or whether they were importers with relatively limited additional production in the Community. This approach is consistent with the recent case-law of the Court of Justice regarding the definition of 'Community industry'.

The Commission examined the relationship between the quantities produced in the Community and the quantities imported. On the basis of the facts established in the investigation, it was found that the two Community producers which are related to exporters and are themselves importing from the United States, import relatively low quantities (in one case these imports represented 10 % of the Community producer's production sold in the Community and in the other case less than 1 %). Furthermore, for one Community producer who had bought a United States producer in 1992, existing contracts had to be honoured; imports from this company ceased in 1993. The other producer mainly imports for its captive consumption.

In these circumstances, it can be concluded that the two Community producers concerned, with corporate headquarters located in the Community, where their commercial policy is formulated and foreign investments planned as a normal business extension of their commercial activities, did not principally act as importers but continued to retain the manufacture of soda ash as their main activity. Given the relatively low quantities imported, these producers cannot be considered to have been shielded against the effects of dumping because of imports.

In the light of the above, it was considered that there were no grounds for the exclusion of any of the complainant producers from the definition of the Community industry.

5. Council Regulation (EC) No 2025/97 of 15 October 1997 imposing a definitive anti-dumping duty on imports into the Community of advertising matches originating in Japan and collecting definitively the provisional duty imposed Official Journal L 284 , 16/10/1997 P. 0057 – 0067

E. COMMUNITY INDUSTRY

(33) *The large majority of the Community producers of advertising matches are members of FEFA (Fédération Européenne des Fabricants d'allumettes), the European association who lodged the complaint on behalf of its members. These producers, located in France, Spain, Italy, Belgium, Portugal and United Kingdom are usually small and medium-sized enterprises with limited resources. Consequently, even though they all supported the complaint, only the main producers, representing 78 % of the total Community output of the product concerned and thus, clearly meeting the criteria set forth in Article 4 (5) of the basic Regulation, have actively cooperated with the Commission in this investigation.*

(34) *A Japanese exporter questioned the exclusion from the published provisional determinations of a Community producer located in France, who replied to the Commission questionnaire.*

(35) *This situation is explained by the fact that this producer, although supporting the complaint, was not in a position to comply with the requirements of the Commission for the on-the-spot investigation due to important internal difficulties. Therefore it was decided that this producer could not be considered as actively cooperating in the proceeding and was not included in the definition of the Community industry.*

(36) *This decision is reflected in the contents of recital 25 of the provisional duty Regulation which indicates that the term 'Community industry' should be interpreted as referring to those Community producers of the like product whose collective output constitutes a major proportion of the total Community production who supported the complaint and who actively cooperated in the proceeding.*

(37) *Despite the explanation provided in recital 26 of the provisional duty Regulation, one importer of Japanese advertising matches in the Community claimed that the main complainant Community producer should not be considered as part of the Community industry on the grounds that he imported directly or via its related companies dumped advertising matches from Japan in volumes representing far more than 4 % of its own production. In support of its claim a list of the subsidiaries of the above complainant which allegedly imported the advertising matches from Japan was supplied.*

(38) *The Commission re-examined the level of imports made by this Community producer and confirmed its provisional finding, namely that the quantities imported by this producer represented around 4 % of its own total production of advertising matches.*

(39) *Another exporter claimed that two of the complaining Community producers were no longer producing advertising matches. Even though this exporter is referring to events which allegedly happened after the investigation period, which therefore should normally not be taken into account, it has to be noted that no indication exists that any of the complaining Community producers stopped manufacturing the product covered by this investigation.*

(40) *In conclusion, the definition of the Community industry for the purposes of the present proceeding and the provisional findings made by the Commission in this respect are hereby confirmed.*

6. COMMISSION REGULATION (EC) No 1845/98 of 27 August 1998 imposing a provisional anti-dumping duty on imports of certain large electrolytic aluminium capacitors originating in the United States of America and in Thailand

D. COMMUNITY INDUSTRY

Community production

(39) *Four large producers of LAECs, i.e. Philips, BHC Aerovox Ltd (United Kingdom), Vishay Roederstein GmbH (Germany) and Siemens-Matsushita Components GmbH & Co., KG (Germany), as well as some small to medium-sized producers are established in the Community.*

(40) *One of the large producers, Siemens-Matsushita Components GmbH & Co. KG (Munich, Germany) is a joint venture between a German company and a Japanese company and is related to one of the exporting producers in the USA. Therefore, this producer was excluded from the Community industry, in accordance with Article 4(1) of the Basic Regulation on the grounds that through its relationship this producer was shielded from the injurious effects of dumped imports. It should be noted that this producer was also excluded from the Community industry in the two previous proceedings concerning LAECs.*

(41) *Some producers/exporters claimed that one of the complaining Community producers, Philips, could not be considered as part of the Community industry, on the grounds that another company within the Philips group, namely Philips Consumer Electronics BV, had been importing LAECs from the USA during the investigation period.*

The investigation revealed that Philips Consumer Electronics BV, which bought around 40% of Philips' output and was its biggest traditional customer, had imported LAECs from the USA during the investigation period, as components for its own production of electronic products. It was noted that the LAECs imported were used by Philips Consumer Electronics BV exclusively as components for its own production of electronic products and that the imported LAECs were never resold on the Community market.

The choice of Philips Consumer Electronics BV to be partly supplied by US exporters was made possible by the structuring of the Philips Group in different profit centres, which are all independent and free to source their materials from any producers which can give the best market conditions. This choice did not presuppose that the primary interest of Philips went from producing to importing.

For these reasons, it was considered that the imports made by Philips Consumer Electronics BV, can be viewed as a perfectly legitimate business decision, since it imported the dumped products only to a limited extent, continuing to rely on its parent company for a majority of its requirements. These imports were considered as a necessary commercial measure until the time when fair conditions of competition were restored in the Community market.

It was therefore concluded that no reasonable grounds existed to exclude Philips from the Community industry. It should be noted that the same conclusion was reached in

recitals (10) to (12) of Commission Regulation (EEC) No 1451/92 imposing provisional anti-dumping measures on imports of LAECs originating in Japan².

(42) One of the exporting producers further argued that Philips should be excluded from the definition of the Community industry, since it is related to a producer in the USA, North American Philips, which is active in the production of LAECs.

Information made available to the Commission indicated that North American Philips only produced for the North American market and that this producer did not export LAECs to the Community during the investigation period.

Therefore, the Commission concluded that Philips should not be excluded from the Community production.

(43) Based on the above, the Community production consisted of all companies producing LAECs in the Community, with the exception of Siemens-Matsushita Components GmbH & Co., KG (Germany). These companies are hereinafter referred to as 'the Community producers'.

Community industry

(44) As mentioned above, two Community producers actively supported the complaint. However, one of these two complainant producers, BHC Aerovox Ltd, could not submit the information requested within the deadlines set and was, therefore, excluded from the scope of the Community industry.

(45) Another large Community producer, Vishay Roederstein GmbH (Germany), expressed support for the complaint but did not complete the questionnaire of the Commission.

(46) One small to medium-sized Community producer, Trobo SA (Spain), expressed support for the complaint, but did not provide full information to the Commission. All other small to medium-sized Community producers remained silent.

(47) In these circumstances, the situation of the sole co-operating complainant Community producer, Philips, was considered. It accounted for 41% of the total estimated Community production of the product subject to investigation in the Community and thus constituted a major proportion of Community production pursuant to Article 5(4) of the Basic Regulation. Consequently, this producer will hereinafter be referred to as the 'Community industry' within the meaning of Article 4(1) of the Basic Regulation.

7. Designated Authority's Final Findings Anti-Dumping investigation concerning imports of Nylon Tyre Cord Fabric- (NTCF) from Indonesia, South Korea, Thailand and Taiwan.

E. DOMESTIC INDUSTRY

8. (i) The present petition for Anti-Dumping investigation has been filed by the Association of Synthetic Fibre Industry (ASFI) on behalf of domestic producers i.e.

² OJ L 152, 4. 6. 1992, p. 22.

M/s. SRF Ltd., M/s. Nirlon Ltd., M/s. Century Enka Ltd and M/s. NRC Ltd. The petition has been supported by other domestic producer M/s Baroda Rayon Ltd. It has been claimed by petitioners that the four petitioner companies and the other supporting company M/s Baroda Rayon Ltd. are the only producers of NTCF in India and hence the petition has support of all the domestic manufacturers of NTCF in India and fulfils the requirement of requisite standing as required under the Rules.

(ii) It has been argued by the exporters and other interested parties that M/s SRF Ltd. have imported the subject goods during the period of investigation through a related company M/s SRF Overseas Ltd. They being related to the importers cannot file petition for Anti-Dumping investigation. Similarly M/s Baroda Rayons Ltd are related to one of the exporters M/s. Thai Baroda Industries Ltd which is an exporter under investigation. Therefore, both these companies cannot be the petitioners in Anti-Dumping investigation. Both these companies accounts for majority of domestic production of NTCF in India and therefore, the petition lacks requisite support from domestic industry as required under the Rules.

(iii) In the Preliminary Findings, the Authority held that imports by M/s SRF Ltd represented 0.24% of the total imports from subject countries during the POI Besides; the imports by M/s SRF Ltd. represented only 0.08% of total production of NTCF of domestic industry during the POI. There is no evidence of any other imports by M/s SRF Ltd. from its related company M/s SRF Overseas Ltd during the POI. The Authority notes that the quantum of imports by M/s SRF Ltd from its related company M/s SRF Overseas Ltd., Dubai were in very insignificant quantities and would not justify the exclusion of M/s SRF Ltd from the scope of domestic industry. As regards, M/s Baroda Rayon Ltd., the Authority noted that M/s Baroda Rayon Ltd. was related to M/s Thai Baroda Industries Ltd who themselves were exporters of the subject goods and are subject to investigation in the present case. However, the present petition has been filed by four producers representing the domestic industry. M/s Baroda Rayon Ltd have merely supported the petition filed by other producers representing the domestic industry and as such M/s Baroda Rayon Ltd. is not an active applicant in the present petition.

F. The interested parties have made the following arguments on preliminary findings with regards to the standing of Domestic Industry.-

9. ARGUMENTS BY PETITIONER

- i. M/s. SRF Limited, M/s. Nirlon Limited, M/s Century Enka Limited and M/s NRC Limited constitute the domestic industry in the present case. The imports by M/s. SRF from M/s. SRF Dubai does not amount to imports of allegedly dumped articles and consequently the question of excluding M/s. SRF from the scope of domestic industry does not arise. This position would apply keeping in view the definition of the domestic industry as it existed prior to the amendment in July, 1999.*
- ii. Without going into the question whether the July, 1999 amendment is retrospective or prospective, in either case there is no warrant to exclude M/s. SRF from the domestic industry.*
- iii. The argument that if M/s. SRF and M/s Baroda Rayon Corporation are eliminated, the remaining producers will account for less than 50% of the domestic production of NTCF and hence they cannot maintain an application is also*

incorrect. In such case, the remaining producers would constitute 100% of the eligible domestic production and would be entitled to maintain the application in their own right.

10. ARGUMENT BY EXPORTERS

- i. The Designated Authority ought to have applied the non amended definition of domestic industry which was applicable at the time of initiation of present investigation. As per these Rules there is mandatory exclusion from domestic industry of certain domestic producers. The Authority has arrived its provisional findings that M/s. SRF is related M/s. SRF Overseas Limited, a known exporter of subject goods and also the it has imported the subject goods during the period of investigation from its related company. The exclusion of M/s. SRF from the scope of domestic industry is mandatory and not discretionary. The import of subject goods irrespective of its quantity is enough to invoke exclusion of M/s. SFR Limited from the scope of domestic industry.*
- ii. Besides, M/s. SRF, M/s. Baroda Rayon Corp. are also related to M/s Thai Baroda Industries Limited. The exclusion of M/s. SRF and M/s Baroda Rayon Corporation, would have the significance of eliminating domestic producers together accounting for more than 50% of Indian domestic production of subject goods from the purview of domestic industry. As such the balance domestic producers together account for less than 50% of Indian domestic production and they cannot constitute domestic industry for the purpose of Rule 2(b) As such the application filed on behalf of domestic producers other than M/s. SRF and M/s Baroda Rayon Corporation cannot be an application on behalf of domestic industry. Therefore, the present investigation is not maintainable and must be terminated.*

11. EXAMINATION BY AUTHORITY

- i. The issue with regard to the standing of the petitioner has been examined by Designated Authority. Rule 2(b) and Rule 5{3}(a) of the Anti-Dumping Rules are relevant in this regard.*
- ii. The Anti Dumping Investigations in the matter were initiated by the Designates Authority on 26.2.99 The petition has been filed by four of the domestic producers of NTCF in India, i.e. M/s SRF Ltd., M/s Nirlon Ltd., M/s Century Enka Ltd. and M/s NRC Ltd Further, the petition has been supported by another domestic producer of NTCF M/s Baroda Rayon Carp.*
- iii. Thus, based on the evidence available on record, the petition was filed by four of the domestic manufacturers and was supported by one other manufacturer. None of the domestic manufacturers of the subject goods had opposed the petition. Hence, the petition had requisite support of domestic industry for initiation of investigation as required under Rule 5(3) (a) of the Anti-Dumping Rules as were prevalent on 26.02.1999.*
- iv. During the course of investigation, it was brought to the notice of Designated Authority that M/s SRF Ltd., one of the petitioners in present investigation had imported on insignificant quantity of NTCF from M/s SRF Overseas Ltd. a related company It was further brought to the notice of Designated Authority that M/s*

- Baroda Rayon Ltd., one of the domestic producers are related to M/s Thai Baroda Industries Ltd , against whom the investigation have been initiated.*
- v. *The Anti Dumping Rules (Rule 2(b) had been amended on 15th July, 1999 inter-alia with regards to the status of the domestic industry. Hence at the point of lime of examining these facts that was brought to the notice of the Designated Authority. The Authority observed in its preliminary findings that since the imports by M/s SRF Ltd represent only 0.24% of the total imports from the subject countries during the Period of Investigation (POI), under the revised Rule 2(b), such insignificant quantum of imports would not justify exclusion of M/s SRF Lid. from the scope of domestic industry.*
 - vi. *The issue with regard to the standing of the domestic industry was also examined by the Authority with reference to the Rules as it existed prior to 15th July. 1999. The Rule 2(b) provides that the domestic industry shall be deemed to exclude such domestic producers who are related to the exporters or importers of the alleged dumped articles or are themselves importers thereof These provisions have to be read with provisions of Rule 5(3) (a) of the relevant Rules. Even. considering that M/s SRF Ltd and M/s Baroda Rayan Ltd are related to the importers or are themselves importers, as per Rule 2(b) of the Rules, as existing prior to 15th July, 1999, the domestic industry would be represented by only M/s Nirlon Ltd., M/s Century Enka Ltd. and M/s NRC Ltd. In such an eventuality the petition had the support of 100% of the domestic producers of NTCF.*
 - vii. *Thus, the domestic producers had the requisite standing to represent the domestic industry as required under the Rules even prior to the amendment in the Anti Dumping Rules en 15th July, 1999.*
 - viii. *In view of the foregoing, Authority holds that the Petitioners had requisite standing to file the petition, as required under the rules and the present petition has been filed on behalf of domestic industry.*

12. Anti-Dumping Investigation concerning imports of Pentaerythritol originating in or exported from China PR and Sweden.

6. The applicant has submitted that product being sold by Perstorp in India is Technical Pentaerythritol 95%, which is nothing but mixture of Pentaerythritol of two different purities, i.e. Technical Pentaerythritol 88% (30%) and Pentaerythritol Mono Grade 98% (70%). They have further argued that different customers require Pentaerythritol of different purities, ingredients and melting points to suit their process requirements and the product of required parameters is being supplied to the customers by mixing the product. Pentaerythritol Technical Grade, which contains Monopentaerythritol 89% is used in the manufacture of the same products as that are manufactured from Pentaerythritol (Mono) Grade containing Monopentaerythritol 98%. The purity of Pentaerythritol (mostly defined in terms of Monopenta) and other ingredients varies depending upon the molar ratio used for manufacture of the product and other process conditions. The purity of Pentaerythritol varies from min. 92% to max. 98%. Pentaerythritol of different purity are nothing but one like product and are within the scope of the present investigations. The Perstrop has submitted that they are one of the major domestic producer of the subject goods in India and manufacturer of technical Penta 95% and imports its raw materials such as mono

penta 98% and technical penta 89 – 90% from Sweden. They have also argued that all these three Penta are of different grades can not be considered as like product.

7. On examination of the submissions filed by the interested party, it is noted that the claim of Perstorp Aegis that the imported raw materials are further processed to manufacture the subject goods under investigation was not substantiated with evidence and during the on the spot verification visit at their unit, it was found that different purities of Penta ranging from 89%-98% were supplied to the paint industry. In addition to various material provided by interested parties, the Authority relies upon verification conducted at the premises of Perstorp Aegis. It was found that the company had undertaken blending and re-bagging of Pentaerythritol of two different purities of the subject goods under consideration. It was also found that in the process of blending the imported products neither the essential product characteristics underwent a significant change nor the company employed a significant plant & equipment, investment therein, manufacturing process, and production activities. The technical literature available on the product distinguishes Pentaerythritol and Dipentaerythritol as two different products. However, sufficient evidence was not been brought by Perstorp Aegis to establish their claim that monopenta and technical penta are two different products, having different product properties, production process, functions & uses, differ significantly in terms of pricing. On the contrary, investigations revealed that the two types have essential similar product properties, produced using same production process, similar functions & uses and fall under the same customs classification. The domestic industry has placed the SION norms for Penta (all grades) which implies the various grades of Penta are one like product and it was supplemented by the response of the user industry also. The technical literature available on this subject distinguishes Pentaerythritol and Dipentaerythritol as two different products not between monopenta and technical penta and none of the interested parties produced any evidence on monopenta and technical penta as two different products. The Authority notes that Pentaerythritol can be of two grades known as technical grade (TG) or nitration grade (NG), however there is no material difference found between these two grades and both the grades are produced out of same process. During the course of verification of costing and sales information of the domestic industry it was established from their sales and excise register that Paint Industry is using different purities of Penta in their manufacturing setup. During the verification visit, the domestic industry had shown that during the production process less than 2% of entire production of Penta results into the production of nitration grade whereas more than 97% constitutes as technical grade and they are the like product within the meaning of AD Rules. On the basis of information made available before Authority, it is noted that merely changes in the purity along with name (which varies between 92%-98%), the imported product does not become different from product under consideration, i.e, Pentaerythritol. It is also noted, even though the product resold by Perstorp Aegis may be different from imported product and may have been processed before selling, the resold product remains Pentaerythritol only and no verifiable evidence was placed by Perstorp Aegis which could establish that the imported product and resold products are not like products within the meaning of the AD Rules.

8. Rule 2(d) of the AD Rules specifies that "Like Articles" means an article which is identical or alike in all respects to the product under investigation or in the absence of such an article, another article, having characteristics closely resembling those of the articles under examination. In this context of this Rules, no significant/material evidence were provided to establish the difference between the subject goods manufactured by the domestic industry and the imported product from subject countries. The subject goods produced by the applicant is found comparable to the imported product in terms of a number of parameters which includes product properties, production process, functions & uses, pricing, customs classification. The domestic product is found commercially and technically substitutable to the imported product. On the basis of the evidence brought before the Designated Authority, the Authority holds that the goods produced by the domestic industry are like articles to the goods imported from the subject countries.

9. The Authority conducted an on-the-spot verification at the plant of M/s Perstorp Aegis in order to verify the claims of the company. It was found that the Unit-II (where the imported product is blended) at Silvassa is not in operation. The company was asked to explain in detail the production activities carried out by them and also provide information with regard to the following:-

- Production technology
- Plant & equipment installed
- Investment
- Production process
- List of raw materials consumed and details of consumption as per format A of the costing information and per unit consumption as per format B of the costing information
- Specifications of the "raw materials" consumed / the "finished product" produced
- Various functions & uses of the penta imported/ penta sold in the domestic market

10. The company did not provide full information. It was found that the production process is mere a blending of penta of two different purity which results in penta of a different purity. It could neither be established by Perstorp that the imported product and resold product was significantly different nor they could establish that the process employed by them resulted in a different product. The company was also asked to provide separate details of cost of production of the Pentaerythritol produced at two different plants. However, no such information regarding the cost of production was provided. In view of the above, it could not be established that imported Pentaerythritol and Pentaerythritol produced and sold by the company at two different units and Pentaerythritol supplied by the domestic industry are not like products.

11. The Authority notes that even though the company claimed that it is also a domestic industry, they did not provide any information with regard to injury to the domestic industry. The company could neither able to establish that the goods imported by them are not like product to the goods sold by them nor the company

could establish that the goods imported by them and goods produced and sold by the domestic industry (Kanoria Chemicals) are not like products.

15. On examination the submissions of the interested parties regarding their claim that goods imported by Perstorp Aegis are raw materials and not the subject goods under investigation, the Authority found that the goods imported by Perstorp Aegis were nothing but Pentaerythritol of various grades. The Authority further notes that Perstorp Aegis, an importer of the subject goods and related to an exporter of the subject goods, in itself is sufficient to exclude them from the constituent of the domestic industry. Therefore, the Authority considers that exclusion of the company is justified since they have imported significant quantity of subject goods from their related company and did not provide any costing or injury information for their claim of being treated as domestic industry in spite of requests made by the Designated Authority. Asian Paints is another producer, producing the product substantially for its own captive requirements. The applicant has submitted that the production of Asian Paints should be excluded since the production of Asian Paints may not compete in merchant market and they may not have experienced injury from such dumping of subject goods in Indian market. On examination of the arguments of the applicant, the Authority has found appropriate to include production of Asian Paints for determining standing of the applicant. The Authority notes that Perstorp, Sweden and Perstorp Aegis, India are related to each other in view of Rule 2(b) of AD Rules. Since Perstorp, India is a subsidiary of Perstorp, Sweden and therefore the latter is in a position to control the former hence it was found appropriate to exclude as a constituent of the domestic industry. In view of the above, the Authority holds that the applicant fulfils the requisite criteria to satisfy standing and constitutes domestic industry, as required under Rule 5(a) and (b) and Rule 2(b) of AD Rules.

13. *Designated Authority's Final Findings in the matter of Anti-Dumping Investigations concerning imports of 'Carbon Black used in rubber applications' originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand.*

D. SCOPE OF DOMESTIC INDUSTRY & STANDING

16. Rule 2(b) of the AD Rules defines domestic industry as under:-

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

17. The Application has been filed by Association of Carbon Black Manufacturers on behalf of the domestic industry. M/s. Phillips Carbon Black Limited and M/s.

Hi-Tech Carbon have provided injury information, whereas M/s. Continental Carbon India Limited has supported the application.

Issue raised by the Interested Parties

18. M/s Jiangxi Black Cat Carbon Black Co., Ltd (“Black Cat”) has, inter alia, contended that the applicant does not have standing in view of relationship of M/s Hi-Tech carbon India with M/s Liaoning Birla Co. Ltd (China) and M/s Thai Carbon Black Public Company Ltd. (Thailand). Further, Phillips Carbon is also ineligible in view of imports made by M/s Ceat Ltd., which is their related company.

Views of the Domestic Industry

19. The Domestic Industry has submitted that Rule 2(b) had been amended for the reason that a discretion was required to be provided to the Designated Authority to include or exclude a company who is found to be related to a foreign supplier or an Indian importer or who itself imported the material. Since the fact of imports or relationship does not automatically imply exclusion and further since the ordinary/general rule is to include all parties, it is required to be established by the interested parties seeking exclusion that such exclusion is indeed necessary in the facts and circumstances of the present case. However, barring mere claim, no factual material has been provided by the interested parties justifying exclusion of these two companies. M/s Ceat Ltd. and M/s Phillips Carbon Black Ltd. are not related companies. The Applicant has further submitted that even though the interested parties have not justified the need for exclusion, facts of the case do not justify exclusion of either company. The applicant has made reference to text books on anti-dumping and practices of other investigating authorities in this regard and has contended that there is no justification whatsoever for exclusion of either companies. The two companies have not reduced their production and have not turned to trading. In fact, in case of M/s Hi-Tech Carbon, the related Thai company has exported the entire material only under advance licence (whereas there is no import from the Chinese related company). In case of M/s Ceat Ltd. also, majority of the imports are under advance licence. The Applicant has also claimed that the volume of exports made from Thailand by related company of Hi Tech Carbon is significantly low in terms of total imports and consumption of the product in India. Similarly, the imports made by M/s Ceat Ltd. constituted a very small proportion in its total sales.

Examination by the Authority

20. The Authority notes that M/s Hi Tech Carbon is related to M/s Thai Carbon Black Public Company and M/s Liaoning Birla Co. Ltd. M/s Hi Tech Carbon has claimed that M/s Liaoning Birla Co. has not exported carbon black in Indian market. Even though M/s Thai Carbon Black Public Company Ltd. has exported the subject goods to India, the entire volume of exports is only 2178 MT, out of total of 515350 MT in POI. Some interested parties have reiterated their argument regarding inclusion of M/s Hi Tech in view of exports by their related entity. The Authority, however, notes that the exports made by the Thai related

company are not so significant and not under such condition to take a view that M/s Hi Tech should be considered ineligible to be considered as a part of the domestic industry. The Authority notes that the Hi Tech Carbon has not turned to importing and trading. The focus of the company remains substantially on production. Further, there is no evidence on record to show that M/s Phillips Carbon Black Ltd. and M/s Ceat Ltd. are related companies. Even though ATMA has participated in the present investigations as an interested party and M/s Ceat Ltd. is their member, there is no evidence on record to show that M/s Ceat Ltd. has imported significant volumes of the product under consideration from the subject countries after payment of customs duties.

21. The Authority notes that the volume of exports made by M/s Thai Carbon Black is too insignificant in relation to production and consumption in India. Besides, it has not been established that M/s Hi Tech Carbon should be excluded from the purview of domestic industry because of exports made by the related company. The Authority considers it appropriate to include M/s Hi Tech Carbon within the scope of the domestic industry. With regard to eligibility of M/s Phillips Carbon, the Authority notes that the interested parties have not provided sufficient evidence to justify its exclusion.

22. As per the evidence available on record, production of M/s Phillips Carbon Black Ltd. and Hi-Tech Carbon account for a major proportion of the domestic production of like article, being significantly more than 50% of Indian production. Further, the petition is supported by M/s Continental Carbon. The application thus satisfied the requirements of Rule 2(b) and Rule 5(3) of the AD Rules. Further, M/s Phillips Carbon Black Ltd. and M/s Hi-Tech Carbon are being treated as "domestic industry" within the meaning of Rule 2(b) read along with Rule 2(d) of the AD Rules for the present purpose.

- Imports by petitioner itself-from unrelated exporter

14. Commission Decision No 307/2000/ECSC of 10 February 2000 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of non-alloy steel originating in the People's Republic of China, India and Romania. Official Journal L 036 , 11/02/2000 P. 0004 – 0019

1. Definition of the Community industry

1.1. Total Community production

(39) Within the Community, the product concerned is manufactured by:

- 12 producers which lodged the complaint,
- five Community producers supporting the complaint, and
- one Community producer which did not support the complaint.

(40) Some exporting producers argued that certain complaining Community producers had imported hot-rolled flat products of non-alloy steel from the countries concerned by the proceeding during the "investigation period". The Commission therefore examined whether any of them should be excluded from the definition of the Community production.

It was found that none of the producers cited had itself imported the product in question. One trading company belonging to the same corporate group as a

complaining Community producer had, however, made such imports during the investigation period. This company which purchased steel throughout the world, including from the producer belonging to the same group, and sold mainly in third countries on its own account was found to act independently. In fact, the structure of the grouping to which both companies, belong is such that each maintains its own financial accounts, submits separate annual reports, and has no profit and loss transfer agreement with the holding company. Furthermore, separate income tax returns are filed, each has its own board of directors, and business relations with other companies in the group are carried out at arms length on identical terms to those applicable to other companies where no legal relationship exists. These purchases could not, therefore, affect the status of the producer concerned, and it was considered that there were no grounds for excluding any producer of hot-rolled flat products of non-alloy steel from the definition of the Community production.

(41) The 18 Community producers of hot-rolled flat products of non-alloy steel mentioned above, therefore, constitute the Community production within the meaning of Article 4(1) of the basic Decision.

1.2. Community industry

(42) Of the 12 producers who lodged the complaint, ten replied to the Commission's questionnaires, allowed on-spot investigations and provided the Commission with additional information when requested; they were therefore considered as cooperating in the investigation.

These 10 Community producers are: Aceralia (Spain), British Steel (United Kingdom), Dillinger (Germany), GTS (France), ILVA (Italy), Palini and Bertoli (Italy), Salzgitter (Germany), Thyssen (Germany), Trametel (Italy), Voest Alpine (Austria). These companies accounted for more than 75 % of total Community production in the IP, and thus represented a major proportion of the Community production within the meaning of Article 5(4) of the basic Decision, and are hereinafter referred to as "the Community industry".

(43) Eight of these companies are fully integrated, i.e. they produce or buy within the group they belong to, the steel slabs used for rolling the product concerned. The two remaining companies are so-called re-rollers, which buy steel slabs on the free market for manufacturing the product concerned.

For the purpose of the provisional findings, on-spot investigations were carried out at the premises of seven complaining producers. The total production of these seven companies represented about 80 % of the total output of the Community industry.

1.3. Other Community producers

(44) The two remaining complainant producers, with production accounting for less than 2 % of the total output of the 12 complaining producers, did not reply to the Commission's questionnaires; they were therefore considered not to be cooperating in the framework of the current investigation and thus not part of the Community industry.

Of the six other producers, one supporter replied partially to the Commission's questionnaires and in principle allowed on-spot investigations, while the other five companies did not reply at all to the Commission's questionnaires.

These eight companies are referred to hereinafter as "other Community producers".

15. Commission Regulation (EC) No 1497/2001 of 20 July 2001 imposing provisional anti-dumping duties on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, accepting an undertaking offered by the exporting producer in Bulgaria and terminating the proceeding as regards imports of urea originating from Egypt and Poland. Official Journal L 197 , 21/07/2001 P. 0004 - 0027

1. Definition of the Community industry

(154) Of the ten complainant Community producers, one (Kemira Agro Rozenburg BV) did not cooperate with the Commission, and was, therefore, not regarded as being part of the Community industry. Another Community producer (Irish Fertiliser Industries Ltd) did not provide the information requested in the format required and is considered not to have cooperated with the Commission, thus likewise not forming part of the Community industry.

(155) A number of exporting producers claimed that, as some Community producers also purchased and imported urea from the countries concerned, these producers should be excluded from the definition of the Community industry.

(156) The investigation established that some of the complainant Community producers purchased the product concerned from sources both inside and outside the Community, including from the countries concerned. However, in the most part these purchases were small in volume, and were made to cover shortfalls in supply due to maintenance. One company did make more substantial purchases during the IP, equivalent to 20 % of its production. These purchases were made to supplement their own product range, were not sufficient to consider the company as anything other than a Community producer of urea. For these reasons, it is provisionally determined that all eight companies can be included in the Community production.

(157) As these eight complainant cooperating Community producers represent more than 76 % of the Community production of urea they constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

16. Commission Regulation (EEC) No 1418/88 of 17 May 1988 imposing a provisional anti-dumping duty on imports of serial-Impact dot-matrix printers originating in Japan. Official Journal L 130, 26/05/1988 P. 0012 – 0033

G. COMMUNITY INDUSTRY

(60) There are eight producers of SIDM printers in the Community. The investigation has shown that during the period under investigation the four Europrint members manufactured about 65 % of the total Community output of SIDM printers, hence a major proportion of the total Community production of the like product within the meaning of Article 4 (5) of Regulation (EEC) No 2176/84.

(61) The Commission also found that three of the Europrint members, i. e. Mannesmann-Tally, Hisi and Philips, imported, during the investigation period, SIDM printers from Japan in quantities which amounted respectively to 51 %, 42 % and 11 % by volume of the total sales of these Community producers (under the assumption that all imported printers are also sold).

(62) In this respect, CJPRINT submitted that a complainant should be excluded if its imports cannot be regarded as interim defensive measures and if it is simply using its resources as a multinational corporation to import products from those sources which

it concludes can provide the best products at the lowest price irrespective of where in the world the source may be located. Consequently, the three importing Community producers should, according to CJPRINT, be excluded because their imports cannot be considered to be an interim defensive measure as the imported products amount to substantial quantities, are resold under their own brand name at a substantial profit and have led to increasing market shares.

(63) With regard to these arguments, the Commission noted that Article 4 (5) of Regulation (EEC) No 2176/84 leaves a certain discretion to the Community institutions as to whether or not they exclude certain importing Community producers. When exercising this discretion, the Commission considered that it is normal for large firms engaged in international business to buy part of their range of models from other producers. The mere fact that a Community producer has imported goods of a kind for which dumping has been found and has resold them with a reasonable profit margin, does not, in itself, prevent it from complaining about dumping or having its injury taken into account. In deciding whether to exclude a Community producer from consideration, the Commission took into account whether the importing of the dumped products and their sale on the Community market should, due to the reasons behind this, the volume of such imports or any other circumstances, be considered as part of normal and sound business practice on the part of a producer. In this respect, it is particularly important to what extent these imports can be considered as having been made in self defence.

(64) As far as the reasons for these imports are concerned, the Commission has found that all printer models imported by the Community producers belong to the low end segment of the SIDM printer market. Before 1983, all three companies were represented in this market segment with their own manufactured printers. The decisions to replace their existing printer models by printers of Japanese origin were, in the first place, based on the general consideration that, for defending their position on the market, it is necessary for an SIDM printer manufacturer to offer a full range of printers and to be represented in all market segments. Indeed, without offering a full range, the three companies would have run the risk of also losing sales and customers in the other market segments and, consequently, be totally driven out of the printer market. Secondly, because of the low price level on the Community printer market caused by imports from Japan, the costs of development and production of a new printer model would not have been recovered within a reasonable time. The prices which the Japanese manufacturers offered were so low that, even at the low level of resale prices on the Community market, the imported products could be resold at a reasonable profit.

(65) As far as the volume and other circumstances of these imports are concerned, the Commission considered that the quantities concerned were not so high as to make it necessary to exclude the three companies concerned. The value of imports represented a substantially smaller proportion of the three companies' total net sales than the volume of imports. This is because all the imports were of relatively low-priced printers.

(66) Moreover, the number of printers imported represents a modest proportion of total sales in the Community in the lower end of the market. In 1983, imports from Japan by Community producers represented 4 460 units, i. e. 0,5 % of Community consumption. In 1986, imports by Community producers represented 91 138 units, i. e. about 4,3 % of total Community consumption.

(67) *As far as the profit margins on the sales of these imported printers are concerned, the investigation has shown that they were not more than 5 % (as a percentage of return on sales) higher than the return on sales of the Community producers' printers.*

(68) *In the light of these circumstances, the Commission is of the opinion that both the reasons which led the three companies to import SIDM printers from Japan as well as the other circumstances can be considered as a reasonable measure of self-defence necessary to stay in the market. Since the market conditions have worsened for the Community producers since 1983, the fact that these imports are not a temporary measure cannot be considered as decisive in these proceedings. Thus, the Commission has come to the conclusion that, for the purposes of the preliminary findings, the three Europrint members who have imported dumped SIDM printers from Japan should not be excluded from the Community producers representing the Community industry.*

(69) *The Commission therefore interpreted the term 'Community industry' as referring to the four Community producers that are members of Europrint.*

17. *Commission Regulation (EC) No 165/97 of 28 January 1997 imposing a provisional anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia. Official Journal L 029 , 31/01/1997 P. 0003 – 0018*

D. COMMUNITY INDUSTRY

1. The complainant producers

(54) *The investigation confirmed that the determination set out in recital (3) was correct and, accordingly, the Commission considers that, for the purposes of this proceeding, the complainant companies constitute the Community industry within the meaning of Article 4 (1) and Article 5 (4) of the Basic Regulation.*

2. Application of Article 4 (1) (a): Definition of the 'Community industry'

(55) *During the course of the investigation it became apparent that a Community producer in the first group, as defined in (6), was also importing the dumped product from the countries subject to the present proceeding. In those circumstances, the Commission examined whether, in the light of Article 4 (1) (a) of the Basic Regulation, that company should be excluded from the definition of the Community industry.*

In this respect it should be recalled that Article 4 (1) (a) does not provide for the automatic exclusion of producers which themselves import the dumped product, but rather obliges the Community institutions to examine on a case-by-case basis whether the exclusion of any producer in such a situation is warranted.

For the purpose of carrying out that examination, it appeared appropriate to determine whether that company was primarily a producer with an additional activity based on imports, merely supplementing its Community production, or whether it was an importer with relatively limited additional production in the Community. Such an approach seemed to be both reasonable and consistent with the practice of the Community and the case-law of the Court of Justice (5).

The investigation showed that the imports of dumped products from the countries concerned accounted for less than 25 % of the turnover of the company in question. It is therefore the opinion of the Commission that the main core of business for the company was production of footwear in the Community and that it was not shielded from the dumping practices. Therefore, for the purposes of Article 4 (1) and Article 5 (4) of the Basic Regulation, that company was considered, along with the other cooperating producers, as forming the Community industry.

18. *Commission Regulation (EC) No 1069/97 of 12 June 1997 imposing a provisional anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan. Official Journal L-156, 13/06/1997 P. 0011–0033*

E. COMMUNITY INDUSTRY

1. Definition of the Community industry

(52) After elimination from the list of companies included in the complaint of seven of them found not to be complainants, the Commission found that the remaining companies represented a major proportion of Community production of bed linen and satisfied the requirements of Article 5 (4) of the basic Regulation.

After initiation of the proceeding, a number of organizations representing exporters and importers of bed linen from the countries concerned alleged that several of the producers which made up the Community industry were also importing the dumped product from the countries subject to the proceeding. In these circumstances, the Commission re-examined whether, in the light of the provisions of Article 4 (1) (a) of the basic Regulation, these companies should be excluded from 'the Community industry`.

(53) For the purposes of carrying out this reexamination, and in accordance with consistent practice of the Community institutions, it appeared appropriate to determine whether those companies were primarily producers in the Community with an additional activity based on imports and merely supplementing their Community production, in order to be able to offer a complete range of products, or whether they were importers with relatively limited additional production in the Community.

(54) In all but one case, companies alleged to be importing bed linen from the countries concerned were among those selected in the sample of Community producers (see recitals (58) to (61)). The Commission was therefore able to examine the extent of these imports during the course of its on-the-spot verification visits. For all but one of these sampled companies, the investigation showed that the imports of dumped products from the countries concerned had accounted for less than 10 % of the turnover of the companies in question in the period examined. It is therefore the opinion of the Commission that these companies were not shielded from the effects of dumped imports and that for the purposes of Article 4 of the basic Regulation these companies may be considered along with the other cooperating producers, as belonging to the Community industry.

In the case of the one other sampled company, it was found that a higher proportion of its bed linen sales in the investigation period were of Pakistani origin and also that only a minor part of its sales were of its own production. It appeared in addition that the company's future activity was likely to be further focused on imports. This company, whose core interests were deemed clearly not to be in the production of bed linen within the Community, was therefore eliminated from the Community industry.

(55) *Since all but one of the sampled companies alleged to be importing bed linen from the countries concerned were found, on examination, not to be doing so in quantities sufficient to warrant exclusion, it has been considered that the allegations made by the exporters in this regard were excessive and unreliable. Consequently, on the basis of the findings concerning the sample, no exclusion of the one non-sampled company is warranted. This company should, therefore, be retained in the definition of the Community industry. In any event, this issue has no substantial influence on the question of the representativity of the Community industry.*

(56) *Three other companies were eliminated. In one case the company was found no longer to produce bed linen. In two other cases the companies did not respond to the requests for information which were addressed, via Eurocoton and the national associations, to those complainants which were not selected in the sample of Community producers, in order to obtain information on the Community industry as a whole.*

(57) *The remaining 35 companies, which cooperated with the enquiry and are located in France, Germany, Italy, Spain, Portugal, Austria and Finland, represented a major proportion of total Community production in the investigation period. These companies were therefore deemed to make up the Community industry under the terms of Article 4 (1) of the basic Regulation.*

2. Sampling

(58) *Because of the number of companies in the Community industry it was decided to resort to sampling, in accordance with Article 17 of the basic Regulation.*

(59) *27 of the 35 companies, representing 96,7 % of Community industry production and 32,5 % of total Community production in 1995, (the latest figures available at the time of sample selection) were situated in Germany, Italy, France and Portugal.*

(60) *As a general rule, Community producers sell a large proportion of their bed linen production in their own Member State, in part because of differences between Member States in standard products and sizes. This is true of Germany, France and Italy which are both the largest producers of bed linen in the Community and very important importers. The producers in these Member States were therefore clear candidates for assessing the impact of the imports on the Community industry.*

Producers in Portugal, for their part, sell a large proportion of their production in other Member States and represent about one third of the production of complainant companies. Even though Portugal is not a significant importer, therefore, it was decided that the effect of the imports on the producers there should be assessed and that Portugal should be represented in the sample.

(61) *In consultation with the complainant Eurocoton an initial list of 19 companies was arrived at (eight from France, six from Germany, four from Italy and one from Portugal).*

In the course of the enquiry one of these companies was eliminated from the sample for failing to cooperate with the enquiry. As a result of this exclusion, and of the exclusion of the other company under Article 4 (1) (a) of the basic Regulation (see recital (54)), in the following injury analysis information given for 'sampled producers` is based on information supplied by the remaining 17 producers which represented 20,7 % of total Community production and 61,6 % of the production of the Community industry. They included the largest Community industry companies in

Germany, Italy and Portugal, and also smaller producers. The Commission therefore considered this sample to be representative of the Community industry.

19. Commission Regulation (EC) No 1023/97 of 6 June 1997 imposing a provisional anti-dumping duty on certain imports of flat pallets of wood originating in Poland and accepting undertakings offered from certain exporters in connection with those imports. Official Journal L 150 , 07/06/1997 P. 0004 – 0017.

D. COMMUNITY INDUSTRY

1. Definition

(32) The Community producers who supported the complaint in this proceeding constituted a major proportion of the total Community production of the product concerned, in accordance with Article 4 (1) and 5 (4) of the Basic Regulation.

One importer claimed that several producers in the Community were importing the allegedly dumped pallets from Poland. The investigation has nevertheless shown that the quantities of pallets imported from Poland by some Community producers were relatively small in relation to the production volume of such producers whose core interests clearly remained in the production of pallets in the Community. The limited imports in question were a defensive reaction to low-priced imports from Poland.

Consequently, it would not be warranted to exclude producers importing pallets from Poland from the assessment of Community industry. Thus, the Community producers who supported the complaint represent the Community industry within the meaning of Article 4 (1) of the Basic Regulation.

20. Commission Regulation (EC) No 255/2001 of 7 February 2001 imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China. Official Journal L 038 , 08/02/2001 P. 0008 – 0021

1. Definition of the Community industry

(49) In the course of the proceeding Philips Lighting BV informed the Commission that it no longer wished to be treated as a member of the group of complainants. Therefore, data relating to Philips Lighting BV were not taken into account for the purpose of determining the Community industry and injury to the Community industry. It should be noted that the provisional conclusions concerning injury and causal link would not have been different had the data relating to Philips Lighting BV been taken into consideration.

(50) The two remaining cooperating Community producers account for more than 85 % of the Community production of CFL-i during the IP.

(51) Several exporting producers submitted that the complainants are themselves importing the product concerned from the PRC. In this respect, it emerged that the two remaining co-operating Community producers had indeed imported CFL-i from the country concerned and resold those imports. According to Article 4(1)(a) of the basic Regulation "[...] when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'the Community industry' may be interpreted as referring to the rest of the producers". During the IP, on average 14,6 % of the total sales of CFL-i by these producers in the Community originated in the country concerned. However, despite these sales of imported CFL-i, the primary activity of these companies remained in the Community. Furthermore, the

sales are explained by the need for the complainants to complete their product range so as to be able to satisfy demand, as well as by the attempt to defend themselves against low priced imports due to dumping. Consequently, the described trading activity of these producers did not affect their status as Community producers.

(52) The two remaining Community producers are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(53) As the Community industry is thus constituted of only two producers, all figures relating to the latter had to be indexed for confidentiality reasons.

2. Community consumption

(54) Community consumption was established on the basis of the sales volumes of the Community industry and of Philips Lighting BV on the Community market, Eurostat import figures concerning the volume of imports from the country concerned and from other third countries, duly adjusted where appropriate.

(55) In this respect it was found that, as mentioned above, not only CFL-i are imported into the Community under CN code 85393190, but other products as well. As a consequence, an estimate of the percentage of CFL-i in all products imported under this code was made for each country exporting CFL-i to the Community. These estimates were based on the questionnaire replies by cooperating importers that were found to trade the totality of the imports of CFL-i from certain countries, information provided by the complainant as well as by the Chinese exporting producers as verified by the Commission.

(56) On this basis, Community consumption increased by 117 % between 1996 and the IP from 56,9 million units to 123,3 million units. Steep increases occurred in particular between 1997 and 1998 and between 1998 and 1999/IP.

21. Commission Regulation (EC) No 1833/98 of 25 August 1998 imposing a provisional anti-dumping duty on imports of bicycles originating in Taiwan. Official Journal L 238 , 26/08/1998 P. 0010 - 0026

F. COMMUNITY INDUSTRY

1. Representativeness

(43) Before the initiation of the investigation and in order to confirm the necessary support for the complaint, the Commission requested all known producers in the Community to submit basic information as to their respective production volume and to clarify their position with regard to the complaint lodged. Community producers representing around 60 % of the total Community production expressly supported this complaint.

(44) By virtue of Article 4(1) of the Basic Regulation, the Commission investigated whether or not producers supporting the complaint, who themselves imported some of the allegedly dumped bicycles from Taiwan, should be excluded from the determination of Community production.

It was found that those imports were relatively small in relation to the total production in the Community of the said producers and that their core interests were thus considered to be in the Community. It was established that the limited imports made by the said producers were a defensive reaction against low priced imports

from Taiwan and not made because these producers were not able to produce the types of bicycles imported. On this basis, it was decided that such producers should not be excluded in determining the Community production. Data relating to these imports were disregarded when the injury factors pertinent to the situation of the Community industry were established.

(45) It follows that in accordance with Articles 4(1) and 5(4) of the Basic Regulation the Community producers supporting the complaint constitute the Community industry as their collective output represents a major proportion of total Community production (hereinafter referred to as the 'Community industry').

22. Designated Authority's Final Findings in the matter of Anti-Dumping (Sunset Review) investigations Metronidazole originating in or exported from China PR

D. DOMESTIC INDUSTRY

6. In the original investigation the application for anti-dumping investigation was filed by M/s. Aarti Drugs Ltd., Mumbai and M/s Aarey Drugs & Pharmaceuticals, Mumbai on behalf of the domestic industry. In the present sunset review the information/data has been provided by M/s Aarti Drugs Ltd., Mumbai M/s Unichem Laboratories Ltd., Mumbai and M/s J B Chemicals Ltd., Mumbai. The data and information submitted by M/s Aarti Drugs Ltd and M/s Unichem Laboratories Ltd. has been considered for analyzing the injury to the domestic industry. The data provided by M/s J B Chemicals has been disregarded for injury analysis as the domestic sales of this company during POI was only 1 MT whereas rest of the production had been exported.

7. In this case, during POI domestic industry had imported approximately 50% of the total imports of subject goods from China PR in which M/s Aarti Drugs Ltd. account for 40%, M/s Unichem Laboratories Ltd. account 3.07% and M/s J B Chemicals account for 7.15% of total imports. It has been contended that imports were made under Advance Licenses of Duty Exemption Scheme for manufacture of Metronidazole Benzoate for export purpose only and did not enter into commerce of the country, therefore, applicants cannot be excluded from purview of domestic industry.

8. This issue has been examined in terms of Rule 2(b) of Anti Dumping Rules and Article 4.1(i) of the Anti-Dumping Agreement. As per Anti-Dumping Agreement 'when producers are related to exporters or importers or are themselves importers of the allegedly dumped product, the term 'domestic industry' may be interpreted as referring to the rest of producers'. As per Rule 2(b) of the Rules, ' "domestic industry" means the domestic producer as a whole engaged in manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major production of total domestic production of that article except when such producers are related to exporters or importers of the alleged dumped articles or are themselves importers thereof in which case such producer may be deemed not to form part of domestic industry'.

9. The Authority examined the issue on imports made under Advance Licenses by the applicants. As per Foreign Trade Policy of India, the inputs imported for export production cannot be sold in India. Inputs imported under Advance Licenses after processing/manufacturing necessarily have to be exported. Therefore, the Authority is of the view that inputs imported under Duty Free Advance Licenses when used for export purpose only will not disqualify the producers from domestic industry under Rule 2(b) of AD Rules.

10. The domestic industry has also raised the issue that J B Chemicals should be treated as domestic industry as per definition in Rule 2(b) of AD Rules as Rules refer to producers as a whole engaged in manufacturing of like article. The Authority has examined this issue and is of the view that M/s J B Chemicals is Mpart of domestic industry as per Rule 2(b), however, its data has not been used for injury analysis as injury to the domestic industry is analysed with reference to its sales in the domestic market. In this case M/s J B Chemicals had sold only 1 MT of its production in the domestic market during POI whereas rest of its production had been exported. As sale of 1 MT by M/s J B Chemicals would be insignificant for its impact on the injury to the domestic industry, therefore, the data of this company has been disregarded for the purpose of injury analysis.

23. Designated Authority's Final Findings in the matter of Anti-Dumping investigations concerning import of Seamless Tubes from Austria, Czech Republic , Russia, Romania and Ukraine.

6. On Standing: Argument raised by Domestic Industry:

The petition was filed by Association of Seamless Tubes Manufacturers on behalf of the three participating companies viz. MSL, KSTL and ISMT. There are six companies in India who have created capacities for Seamless Tubes production. TISCO, Remi Metals and BHEL are the other three companies who have the capacity for production of the subject goods. The petition is supported by Remi Metals. The Designated Authority has determined the locus as follows:

- i. Remi Metals and BHEL have been considered as importing the subject goods and thus have been excluded.
- ii. MSL has been considered as related to Jindal Drilling and Industries Ltd. that has important large volumes of the subject goods from the narned countries.
- iii. The production of TISCO has been considered for determining the locus.

2. Domestic Industry comments as follows:

- i. Imports from Remi Metals and BHEL : Domestic Industry agrees with the findings of the Designated Authority that these companies have imported the subject goods and therefore should be excluded from the scope of the present investigation. BHEL is largely a captive consumer of the subject goods. Production of BHEL is required to be excluded from the eligible production.
- ii. The Designated Authority has -considered the production of TISCO in the eligible production. Though there is no implication with regard to the

standing of the petitioners to file the present petition whether TISCO is considered within the eligible production, as the standing conditions are satisfied in any event, it is submitted that while initially TISCO conveyed verbally that they would be supporting the petition it was later considered more appropriate by them to remain neutral as they were not at present producing the subject goods. TISCO may therefore be excluded.

- iii. *It is submitted that MSL cannot be treated as related to an importer and cannot be excluded from the scope of the present investigation. A discretion has been provided to the Designated Authority in the amendment of the Anti-Dumping Rules dated 15.7.1999 to decide whether or not a producer who is related to an importer, exporter or itself is an importer of the alleged dumped goods should be included in the investigations. The Designated Authority in the case of PSF, held that though Reliance Industry itself had imported the subject goods it qualified to be included within the scope of domestic industry. Similarly, in case of Nylon Tyre Cord Fabric, the DA held that SRF qualified to be included within the scope of domestic industry inspite of the fact that it was related to an importer. In the instant case, the petitioner company has itself not imported any volume's and the injury assessment would not have got biased in any way. It is submitted in this connection that*
- a. *JDIL and MSL are public limited companies and are not related under any provision of the Company's Act, 1956. None of them is either a related company or a subsidiary of the other one in terms of Section 4 of the Companies Act, 1956. They were neither under the same management in terms of Section 370 (1B) of the Companies Act, 1956 nor were in the Same group in terms of Section 372 (11) of the Companies Act, 1956.*
 - b. *The main business carried on by MSL and JDIL are different. MSL is engaged in manufacture of Seamless Pipes where as JDIL is mainly engaged in off-shore oil well drilling. It is also engaged in a limited extent in threading, end-finishing, cold pilger, heat treatment, etc. of seamless pipes. Jindal has imported all the material from Volzhsky Pipe Plant who has cooperated with the Authority. The volumes imported by the company are in the region of * * * MT, which constitute an insignificant proportion of the Indian demand.*
 - c. *The day-to-day functioning of JDIL is conducted by the Whole time Director subject to the control of the Board of Directors of the company. Likewise, the day-to-day functioning of MSL is conducted by the Managing Director subject to the control of the Board of Directors of the company. Both the companies have their own professional Board of Directors. It is evident from the constitution of the Board of Directors of the two companies that there is only one common Director in the Board of the two companies who is Shri D.P.Jindal. The board cannot take any decision unless the decision is approved by a minimum of two directors in MSL as is also the case with JDIL. It is submitted that the common Director cannot in any situation influence the decision as he lacks necessary quorum.*

- d. *Public Limited companies like MSL and JDIL are basically run by the Board of Directors who control all aspects of business. Since there is only one common director in the board of the two companies, there is no way one company can exercise direction or restraint over the other. One of the important facts to note is that JDIL has imported the sizes which are not produced by MSL.*

7: Arguments raised by ONGCL and Volszkhy:

The investigation in this case was initiated on 21.5.1999 and on that day the un-amended rule 2 (b) was in force. This rule did not give any discretion to the Designated Authority and every domestic producer who is related to the exporter or importer or who has imported the alleged dumped article had to be excluded from the purview of the term "domestic industry". The fact that Maharashtra Seamless Ltd. is related to an importer of the alleged dumped article was brought to the notice of the Authority by ONGCL & Volszkhy. The European Council Regulation on antidumping, in addition to defining the term "related" specifies a company which holds more than 5% of the shares in another, as related to the other. The definition of the term "related" as used by the European Commission is extracted below:

"For the purpose of completing this questionnaire, a company should be considered to be related if it holds directly or indirectly more than 5% of your capital or otherwise has controlled over your company or if your company holds more than 5% of its share capital or you otherwise control it. Furthermore, companies under the same holding are considered to be related". In fact the supply by the JDIL of pipes imported from the countries under investigation compete in the same market as the pipes supplied by MSL and hence MSL has to be excluded.

9. DOMESTIC INDUSTRY:-

The petition has been filed by the Association of Seamless Tubes Manufacturers on behalf of M/s Maharashtra Seamless Ltd., M/s Kalyani Seamless Tubes Ltd., and M/s Indian Seamless Metal Tubes Ltd. Other domestic manufacturers of the subject goods are Tisco, Remi Metals and BHEL.

The above mentioned six companies have created capacity for production of seamless tubes. BHEL has created capacity primarily for captive consumption. It is noted that Remi Metals has imported 7884.79MT of the subject goods from the subject countries during the period of investigation. BHEL has also imported the subject goods but from sources other than the listed countries. After careful consideration of the above, it was decided by the Authority to exclude Remi Metals and BHEL from the scope of domestic industry in view of captive consumption by BHEL and the substantial imports made by Remi Metals of the subject goods from the named sources. Tisco has suspended production and is not a supporter of the present petition.

As stated at para 8 of these final findings, the domestic industry is constituted of M/s Maharashtra Seamless Ltd., M/s Kalyani Seamless Ltd., and M/s Indian Seamless Metal Tubes Ltd., who account for 100% of the total eligible domestic production of the subject goods and thereby have the required standing to file the petition under the Rules.

- Imports by petitioner itself-from Other than Subject country

24. Council Regulation (EC) No 769/2002 of 7 May 2002 imposing a definitive anti-dumping duty on imports of coumarin originating in the People's Republic of China. Official Journal L 123 , 09/05/2002 P. 0001 – 0009

DEFINITION OF THE COMMUNITY INDUSTRY

(39) *The company represented by the applicant was the only producer of coumarin in the Community during the investigation period.*

(40) *During the IP, the Community producer imported coumarin from a country other than the PRC. The purpose of such imports was to compensate shortages of the product concerned from the producer's Community production due to technical reasons. These imports represented a minor part of the total sales volume by the producer in the Community. Thus, despite these sales of imported coumarin, the primary activity of the company remained in the Community and the import of this producer did not affect its status as Community producer. This Community producer is therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.*

- Imports by affiliated company in India from related exporter

25. Commission Regulation (EC) No 362/1999 of 18 February 1999 imposing a provisional anti-dumping duty on imports of steel ropes and cables originating in the People's Republic of China, India, Mexico, South Africa and the Ukraine and accepting undertakings offered by certain exporters in Hungary and Poland Official Journal L 045 , 19/02/1999 P. 0008 - 0025

D. COMMUNITY INDUSTRY

1. Community production

(34) *A number of exporting producers alleged that one complainant Community producer should be excluded from the definition of Community industry as it was related to an importer and a chain of distribution/trading companies which had imported the product concerned into the Community from the countries under investigation during the period examined pursuant to Article 4(1)(a) and (2) of the Basic Regulation.*

It should be noted that the complainant Community producer in question had not itself made any imports during the period investigated.

As regards imports by the trading companies in the group, the Commission established that the complainant Community producer in question was indeed part of a group of companies that included an importer and distribution companies, and that these had imported SWR from the countries concerned during the investigation period. The structure of the group was found to have changed between 1994 and the IP. However, throughout the whole period investigated, the complainant Community producer in question and both the importer and the distribution companies had had common holdings and were therefore considered to be related companies.

The Commission examined the nature of the group structure and found that it could not be excluded that a certain degree of control may have existed between the related companies either directly or through the common holding company. The Commission

established that the volume of dumped imports made by the related companies in the IP represented 2 % of Community consumption, 6 % of total third country imports and only 11 % of the complainant Community producer's volume of production. The principal activity of this complainant Community producer was therefore the production of SWR.

As concerns the behaviour of the complainant Community producer concerned on the Community market, the Commission found that despite the possible existence of any such control, the complainant Community producer in question was suffering the same injurious effects of the dumped imports as the other complainant Community producers investigated in the course of the current proceeding. It should be noted in this respect that the company concerned did not adopt commercial behaviour on the Community market that was significantly different from that of the other complainant Community producers as a result of the imports in question. The complainant Community producer in question was found to have suffered consistent and significant undercutting by the imports originating in the countries concerned during the IP (a weighted average undercutting of 75,8 % was found). It was therefore considered that the complainant Community producer in question did not benefit unduly from the imports concerned and it had not been shielded from the injurious effects of the dumping.

In view of the above the Commission considered that there were no grounds to exclude the complainant Community producer in question from the total Community production.

(35) The Commission found that during the investigation period certain complainant Community producers had purchased SWR from various sources outside the Community, including the countries concerned. However, the volume of these imports represented a negligible share of total production (i.e. less than 1 % of the complainant Community producers' total production of SWR). The Commission therefore considered that these purchases were in accordance with the standard commercial practice of producers who had to supplement their own range of products with a small proportion of imports. These imports were necessary in order to be able to offer a full range of products and be able to compete on the Community market.

(36) Based on the above, the Commission considered Community production to consist of all companies producing SWR in the Community at the time of the investigation. These companies are hereinafter referred to as the 'Community producers'.

2. Community industry

(37) A number of small producers that supported the complaint did not provide responses to the Commission's questionnaires. In accordance with Article 4(1) the scope of the Community industry was defined as the remaining cooperating producers.

(38) On this basis the following 20 complainant Community producers made up the 'Community industry', i.e. Bremer Drahtseilerei Lüling GmbH (Germany), Bridon International Limited (United Kingdom), BTS Drahtseile GmbH (Germany), Cables Y Alambres Especiales Sa. (Spain), Casar Drahtseilwerk Saar GmbH (Germany), Cordoaria Oliveira SA (Portugal), Drahtseilerei Gustav Kocks GmbH (Germany), Holding Ficadi (France), Iscar Funi Metalliche (Italy), D. Koronakis SA (Greece),

Metalcalvi Wire Ropes (Italy), Midland Wire Cordage Co., Ltd (United Kingdom), Randers Rebslageri (Denmark), Redaelli Tecnacordati SpA (Italy), Trefileurope (France), Trencas Y Cables SL (Spain), Vereinigte Drahtseilwerke GmbH (Germany), Voest-Alpine Austria Draht GmbH (Austria), Vornbäumen-Stahlseile GmbH and Wadra GmbH (both Germany).

(39) The Community industry accounted for 97 % of the total estimated Community production and thus constituted a major proportion of Community production pursuant to Article 5(4) of the Basic Regulation.

- *Imports by affiliated company in India from unrelated exporter*

26. *Council Regulation (EC) No 2320/97 of 17 November 1997 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia Official Journal L 322, 25/11/1997 P. 0001-0024*

D. COMMUNITY INDUSTRY

(42) The same Community producers cooperated in the two investigations (see recital (8)). These companies represented more than 90 % of the total Community production of the product subject to the investigation, and constituted, therefore, a major proportion of the total production of the product concerned in the Community.

(43) A number of exporters alleged that their products were purchased and imported by certain complainant Community producers. They claimed that these producers should be excluded from the determination of the Community industry for the purpose of the injury assessment pursuant to Article 4 (1) (a) of the basic Regulation.

No substantiating evidence to support this assertion was provided. In addition, the investigation carried out by the Commission has shown that none of the Community producers imported the products concerned and that certain importers, related to such Community producers, imported small quantities of the products concerned during the investigation period. These imports were resold in the Community market exclusively by these related importers, which were found to have acted independently and even to have operated in competition with the sale departments of their related producers. In any event, the examination of the facts revealed that the volume of these imports accounted for less than 3 % of the total sales volume of these products on the Community market for each of the Community producers.

It is, therefore, considered that such a low level of imports could not have led to any injury to the Community producers and consequently there are no grounds for excluding these producers.

Consequently the producers mentioned in recital (8) will be referred to hereinafter as the 'Community industry' within the meaning of Article 4 (1) of the basic Regulation.

- *Relationship with Exporter exported during POI*

27. *COMMISSION REGULATION (EC) No 1742/2000 of 4 August 2000 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand*

C. COMMUNITY INDUSTRY

(87) *The following 9 Community producers co-operated in the investigation, i.e. replied to the Commission's questionnaires, allowed on-spot verifications and provided the Commission with additional information when requested:*

- *Du Pont Polyesters Ltd (UK);*
- *Eastman Chemicals BV (NL);*
- *INCA International SpA (I);*
- *Italpet Preforme SpA (I);*
- *KOSA GmbH(D);*
- *Shell Chemicals Ltd (UK);*
- *Wellman PET Resins Europe (NL);*
- *Aussapol SpA (I);*
- *CEP-Tergal Fibre (F).*

(88) *It should be noted that, although Aussapol SpA and CEP - Tergal fibres were not among the companies on whose behalf the complaint was lodged, these companies supported the complaint and co-operated in the investigation.*

(89) *It should also be noted that, although it operates a plant in Malaysia, Eastman has been considered part of the Community industry because its affiliated company has exported only insignificant quantities of PET to Eastman itself. No other co-operating companies did import PET from the countries concerned during the IP.*

(90) *None of the three other European producers replied to the Commission's questionnaires or expressed opposition to the proceeding.*

(91) *The cumulated production of the nine co-operating producers during the investigation period was 1 042 350 tonnes out of an estimated total Community production of 1 220 000 tonnes, i.e. 85 % of the Community production.*

(92) *The Commission, therefore, considers that the nine cooperating producers constitute the 'Community industry' within the meaning of Article 4(1) and Article 5(4) of the Basic Regulation.*

28. *COUNCIL REGULATION (EC) No 173/2000 of 24 January 2000 terminating the anti-dumping proceedings concerning imports of certain large aluminium electrolytic capacitors originating in Japan, the Republic of Korea and Taiwan*

D. COMMUNITY INDUSTRY

1. Composition of the Community industry

(60) *The two reviews cover the same product and are based on data largely pertaining to the same time periods. Therefore, it is considered appropriate to investigate them simultaneously. Consequently, the same producers in the*

Community constitute the Community production and the Community industry in both reviews.

(61) Four large producers of LAECs, i.e. BC Components, BHC Aerovox Ltd (United Kingdom), Vishay Roederstein GmbH (Germany) and Siemens-Matsushita Components GmbH & Co. KG (Germany), as well as some small to medium-sized producers, were established in the Community.

Three producers supported the request for review on Japan: BC Components, BHC Aerovox Ltd and Vishay Roederstein GmbH. However, the two latter producers did not cooperate with the Commission and were, therefore, not considered part of the Community industry.

(62) As indicated above, BC Components is a new company, incorporated after the end of the IP. It has, notably, taken over the activities of Philips components BV in the manufacturing and sales of LAECs. This takeover was made on a going concern basis, in particular as regards the manufacturing and sales of LAECs in the Community. Moreover, BC Components BV, expressed its support for both reviews.

(63) Siemens-Matsushita Components GmbH & Co. KG (hereinafter 'Siemens-Matsushita') and the other small and medium-sized producers were not among the producers which requested the review on Japan. Moreover, these companies did not make themselves known after the publication of the notices announcing the initiation of the reviews. Therefore, in accordance with Article 5(4) of the Basic Regulation, these producers could not be considered part of the Community industry.

(64) One Japanese producer/exporter contested the fact that Siemens-Matsushita was not contacted by the Commission and the fact that this company was excluded from the Community industry. These claims could not be accepted because, as stated above, further to the publication of the above notices, Siemens-Matsushita did not make itself known as an interested party and did not express any interest in cooperating. Also, it did not oppose its exclusion from the Community industry.

In addition, available information indicated that Siemens-Matsushita is a joint venture owned in equal parts by Siemens AG (Germany) and the Matsushita Electric Industrial Ltd Group (Japan), a non cooperating Japanese producer/exporter. Siemens AG holds control of the corporate management and holds the casting vote in the event of a tied vote. Siemens-Matsushita was reported not to have imported any LAECs originating in the countries concerned and to sell its own production of LAECs on the Community market under its own brand. However, through its 50 % shareholding, the Matsushita Electric Industrial Ltd Group is clearly in a position to exert control or restraint on Siemens-Matsushita. Available information also indicated that Siemens-Matsushita benefited from the shared know-how of its two shareholders. These two companies are therefore related within the meaning of Article 4(2) of the Basic Regulation.

(65) The important shareholding of Matsushita Electric Industrial Ltd in Siemens-Matsushita and the abovementioned shared know-how lead to the conclusion that

Siemens- Matsushita is in a fundamentally different position as compared to that of BC Components. Therefore, in accordance with Article 4(1)(a) of the Basic Regulation, it was considered appropriate to exclude Siemens- Matsushita from the definition of the Community industry.

(66) It should finally be underlined that Siemens-Matsushita was already excluded from the definition of the Community industry in the original investigations concerning imports from Japan and imports from the Republic of Korea and Taiwan. This approach has not been disputed in either of these two investigations.

(67) A number of Japanese producers/exporters claimed that BC Components should be excluded from the Community industry because, until the end of the IP, companies which were related to it at that time, in particular Philips Consumer Electronics BV, imported significant quantities of LAECs from Japan.

(68) The Commission examined whether the fact that Philips Consumer Electronics BV imported LAECs from Japan was a sufficient reason to exclude BC components, at that time the only LAECs manufacturer within the Philips Group, from the Community industry.

It was found that almost all imports made by the Philips Group were not destined for further resale, but were incorporated by Philips Consumer Electronics BV in its own production of electronic products. Moreover, the investigation revealed that the majority of these imports (more than 85 %) were of 'radial' products either not yet produced by BC Components or still in a start-up phase of production. In these circumstances, Philips Consumer Electronics BV had no other choice but to be supplied by producers/exporters in the countries concerned.

Philips Consumer Electronics BV were products directly competing with BC Components' production and represented an insignificant share of the total imports into the Community. It was also noted that Philips Consumer Electronics BV, despite the above imports, was the biggest traditional customer of BC Components, since it represented approximately 40 % of its total sales in the IP. The choice of Philips Consumer Electronics BV to be partly supplied by producers/exporters in the countries concerned was made possible by the structuring of the Philips Group into different profit centres which are all independent and free to choose their suppliers, notably when it is necessary to complete or supplement the range of products offered within the Philips Group (as in the case of the 'radial' LAECs).

(69) For the above reasons, the imports made by Philips Consumer Electronics BV were considered as normal commercial behaviour until such time as fair conditions of competition would be restored on the Community market.

(70) BC Components, represented a major proportion (41 %) of the total estimated Community production.

(71) Based on Article 4(1)(a) of the Basic Regulation, the estimated production of Siemens Matsushita was not taken into account in the determination of the total Community production, for the purposes of the assessment of the representativity of the Community industry.

One cooperating Japanese producer/exporter claimed that, had the estimated production of Siemens-

Matsushita been taken into account, BC Components would not have had sufficient standing to be representative of the total Community production.

However, it was found that even if the production of Siemens-Matsushita, as established on the basis of the information submitted by the cooperating parties had been included in the determination of the total Community production, the Community industry would still have represented a major proportion of this production, pursuant to Article 5(4) of the Basic Regulation.

(72) It was therefore confirmed that BC Components constituted the Community industry in both reviews, within the meaning of Article 4(1) of the Basic Regulation.

29. *Commission Regulation (EC) No 1472/2000 of 6 July 2000 imposing a provisional anti-dumping duty on imports of Polyester Staple Fibres originating in India and the Republic of Korea Official Journal L 166, 06/07/2000 P. 0001- 0013*

E. DEFINITION OF THE COMMUNITY INDUSTRY

(60) Both complaints were lodged on behalf of 8 of the 14 Community producers known to produce PSF in the Community. One of these complainant producers withdrew from cooperation and another had to be considered as non-cooperating as it did not provide a sufficient questionnaire response.

(61) The share of total Community production of PSF held by the six cooperating Community producers during the IP was 71,5 %. On this basis, these six complainant producers constitute the Community industry within the meaning of Article 4(1) of the basic Regulation. They are referred to as the "Community industry" hereafter.

(62) It was argued that two of the six complainant producers should not be included in the Community industry as they were related to an exporting producer from Indonesia. This country was involved in both an anti-dumping and an anti-subsidy investigation involving PSF.

(63) It should be recalled that the current proceeding investigates a complaint against imports originating in the Republic of Korea and India. It is further recalled that producers related to exporters may be excluded from the definition of the Community industry if the relationship leads to a behaviour which is different to that of unrelated Community producers because such related producers are shielded from the effects of dumping, unduly benefiting from the dumping practices or are even participating in the dumping practices. No evidence was found during the investigation that the two Community producers related to the Indonesian exporters would fall under any of the three aforementioned categories. In particular, it was not found that the information relating to the various injury indicators for these two companies was significantly different to other complainants. This shows that the two companies were not shielded from the effects of dumping, unduly benefiting from the dumping practices or are even participating in such practices. Consequently, these two Community producers have not been excluded from the definition of the Community industry.

30. Final Findings in the matter of Anti-dumping investigation concerning import of Para Cresol originating in or exported from People's Republic of China.

7. Domestic Industry

The Authority recalls the preliminary findings on the issue of domestic industry. The petition has been filed by M/s Atul Limited (Aromatics Division), Dist. Valsad, Gujarat. The petitioner company is the sole producer of Para Cresol in India. Therefore, they claim to represent the 100% domestic production of the subject goods. The petitioner had informed in the petition regarding imports of 32 MT of Para Cresol made during POI under Advance Licence for fulfilling export obligation. It has been argued by some of the importers that since the petitioner has made imports during the POI they may not be treated as part of the eligible domestic industry. The Authority had noted that the imports of 32 MT made by M/s Atul Limited during POI were meant for export production and these imports were necessitated due to a planned stoppage of their Para Cresol plant. The Authority did not consider these small quantity imports for export production to make the petitioner as ineligible to be treated as 'Domestic Industry' within the meaning of Rule 2(b) supra. The petitioner was, therefore, considered to represent the domestic industry.

Arguments have been made on behalf of importers viz. M/s Blackrose Exports Pvt. Ltd., Metrochem Industries Ltd., Nandolia Organic Chemicals Pvt. Ltd. and Universal Chemical Industries Ltd. stating that the petitioner lacks the standing to file the petition as they have made imports of subject goods. Further, it has been argued that the following three reasons considered by the Authority while treating M/s Atul Limited as domestic industry are not sufficient:

- i. Imports made by the petitioner are insignificant,
- ii. Imports made under advance licence,
- iii. Imports have been made at a time of temporary shut down of production facilities.

It has been argued that imports made by the petitioner constituted more than 5% of imports whereas under WTO rules, 3% volume of imports is a quantity considered as significant. Further, these imports made by the petitioner were more than 1% of demand of the product. With regard to second reason regarding imports made by the petitioner under advance licence, it has been argued by the importers that it is the practice of the Designated Authority to exclude all such producers from the eligible domestic industry. It has been argued that in the case of imports of Metronidazole from China, three producers were excluded from the purview of domestic industry even though these companies made imports under advance licence. As regards the third reason given by petitioner to have made imports under advance licence in the condition of temporary shut down, it has been argued by the importer that the reasoning defies all logic as at one place, domestic industry claimed that imports were necessitated due to its own requirement for exports and at the same time, it has been stated that imports had to be made due to temporary shut down of the plant. In response to the Disclosures, the importers have reiterated their above stand.

The domestic industry has drawn attention to the legal position on definition of domestic industry as per Rule 2 (b). They have argued that the word 'shall' existing in the said Rule was amended to read as 'may' by virtue of the

Amendment No.44/99-CUS dated 15.7.1999. Thus specific discretionary powers were vested in the Designated Authority to decide whether in a particular case, the importing domestic industry may be considered not forming a part of the domestic industry under Rule 2(b). In the instant case, the Designated Authority was satisfied that the petitioner should be considered as the eligible domestic industry despite the fact that they have imported the said product. Imports in the instant case were made by the petitioner against advance licence which are totally exempt from the incidence of custom duty and also the anti dumping duty. This exemption is based on the fact that such imports do not enter in the mainstream commerce of the country. Exclusion of producers who imported the product under consideration has to be decided by the Designated Authority on a case by case basis, on reasonable and equitable ground, and by taking into consideration all the legal and economic aspects involved. The purpose of the provisions on the exclusion of certain producers is to obtain an objective and undistorted view of the effects of the dumped imports. It is pertinent to note that the present petitioner has not in any way participated in dumping practices or shielded from its effects or in any way benefited unduly from them. The contention of the importers that the importing domestic industry is ordinarily to be excluded, is not borne out either from a plain reading of the law or from the jurisprudence on the subject. The petitioner has also cited the excerpts from the book titled "EC Anti Dumping Law, A Commentary on Regulation 384/96 by Nicholas Khan" which contains the practices followed by EC in this regard.

It has been further argued by the petitioner that the preliminary findings on the issue of 'domestic industry' have been misinterpreted and distorted in the submissions made by the importers. The said findings make it amply clear that the imports by the domestic industry have been ignored for determining the standing of the domestic industry because the imports were necessitated to fulfill the export commitments and not for the reasons cited in the submissions of importers / consumers. The reasons in support of questioning the decision of the Designated Authority are based on an erroneous interpretation of the preliminary findings and hence needs to be rejected ab initio. The criteria of 3% volume of imports mentioned by importers has no connection or linkage with the status of the domestic industry to file a petition. The reliance placed by the importers on the Phenol case is also totally mischievous and misleading.

The Authority has examined the arguments made by the importers on the preliminary findings on the issue of 'domestic industry' and the arguments made by the petitioner. The Authority is of the view that Rule 2(b) gives the discretion to the Authority in determining as to whether a domestic producer who has made imports of subject goods can be considered as part of the domestic industry or to be excluded. In the instant case, the petitioner, who is the sole producer of the subject goods in India, had made imports of 32 MT during the POI. These imports were made for export production and these had been necessitated due to a planned stoppage of their Para Cresol plant. The Authority has not considered these imports as very significant, particularly, when these were meant for export production. The reference to the criteria of 3% volume of imports in the context of the determination of standing of domestic industry has no relevance, as these provisions relate to determination of de minimus volume of imports. The facts and circumstances of other cases cited by the importers in support of their arguments

are different from the instant case. The Authority therefore, reiterates and confirms its preliminary findings on the issue of 'domestic industry'.

• Relationship with exporter no exports during POI

31. Council Regulation (EC) No 771/98 of 7 April 1998 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China Official Journal L 111 , 09/04/1998 P. 0001 - 0009

D. COMMUNITY INDUSTRY

(22) A number of claims were made by the Chinese exporters/producers and some users concerning the definition of the Community industry and the standing of the producers supporting the review request.

(23) The Chinese exporters/producers claimed that one of the producers supporting the review request was related to one importer of Chinese carbide and should therefore be excluded from the definition of the Community industry, pursuant to Article 4(1)(a) and (2) of the Basic Regulation.

It was established during the investigation that the two companies concerned although related had no control over each other. Moreover, these companies had conflicting interests regarding the imposition of the anti-dumping measures. One company was producing carbide whereas the other company was importing the product concerned. It was found that the two companies were acting autonomously when defining and pursuing their business strategy. Overall, it was concluded that their relationship did not influence the behaviour nor did it distort the analysis of the economic situation of the Community producer in question as regards the product concerned and there was therefore no reason to exclude this producer from the definition of the Community industry.

(24) As mentioned in recital (2), the request for review was submitted by producers representing almost the totality of the production of carbide intended for sales on the open market and, accordingly, they constituted the Community industry.

This was contested by a number of integrated producers of tungsten end-products in the Community (tools, hard metals), producing small quantities of carbide exclusively for internal consumption. Specifically, they argued that the representativity of the producers supporting the review should be assessed by reference to the totality of the Community production of the product concerned (including their own captive production) and that, on this basis, the producers supporting the review were not representative of the Community industry.

(25) This issue was examined but it was concluded that the argument was incorrect. Indeed, even if the output of the companies which only produce for captive use was taken into account, the producers supporting the review request would still account for 60 % of the overall Community production of the product concerned, thus fulfilling the criteria of Article 5(4) of the Basic Regulation. In addition, it was confirmed that the producers supporting the review accounted for almost all Community production of carbide intended for sales in the open market.

(26) Given the above, the producers supporting the review request constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the Basic

Regulation. For the remainder of this Regulation, the term 'Community industry' will be used to refer to the companies supporting the review.

32. *Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan Official Journal L 054 , 24/02/1987 P. 0012 – 0035*

iii) Definition of Community industry in the context of the proceeding

In this case the Commission has been obliged to take into consideration the fact that all Community producers concerned with this proceeding have links of either a corporate or commercial nature with Japanese exporters. This has given rise to complex questions regarding the definition of Community industry under Article 4 (5) of Regulation (EEC) No 2176/84 and has necessitated a detailed examination of the position of each of the complainant companies based on the specific facts pertaining to each company's situation.

(a) Position of Rank Xerox

(50) In Regulation (EEC) No 2640/86 the question of whether Rank Xerox, in view of its corporate relationship with its Japanese supplier, Fuji Xerox, should be included as part of the Community industry for the purposes of assessing injury within the context of the proceeding was essentially left open since the Commission concluded that there was injury to Community producers irrespective of whether Rank Xerox's production of low-volume copiers was included in the term 'Community industry' or not. However, since the duty required to remove the injury was calculated to be at a lower level when Rank Xerox was included in Community industry for the assessment of injury than if it had been excluded, for the purposes of the provisional findings, the Commission decided to consider Rank Xerox as part of the industry.

(51) In order to come to a definitive decision on the position of Rank Xerox in the proceeding, the Commission re-examined all matters relevant to the assessment of whether the Community industry, as defined in Article 4 (5) of Regulation (EEC) No 2176/84, should include Rank Xerox. As a starting point the Commission reviewed the relative importance of Rank Xerox's operations with its affiliate Fuji Xerox compared with the company's other operations in the photocopier industry in the Community.

(52) The facts as finally established show that Rank Xerox's imports from Fuji Xerox of PPCs which were sold in the Community represented about 7 % of the company's total sales and rentals in the Community of new machines in segments 1 to 5 over the period 1981 to the end of the reference period. With the exception of the imports of the 1055 mid-volume model from Fuji Xerox in 1984, these imports were all segment 1 and 2 copiers and represented approximately 8 % of Rank Xerox's segment 1 and 2 machine sales and rentals in the Community of these machines in the same period. In terms of sales and rentals of new machines in segments 1 to 5 inclusive on the Community market by all producers over the period 1981 to July 1985, Rank Xerox's resales of Fuji Xerox imports represented less than 1 % of the total.

(53) The findings in Regulation (EEC) No 2640/86 (recital 74) regarding Rank Xerox's reasons for importing principally in advance of the setting-up of manufacture of the equivalent model in the Community, and regarding the resale prices of the Fuji Xerox imports being the same as those of models manufactured in the Community are confirmed, no contrary evidence having been produced.

(54) *With regard to Rank Xerox's sales of segment 1 and 2 copiers not supplied in complete units by Fuji Xerox over the period 1981 until the end of the reference period, it was alleged that these were produced in the Community from parts supplied in large measure to Rank Xerox by Fuji Xerox. Following these allegations, the Commission investigated the production of all photocopiers manufactured by Rank Xerox in the Community. In this context the Commission visited the manufacturing plants of Rank Xerox in the United Kingdom (low-volume machines) and the Netherlands (mid-volume machines) and examined the nature of the manufacturing operations carried out in each plant.*

(55) *In the Netherlands it was found that integrated manufacturing operations were carried out by, or on behalf of, Rank Xerox in the Community. The value added within the Community in these manufacturing operations exceeds 70 %. The photocopiers produced by Rank Xerox in the Netherlands have Community origin.*

In the United Kingdom, Rank Xerox's products were manufactured on the basis of parts originating predominantly in Japan and to a lesser degree in the Community. However, Rank Xerox had already set in motion concrete plans to replace certain key components of Japanese origin with parts produced in the Community. These plans have materialized in the meantime, leading to a substantial increase in value added within the Community for these low-volume products.

As regards the type of operations carried out in the United Kingdom, these consist of the construction of sub-assemblies for the production line, including the fusers, modules, develop boxes, cassettes, semi-automatic document handlers, optics and other minor assemblies. These operations are completed by the frame assembly and the final mainline assembly of sub-assemblies and components. The manufacturing process is completed by testing and packing of the photocopiers. Overall, in the reference period, the value added in the Community in the production of Rank Xerox's low-volume copiers was between 20 % and 35 %.

(56) *The Commission has examined whether, in view of these facts, Rank Xerox can be considered as a Community producer of segment 1 and 2 copiers within the meaning of Article 4 (5) of Regulation (EEC) No 2176/84. The Commission has noted that the Regulation does not lay down precise guidelines in this context. In particular, no threshold has been specified in either Community legislation or in previous cases for the minimum value added that must be respected in order for a producer to qualify as part of Community industry. Therefore the Commission has been obliged to look at the particularities of the present case.*

(57) *The first point to note is that the company is a manufacturer of photocopiers in the Community of long standing and one of the largest companies in the market.*

Whilst the production operations of Rank Xerox in the United Kingdom were more limited than the activities undertaken at its plant in the Netherlands during the reference period, the company did nonetheless undertake a multiplicity of manufacturing operations necessary in order to produce copiers for the market. In addition, Rank Xerox has been actively engaged in the process of replacing parts from Japan with other key components either of its own manufacture or from subcontractors within the Community.

The investigation showed that, if no protective measures covering segment 1/2 copiers were taken, then the process actively engaged in by Rank Xerox of replacing key parts

sourced from Japan with Community-produced supplies would be jeopardized. Article 4 (1) of Regulation (EEC) No 2176/84 authorizes protective measures in the case of the retardation of the establishment of an industry. If no anti-dumping measures were to be taken in this case, there would be a setback not only to Rank Xerox's future plans on sourcing products from the Community, which are already well established, but also a threat to the process already begun in this area. This might lead to a rupture in the process of building up Rank Xerox's production of low-volume copiers based on parts manufactured in the Community.

(58) In any event, since the like product in the proceeding has been defined to be all photocopiers from personal copiers up to and including machines classified in Dataquest segment 5, it would be inappropriate to analyse whether a Community producer should be part of Community industry just in terms of its production of one model or a limited range of models. This is the case even if, looked at in isolation, there were doubts as to whether Rank Xerox's manufacturing operations in the United Kingdom were sufficient to confer upon it the status of a Community producer in the sense of Article 4 (5) of Regulation (EEC) No 2176/84, for segment 1/2 copiers. The weighted average value added in the Community for all PPCs manufactured by Rank Xerox in the range segment 1 to segment 4 was in excess of 50 % in the reference period. Also the company has a policy of obtaining an increasing proportion of its components from within the Community.

(59) In any case, even if Rank Xerox's production in the United Kingdom was not regarded as part of Community industry for the purpose of these proceedings, there would remain Community production of PPCs in the same segments of the market as Japanese products, or in adjoining segments. The rates of duty appropriate to protect that Community production in accordance with the criteria used in this Regulation would be unaffected.

(60) The Commission also examined the issue of whether Rank Xerox should be excluded in whole or in part from the definition of Community industry by virtue of the benefits it derives from dumped imports from Fuji Xerox. In addition, an investigation was made of the question whether, in purchasing from Fuji Xerox, Rank Xerox inflicted injury upon itself and whether its motivation in importing was not one of acting primarily out of self-defence but more one of profit maximization within the context of its parent's, Xerox Corporation's, worldwide rationalization of copier production.

(61) With respect to the benefits that Rank Xerox derives from its corporate relationship with Fuji Xerox, it is evident that there are gains arising from the supply of cheap machines prior to start-up of production in the Community. These benefits, however, are short-lived and limited in scope. Furthermore, when account is taken of the volumes of imports concerned it is evident that the benefits are insignificant when assessed against injury being caused to Rank Xerox through dumping by other Japanese exporters.

(62) As regards the possibility that Rank Xerox may have inflicted injury upon itself by provoking or contributing to a fall in prices on the market, there is no evidence to suggest this. In the first place, Rank Xerox's resale prices for segment 1 and 2 products imported from Fuji Xerox were the same as for the corresponding Rank Xerox Community-produced machines and these prices were generally undercut by the prices of Japanese subsidiary companies on the Community market. This fact

demonstrates that Rank Xerox cannot be considered to have inflicted injury upon itself through its purchase and resale of machines from Fuji Xerox.

(63) With respect to the possibility that injury was caused by Rank Xerox to other Community producers through the resale of photocopiers supplied by Fuji Xerox at dumped prices, the evidence showed that when account is taken of the different features of these models and the comparable Community-produced model, the Rank Xerox resale prices were in general below those of the Community producer concerned and must therefore be considered to be injurious to that producer. It follows, therefore, that the effect of these imports should be taken into account in assessing the injury to other Community producers.

(64) Finally, on the question of whether Rank Xerox acted in order to protect itself against low-priced competition from Japanese producers, the Commission reviewed the evidence supplied by interested parties, including that submitted by Rank Xerox itself. Whilst the company maintained that a major factor in its decision to purchase low-volume photocopiers from its affiliate in Japan from 1978 onwards was the low price prevailing on the Community market which had been set by Japanese exporters, no convincing evidence was advanced in support of this statement. Independent sources suggest, on the contrary, that the decision may have been due more to internal difficulties which the Xerox Corporation as a whole experienced in producing new low-volume products. Faced with this situation, Rank Xerox turned to Fuji Xerox which had developed a low-volume model (2202) for sale in Japan and imported this product into the Community. This model replaced Rank Xerox's former Community-produced model (660) but was not itself produced in the Community.

(65) This initial supply link with Fuji Xerox was short-lived and was superseded in 1979 by the pattern of supply arrangements described in recital 53. The purpose of such supply arrangements has evidently been to enable Rank Xerox to prepare for and to accelerate the marketing of new products in advance of their manufacture in the Community as Community products. While it cannot be said that Rank Xerox was obliged to purchase machines from Fuji Xerox for self-defensive purposes, it is clear that in current circumstances in which the low-volume end of the market is dominated by Japanese suppliers, the ability to bring to the market a product more quickly than by waiting for Community production to come on-stream has enabled the company better to defend its overall position.

(66) Even if the company's activities in importing were not considered to be self-defensive, the low volume of supplies from Fuji Xerox in terms of Rank Xerox's total range of photocopiers in the Community is a decisive factor in favour of the view that there are no reasonable grounds for excluding the company's production of low-volume copiers from the definition of Community industry in the proceeding by virtue of its purchase of complete PPCs from Fuji Xerox.

(67) In summary, and having taken account of the particular circumstances of the case, the Commission considers that under Article 4 (5) of Regulation (EEC) No 2176/84, Rank Xerox should be considered to be a Community producer of photocopiers for the purposes of this proceeding.

(b) Position of Tetras

(68) In November 1986, Tetras, a member of CECOM and producer of a personal copier in the Community, established a relationship with Canon, a Japanese exporter,

whereby Canon took a 19 % shareholding in Tetras with an option to purchase an additional 30 % of the company's stock from other investors within a pre-set time limit. The minority shareholding relationship with Canon has not affected Tetras' position either as a Community producer or as a complainant and consequently Tetras remains part of the Community industry for the purposes of this proceeding.

(c) Position of Océ and Olivetti

(69) As regards the position of Océ and Olivetti, representations were made by a number of exporters and OEMs to the effect that these companies should be excluded from the scope of Community industry in the proceeding under Article 4 (5) of Regulation (EEC) No 2176/84 on the basis of their links with Japanese suppliers. It was argued, in essence, that the scale and long tradition of these companies' links with Japanese suppliers precluded them from being considered as Community producers in the proceeding.

(70) With respect to the relative importance of these companies' links with Japanese suppliers, the data show that for Océ and Olivetti, sales in the Community of imported machines represented between 35 and 40 % of each company's sales and rentals of new machines placed in the market over the period 1981 to July 1985. Models imported from Japan by Océ for resale have been segment 1 and 2 copiers with lower prices than those of Océ's own-produced machines. Olivetti has imported predominantly segment 1 copiers over the period 1981 to July 1985, but since 1984 has also purchased personal copiers from Canon.

(71) The question of whether Olivetti and Océ could have caused injury to themselves through actions in importing dumped PPCs was dealt with extensively in Regulation (EEC) No 2640/86. The Council confirms these findings and considers that these companies should be included in the definition of Community industry for the following reasons:

- Both companies attempted, at various times, to develop and market a fuller range of models but were thwarted in their attempts to do so because of depressed market prices set by Japanese imports. This is evidenced by management evaluations of projects and full documentation in one case of a prototype model scheduled for introduction to the market.
- The companies' resort to distribution of Japanese-manufactured machines on an OEM basis was a response to the need to offer a full range of models to their customers. By doing so, the companies were clearly protecting customer bases against competition from other suppliers who were able to offer a full model range.
- Over the period 1981 to the end of the reference period, the companies sold and rented far more units of their own manufactured products than those of imported PPCs.
- The prices at which the two companies resold the imports on an OEM basis were in general higher than those of the same machine sold by their suppliers on the Community market, thereby discounting the possibility that Océ and Olivetti could have inflicted injury upon themselves via their pricing policy, and supporting the argument that these OEM sales were subsidiary to and aimed at facilitating the placement of their own-manufactured machines.

- *The very small volume of Océ's and Olivetti's OEM imports in relation to total imports of all Japanese-produced machines (average of 4 % over the period 1981 to 1985), and the fact that they were sold at higher prices than those sold by their suppliers, demonstrates that these limited imports could not have had detrimental effects on the prices of their own and other Community producers' own-manufactured PPCs. In conclusion, the Council confirms that within the context of this proceeding Océ and Olivetti did not injure themselves in importing low-cost PPCs from Japan for distribution on an OEM basis.*

(72) Finally, the Commission's argument in recital 73 of Regulation (EEC) No 2640/86 that Océ and Olivetti could be considered to have done nothing which caused them to suffer losses greater than they would have suffered if they had attempted to base their own PPC business on the marketing of a more limited range of models was challenged on grounds of the lack of evidence justifying this conclusion. In response the Council points to the difficulties experienced by companies past and present to base their photocopying business on the marketing of a limited range of models and the need, emphasized by nearly all successful producers, to be in a position to respond to a customer's total copying needs. These considerations support the conclusions of the Commission.

(73) In conclusion, the Council confirms that Océ and Olivetti should be included in the definition of Community industry for the purposes of the proceeding.

(d) Position of Develop

(74) Develop, a Community producer of photocopiers, was effectively taken over in May 1986 by Minolta, a Japanese exporter, and subsequently withdrew its support for the complaint. While Develop continues to be a producer the question arises whether it should be considered as part of Community industry for the purposes of injury assessment. In the view of CECOM, Develop should be included since, during the reference period and before, the company was injured by the dumping practices of Japanese exporters.

(75) The Commission takes the view that, since it withdrew its support for the petition, Develop should no longer be considered part of the Community industry for the purposes of this proceeding. As to the argument that injury allegedly suffered by Develop in the reference period and before should be taken into account, the Council confirms the Commission's position that remedies to counter dumping practices can only be applied to offset injury caused to those producers defined as constituting the Community industry in the proceeding. It follows, therefore, that it would be illogical in determining the measures to be applied to take account of injury allegedly suffered by a producer not considered as part of the industry. Consequently Develop is not considered part of the Community industry for the purposes of this proceeding.

(e) Position of Canon

(76) Representations were made to the Commission by Canon that the Community industry should be defined to include not just the complainants but also Canon Giessen and Canon Bretagne - producers of photocopiers in the Community - but which do not support the complaint. The Commission considers that since the complainants form a major proportion of the industry, irrespective of whether

Canon's subsidiaries are included or not, then it is sufficient in the proceeding to assess whether injury has been caused to this major proportion of the industry.

(f) Conclusion

(77) In summary, the Community industry for the purposes of this proceeding is defined to be the Community producers, Rank Xerox, Olivetti, Océ and Tetras, who manufacture photocopiers in the Community.

g. Having regard to the above, petitioner submits that the Authority has rightly noted the submissions made regarding exports made by related exporter and eligibility of the petitioner company as a domestic industry.

E. Selection of POI

33. Another issue that has been raised by the interested parties' concerns period of investigation selected in the present case. The Applicant domestic industry has submitted as follows:

- a. petition contained sufficient reasons for choosing 6 months as the POI;*
- b. the notice of initiation issued by the Designated Authority contains reasons for choosing 6 months as the POI,*
- c. decision to take six-months period as POI has been upheld by the Hon'ble Tribunal in the matter of Virchow Laboratories Ltd. v/s Ministry of Finance, wherein CESTAT has held as under:*

34. It is contended on behalf of the Designated Authority that there is no rule mandating the Authority to take a period of 12 months for determination of dumping. The Designated Authority has observed that there was significant drop in the import price of HAS from the subject countries during six months. The price had dropped by over 50% and the landed price of the imports had been continuously declining in the last four years. There was no allegation of malafides made against the Authority in the matter of choice of the period by any one of the parties during the investigation proceedings.

35. There are no rules during the period of investigation as twelve months as contended by the appellant. On the other hand, the footnote to Part I Article 2.2.1 of Agreement on implementation of Article VI of the General Agreement on Tariff and Trade, 1994 would give a different indication. Article 2.2.1 provides that while determining normal value, the Authority shall take into consideration sales, which are made in an extended period of time in substantial quantities. Footnote to this clause explains that the extended period of time should normally be one year but shall in no case be less than six months. This would show that choice of a period of six months is not barred.

36. While rejecting a similar contention in Final Order No. 22/2000-AD, dated 2-2-2000 [2000 (119) E.L.T. 157 (T)] the Tribunal has observed as follows :-

“We are not convinced with the arguments advanced on behalf of the appellants that assessment is arbitrary since the D.A. has chosen only 6 months i.e. October, 1994 to March,

1995 as period of investigation for the purpose of assessment. The D.A. is right in observing that there are no specific provisions in the Rules to suggest the period of investigation. There are, however, indirect references available to suggest that the period of investigations should not be less than six months. Our anti-dumping law is based upon agreement on implementation of Article VI of the General Agreement on Tariff and Trade (W.T.O. Agreement). Annexure 1.2(1) suggests and Note for of WTO (Article 2.2.1) suggests that the period of investigation should not be less than six months. In the absence of prescription or restriction with reference to the period of investigation in the respective provisions of anti-dumping law, we do not find any flaw in the order in the course adopted by D.A. taking six months as period of investigation.”

We, therefore, hold that the discretion exercised by the Designated Authority in choosing a period of six months is not in any manner vitiated.

- d. even when the WTO Agreement contains no legal provision with regard to choice of POI, the Committee on Anti Dumping practices has stated as follows –*

(i) Recommendation by the Committee on Anti-Dumping Practices

- 20. At its meeting of 4–5 May 2000, regarding appropriate periods of data collection, the Committee on Anti-Dumping Practices recommended with respect to original investigations to determine the existence of dumping and consequent injury:*

“1. As a general rule:

(a) the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable;

(b) the period of data collection for investigating sales below cost, and the period of data collection for dumping investigations, normally should coincide in a particular investigation;

(c) the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation;

(d) In all cases the investigating authorities should set and make known in advance to interested parties the periods of time covered by the data collection, and may also set dates certain for completing collection and/or submission of data. If such dates are set, they should be made known to interested parties.

2. *In establishing the specific periods of data collection in a particular investigation, investigating authorities may, if possible, consider practices of firms from which data will be sought concerning financial reporting and the effect this may have on the availability of accounting data. Other factors that may be considered include the characteristics of the product in question, including seasonality and cyclicity, and the existence of special order or customized sales.*

3. *In order to increase transparency of proceedings, investigating authorities should include in public notices or in the separate reports provided pursuant to [Article 12.2 of the Agreement](#), an explanation of the reason for the selection of a particular period for data collection if it differs from that provided for in: [paragraph 1](#) of this recommendation, national legislation, regulation, or established national guidelines.”*

21. *Having regard to the above, petitioner submits that 6 months POI considered in the present case is fully justified. The petition contained sufficient reasons. The Designated Authority gave reasons in the notice of initiation.*

22. *Dumping - The domestic industry had earlier made elaborate submissions on various aspects relating to dumping. The previous submissions made by the domestic industry before are referred to and relied upon. Further, the information provided by the domestic industry and other submissions made by the domestic industry during the course of the present investigations may kindly be considered as part and parcel of the present submissions. These are not being repeated for sake of brevity. However, all these submissions may kindly be deemed to be included in the present submissions.*

23. *Injury & causal link - The domestic industry had earlier made elaborate submissions on various aspects relating to injury and causal link. The previous submissions made by the domestic industry before are referred to and relied upon. Further, the information provided by the domestic industry and other submissions made by the domestic industry during the course of the present investigations may kindly be considered as part and parcel of the present submissions. These are not being repeated for sake of brevity. However, all these submissions may kindly be deemed to be included in the present submissions.*

24. *Contraction in demand - It has been argued that the contraction in demand has caused injury to the domestic industry. Followings are relevant in this regard –*

a. *The demand of the product under consideration has not registered negative growth, except some reduction during the investigation period. With regard to demand in the investigation period, petitioner submits that while there is decline in demand, the same is not the sole or principal cause of injury to the domestic industry. Firstly, decline in demand should*

have equally impacted the domestic industry and Foreign Producers. However, whereas the Foreign Producers gained significant market share, the domestic industry lost the same. Secondly, the Foreign Producers have reduced the prices too significantly. Resultantly, the domestic industry was forced to undertake too significant price cuts. Deterioration in the performance of the domestic industry in respect of price parameters is due to dumped imports.

- b. The interested parties have argued that the reduction in demand has not been appropriately examined by the Authority with regard to casual link analysis. Petitioner disputes and submits that the Authority has adequately examined the issue of contraction in demand in its impact on the injury to the domestic industry. In fact, any contraction in demand should have affected all parties equally. However, whereas imports have gone up with the decline in demand, sales of domestic industry have disproportionately declined. While it is appreciated that the domestic industry would have faced some loss of sales due to decline in demand, a higher degree of decline in sales vis-à-vis decline in demand on one hand and increase in imports in absolute terms and relative to production & consumption on the other hand clearly establishes that injury to the domestic industry is because of imports. Further, followings are relevant.*
- c. It is true that the demand for the product had declined as a result of economic recession. This is also true that to such an extent injury to the domestic industry is caused by contraction in demand. However, the fact that imports have increased in a situation where demand has declined, at the least, establishes intensified injury to the domestic industry because of increased imports. While the industry was already facing lack of demand, the difficulties of domestic industry have been compounded by increase in imports. Further, while the decline in the sales volumes (and consequently production & capacity utilization) can be partly seen in decline in demand, the same does not justify the substantial decline in profitability.*
- d. It is also relevant to point out that the volume of dumped imports would have further increased but for contraction in demand. Had the market for the product continued to grow, the dumped import volumes would have increased further. Given the price advantage, it is quite likely that even other consumers would have switched to imports, had the domestic industry not immediately corrected its prices.*
- e. We also refer to the decision of the E.C. in the following cases, relevant extracts of which are given below –*

COUNCIL REGULATION (EC) No 2080/2001 of 23 October 2001 imposing a definitive anti-dumping duty on imports of internal gear hubs for bicycles originating in Japan

(b) Fall in consumption in 1999 and market development

(92) *It has been examined whether the fall in consumption in 1999 was a major factor contributing to the injury suffered by the Community industry. Given the presence of basically two major operators on the Community market, it was considered that the possible impact of the fall in consumption and the subsequent market development should be examined in the light of the performances of both operators.*

(93) *In 1999, as compared with 1998, the Community industry's sales volume decreased by around 18 %, whereas demand decreased by 8 %, i.e. to a much lesser degree. The Community industry also lost around 9 % of market share. During the same period, the exporting producer was able to increase its sales volume by 17 % and its market share by 30 %.*

(94) *During the IP, by comparison to 1999, the Community industry increased its sales volume by 4 % but its market share dropped by 4 %. In the meantime, the exporting producer was able to further increase its sales volume (22 %) and market share (11 %), namely to a much larger extent than the recovery of the market (8 %).*

(95) *Based on the above facts, it is clear that the deterioration of the Community industry's position in 1999 was more dramatic than any reduction in consumption. Similarly, when the market recovered during the IP, the performance of the Community industry was far below the market development. In the meantime, the dumped imports substantially improved their position on the Community market. Consequently, unlike dumped imports it is considered that the fall in consumption did not play any significant role in the injurious situation of the Community industry.*

Conclusion on causation

(102) *The substantially dumped imports which increased materially during the period considered, the price undercutting and the price depression found, all had significant negative consequences on the economic situation of the Community industry, notably in terms of sales prices and sales volumes, which in turn had an effect on market share and profitability. The impact of the dumped imports was such that it caused material injury to the Community industry. Based on the above facts and considerations, it is also concluded that any other factors which may have contributed to the injury suffered by the Community industry were not such as to break the causal link between the injury established and the impact of the dumped imports concerned.*

COMMISSION REGULATION (EC) No 1629/2000 of 25 July 2000 imposing a provisional anti-dumping duty on imports of ammonium nitrate originating in Poland and Ukraine

(b) Decrease in apparent consumption

(47) *As to the development of demand, apparent consumption of AN fell by 950 000 tonnes between 1995 and the (annualised) IP, i.e. by 16,7 %. The fall was particularly marked between 1998 and the annualised IP. As stated above, the AN market is characterized by a distinct seasonal pattern. The major part of the sales take place between October and March of each year (high season), while during the rest of the year demand is relatively subdued (low season). As the investigation period of 18 months contains two low seasons and only one high season, the annualised apparent consumption would be understated. In addition, it cannot be excluded that the decrease in demand (even if statistically overstated in the IP) is the consequence of certain substitution effects amongst different nitrogen fertilisers. It has been established in a recent case concerning UAN solutions that apparent consumption of UAN solutions increased in recent years (see Commission Regulation (EC) No 617/2000 (1)). This trend continued in the second half of 1999. However, while the decline in demand certainly contributed to increased competition and exerted a certain downward pressure on prices, thereby contributing to the injury suffered by the Community industry, the latter did anticipate a fall in demand and is adapting to it, which may be seen in the recent announcement of different plant closures. Also, in the absence of the price pressure from the dumped imports the decline in prices and profitability of the Community industry would have been much less marked.*

Conclusion on causation

(49) *In view of the above, it is provisionally concluded that while the decline in apparent consumption or certain third country imports certainly may have contributed to the injury suffered by the Community industry, in particular in terms of a reduction in production and sales volume, the dumped imports remain a significant factor especially as far as the price and profit development of the Community industry is concerned. In view of the coincidence in time between, on the one hand, the price decrease and undercutting established for the imports concerned, the significant market share gained by the dumped imports originating in the countries concerned and, on the other hand, the decline in sales suffered by the Community industry, as well as the reduction of its sales prices and the decline of its profitability, it is provisionally concluded that the dumped imports originating in the countries concerned have caused the material injury suffered by the Community industry. Thus, it was also concluded that the effect of factors other than the dumped imports were not such as to break the causal link between the dumped imports and the material injury suffered by the Community industry therefrom.*

COMMISSION REGULATION (EC) No 1845/98 of 27 August 1998 imposing a provisional anti-dumping duty on imports of certain large electrolytic aluminium capacitors originating in the United States of America and in Thailand

Community consumption

(90) *One of the cooperating producers/exporters claimed that the decline in sales suffered by the Community industry after 1995 was due to*

a general downturn in the economic cycle of the LAECs market. It should be noted that the Community consumption declined by 8% between 1995 and the investigation period and that, during the same period, the sales of the Community industry decreased by 25 %, i.e. a far larger decrease than the Community consumption. Moreover, between 1995 and the investigation period, despite the decline in consumption, the cumulated dumped imports originating in the USA and Thailand remained stable in volume terms at the high level of 1995 but increased their market share.

Conclusion

(98) Although it cannot be excluded that some of the imports from other third countries and the recent reduction of Community consumption may have contributed to the loss in market share and the disadvantageous situation of the Community industry, the investigation has also shown that these factors were not such as to break the causal link between the imports subject to the investigation and the material injury suffered by the Community industry. This conclusion is drawn in particular given the decline in sales and the loss of market share of the Community industry, over a period during which demand in the Community increased globally, which coincided with a notable increase in the volume of imports originating in the USA and Thailand, at prices which undercut those of the Community industry. Consequently, in a period where the Community industry was trying to recover from past dumping practises from other third countries it was unable to benefit from the increased demand on the Community market, but it was also unable to benefit from the economies of scale which would have resulted from an increased sales volume, if the Community industry could have maintained its market share. Moreover, as a result of this decline in sales, the average profitability of the Community industry was again on the decline after 1995 and so were employment levels and investments. Therefore, it is concluded that dumped imports from the countries concerned caused material injury to the Community industry during the period considered.

25. Other major issues raised by the interested parties at the time of oral hearing or in the writ petition

- a. Confidentiality – *The petitioner has claimed such information as confidential which is by nature confidential because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information. Petitioner provided sufficient reasons for claiming confidentiality and the same were considered by the Authority. It is, therefore, not a situation that the Authority has accepted confidentiality claims on mere claims made by the parties. As regards confidentiality claims on Chlore Alkali and similar other information, petitioner submits that the confidentiality claims are fully consistent in this regard. In any case, no prejudice has been established by the parties. It is also relevant to*

point out that the Designated Authority's hands are not tied up to the mere claims made by the petitioner domestic industry or foreign producers. It is fully open to an exporter or association/importer/user to provide relevant information to the Authority. In particular, it was open to these parties to provide relevant information with regard to prevailing prices of inputs etc. in fact, Rule 6 in its relevant part provides opportunities to the importers and consumers to provide relevant information to the Designated Authority. The relevant rule is extracted below.

(5) The designated Authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.

No information whatsoever has however been provided by the consumers or their association. Petitioner requests the Authority to specifically record in the findings that no factual information has been provided by the association or any of its members/ consumers.

- b. **Plant wise analysis** – It has been argued that no proper plant-wise analysis has been done to reach appropriate conclusions on injury. Petitioner submits that the argument is illegal and should not be accepted. Under the rules, the Designated Authority is required to determine injury in respect of domestic industry. The relevant rule is extracted below.*

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

*(2) The designated Authority **shall determine the injury to domestic industry**, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.*

- 26. It would be seen that the Designated Authority is required to determine injury in respect of “domestic industry”. In fact, in a situation where domestic industry comprises of more than one producer, it is established position that the Designated Authority is required to consider domestic industry as a whole for its determination. The Designated Authority cannot consider individual company*

performances for injury analysis. Such being the case, the information, in any case, cannot be broken into plant wise analysis. In any case, any such analysis would be highly misleading/distorted for the reason that it is company as a whole whose performance can be examined and not plant specific performances. It may not even be feasible to determine plant wise performances under the law for the reason that a company is required to maintain its financial performance consolidated for all the plants/operations. Plant wise financial records are required to be maintained only to the extent that these are relevant for the purposes of consolidation into company's account. It is quite possible that some of the income and expenses are not charged/booked in the relevant plant operations (there is no such statutory requirement. In fact, it is quite possible to book all production expenses at the plant level and all other expenses and income at some other plant or office). In fact, the rules provides as follows with regard to the assessment of injury.

(vi) The effect of the dumped imports shall be assessed in relation to the domestic production of the like article when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

27. It would be seen that the rules in fact authorize the Authority to consider information which might even include other products. Such being the case, plant wise performance, in any case, cannot be envisaged.

a. No intensified dumping – It has been argued that DA has been failed to appreciate that decrease in landed value was a function of cost of production and does not necessarily result in a conclusion that there was increased dumping margin.

It is submitted that the dumping margin is not directly related to cost of production. It is only in a situation where the cost of production is above the selling price that the cost of production becomes relevant. Otherwise, dumping margin being the difference between domestic price and export price, it is immaterial that the cost of production might have undergone a change. The decline in landed price at a first instance clearly implies increased dumping.

b. Grey and dyed fiber comparison – It has been argued that the data of grey and dyed has been combined. Petitioner submits that it is for the importers, foreign producers and consumers to provide relevant information and make appropriate claims. The interested parties cannot confine themselves to mere arguments. If the consumers or foreign producers considered that there were significant differences in grey and dyed cost and price and the same required separate assessment, the relevant data should have been provided to the Authority and claims should have been made within the time limits set out in the notice of

initiation. Such high questions of fact cannot be brought before the Authority at such a belated stage of the proceedings.

28. *Without prejudice, it is submitted that it has not been established that in fact data of grey and dyed has been combined. The import data does not show significant imports of dyed fiber. Thus, in any case, the issue is totally irrelevant.*
29. *Majority imports were in advance license - Petitioner submits that no factual information has been provided by the association. The Designated Authority cannot consider such factual argument without relevant information on record. The Designated Authority is required to satisfy itself with regard to accuracy of the claims which can only be done if an interested party has provided relevant information to the Designated Authority. In the present case, however, the association and its members have preferred non cooperation with the Authority and therefore it remains to be established that the imports were only in advance license. In fact, by their own arguments, they are contending that majority of the imports were under advance license. Majority could mean even just above 50%. It is possible that the imports were entirely under advance license in the earlier years and only 50% or so imports were under license in the period of investigation. If so, this clearly establishes that the consumers moved to imports of the product under consideration on duty paid basis as well.*
30. *Without prejudice, even if it is argued that entity of imports were under advance license, the same could have still caused injury to the domestic industry. As submitted extensively and repeatedly during the course of the investigations, the pricing of the domestic industry has been based on the import prices. Further, consumers are in a position to decide their sources based on relative price offered by different suppliers. The imports are admittedly not under negative list of DGFT. A price quoted by foreign producers can very well be converted into the price at which the consumer can import the material for its domestic consumption – only difference between advance license imports and duty paid import being the element of customs duty. Once the customs duty is added to the price offers given by the foreign producers, the consumers know precisely the price at which they are in a position to import the material. Thus, there is no legal and factual basis or the argument that import under advance license have no relevance to the present purposes and could not have caused injury to the domestic industry.*
31. *Determination of Normal Value – It has been argued that Para 7 of Annexure-I has not been applied by the Authority. The petitioner disagrees and submits that the Designated Authority has in fact applied Para 7. Followings are relevant in this regard. According to Para-7, the normal value in China can be determined on any of the following basis: -*
 - a) *the price in a market economy third country,*
 - b) *constructed value in a market economy third country,*
 - c) *the price from such a third country to other country, including India,*
 - d) *the price actually paid in India, adjusted to include a reasonable profit margin.*

- e) *the price actually payable in India, adjusted to include a reasonable profit margin.*

Normal Value could not be determined on the basis of price or constructed value in a market economy third country for the reason that the relevant information is not publicly available. It is relevant to mention here that such Normal Value must be “comparable price in the ordinary course of trade for the like article when meant for consumption in such market economy third country”. In order to arrive at Normal Value on this basis, the Designated Authority requires complete & exhaustive verifiable information on all domestic sales made by a cooperating producer in such third country, along with its cost of production and all other associated information and evidences (including all information in the ordinary course of trade). Principles of fair comparison as laid down under Article 2.4 of the Anti dumping Agreement are also relevant in this respect.

Petitioner submits that India is an appropriate surrogate country for Chinese producers. Not only consideration of India as a surrogate country has resulted in access to accurate and adequate information, there is no factual basis to consider that India is not a proper surrogate country. India has been considered as an appropriate surrogate country by other Investigating Authorities too.

The normal value in China can be determined on any of the above-mentioned basis. The normal value in China can thus be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit.

Without prejudice, petitioner submits that the interested parties could have provided relevant information to the Designated Authority in accordance with the provisions of Para-7 and could have requested the Designated Authority to consider the same. However, no such factual information has been provided by any interested party. The obligation of the Designated Authority under the Rules is with regard to information made available to the Designated Authority by various interested parties.

32. Malafide petition – *It has been argued that the proceedings of the applicant are malafide & with an intention to avoid competition as the applicant has deliberately manipulated the figures of the balance sheet & records of the public disclosure. Petitioner strongly refutes and submits that such a wild statement is without any legal and factual basis. Petitioner is one of the most respected business houses in the Country. No data has been distorted at all and there has been no manipulation of the figures in the Balance Sheet or in the records of the public disclosures. Such statements are clearly imaginary.*

33. Other issues relating to standing of the petitioner : *Question 6 is not answered fully*

Followings are relevant –

- a. *All relevant information is on the record of the Designated Authority.*
- b. *Petitioner clearly stated that it has production set ups in the subject countries.*
- c. *Since petitioner itself had agreed that these entities are related, the basis on which these companies are related becomes irrelevant.*

Information establishing relationship is relevant only in those situations where a party disputes existence of such relationship.

- d. The petitioner has affiliated companies in Indonesia and China producing & selling the product. The companies are Birla Jingwai Fibres Company Limited, China and PT Indo Bharat Rayon, Indonesia. The relationship between these entities is given in the table below:*

<i>S N</i>	<i>Name of the entity</i>	<i>Common directors</i>
<i>1</i>	<i>Grasim Industries Ltd</i>	<i>Mr. Kumar Manglam Birla Ms. Rajshree Birla Mr. S K Jain</i>
<i>2</i>	<i>Birla Jingwai Fibres Company Limited, China</i>	<i>Mr. S K Jain</i>
<i>3</i>	<i>PT Indo Bharat Rayon, Indonesia</i>	<i>Mr. Kumar Manglam Birla Ms. Rajshree Birla Mr. S K Jain</i>

- 34. Without prejudice to petitioner’s primary argument that full information is on record of the Designated Authority and the Designated Authority has rightly exercised discretion, as an alternative to the submissions made before, petitioner submits that the Designated Authority has in the meantime issued final findings in the matter of circular weaving machines, wherein the Designated Authority has laid down the governing principle for relationship. Petitioner submits that if the test applied in circular weaving machines are applied to the present case, it would be seen that the petitioner is not even related to the Indonesian company. Therefore, given the repeated arguments of the opposing parties on this account, petitioner submits that the Designated Authority may revisit the previous determination and consider whether at all the petitioner should be treated as related company.*

- 35. It may be argued that the Designated Authority has initiated the investigations based on relationship and once the petitioner itself has agreed existence of relationship, the same cannot be revisited either by the petitioner or by the Authority. Petitioner however submits that the Authority has to reach its own determination, independent of the claims by the parties. If the Designated Authority has laid down some principles for relationship in some other case, the same are equally applicable to the petitioner’s case as well. Chinese company is 100% subsidiary of Aditya Birla Group. This relationship is wholly irrelevant for the present purposes. Under the Rule 2(b), relationship is relevant only with “exporters” or “importers”. Relationship with foreign producers is wholly immaterial and does not lead to disqualification of such domestic producer. No information on relationship with Indonesian company is given. The relevant information is on record of the Authority.*

36. The petitioner got the investigation initiated on the basis of truncated information and now claiming that there is no relationship: Even the facts gathered during the course of the investigations establish that initiation was valid.
37. 6% cannot be said to be an intensified dumping: The intensified dumping was within the investigation period. If the data for the investigation period is considered on month by month basis, the same shall clearly establish intensified dumping.

Export Price USD per KG

	July 08	Aug 08	Sept 08	Oct 08	Nov 08	Dec 08
China	2.02	2.02	2.10	2.28	2.09	1.78
Indonesia	2.28	2.17	2.17	2.18	2.24	2.05

Information of imports in Jan.-March, 09 period shows that there was further significant decline in prices from subject countries.

Jan-Mar 09	USD KG
China	1.57
Indonesia	1.79

There is further decline in export price from subject countries in Jan-March, 2009. In fact, these are the orders booked at the end of POI and must therefore have been included in the questionnaire responses of the responding exporters.

38. There is unison of interest. The counsel representing domestic industry is also representing the related exporter: There is no legal prohibition. Neither the petitioner nor the Indonesian company has something to hide from the Designated Authority.
39. In the light of the statement that domestic industry is not related to either Chinese or Indonesian company, the initiation, preliminary findings and final findings is non est: The argument must be rejected for the following reasons – (a) the argument has been advanced as an alternate to the argument that there is no justification for treating the petitioner company as eligible domestic producer; (b) should the parties agree with the petitioner that it is not related to the exporters, the entire argument must fail. Should the Designated Authority find no merit in the argument of the petitioner, the primary argument remains; (c) had it been the other way, i.e., a situation where the petitioner had claimed no relationship and the Authority finds such relationship, possible illegality of the investigation could

be true. However, where the petitioner established that such relationship does not render the petitioner as ineligible, subsequent claim that the petitioner is not related will not vitiate the legal position.

40. Normal value is based on generality of data and still kept confidential: *The Designated Authority cannot disclose such export price and dumping margin, as the same will lead to disclosure of normal value.*

41. To sum up, the domestic industry has submitted that:

- (a) The present investigations have been rightly initiated by the Designated Authority.*
- (b) The petitioner company constitutes domestic industry, notwithstanding its relationship with one of the Indonesian producer. The Indonesian producer has had very small volume of exports to India, that too under Advance Licence.*
- (c) Even when the petitioner had admitted relationship at the time of initiation, petitioner now requests the Designated Authority to kindly examine, more so because of the jurisprudence laid down by the Designated Authority in the matter of Circular Weaving Machine whether at all the petitioner should be treated as related company to the Indonesian producer within the meaning of anti dumping rules.*
- (d) The product under consideration has been exported to India from the subject countries below associated Normal values.*
- (e) The domestic industry has suffered material injury in respect of the product under consideration.*
- (f) The material injury has been caused by the dumped imports from the subject countries.*
- (g) Definitive anti dumping duties are required to be imposed on imports of the product under consideration in India.*

Written Submissions made on behalf of PT South Pacific Viscose, Indonesia; Indian Spinners Association and Rajasthan Textiles Mills Association

42. The following submissions have been made on behalf of these interested parties:

43. Preliminary Objections: *the initiation of investigation in this case is without jurisdiction for the following reasons:*

- a. It is submitted that domestic industry has intentionally and mischievously changed the format as prescribed by the Authority in the application Proforma. Part 'b' of the question 6, which is important because it gives the information about relationship of applicant with exporter or importer of the alleged dumped article. This question of nature of such relationship and comes from the Rule 2(b) which must necessarily be answered prior to the initiation itself. It was stated by the representative of the Domestic industry that they had provided the required information even though the question might have changed. It is respectfully submitted that the Domestic Industry is making a futile attempt to obfuscate the Authority. The non-confidential version which is supposed to be a replica of the confidential version is a testimony to the fact that no information was provided by the Domestic*

Industry with regard to their relationships with producer/exporter in the country under investigation. This is reinforced by the fact that no such mention about relationship has been indicated in the initiation notification also. Clearly, it is only after the interested parties raised a serious objection that the Domestic Industry made an attempt to cover up an issue which in our opinion is fatal to the case.

- b. *In view of the amended definition of Rule 2(b), the sole producer in India ceases to be an eligible Domestic Industry in terms of the specific provisions of law. Rule 2(b) reads as follows:-*

“Rule 2(b): “domestic industry” means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof [in such case the term ‘domestic industry’ may be construed as referring to the rest of the producers only]

Provided that in exceptional circumstances referred to in sub-rule (3) of Rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry, if –

- (i) the producers within such a market sell all or almost all of their production of the article in question in that market; and*
- (ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;*

- c. *Scope of Rule 2(b) post-amendment in February 2010 can be analyzed through the Table below:*

	Rule 2(b) Prior to 27.2.2010	Rule 2(b) with effect from 27.2.2010
d. A		
Main Definition	"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	"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
Exclusions	except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof	except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof
Scope of Discretion	in which case such producers [shall] may be deemed not to form part of domestic industry:	in such case the term 'domestic industry' may be construed as referring to the rest of the producers only:
Implications	Discretion in respect of Category B	Discretion in respect of Category A + C only

Table above goes to show that there is no change in Rule 2(b) in relation to the "main definition" and "exclusions". The change brought about is only in relation to the "scope of discretion". It is submitted that after having determined the eligibility of the domestic producers strictly in terms of the express language of the Rule, the DA has to apply the "major proportion" test to use its discretion whether or not to consider the eligible domestic producers as the eligible "Domestic Industry". With respect, this is the only discretion available to the Designated Authority under the amended rule.

- d. It is clear from the above table that subsequent to the amendment in Rule 2(b) of the Anti-dumping Rules vide Notification No. 18/2010-Customs (NT) dated 27.02.2010, the Authority was left with no discretion with regard to the inclusion of the domestic producers who are either related to the exporters or importers of the alleged dumped article or are themselves importers of the Product under Consideration. It is important to note that prior to the said amendment, the Rule specifically empowered the Designated Authority to exercise its discretion with regard to the above-referred category of domestic producers whereas the erstwhile discretion has specifically been taken away by the said amendment. It is pertinent to note that the word "may" in the amended Rule 2(b) gives discretion limited and restricted to the "rest of the producers" and not for the excluded category. Thus, any exercise of the discretion by Designated Authority to treat applicants within the definition of

“Domestic Industry” under the amended Rule 2(b) would be without jurisdiction and without the authority of law.

- e. It is important to note that in the instant case the Rule 2(b) prior to the amendment dated 1.12.2011 is applicable because this amendment in the Rule 2(b) is effective from the date of its publication in the Official Gazette.*

Standing of the Applicant: On behalf of the interested parties, we submit that the applicant is not eligible to file the present application under the Rules and the jurisprudence on the subject. In this context, we submit as under:

- f. Rule 2(b) contemplates that, the Designated Authority may not treat domestic producers as Domestic Industry if such producers are related to exporters or importers or are themselves importers of the allegedly dumped product. Admittedly in the subject case, M/s. Grasim has related entities in China and Indonesia. It is also admitted that PT Indo Bharat Rayon, Indonesia is wholly 100% held by the applicant in question and has not only exported subject goods to India but has been found to be resorting to dumping.*
- g. Final findings record that PT Indo Bharat Rayon, Indonesia (100% subsidiary of the sole domestic producer) resorted to unfair price behaviour and was adjudged with the maximum anti-dumping duty of 0.164 % whereas the dumping margin from the other cooperating exporter is only 0.103%. Under the circumstances, it is apparent that the injury to the sole domestic producer is, at best, a self-inflicted injury which ought not to be protected by way of anti-dumping duty.*
- h. It is obvious that the cause of the injury, if any, is attributable to the dumped imports from the related entity. It goes without saying the non-related exporters have no choice but to match the prices being offered by the other cooperating exporter from Indonesia which happens to be a 100% group company of the sole Indian producer. Under the circumstances, it is clear that the Indian producer and its subsidiary in Indonesia have colluded to ensure that the other competitors are first forced to lower their prices and then the Indian arm brings an anti-dumping investigation with the sole objective of blocking fair competition in the Indian market. It is submitted that the process of anti-dumping investigations should not be allowed to be so brazenly abused by the sole monopoly producer in India.*
- i. It may also be placed on record that the fact that PT Indo Bharat Rayon was a fully owned subsidiary of the applicant was withheld from all the stakeholders in this investigation. In fact, even today, the true nature of the relationship has been withheld from all other interested parties except the applicant and its related exporter from Indonesia, who are both represented through the same representative. Hence, parties were prevented from raising objections on standing.*
- j. Without prejudice to the above, it is apparent that the related entity of applicant is seeking determination of individual dumping margin. This goes*

against the object and purpose of introduction of deeming fiction in Rule 2(b) which contemplates exclusion of such producers who are related to the exporters if the Designated Authority deems it fit. Exercise of discretion in favour of Domestic Industry would be an antithesis to the object and purpose of introduction of deeming fiction in Rule 2(b).

- k. *As regards the reasoning adopted in the Final Findings that the quantum of imports by the related party was less than 3%, we submit that such an approach is not valid for the reasons in the following paragraphs:*
- (i) There is no indication in law or theory that the quantum of imports can be a decisive factor for the purpose of exercise of discretion under Rule 2(b). It is important to note that wherever the legislature wanted to give numerical criteria in the law, the same has been done specifically. For instance, 2% as de minimis dumping margin, 3% and 7% as de minimis volume from each country have been specifically mentioned in the WTO Agreement on Anti-dumping as the Indian Anti-dumping Rules. No such numerical criteria have been laid down for the use of discretion under Rule 2(b) or its corresponding Article in the Anti-dumping Agreement.*
 - (ii) There are good reasons for not providing for numerical criterion for Rule 2(b) as the important issue is the nature of relationship and the possibility of abuse by a collusive behaviour.*
 - (iii) It is important to note that the Designated Authority himself in the prescribed application proforma seeks information with regard to the nature of relationship and NOT on the quantum of imports by the related a party.*
- l. *The entire issue of related party transactions goes by the doctrine of “Single Economic Enterprise”. In the US Hot Rolled Steel, paragraphs 141-158; Ref. WT/DS-184/AB/R, the Appellate Body has held that “There are many reasons relating to corporate law and strategy, and to fiscal law, which may lead to resources being allocated, in these ways, within a single economic enterprise”.*
- m. *Under the EC jurisprudence and academic literature, the authorities exclude the domestic producer from the definition of “Domestic Industry” if they find*
- (i) That the related exporter had participated in the dumping practices, or*
 - (ii) That the related exporter provoked or contributed to a fall in prices in the market.*
- n. *In the instant case, based on the Final Findings of the Designated Authority himself, it is clear that:*
- (i) The Indian applicant is related to the major producer and exporter from Indonesia.*

- (ii) *The related exporter from Indonesia has exported to India at dumped prices. The dumping margin for the related exporter is almost twice that of the other cooperating exporter [Criterion (h) (i) above]. Thus, it is clear that the injury, if any, is self-inflicted, a situation in which no anti-dumping authority ever imposes duties.*
- (iii) *A detailed analysis would indicate that the related exporter himself had provoked the price fall by offering material at prices lower than that of the other exporters. Thus, the related exporter from Indonesia viz. PT Indo Bharat Rayon has not only contributed but provoked price fall in the Indian market [Criterion (h) (ii) above].*
- (iv) *It goes without saying the non-related exporters have no choice but to match the prices being offered by the other cooperating exporter from Indonesia, which is admittedly a related company of the Applicant. Under the circumstances, it is clear that the Indian producer and its group company in Indonesia have colluded to ensure that the other competitors are first forced to lower their prices and then strategically the Applicant brings an anti-dumping investigation with the sole objective of blocking fair competition in the Indian market.*
- (v) *Going by the EC jurisprudence also, related produces which fulfil any of the above criteria, would have to be excluded from the definition of Domestic Industry.*

44. Short & Inappropriate Period of Investigation: It is submitted that in the instant case, the applicant had requested for a six month period of investigation which was accepted by the Authority by making an exception to the practice and guidelines without any sound basis or reasoning. The Hon'ble Designated Authority has not appreciated that the Applicant strategically claimed injury only for 6 months and requested for examination of pre-conditions of Rule 5 based on such claims contrary to the specific guidelines and practice followed by the Designated Authority. The selection of 6 month period of investigation is also contrary to guidelines of the Committee on Anti-Dumping Practices. It has been the consistent stand of the DGAD that the most desirable period of investigation is a financial year. In several cases, the Designated Authority has insisted that the information should necessarily be of a minimum of one year. None of the factors like financial reporting having an effect on availability of data, characteristics of the product in question, including seasonality and cyclicity, etc. has been taken into account while fixing the period of investigation for minimum period of 6 months.

- a. While accepting such 6 month period as period of investigation the DA recorded in the impugned preliminary findings as under:*

“5.3 The Authority has noted the submissions made by the interested parties regarding period of investigation and is of the view that the period

of investigation chosen in the instant matter has been appropriately chosen considering the facts of the case, which also covers the most recent available data on the subject. Besides, the decision to take six-month period as POI has also been upheld by the Hon'ble tribunal in the matter of Virchow laboratories Ltd. v/s Ministry of Finance.”

- b. *It can be seen that the Designated Authority has in the Final Findings merely stated that “is of the view that the period of investigation chosen in the instant matter has been appropriately chosen considering the facts of the case, which also covers the most recent available data on the subject”. It is respectfully submitted that this is just a statement which cannot be put under the category of a reasoned exercise of discretion based on cogent reasoning. In the initiation notification, intensified dumping has been stated to be intensified dumping in July-Dec., 2008. This is without any basis in law or logic for choosing an exceptional period of six months as the POI. In fact, the practice of normally taking a year as the period of investigation is precisely to ensure that no anti-dumping investigations are initiated due to short-term fluctuations in prices. Moreover the Authority is fully aware that the shortest permissible POI of six months covers about four months when the entire world was passing through an unprecedented economic and financial crisis in which the fabric and consequently the yarn and the fibre industry suffered considerably. It is an admitted fact that there was a substantial fall in demand in an otherwise growing market and, therefore, the Designated Authority ought not to have taken a period craftily selected by the Domestic Industry even if the same is legally permissible. It may be clarified that the issue here is not about the legality of selecting a six month POI but the propriety and appropriateness of the same. In support of the above, kind attention is drawn to following from extract guidelines from Committee on Anti-Dumping Practices:*

“1. As a general rule:

- 1. the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as is practicable;*
- 3. In order to increase transparency of proceedings, investigating authorities should include in public notices or in the separate reports provided pursuant to Article 12.2 of the Agreement, an explanation of the reason for the selection of a particular period for data collection if it differs from that provided for in: paragraph 1 of this recommendation, national legislation, regulation, or established national guidelines.” (Emphasis added)*

No Case on Merits:

45. *Without prejudice to the aforementioned objections to the very initiation of the investigation, it is submitted that the applicant has not been able to make out any case whatsoever of injury or causal link to merit imposition of anti-dumping duties.*

46. Market Share: *The applicant has claimed that they had lost the market share due to imports from the subject countries. In this connection, it is submitted that it is an admitted position that the market share of the applicant has come down from 99.91% to 94.10% during the POI of six months which is a loss of a meagre 5.81%. The Designated Authority has not appreciated that even this small loss of market share is based on incomplete data. In any case, a drop in market share by about 6% within a short period of six months out of which bulk of the period saw macroeconomic problems, cannot be a ground of injury, let alone material injury.*
47. Production & Capacity Utilization of Domestic Industry: *It has been claimed that the production and capacity utilization of the applicant had come down during the POI. It is submitted that such an analysis is completely flawed as it does not take into account the fact that the applicant had increased its installed capacity by 31.40% increase during 2008-09. Obviously, it cannot be expected that the new capacity shall also operate at the same level as that of the existing capacity. Further, it appears that the fall in the national and international demand has certainly contributed to the drop in production and the capacity utilization during the short POI which has not been factored in at all.*
48. No Price Undercutting: *It can be seen that there is no price undercutting from Indonesia and the price undercutting from China is negligible. Thus, no case for imposition of anti-dumping duties has been made out.*

Other Factors & Absence of Causal Link:

49. *Even assuming that the applicant suffered some slowdown for a short period of time, there is ample evidence to prove that the injury was at best self-inflicted or clearly attributable to factors other than dumping. As per the Anti-Dumping rules, the presence of causal link between dumping and injury is an essential prerequisite for proving material injury to the domestic industry on account of dumping. In the anti-dumping proceedings, it is imperative to prove that the dumping has caused injury to domestic industry. The provisions of Clause (V) of Annexure II of the Anti-Dumping Rules pertaining to the Principles of determination of injury states that:*

“It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, inter alia, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption”

50. Sales Volume: *The domestic industry has also claimed injury on account of declining sales volumes. Here again the various reports of the domestic industry*

clearly show that the sales volumes have declined but not because of the alleged dumping as claimed by the petitioner. The decline in sales volume are admittedly attributable to the following factors:

- Consumer resisting purchase due to global recessionary trend
- Sharp fall in exports of textile products due to lack of demand accentuated by credit squeeze and credit risk factor
- Moderation in domestic demand
- Global slowdown coupled with inflationary pressure
- Liquidation of inventory in the value chain.

51. The above reasons for decline in sales have been attributed by the domestic industry itself in its various reports/presentations. Thus, it is clear from the above that the reason for decline in sales volume of the domestic industry cannot be attributed to alleged dumping.

52. Pricing Policy of the Applicant: We wish to reiterate our submissions on the pricing policy and strategy adopted by the petitioner in respect of deemed exports. It appears that the petitioner that the domestic industry is offering incentives for their supplies against deemed exports in the form of rebates.

a. As per the pricing policy of the Applicant, rebates are given if the following conditions are met with for their supplies against deemed exports:

- Customers need to furnish a true copy of export contract of VSF based yarns with their foreign buyer, immediately after it is formalized.
- VSF with rebate shall be supplied on replenishment basis against receipt of export proof under DEPB and Duty Drawback Scheme. For the purpose of replenishment, copy of Excise Invoice and ARE1 will suffice. However, further export proof in terms of shipping bill / bill of lading, Copy of Export Invoice etc., need to be received at our end within 30 days from date of ARE1.
- To avail any rebate under the discount schemes, a spinner manufacturing VSF based blended & twisted yarn has to ensure a minimum VSF content of 35% in the final product manufactured at ring frame stage.

b. It is thus clear from the above that the petitioner is offering these incentive schemes in the form of rebates from the basic price of the subject article offered to the customers subject to the above conditions being met. The Authority would appreciate that had the subject article been offered to customers for normal domestic sale, the price charged by the petitioner would have been higher.

- c. *It has been observed that the price charged for the supplies against deemed exports are much below the price charged for the domestic sales. This may be seen from the price lists of the petitioner.*

It appears from the pricing strategy and policy of the domestic industry that certain sales made to customers for eventual exports have also been included under domestic sales for the purposes of injury analysis.

*The paramount objective of anti-dumping measures is to ensure free and fair international trade. They act as remedial measures for removal of injury caused to the petitioner in the **domestic market** due to unfair trade practices and thus reestablish free and fair competition, providing a level playing field for the domestic industry. Thus, the inclusion of known export sales for injury analysis is inconsistent with the anti-dumping rules and regulations.*

- d. *It is relevant to quote the provisions of the Anti-Dumping Rules with reference to injury analysis here. Annexure II regarding principles of determination of injury states that:*

*“(i) A determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the affect of the dumped imports on **prices in the domestic market for like article** and (b) the consequent impact of these imports on domestic producers of such products”.*

- e. *It may be seen that the applicant is fully aware that the subject goods are meant for eventual exports and therefore it follows a different pricing policy to ensure that the export market is not lost. This has nothing to do with its performance in the domestic market which is the requirement of law. The domestic industry cannot take shelter of injury under alleged dumping when the so-called injury may have been caused due to its own pricing policies. Thus, there is clearly absence of causal link between alleged dumping and injury to the petitioner.*
- f. *We also understand that the petitioner supplies substantial quantities to its related entities. We shall be grateful if this could be looked into and a non-confidential version of all such information is supplied to us for our comments.*

53. *It is also submitted that the various submissions made by or on behalf of the interested parties during the course of the proceedings may be considered as a part of these written submissions as the same are not repeated for the sake of brevity.*

54. *In view of the above submissions, we would request the Hon’ble Designated Authority to terminate the investigations forthwith.*

Rejoinder submissions made on behalf of the domestic industry

A. The Authority may disclose the reasons for not accepting the remand orders of the CESTAT.

55. *It is for the Designated Authority to reply.*

B. The initiation is without jurisdiction for the following reasons:

a. The domestic industry has intentionally changed the Application proforma and did not answer Part b of question 6 which needs to be answered prior to initiation of the investigation.

56. *The Written Submissions are referred and relied upon wherein the issue has been dealt in detail. There is no such intention. Facts are on record. Further, the findings recorded by the Authority establish that in any case there is no change in the scope of the domestic industry.*

b. The Authority has no discretion with regard to inclusion of the domestic producers who are either related to the exporters or importers of the alleged dumped article or are themselves importers of product under consideration.

57. *The Written Submissions are referred and relied upon wherein the issue has been dealt in detail.*

c. Rule 2(b) prior to the amendment dated 1.12.2011 is applicable because this amendment is effective from the date of publication in the official gazette.

58. *The amendment shall be applicable.*

59. *The Authority applied Budget 2010 amendment to the on going cases. Therefore, the present amendment should also be applied.*

60. *The petitioner has established that either way, it does not vitiate the position.*

C. The applicant is not eligible to file the present application due to following reasons

a. M/s Grasim has related entities.

61. *The Written Submissions are referred and relied upon wherein the issue has been dealt in detail. The relationship does not debar petitioner from seeking relief. This is without prejudice to our contention that even relationship may not be such as to*

attract provisions of Rule 2(b). Decision of Designated Authority in the matter of Circular Weaving Machine and emerging jurisprudence is relied upon.

- b. In Final Findings, PT Indo Bharat Rayon, Indonesia (100% subsidiary of the sole domestic producer was adjudged with the maximum anti-dumping duty. It is apparent that the injury to the sole domestic producer is self inflicted injury which ought not to be protected by way of Anti-dumping duty.*
62. *It is submitted that given the positive dumping margin that has been established in the instant case, it is evident that the unrelated Indonesian producer did resort to dumping, which has been found to be unprovoked and not due to the three small shipments made by PT Indo Bharat Rayon. Significant volume of the subject goods have been exported by PT South Pacific Viscose at dumped prices. Also the dumped imports of the subject goods from the subject countries have caused 'injury' to the domestic industry. It is further submitted that small and sporadic exports have not been a significant factor in such injury. Besides, the focus of M/s Grasim Industries Ltd continues to be production and sale of the subject goods. Thus, there does not appear to be case of self-inflicted injury*
- c. Injury if any is caused due to dumped imports from the related entity. The domestic producer along with the related exporter has colluded to ensure that the other competitors are compelled to first lower the prices and then Anti-dumping investigation to block fair competition.*
63. *Already dealt. No such injury has been caused by those exports. Given the positive dumping margin in respect of other exporters, it is without basis that this was a fair competition.*
- a. The true nature of the relationship between Indian producer and PT Indo Bharat Rayon is withheld during investigation who are represented by the same representative and hence parties were prevented from raising objections on standing.*
64. *There is no legal prohibition. Neither the petitioner nor the Indonesian company has something to hide from the Designated Authority. Nor this has vitiated the position in any manner.*
- b. Related entity seeking determination of individual dumping margin goes against the deeming fiction in Rule 2(b).*

65. *Neither the Indian law nor the WTO Anti-dumping Agreement provides that the Authority should hold a domestic producer as ineligible if it is related to foreign producer in case such related foreign producer participates in the investigation and positive dumping margin is established in respect of its exports. Further, an individual dumping margin is required to be determined in respect of each known exporter and the Act and the AD Rules do not make any distinction between a related and unrelated exporter in this respect. As regards deeming fiction under Rule 2(b), the same unambiguously vests discretion in the Authority in such a case. Such discretion, however, needs to be exercised in an un-biased and objective manner.*
- c. *As regards the reasoning adopted in Final Findings that imports from the related parties is below 3%, the approach is not valid as no quantum of imports can be a decisive factors for the purpose of exercise of discretion under Rule 2(b)*
66. *Opposing interested parties have no basis to argue that the criteria based on quantum of exports is not a rational criterion. As the issue at hand is “exports” made by a related exporter; the domestic industry submits that the quantum of imports is indeed an important factor to decide the exclusion of the related domestic producer.*
67. *Global practices have been shown to the Designated Authority. On the contrary, the opposing interested parties have provided no material in this regard.*
- D. *Short period of investigation has been taken. None of the factors like financial reporting, characteristics of the product including seasonability and cyclicalities etc. The Designated Authority has selected 6 months period of investigation without any reasoned exercise of discretion. In six months there is substantial fall in demand, and the six months covers four months of recession in which the yarn and the fibre industry suffered.*
68. *Previous submissions and written submissions are referred and relied upon wherein the issue has been dealt in detail. The petitioner reiterates that as far as guidelines and practice followed by the Designated Authority or the guideline of the Committee on Anti Dumping Practices is concerned, it is submitted that (a) the Designated Authority has adopted 6 months period of investigation in a number of cases, (b) the interested parties agree that consideration of 6 months as the investigation period is not illegal, (c) the stated guidelines cannot be read as mandatory prescription applicable in all situations, irrespective of the facts of a case. Factors such as financial reporting cannot be considered as the same would imply consideration of only one period as the period of investigation viz. April-March. With regard to the argument that 6 months period of investigation covers 4 months of the recessionary period, the petitioner submits that the fact of recession cannot be selectively pleaded in support of export price below normal*

values; as the fact of recession would equally apply to normal value as well. It is, however, submitted that the domestic prices of the subject goods in Indonesia were materially higher than the export price to India. Thus, recession in the global market cannot be stated as a justified reason to be considered in fixing the period of investigation.

E. Injury has been self inflicted or at best has been caused due to other factors.

69. Positive dumping margin that has been established in the instant case establishes that the unrelated Indonesian producer did resort to dumping, which has been found to be unprovoked and not due to the three small shipments made by PT Indo Bharat Rayon. Significant volume of the subject goods have been exported by PT South Pacific Viscose at dumped prices. Also the dumped imports of the subject goods from the subject countries have caused 'injury' to the domestic industry. It is further submitted that small and sporadic exports have not been a significant factor in such injury. Besides, the focus of M/s Grasim Industries Ltd continues to be production and sale of the subject goods. Thus, there does not appear to be case of self-inflicted injury
70. As regards other factors causing injury, the petitioner submits that firstly, it has been wrongly assumed by the interested parties that dumping of the product should be the sole cause of injury to the domestic industry. Though production and sale undisputedly suffered due to decline in demand but dumping of the subject goods caused material injury to the domestic industry. With regard to profitability, as the domestic industry fixes its prices on the basis of import prices; therefore, availability of dumped imports at lower prices in the market forced the domestic industry to offer such prices that did not permit recovery of increase in the input costs.

F. Market share declined only 6% within a short period of 6 months out of which bulk of the period saw microeconomic problems cannot be a ground for injury.

71. The interested parties are taking the shelter of economic crises in order to refute the argument of injury to the domestic industry, but they are unable to appreciate the fact that exporters ought to have also suffered during the same period. But in the instant case, when the market share of the domestic industry declined that of subject countries increased. Also during period of investigation, when the demand of the product declined, the exporters managed to exports the goods into India at a significant rate capturing the domestic market.

G. While analyzing fall in production and capacity utilization, the factors like new capacities being installed by the company, national and international drop in demand has not been considered.

72. *The petitioner submits that if the performance of the domestic industry will be examined on same capacity level, which was there before expansion and it would be seen that even with the same capacity levels, the capacity utilization would decline from 104.27 % in 2007-08 to 85.8% in the POI. Therefore, it clearly establishes that decline in capacity utilization is not due to increase in capacity but due to dumped imports from subject countries.*

H. No price undercutting from Indonesia and price undercutting from China is negligible.

73. *As submitted earlier, the domestic industry fixes its prices periodically based on prevailing international prices. It is undisputed fact that the prices of the domestic industry are based on import prices. In fact, this fact itself establishes that the increase in the selling prices was incommensurate with the increase in cost of production because of presence of the dumped imports from the subject countries. Further, the purpose of determining price undercutting is to assess whether such dumped imports are causing injury to the domestic industry. If the import price declines, the domestic industry may also be forced to reduce its selling prices. If the import price increases, but not to the full extent of increase in the cost of production, the domestic industry may be prevented from increasing its prices commensurate with the increase in the cost of production. Under the AD Rules, the Authority is required to determine whether imports are undercutting the domestic prices or whether the effect of imports was to otherwise depress or suppress the prices of domestic industry in the market. Thus, the rules clearly provide for establishing either price undercutting, price suppression or price depression. In any case, absence of positive undercutting does not mean lack of injury.*

74. *Domestic industry also refers to the final findings notified by the Designated Authority in the matter of PVC suspension resin, wherein the price undercutting cumulatively from the subject countries was negative. The Designated Authority held as follows –*

286. It is also seen that the selling price of the domestic industry is almost at the same level as the weighted average LV of imports from the subject countries. Therefore, the price undercutting at the aggregate level is marginally negative though certain countries have significant positive price undercutting. However, the domestic industry's prices are significantly depressed as the domestic industry apparently kept the prices low to protect its market share and therefore, price undercutting would not give a clear picture of price effect.

75. *In the matter of polypropylene, the Designated Authority held as follows –*

181. The Authority notes that the landed value from the subject countries over the injury investigation period has increased from 100 (Base year 2005-06) to 133 during POI. The trends in the selling price of the domestic industry show similar rising trends. The landed prices of the imports from the subject countries have always been higher than the domestic selling prices of the domestic industry and hence imports were not undercutting the prices of the domestic industry. Negative price undercutting is seen throughout the injury period. In this context the domestic industry has contended that the comparison of the weighted average landed price with the weighted average selling price does not reflect the true picture in view of the fact that the domestic prices have been pegged on the basis of the consignments coming to India at a lower price. Further, there is a time difference between orders booked by the exporter/producers from the subject countries and the time when these shipments landed into India. Considering that the prices of the subject goods significantly fluctuated during the course of the POI, any comparison on a weighted average basis is likely to give misleading picture. Domestic industry has further claimed that increase in the selling prices of the domestic industry could not be commensurate with the increase in costs. However, the trends in increase in the costs vis-à-vis corresponding increase in the selling prices show that the domestic industry has suffered price-suppression.

I. Sales have declined due to following reason like Consumer resisting to purchase due to global recession, sharp fall in exports of textile due to lack of global demand, moderation of domestic demand, global slowdown coupled with inflationary pressure, liquidation of inventories in value chain.

76. It is very interesting to note that the interested parties have highlighted reasons for declining the sales of the domestic industry but ignored the fact that these reasons should also lead to decline in imports but imports have all the more increased. It is submitted that the situation where (a) consumers are restricting purchases from domestic source, but increasing purchases through imports; and (b) domestic prices declined due to import prices in fact establishes that injury to the domestic industry is due to dumped imports.

J. Domestic industry is offering incentives for their supplies against deemed exports in form of rebates. Prices charged for supplies against deemed exports are much below the price charged for domestic sales.

77. The domestic industry follows a well laid down pricing policy. The domestic industry declares and sells the product as per "price list". The prices are not negotiated for each sale transaction. The domestic industry does not follow a system of responding to trade enquiries, giving quotations, price negotiations, procurement and execution of order. The domestic industry declares a "price list" and thereafter sells the material on the basis of declared price list. Barring

exceptional circumstances, all sales made by the company are as per the price list with little or no discretion to the operating level of marketing executives to modify the prices.

78. *The domestic industry's price list must be used for comparison of imported product price with the domestic industry price. In a situation where the company sells material to different customers at different prices, negotiating prices each time, which vary from customer to customer, it might be relevant and appropriate to determine weighted average selling price for the quantities sold over the relevant period. However, in a situation where the company sells its product at pre-determined, declared public price lists and where such price lists are declared after considering international prices, the price comparison between the imported and domestic product must be carried out on the basis of such price lists. Domestic industry reiterates that the selling prices do not vary with customers and therefore there is no necessity of determining weighted average selling price of the quantities sold in a particular period.*
79. *The price is fixed in a scientific and transparent manner. The basis of fixation of price is the prevailing international price. Considering prevailing international prices and various factors, which must be accounted for the differences which exists in different countries (such as exchange rate, customs duties etc), the company decides its basic price.*

K. *Inclusion of known exports sales by domestic industry for injury analysis is inconsistent with AD rules and regulations.*

80. *It is submitted that The company has termed certain category of sales as "deemed exports". They have no disagreement with the opposing interested parties that deemed exports should not form part of domestic sales. However, merely because the company has designated certain sales as deemed exports, these would not become deemed exports.*
81. *Deemed exports have been defined under the Foreign Trade Policy. Essential ingredients of deemed export sales are the following:*

"Following categories of supply of goods by main / sub-contractors are regarded as "Deemed Exports" under FTP, provided goods are manufactured in India:

- (a) Supply of goods against Advance Authorization / Advance Authorization for annual requirement / DFIA;*
- (b) Supply of goods to EOUs or STPs or EHTPs or BTPs;*
- (c) Supply of capital goods to holders of Authorizations under EPCG Scheme;*
- (d) Supply of goods to projects financed by multilateral or bilateral agencies / Funds as notified by Department of Economic Affairs (DEA), MOF under International Competitive Bidding (ICB) in accordance with procedures of those agencies /*

Funds, where legal agreements provide for tender evaluation without including customs duty;

- (e) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral agencies / Funds as notified by DEA, MoF under ICB, in accordance with procedures of those agencies / Funds, which bids may have been invited and evaluated on the basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad;*
- (f) Supply of capital goods, including in unassembled/ disassembled condition, as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till stage of commercial production, and spares to extent of 10% of FOR value to fertilizer plants;*
- (g) Supply of goods to any project or purpose in respect of which the MoF, by a notification, permits import of such goods at zero customs duty;*
- (h) Supply of goods to power projects and refineries not covered in (f) above;*
- (i) Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided said containers are exported out of India within 6 months or such further period as permitted by customs;*
- (j) Supply to projects funded by UN agencies; and*
- (k) Supply of goods to nuclear power projects through competitive bidding as opposed to ICB.”*

82. *Since the Govt. of India considers deemed export sales as export sales and further since the injury assessment must be made for domestic sales, the opposing interested parties have rightly claimed that deemed export sales should not be included in the domestic sales.*

83. *The domestic sales made by the domestic industry do not qualify as deemed export sales, even though it is using the terminology deemed exports in the market place. In fact, the consumer claims export benefits on the exports they make and the domestic industry uses the nomenclature “deemed export” simply for the reason that the fibre has been consumed in a product, which has been exported. However, all export benefits have been taken by the consumers and not by the domestic industry. If these were deemed exports sales, the domestic industry would have been entitled for various benefits granted under Foreign Trade Policy.*

84. *It is therefore submitted that these sales are not deemed export sales as understood by opposing interested parties but domestic sales only. Therefore, the sales have been rightly included under the head “domestic sales”.*

L. *NCV of information as to supplies made by applicant to its related parties may be provided.*

85. *There are no supplies made by the petitioner to its related parties.*

M. Conclusion

86. *The arguments raised by the opposing party are mere conjectures, without any factual and legal basis. Further, the claims are unsubstantiated and without any proper appreciation of the facts of the present investigation.*

87. *Considering the present investigation carried out by the Authority for the product under consideration, it is evident that –*

- a. The present investigations have been rightly initiated by the Designated Authority.*
- b. The petitioner company constitutes domestic industry, notwithstanding its relationship with one of the Indonesian producer. The Indonesian producer has had very small volume of exports to India, that too under Advance Licence.*
- c. Even when the petitioner had admitted relationship at the time of initiation, petitioner now requests the Designated Authority to kindly examine, more so because of the jurisprudence laid down by the Designated Authority in the matter of Circular Weaving Machine whether at all the petitioner should be treated as related company to the Indonesian producer within the meaning of anti dumping rules.*
- d. The product under consideration has been exported to India from the subject countries below associated Normal values.*
- e. The domestic industry has suffered material injury in respect of the product under consideration.*
- f. The material injury has been caused by the dumped imports from the subject countries.*
- g. Definitive anti dumping duties are required to be imposed on imports of the product under consideration in India.*

Rejoinder submissions filed on behalf of PT South Pacific Viscose, Indonesia; Indian Spinners Association and Rajasthan Textiles Mills Association

Preliminary Objections:

88. *Kindly recall that in our original submissions also we had sought data, information and evidence filed before the Designated Authority by various interested parties. Before affording the present oral hearing, the same ought to have been provided to us. The obligation to provide full information, data and evidence is mandatory under the present Rules. In any case such an approach is contrary to principles of natural justice and fair play and we are prevented from offering appropriate*

comments on all aspects of the case as a participating interested party. To that extent, serious prejudice has been caused to the interest of the said above named parties on whose behalf present rejoinder is being filed.

89. *In view of the above, at the risk of repetition, we are constrained to point out that we are totally handicapped to file full and meaningful rejoinder submissions. In view of the strict time lines followed by the Designated Authority, we are constrained to file limited rejoinder submissions based on written submissions of the applicant industry. Principles of natural justice demand that the opportunity provided should be effective and hence we request that the information/documents/data should be provided and only thereafter we may be called upon to file our full comments thereto.*
90. *Written submissions contrary to Trade Notice:* *We would like to submit that the written submissions filed by the domestic industry have been without giving proper paragraph numbers to each paragraph contrary to specific instructions contained in Trade Notice 1/2007 dated 22.10.2007. You would kindly appreciate that in the absence of continuous serially numbered paragraphs, it is virtually impossible for any interested party to offer its comments in terms of para 3(i) of the said Trade Notice. It is respectfully submitted that we are bringing this issue to your kind attention only because the requirements of Trade Notice are being flouted almost as a matter of right and practice. We have pointed out the difficulties being faced by other parties to give para-wise rejoinder in the past too but the practice seems to be continuing with impunity. Non-compliance of such procedure we were informed would result in rejection of submissions. In view thereof, we pray that the submissions may not be taken on record.*
91. *It may kindly be noted that there are no written submissions on behalf of the other Indonesian exporter namely PT Indo Bharat Rayon have been made even though the representative on record for the said exporter happens to be the same as that of the applicant.*
92. *Paragraph-wise (to the extent feasible) rejoinder submissions follow hereinafter.*
93. *Contents of un-numbered paragraph 1 of the written submissions of the applicant need no response, as it is reproduction of certain facts without any submissions.*
94. *Contents of un-paragraph 2 of the written submissions of the applicant, it has been stated that they reiterate all the facts, contentions, averments and statements presented in previous submissions filed before the Designated Authority and has requested the Designated Authority to treat them by a deeming fiction as part of their written submissions. The applicant may be called upon to list such submissions by reference to the date of such submissions together with the dates on which they were filed. If non-confidential version of such documents were not filed along with confidential version, the same cannot be taken into consideration, as they would be contrary to requirements of Rule 7. We reiterate our request to provide index to the public file so that we can cross check if they are available on record. In any case, we request that the Designated Authority to provide a copy of all submissions made*

by the applicant together with data/information or evidence. Despite repeated requests made in the past also, we have been denied essential documents, which are being used to reach Final Findings.

95. *Contents of paragraph 1 of the written submissions of the applicant need no response, as it is reproduction of certain facts without any submissions.*
96. *Contents of paragraph 2 of the written submissions of the applicant need no response, as it is reproduction of definition without any submissions.*
97. *Contents of paragraph 3 of the written submissions cannot be taken on record until non-confidential version of all the information which is submitted to the Authority on confidential basis is providing to all the interested parties. Considering the same without giving full non-confidential version to all interested parties would be contrary to the requirement of the Rule 7. Without reference to the dates of letters through which submissions were filed, the submissions cannot be reiterated.*
98. *Contents of paragraph 4 of the written submissions of the applicant need no response, as it is reproduction of certain arguments without any submissions.*
99. *Contents of paragraph 5 are wrong and denied. Grasim Industries Ltd. does not satisfy the requirement of standing in terms of Rule 5(3) nor does it qualify to constitute domestic industry within the meaning of Rule 2(b).*
100. *Contents of paragraph 5 (a) needs no response, as it is reproduction of Rule 5 (3) without any submissions.*
101. *Contents of paragraph 5 (b) to (k) are wrong and denied except to the extent the law has been reproduced. Detailed submissions have already been made as to how the sole producer in the country cannot be considered as the eligible Domestic Industry in terms of Rule 2(b) as it is an admitted fact in the instant case, Grasim Ind. Ltd. is related to exporters from China and Indonesia and, therefore, falls under the excluded category. Since there is a single producer, the question of their having the standing in terms of Rule 5(3) also does not arise. In any case, the issue has now been settled with the decision of the Hon'ble Madras High Court in the case of Saint Gobain Glass India Ltd. Vs. UOI wherein it has been held that under the revised Rule 2(b), the Designated Authority has no discretion to consider the excluded category into the definition of "Domestic Industry". It is respectfully submitted that the said decision is squarely applicable to the facts and circumstances of this case and is binding on the Designated Authority.*
102. *The Domestic Industry has further submitted that the said Rule 2(b) had undergone changes and the Designated Authority is required to first decide as to which rule shall apply in such circumstances. In this context, it is submitted that the Domestic Industry has not made any submissions in this regard. Without prejudice, it is submitted that the Designated Authority draws its power from the Rules which are prevailing at the time when such powers are exercised. There is no question of the Designated Authority operating under the old Rule which in the eyes of law has ceased to exist. Moreover, it is important to note that the issue here relates more to*

the scope and definition of “Domestic Industry” which has to be ascertained only at the time when the Final Findings are rendered. The “Domestic Industry” at the time of initiation is of no consequence as it would render the entire process of investigation meaningless.

- 103. Contents of paragraph 5 (l) are wrong and denied. During the public hearing we have pointed out that the petitioner has intentionally omitted the vital question from the prescribed sets of questions just to avoid the nature of relationship with Indonesia. No such information, document and evidence is still available in the non-confidential version of application provided to the interested parties or the documents in the public file maintained by the Authority till date to support the claim of the petitioner. The Designated Authority is requested to kindly look into this vital issue personally and address it appropriately.*
- 104. Contents of paragraph 5(m & n) are wrong and denied. It is submitted that the petitioner has only provided some extracts of the decisions and most of them are not relevant to the case and some of them even contradict the claim of the petitioner as the authority confirmed its decision to keep such entity outside the scope of community industry. We are unable to understand, how such cases advance the case of the applicants in any manner. Further, it is submitted that no reliance can be placed on extracts from such findings. The applicants are obligated to provide full copies of the decisions while placing reliance on them. In the absence of full decisions and appreciation of full facts, we are unable to provide full and meaningful comments. Without prejudice to the aforesaid, it is important to note that the Domestic Industry in its written submissions has agreed that the citations submitted by them do not deal with a situation where the applicant is related to exporters but only those where the applicant is an importer of the subject goods. We strongly deny that the said decisions which deal with the case of importers apply ipso facto to the situation where there is an issue of relationship between the applicant and the foreign exporter. Even the text books cited by the Applicant differentiate between the two situations. Moreover, the Domestic Industry has not cited even a single decision wherein the issue of the very existence of discretion with regard to the excluded category under Rule 2(b) has been questioned. Thus, the plethora of instances cited by the Domestic Industry are nothing more than an indication of some practices prevailing in certain jurisdiction in the context of their own law and jurisprudence. In any event, the Madras High Court in the aforesaid decision has also held that “the Indian rule cannot be understood or interpreted with the aid of other countries’ definition or decision based on those provisions which are not identically worded as our provision”.*
- 105. Contents of paragraph 5(o) and sub para (i to iv) are wrong and denied. It is reiterated that Proforma was intentionally left blank by the petitioner to hide relationship from the Hon'ble Authority. It may also be recalled that during the public hearing the representative of the petitioner suggested alternative theory by providing nature of relationship for the first time. As regards the deliberate misrepresentation of the applicant in response to the pointed question of the Designated Authority regarding the nature of relationship, the applicant has given a completely unsatisfactory reply in the written submissions. It has been mentioned that the “information establishing relationship is relevant only in those situations*

where a party disputes existence of such relationship”. With respect, such a response of the applicant is not only incorrect but completely presumptive. It is clearly an attempt to get away with a gross misdeclaration by the applicant. A plain reading of the relevant question reveals that the Designated Authority is seeking the nature of relationship which needs to be answered only if the factum of relationship is admitted. It is more than clear now that the Domestic Industry had deliberately suppressed this vital information by changing the questionnaire itself as full and fair information at that stage of the investigation might have led to non-initiation of investigation itself. It may also be mentioned that the applicant even at this stage has claimed confidentiality on the issue of common directors. No reason for claiming confidentiality on the same has been stated. We reiterate that the full nature of relationship is relevant even when the fact of “relationship” is admitted. This is for the reason that in the absence of such information, the Authority would not be in a position to decide the specific criterion to be adopted for inclusion or exclusion under Rule 2(b). Under the circumstances, the fact that the application format has been altered to get desired results cannot be brushed aside by the Hon’ble Designated Authority as it goes to the very root of the matter of jurisdiction. Copy of relevant pages of Proforma prescribed by the Directorate General of Anti-dumping & Allied Duties, which is expected to be filled by the petitioner. is enclosed as Annexure 1.

- 106. Contents of paragraph 6 need no response as it is only repetition of information provided in the earlier submissions.*
- 107. In response of paragraph 7, it is submitted that even today the petitioner is keeping the names of the directors and relationship with related entities as confidential. Please appreciate that we are unable to comment on this unless full and meaningful information is provided to us. We reserve our right to submit detail comments once the desired information is provided.*
- 108. Contents of paragraph 8 are wrong and denied. It is submitted that the DGAD has prescribed specific formats to seek specific information (in this case with regard to the nature of relationship).*
- 109. Contents of paragraph 9 are wrong and denied for the reasons stated in earlier paragraphs.*
- 110. Contents of paragraph 10 are wrong and denied for the reasons stated in earlier paragraphs.*
- 111. Contents of paragraph 10 (a - d) need no response as it is only repetition of information provided in the earlier submissions which have been dealt with appropriately.*
- 112. Contents of paragraph 10 (e-f) are wrong and denied for the reasons stated in earlier paragraphs.*
- 113. As regards the amendment in Rule 2(b) on 1st December 2011, it may be noted that by this amendment only the word “only” has been removed. It is submitted that this*

change is of no consequence as even the removal of the word “only” does not in any manner alter the scope of discretion available to the Designated Authority.

114. *Without prejudice, we wish to point out that practices followed by rest of the countries emanate from practices and/or specific language employed in their statute even prior to making of the WTO Agreement on Anti-dumping. For example, the language employed by US law specifically vests discretion in the Authority. In Canada, the definition of domestic industry is different for application purposes and different for the purposes of analysis to reach conclusions of injury and causal link. EU continues to follow practices that were in vogue even prior to WTO Agreement on Anti-dumping. Merely because the practices have not been challenged does not mean that such practices are good law and in line with the obligations under the WTO Agreement on Anti-dumping. In any case, none of the findings or decisions relied upon deal with the argument raised by us in the present proceedings that the word “may” in the present amended Rule 2(b) and Article 4 is in the context of rest of the producers and not in the context of the ineligible producers. Clearly, they are distinguishable and not good in view of plain language of Article 4 or even their respective municipal legislations.*
115. *Contents of sub para 10 f (A & B) are wrong and denied. It is reiterated that the practices followed by various countries have no binding precedent value when the Designated Authority is bound by its municipal law. This issue is very well settled by Hon’ble Supreme Court in catena of judicial pronouncements that courts and authorities in India are bound by the Municipal law. As mentioned earlier, the decision of the Hon’ble Madras High Court (WP No. 23515 of 2011) is directly relevant on this issue. Further, the language employed by all such countries or territories is not para-materia to Indian law. In any case, even the tribunal has held that even Dispute Settlement Body decisions viz. Panel Reports or Appellate Body Reports do not have any binding precedent value. In such a situation, it cannot be said that practice followed by a country would have any value while applying plain language of Indian law. Interpretation of the contents in the said section is wrong and denied. In the previous submissions and post remand submissions, we have discussed Rule 2(b) in details. The same for the sake of brevity have not been repeated herein. The said submissions may be treated as having been incorporated herein in reply to submissions of the applicants.*
116. *It is submitted that the plethora of EC as well as Indian decisions referred to by the applicant are of no consequence as they are completely unrelated to the issue at hand. In all the cases cited by the applicant, the authorities were accosted with a situation where the domestic producer itself was an importer of the subject goods. It is submitted that the jurisprudence from the text books have little or no persuasive value as the practices followed by other jurisdictions are not even of persuasive value particularly when the language in the Indian law is distinctly different from the language of the WTO Agreement on anti-dumping and the foreign laws.*
117. *As stated earlier, it is submitted that after the decision of Hon'ble High Court of Madras in the case of Soda Ash, it is clear that there is no discretion vested in Designated Authority under amended Rule 2(b) to include domestic producers that are falling under the excluded categories.*

118. *Comments on Various Extracts of the Findings cited by the Applicant: Without prejudice to our basic submission regarding the non-admissibility of the decisions by the applicant, we give our comments as follows.*
119. *This finding at Sl. No.1 is sought to be included under category I which relates to imports by petitioner itself from related exporters. Category I cases are not relevant, as the applicants have not themselves imported subject goods from its related entity. However, without prejudice, it may be pointed that the findings at Sl. 1 was in the context of a supporter and not in the context of Petitioner (Community Industry) as defined. Therefore, this case even does not fall within Category I as has been made out by the Applicants. Further, because of self imports by the Tokai Seiki, domestic producer the authority confirmed its decision to keep such entity outside the scope of community industry. Moreover, the injury data pertaining to Tokai Seiki as not considered for injury finding. We are unable to understand, how this case advances the case of the applicants in any manner.*
120. *This finding at Sl. No. 2 is sought to be included under category I which relates to imports by petitioner itself from related exporters. Category I cases are not relevant, as the applicants have not themselves imported subject goods from its related entity. Further, the finding relied upon is a provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is 1995 and findings would have been concluded either within the same year or in the next year. In the cited case the main reason for not excluding the producer was that almost all the producers of the same industry fitting pipes are importing, which are outside their manufacturing purpose and the producers cannot be shielded themselves from the dumped imports.*
121. *This finding at Sl. No. 3 is sought to be included under category I which relates to imports by petitioner itself from related exporters. Category I cases are not relevant, as the applicants have not themselves imported subject goods from its related entity. We are unable to understand how this finding supports the case of the applicants as no imports were found to have been made as per the allegations made. Clearly, cases have been cited to strategically claim and mislead the authority to believe that inclusion was done despite relationship.*
122. *Finding at Sl. No. 4 is sought to be included under category I which relates to imports by petitioner itself from related exporters. Category I cases are not relevant, as the applicants have not themselves imported subject goods from its related entity. Further, the finding relied upon is a provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is 1995 and findings would have been concluded either within the same year or in the next year.*
123. *Finding at Sl. No. 5 is sought to be included under category I which relates to imports by petitioner itself from related exporters. Category I cases are not relevant, as the applicants have not themselves imported subject goods from its*

related entity. Further, this case does not deal with the argument raised by us in the present proceedings. The interpretation of the word “may” was never challenged by alleging that the same is in the context of rest of the producers and not in the context of the ineligible producers. The jurisprudence hence is distinguishable.

- 124. This finding at Sl. No. 6 is sought to be included under category I which relates to imports by petitioner itself from related exporters. Category I cases are not relevant, as the applicants have not themselves imported subject goods from its related entity. Further, the finding relied upon is a provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is 1998 and findings would have been concluded either within the same year or in the next year. Further, Siemens was excluded due to imports from its related entity. For Philips it was found that it imported components and same were used to produce subject goods by Philips in EU. No exports were found by American Philips during investigation. It was in this context such a conclusion was reached by the authority. The finding does not at all support the case of the applicants.*
- 125. This finding at Sl. No. 7 has no relevance in the present case as the Final Finding was issued dated 22nd February, 2000 by Designated Authority. It has no application to position after 2010 as the same was recorded in the context of Rule 2(b) post 1999 and prior to 2010 amendment. There is no dispute that the amendment in 1999 did confer discretion on Designated Authority. It is for this reason the applicants having strategically omitted to mention the date of the findings.*
- 126. This finding at Sl. No. 8 has no relevance in the present case as the Final Finding was issued dated 2nd February, 2006 by Designated Authority. It has no application to position after 2010 as the same was recorded in the context of Rule 2(b) post 1999 and prior to 2010 amendment. There is no dispute that the amendment in 1999 did confer discretion on Designated Authority. It is for this reason the applicants having strategically omitted to mention the date of the findings.*
- 127. This finding at Sl. No. 9 has no relevance in the present case as the Final Finding was issued dated 24th December, 2009 by Designated Authority. It has no application to position after 2010 as the same was recorded in the context of Rule 2(b) post 1999 and prior to 2010 amendment. There is no dispute that the amendment in 1999 did confer discretion on Designated Authority. It is for this reason the applicants having strategically omitted to mention the date of the findings.*
- 128. This finding at Sl. No. 10 are sought to be relied upon by the applicant in support of its case. The finding relied upon are provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is old period. Reference to interim orders without reference to final order and conclusion*

cannot form the basis of any submission even to have any persuasive value. Further, nothing can be drawn from the extract cited by the petitioner.

129. *This finding at Sl. No. 11 are sought to be relied upon by the applicant in support of its case. The finding relied upon are provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is old period. Reference to interim orders without reference to final order and conclusion cannot form the basis of any submission even to have any persuasive value. Moreover, one of the producers does not provided the information requested in the format and is considered not to have co-operated with the commission, thus not forming the part of the community industry. Thus, this case is on our line of arguments. In view of the above the case should be immediately terminated as Grasim is the solo producer of the subject goods.*
130. *This finding at Sl. No. 12 are sought to be relied upon by the applicant in support of its case. The finding relied upon are provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is old period. Reference to interim orders without reference to final order and conclusion cannot form the basis of any submission even to have any persuasive value. Further, only for the purpose of preliminary finding the commission is including Europrint members from Japan.*
131. *This finding at Sl. No. 13 to17 are sought to be relied upon by the applicant in support of its case. The finding relied upon are provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is old period. Reference to interim orders without reference to final order and conclusion cannot form the basis of any submission even to have any persuasive value.*
132. *Finding at Sl. 18, and 19 recorded by Designated Authority has no application to position after 2010 as the same was recorded in the context of Rule 2(b) post 1999 and prior to 2010 amendment. There is no dispute that the amendment in 1999 did confer discretion on Designated Authority. It is for this reason, the applicants have strategically omitted to mention the date of the findings.*
133. *Finding at Sl. No. 20 has no application to the facts of the present case as imports by the community was not from subject country.*
134. *Findings at Sl. No. 21 are sought to be relied upon by the applicant in support of its case. The finding relied upon are provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is 1999 and Final Findings were recorded within 18 months of initiation. Reference to interim orders without reference to final order and conclusion cannot form the basis of any submission even to have any persuasive value.*

135. *Finding at Sl. No. 22 is sought to be included under category which relates to imports by petitioner itself from un-related exporters. The Category referred to above is not relevant, as the applicants have not themselves imported subject goods from un-related entity. Further, this case does not deal with the argument raised by us in the present proceedings. The interpretation of the word “may” was never challenged by alleging that the same is in the context of rest of the producers and not in the context of the ineligible producers. The jurisprudence hence is distinguishable.*
136. *Findings at Sl. No. 23 are sought to be relied upon by the applicant in support of its case. The finding relied upon are provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is 2000 and Final Findings were recorded within 18 months of initiation. Reference to interim orders without reference to final order and conclusion cannot form the basis of any submission even to have any persuasive value.*
137. *Findings at Sl. No. 24 are sought to be relied upon by the applicant in support of its case. The finding relied upon by no stretch of imagination can have any persuasive value as the case relates to exclusion of a producer who did not make itself known and was found to be related to exporters. Further, Philips Consumer was not treated as “Community Industry” as defined; as BC components represented a major proportion, the case was done on the basis of their information only. The reliance placed is completely misleading and mischievous.*
138. *Findings at Sl. No. 25 are sought to be relied upon by the applicant in support of its case. The finding relied upon are provisional finding which by no stretch of imagination can have any persuasive value. We are surprised that the applicants have not placed reliance on the Final Findings as the period that it relates to is 2000 and Final Findings were recorded within 18 months of initiation. Reference to interim orders without reference to final order and conclusion cannot form the basis of any submission even to have any persuasive value.*
139. *Finding at Sl. 26 recorded by Designated Authority has no application to position after 2010 as the same was recorded in the context of Rule 2(b) post 1999 and prior to 2010 amendment. There is no dispute that the amendment in 1999 did confer discretion on Designated Authority. It is for this reason, the applicants have strategically omitted to mention the date of the findings.*
140. *Findings at Sl. No.27 have no application to the facts of the present case as the authority in that case had reached a conclusion that even after exclusion the remaining industry accounted for over 60% of the total domestic production.*
141. *Findings at Sl. No.28 have no application to the facts of the present case as the authority in that case had reached a conclusion that there was injury to community producers irrespective of inclusion of producers with relationship. The conclusions reached were in peculiar facts and circumstances of the case. Without prejudice to the above, the argument raised in the present proceedings in the context of “may”*

has not been raised therein. Hence, the issue needs to be decided in the facts and circumstances of the pleadings on record.

142. *From the above, it is clear that the pact has merely cited a series of decisions without examining the legal relevance or the factual content. In fact, the only two decisions which relate to category of “exporters related to the domestic producer” establish that the quantum of imports are of no consequence for the second situation envisaged under Rule 2(b) of the Anti-dumping Rules.*
143. *Contents of paragraph 6 and 7 (page 65) are wrong and denied. It is reiterated that in the instant case, the applicant had requested for a six month period of investigation which was accepted by the Authority by making an exception to the practice and guidelines without any sound basis or reasoning. The Hon’ble Designated Authority has not appreciated that the Applicant strategically claimed injury only for 6 months and requested for examination of pre-conditions of Rule 5 based on such claims contrary to the specific guidelines and practice followed by the Designated Authority. The selection of 6 months period of investigation is also contrary to guidelines of the Committee on Anti-Dumping Practices. It has been the consistent stand of the DGAD that the most desirable period of investigation is a financial year. In several cases, the Designated Authority has insisted that the information should necessarily be of a minimum of one year. It is submitted that even in the written submissions, the applicant has not given any cogent reasons for the exception made in their favour. The legal position is known to everyone. Therefore, it can be presumed that neither the applicant nor the Designated Authority had any basis for restricting the POI to six months. As stated in our written submissions 5% cannot be said as intensified dumping which is the sole ground for taking POI as 6 months. Thus, it is not an appropriate criterion either in law or on facts. The applicant has attempted to link the issue of intensified dumping to the cost of production which is incomprehensible. Our argument that the low dumping margin determined by the Designated Authority cannot lead to a conclusion that there was intensified dumping (which is the only justification for a shorter POI), remains unanswered by the Domestic Industry.*
144. *In response of paragraph 8 and 9, it is submitted that the petitioner has reiterate and relied upon all the facts, contentions, averments and statements presented in previous submissions relating to dumping and injury & causal link respectively, filed before the Designated Authority and has requested the Designated Authority to treat them by a deeming fiction as part of their written submissions. It is reiterated that the applicant may be called upon to list such submissions by reference to the date of such submissions together with the dates on which they were filed. If non-confidential version of such documents were not filed along with confidential version, the same cannot be taken into consideration, as they would be contrary to requirements of Rule 7.*
145. *Contents of paragraph 10 are wrong and denied. It is reiterated that the applicant has attempted to link the fact of contraction of demand with the marginally increased imports. It is submitted that the issue here is whether there is any contraction in demand or not and if yes, how has that affected the performance of the Domestic Industry. It is further, reiterated that the increase in imports in a short*

period of six months is of no consequence as the orders in the pipeline and the clearances during the POI cannot be stopped. In any case, contraction in demand is an issue of causal link and cannot be linked logically or legally to increased imports for the reasons mentioned above.

146. *In response of the extracts of the decision of the E.C. on page 69, it is submitted that out of the three findings, the two relied upon are provisional findings which cannot have any persuasive value. The citation given by the petitioner (the Council Regulation (EC) No 2080/2001 of 23rd October 2001 imposing anti-dumping duty on imports of internal gear hubs for bicycles originating in Japan) supports our view and contradicts the claim made by the petitioner. In the cited case, the percentage decline in demand was 8% whereas loss of market share of the Community industry was 9%. Hence the loss of market share was lesser than percentage decline in demand. In the present investigation, the decline in demand is 51.98% whereas the loss of market share is 5.81%. Hence, the citation does not support the claim made by the domestic industry. On the contrary, it contradicts the claim of the Domestic Industry.*
147. *Contents of paragraph 11 (a) are wrong and denied. It is submitted that above mentioned parties had never asked for any confidential information from the domestic industry. We had only requested that the information given in the confidential version should be in indexed form in the non-confidential version thereof so as to offer our fruitful comment on the same. Further, needful information was provided by the interested parties at appropriate time and whenever required by the Authority.*
148. *Contents of paragraph 10 (b) are wrong and denied. It appears that the applicant has inadvertently copied the argument relating to some other case.*
149. *Contents of paragraph 10 (c) are wrong and denied. The methodology given by the petitioner for arriving dumping and dumping margin is known to all. We have never argued for the methodology for the final figure of dumping. We have only raised our series objection to the conclusion of Authority to consider 6% of dumping as intensified dumping that is also for the short period of 6 months so as to justify the selection of a shorter period of only six months as the POI. The petitioner and their representative are very well aware of this objection. However, since there is no justification to be offered by the applicant, they are attempting to obfuscate the issue by making irrelevant and misleading submissions.*
150. *Contents of paragraph 10 (d) are wrong and denied. It is an admitted fact by petitioner in its application on page 19 under the heading of “price effect” that there was significant price difference between gray and dyed. Hence any analysis for dumping margin or injury based on such clubbed data of gray and dyed was flawed. Therefore, to say that interested parties are mere alleging that there is significant differences are wrong and contrary to the submission made by the petitioner in the application.*
151. *Contents of paragraph 10 (e) are wrong and denied. It is submitted that under the present scheme of the Act and the Rules, even if there is dumping resulting in*

consequent injury to Applicant, no duties can be imposed on imports undertaken under advance license. In other words, no protection can be afforded when imports take place even at dumped prices as they are for export purposes. In view of such a situation, the analysis under advance license was critical to a decision to recommend duty. Further, we have strongly argued that imports undertaken under advance license have huge impact on the current investigation and there is any injury to domestic industry that could be on the account of imports undertaken under advance license.

152. *Contents of paragraph 10 (f) are wrong and denied. We have never argued that the Authority had not applied Para 7 of Annexure I. It is reiterated that the petitioner is trying to mislead the Authority by providing those arguments which were never raised by us.*
153. *Contents of paragraph 10 (g) are wrong and denied. It is submitted that we have argued that the petitioner has not provided the full and correct information of its related party. We have never raised any question on the dignity of the petitioner even though the conduct in respect of the present application may be suspect. The submission in 10 (g) from the petitioner is surprising.*
154. *Contents of paragraph 10 (h) are wrong and denied. It is respectfully time the petitioner has not disclosed the information about the nature of relationship with Indonesian subsidiary which was to be declared at the time of initiation in the question 6 of Proforma prescribed by the DGAD.*
155. *Contents of paragraph 10 (i) are wrong and denied. However, even the comparison made by the applicant does not justify the view that 6% dumping margin can be considered as intensive dumping.*
156. *Contents of paragraph 10 (j) are wrong and denied. We are unable to understand how domestic industry and exporter, having by nature conflicting interests can hire same consultants. In this context, kind attention of the Authority is invited to the decision of the Hon'ble Supreme Court in the case of ATMA Vs. Designated Authority wherein it has been held that in anti-dumping matters there is a lis between the various interested parties. Once there is a lis between the parties, the conflict of interest is inherent. Therefore, it is preposterous to suggest that there is no legal prohibition for representing both the petitioner as well as one of the respondents. It is more than clear that the applicant along with their related party has manipulated the system to get the protection of an extraordinary duty. It is respectfully submitted that the Designated Authority may kindly consider this fact alone as a basis for reaching the conclusion that the petitioner has not come with clean hands before the Authority.*
157. *Contents of paragraph 10 (k) are wrong and denied. It is submitted that the applicant cannot be allowed to change its position and facts which were the very basis of the initiation, Preliminary Findings as well as the Final Findings in remand proceedings. Moreover, if the parties are not related, then it is all the more curious that the same lawyer is representing two unrelated but conflicting parties in the*

same proceedings. In any case, there is no ground or argument by the applicant as to how they are not related to the Chinese and the Indonesian companies.

158. *Contents of paragraph 10 (i) are wrong and denied. We reiterate that the Normal Value, Export Price as well as the dumping margin cannot be kept confidential as they are computed on the basis of non enterprise specific data.*
159. *In the aforementioned premises, the “Conclusions and Prayer” of the applicants are based on faulty premise and misleading data and information. No relief as contemplated under the Act and the Rules can be provided in such circumstances in terms of the present law and practice relating to anti-dumping. It is a fit case in which proceedings may be terminated immediately.*
160. *We also pray that a copy of rejoinder submissions filed for and on behalf of applicants and other interested parties may be provided to us in the interest of justice and fair play. Without prejudice to the above, we also request the authority to kindly provide us all correspondence including non-confidential version exchanged with the applicants in the present proceedings before proceeding further with the investigations so that appropriate comments can be filed by us on such correspondence. We would request the authority not to take into consideration any response for which non-confidential version has not been filed and copies provided to us. The authority ought not to allow applicant to prevent interested parties to comment on all data and information filed as it has a direct bearing on the outcome of the proceedings.*
161. *Without prejudice to the aforesaid, it is submitted that the aforesaid proceedings are without jurisdiction in view of the decision of the Hon’ble Madras High Court in the case of SGGI Vs. UOI [supra] and should be terminated forthwith as the applicant has already enjoyed the protection of illegal anti-dumping duties for a long time.*

Examination by the Authority

162. As regards the contention that there was no information filed with the Authority at the time of initiation of the instant investigation that M/s Grasim Industries had related parties in China PR and Indonesia; the Authority notes that the contention is not based on facts as the Authority was aware that M/s Grasim industries had affiliated companies both in China PR and Indonesia right at the initiation stage as would also be evident from para of the initiation notification dated 19th March 2009 on the subject.
163. As regards the contention that they had sought data, information and evidence filed before the Authority by various interested parties and that before affording the present oral hearing, the same ought to have been provided; the Authority notes that AD Rules & regulations on the subject do not require the Authority to provide data, information and evidence filed before the Authority by various interested parties. The AD Rules only require that the Authority shall provide a copy of the application referred to in sub-rule (1) of Rule 5 to the known exporters or to the concerned trade association where the number of exporters is large, and the governments of the

exporting countries and that the Authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing. The AD Rules further require that the Authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation. To this end as a standard practice, a public file containing the non-confidential version of the information/data/evidence filed by the interested parties is maintained by the Authority. Attention of the interested parties has also been drawn to this fact vide the initiation notification itself. Thus, there is no violation of any Rule including the principles of natural justice as these interested parties have had ample opportunities to have access to the information/data/evidence filed by other interested parties to defend their interests on the subject throughout the course of this investigation; hence the contention is devoid of any merit.

164. As regards, the contention that written submissions are contrary to Trade Notice 1/2007 dated 22.10.2007; the Authority notes that the said trade notice was issued to facilitate examination of the issues raised by the parties and therefore the interested parties should have ordinarily followed the guidelines suggested therein.

165. As regards, the contention that M/s Grasim Industries Ltd. does not satisfy the requirement of 'Standing' in terms of Rule 5(3) nor does it qualify to constitute domestic industry within the meaning of Rule 2(b) as it is an admitted fact in the instant case, Grasim Ind. Ltd. is related to exporters from China and Indonesia and, therefore, falls under the excluded category. Since there is a single producer, the question of their having the standing in terms of Rule 5(3) also does not arise and that the issue has now been settled with the decision of the Hon'ble Madras High Court in the case of Saint Gobain Glass India Ltd. Vs. UOI wherein it has been held that under the revised Rule 2(b), the Designated Authority has no discretion to consider the excluded category into the definition of "Domestic Industry"; the Authority has carefully examined the submissions made by respective interested parties on the subject in the context of the applicable law from time to time.

166. It would be appropriate to mention at the outset, that the Rule 2(b) has been amended once again vide Notification No. 86/2011-Cutoms (N.T.) dated 1st December 2011, that has dropped the word "only" from Rule 2(b) of the AD Rules. It is further noted that this amendment has not been taken cognizance of by the Hon'ble Madras High Court in the matter of Saint Gobain Glass India Ltd. Vs. UOI, as would be clear from the para of the judgement .

167. Rule 2(b) now reads as follows:

"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"

168. As regards which rule shall apply in such circumstances; the Authority notes that considering the Rule 2(b) as the time of initiating this investigation or considering the Rule 2(b) as on date, in either event, the Authority has a discretion on the subject as would be evident from the following.
169. Rule 2(b) of the AD Rules provides that domestic producers which are related to the exporters or importers or which are themselves importers of the allegedly dumped articles may be excluded when determining the domestic industry in certain situations. The Authority is of the considered view that the use of the word ‘may’ in Rule 2(b) suggests that the two types of producers in question, i.e. related producers and producers importing the dumped product, are not automatically excluded from being part of the domestic industry. On the contrary, it has been the consistent practice of the investigating authorities that the exclusion of such producers must be decided on a case-by-case basis, on reasonable and equitable grounds, and by taking into consideration all the legal and economic aspects involved.
170. The issue of excluding or including a domestic producer from the ambit and scope of the domestic industry is of significant importance; as the question arises whether or not they are really part of the domestic industry in the sense of Rule 2(b) of the AD Rules, which in turn may have an effect on the ‘Standing’ of the application i.e. whether or not their (the domestic producers that have filed or supported the application) production reaches the necessary level of representativity as stipulated under the AD Rules; as the output of domestic producers, which are excluded from the definition of the domestic industry because of their relationship to exporters or importers; or because of their own dumped imports, would not be considered while computing total domestic production and determining whether the applicant along with supporting domestic producers represent a major proportion of such production.
171. The Authority notes that Rule 2(b) has been amended a number of times. It is noted that Rule 2(b) as on 1.1.1995 provided no discretion to the Designated Authority in such situations where one or more domestic producer had imported the product under consideration or was related to an importer or exporter of the product under consideration.
172. However, WTO Agreement on Anti Dumping and Municipal laws of other investigating authorities vested discretion to the investigating authorities in such situations, which was to be applied on a case by case basis. Thus, Rule 2(b) was amended with effect from 15th July 1999 vide Customs Notification No.44/1999 (N.T.) vesting discretion to the Designated Authority in such situations, which could be applied on case by case basis. Rule 2 (b) was further amended in 2010 as follows:

“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”

173. However, vide Notification No. 86/2011-Cutoms (N.T.) dated 1st December 2011, the word “only” has been dropped. As stated, the use of the word ‘may’ in Rule 2(b) suggests that the two types of producers in question, i.e. related producers and producers importing the dumped product, are not automatically excluded from being part of the domestic industry. The Authority considers that the discretion so vested in the Designated Authority with purpose and helps it address situations wherein:-

- (a) Some domestic producers may not wish to support an anti-dumping application merely because they themselves are importing the product, or they are related to an importer or exporter of the product. Such domestic producers may even wish to force closure of other domestic producers in order to eliminate competition through unfair practice of dumping. One reason for vesting the discretion in the Authority could be to exclude such related entities, who may seek to thwart an attempt by the remaining domestic producers to seek redressal of injury caused to them on account of dumping by filing an anti-dumping application and seeking suitable relief against the unfair trade practice of dumping. If it were not so, the remaining domestic producers may not be able to meet the ‘Standing’ requirement as stipulated under the law and seek suitable remedy against the unfair trade practice of dumping. In short, the law enjoins that there may be a need to exclude certain entities from the scope of domestic industry in order to enable the Authority to address injurious dumping in the Country.

- (b) One or more of the domestic producers might have imported the product under consideration or their related company might have imported or exported the product under consideration for one or more *bona-fide* reasons. Some of these reasons are listed below:
 - (i) imports made under advance license in order to compete in the international market in the downstream product;
 - (ii) imports made at the time of temporary suspension of production (due to variety of *bona-fide* reasons, such as fire, strike, natural calamities etc);
 - (iii) imports made to supplement the product-line by importing a particular type which the applicant may not be producing and which might constitute a very small portion of its total business operations;
 - (iv) imports made for testing, research & development, seed-marketing purposes (imports of the product to test the quality and other parameters when faced with low priced imports);
 - (v) imports of the part of the product, which does not form the core activity in the manufacturing of the product.

174. Axiomatically, the Authority considers that it would be inappropriate to exclude such bona-fide domestic producers from being treated as domestic industry. Thus, the Authority is of the view that the modified Rule provides discretion to the Authority in the above mentioned situations. In other words, the AD Rules have been amended to provide discretion to the Authority to include a domestic producer in certain situations or to exclude a domestic producer in certain situations.

175. The Authority has taken into cognizance the jurisprudence available on the subject, which suggests the circumstances in which a related domestic producer may be included or excluded as follows:-

- (a) one of the important factor in this regard is the balance of business of the domestic producer between manufacturing and importing. If the company predominantly manufactures the product in India, it should be included. However, if the domestic producer closes or reduces its production and instead imports the product or the general emphasis of its business shifts from production to imports, it should be excluded.
- (b) if a domestic producer has shielded itself from the effect of dumping by resorting to imports or exports to a related party, the company must be excluded.
- (c) if a domestic producer has participated in some way in the dumping practices or has otherwise unduly benefitted from it, it must be excluded.
- (d) if inclusion of a domestic producer would distort the injury findings, it must be excluded.
- (e) if a domestic producer does not co-operate with the Authority, the Authority tends to consider such domestic producer as ineligible.

176. The Authority also notes that the text book written by M/s. Czako, Human and Miranda; inter alia, mentions the criteria applied by the other WTO members in such situations as follows:-

- (a) The percentage of domestic production of the product in question that is accounted for by the related producers.
- (b) Whether imports of the product in question by the related producers allow them to benefit, or serve to shield them, from the effects of dumping.
- (c) Whether exclusion of the related parties would unduly skew the data for the remaining members of the industry.
- (d) The level or long term nature of the commitment shown by the producer to the domestic production, as opposed to importing activities.

- (e) The ratio of import shipments to domestic production for the related producers.
177. The Authority considers that the purpose of the discretion to include or exclude certain domestic producers is to enable the Authority to come to an objective and undistorted determination with regard to the effects of dumped import on the domestic industry in India by excluding those domestic producers from the relevant domestic industry which have participated in injurious dumping. The Investigating authorities may exclude a related producer, where the related parties either:
- (a) provoked or contributed to a fall in prices on the market,
 - (b) are shielded from their effects, or
 - (c) where they benefited unduly from them.
178. With regard to the first category, i.e. the participation in dumping practices, the Authority considers that several typical situations may be distinguished. On the one hand, the exclusion is indeed appropriate where the injury of a domestic producer is self-inflicted because imports from dumped producers reduced the use of domestic producers' own capacity, or resulted in the abdication of domestic producers' projects designed to increase their own production. The Authority is of the view that exclusion of a domestic producer is prima facie not appropriate, if its participation in the dumping was an act of self-defence. Such a domestic producer should, therefore, be taken into account when defining the relevant domestic industry.
179. The Authority further considers that domestic producers that import the dumped product or whose related party exports the dumped product or whose related party imports the dumped product do not unduly benefit from dumping practices, if these exports /imports do not represent a significant part of their sales or market size. Indeed, no advantage would occur to such domestic producers in such an event because of the competition from other suppliers in the market. Another distinction drawn by the Investigating authorities of other countries while deciding whether a domestic producer should be excluded is: Is the domestic producer merely supplementing its domestic production with some dumped imports or whether it is primarily an importer with relatively limited production? If the focus has shifted from domestic production to imports, then such a company should be excluded from the scope of domestic industry. Thus an important element that needs to be considered on the subject is: whether or not the domestic producer in question is committed to production in the country of imports.
180. While disputing the claim of M/s Grasim Industries Ltd to treat it as the domestic industry, the opposing interested parties have contended that M/s Grasim Industries Ltd should be treated as ineligible for consideration as the domestic industry.
181. After careful examination of the submissions made by interested parties on the subject and considering the legal provisions and facts of the case, the Authority notes that

facts on record do not justify exclusion of M/s Grasim Industries Ltd from it being considered as the domestic industry in the instant matter. The opposing parties have argued that the cases referred by the domestic industry are not relevant to the present situations. It is, however, noted that the cases relied upon by the domestic industry are not limited to those situations where the applicant company(s) had imported the product under consideration. The applicant has referred to some decisions wherein one of the domestic producers was related to exporter from subject or non-subject countries and it was found by the investigating authorities that inclusion of such domestic producers within the category of domestic industry was justified. The contention of the opposing parties that the domestic industry is ordinarily to be excluded is neither borne out from a plain reading of the law nor from the jurisprudence on the subject.

182. It is noted that the relevant provision defining the domestic industry grant discretion to the Authority to either include or exclude a related domestic producer from its consideration as a part of the domestic industry. The Authority further notes that in case the applicant is related to a producer in the exporting country, the mere fact of such relationship does not lead to automatic exclusion of such producer from the ambit and scope of the domestic industry. Indeed, discretion granted has to be judiciously exercised by the Authority in such cases, to examine further on case by case basis and consider whether such a related producer should be considered as eligible or ineligible to be considered as a part of the domestic industry. Axiomatically, the impact of relationship on the facts of the case needs to be appreciated for this purpose. Considering the facts available on record, the Authority has, *inter alia*, considered the followings:-

- (a) Whether the behaviour of the related parties is distinct and different as compared to unrelated parties;
- (b) Whether there is some evidence to show that such related producer triggered or intensified dumping in the Indian market;
- (c) Whether the related domestic producer has been shielded from the effects of dumping or has unduly benefited from it;
- (d) Whether the related domestic producer has sought to stifle the competition in the Indian market;
- (e) Whether there is a case of self-inflicted injury?

183. The Authority considers that apart from being a related party, it is also pertinent to evaluate the impact of the exports/imports, if any, made by the related party in a given case. Whether such related party had exported/imported the product to India during the period, if so, what is the impact thereof on the claims of injury? If not, whether there is any other ground still justifying its exclusion. In case the related party has also exported/imported the subject goods, then the following also need to be evaluated:

- The volume of exports/imports made by such related party;
- The purpose of such exports/imports made by the related party;
- Whether there is any evidence to show that injury to the domestic industry was attributable to such exports/imports by the related party;

- Whether the general emphasis of the related domestic producer was on the production of the subject goods or whether the general emphasis gradually or steadily shifted to imports;
- Whether the volume of exports/imports by such related parties were such that the related exporter is gradually or steadily substituting the unrelated domestic producers' market;
- Any other factor which might have been brought to the notice of the Authority by the interested parties during the course of the investigation.

184. PT South Pacific Viscose has, inter alia, contended that they have been forced by PT Indo Bharat Rayon to resort to dumping, that is, they have resorted to unfair competition in the form of dumping because the other party was dumping. In this context, the Authority notes that reasons for dumping are entirely irrelevant under the law and it is only the factum of dumping that is relevant. Only existence and degree of dumping is relevant in an anti-dumping proceeding and the reasons leading to such dumping are not material. Even if one or more foreign producers (from the same or different countries) have been forced to resort to dumping by one or more other foreign producers, the law does not condone the same. Notwithstanding this, The Authority noted that this allegation was found to be false, as PT South Pacific Viscose had exported the subject goods much earlier than the shipments exported by PT Indo Bharat Rayon. Besides, the volumes of exports made by PT South Pacific Viscose were significantly higher than the volume of exports made by PT Indo Bharat Rayon. PT South Pacific Viscose was found to be selling the product concerned even in its domestic market at a loss and therefore, the allegation that they resorted to dumping because the other party was dumping is not factually correct and thus devoid of any merit.

185. As regards the contention that the process of anti-dumping should not be abused by the "sole monopoly producer" in India; the Authority notes that 'dumping' is an unfair trade practice and must be condemned if it causes injury to an established domestic industry, even though there is only one domestic producer; as the intent of anti-dumping duty is only to redress the injury caused to the domestic industry on account of the unfair trade practice of dumping. Imposition of the duties shall not restrict the rights of foreign producers to sell the subject goods at un-dumped prices in the Indian market. Redressal concerning anti-competitive behaviour could always be sought by an entity impacted by such a behaviour by moving the appropriate institution set up to address the same.

186. The Authority also notes that neither the Indian law nor the WTO Anti-dumping Agreement provides that the Authority should hold a domestic producer as ineligible if it is related to foreign producer in case such related foreign producer participates in the investigation and positive dumping margin is established in respect of its exports. Further, an individual dumping margin is required to be determined in respect of each known exporter. The Act and the AD Rules do not make any distinction between a related and unrelated exporter in this respect. As regards deeming fiction under Rule 2(b), the same unambiguously vests discretion in the Authority in such a case. Such discretion, however, needs to be exercised in an un-biased and objective manner.

187. The Authority notes that the opposing interested parties have erred while contending that the criteria based on quantum of exports is not a rational criterion. As the issue at hand is “exports” made by a related exporter; the Authority considers that the quantum of imports is indeed an important factor to decide the exclusion of the related domestic producer; as it would, *inter alia*, be one of the factors in assessing whether the injury claimed is a self-inflicted injury or otherwise.
188. In the instant case, M/s Grasim Industries Ltd. has affiliated companies in Indonesia and China PR producing & selling the product concerned, namely M/s Birla Jingwai Fibres Company Limited, China PR and PT Indo Bharat Rayon, Indonesia. PT Indo Bharat Rayon – Indonesia have also filed their detailed response to the questionnaire sent, which has been verified by the Authority and has been dealt appropriately in the relevant sections of these findings. PT Indo Bharat Rayon is not a subsidiary of M/s Grasim Industries Ltd. It is noted that M/s Grasim Industries Ltd holds only *** % shareholding in PT Indo Bharat Rayon, Indonesia and ***% in M/s Birla Jingwai Fibres Company Limited, China PR. M/s Grasim Industries Ltd. is the sole producer of the subject goods in India and has claimed injury on account of the dumped imports from the subject countries.
189. It is important to emphasize that despite having related parties in the subject countries, the Authority did not notice any difference in M/s Grasim Industries Ltd.’s behaviour, *vis a vis* a situation, were it not a related party. There has been evidence on record in respect of stifling the competition by M/s Grasim Industries Ltd. or taking any other undue advantage by seeking application of the anti-dumping duty in the instant matter.
190. Besides, the volume of exports made by PT Indo Bharat Rayon is quite small and sporadic in nature; these imports have been made by the unrelated importers under duty exemption category. M/s Grasim Industries Ltd has not imported the subject goods. The Authority notes in this regard that in a situation where majority of the exports are by other unrelated Indonesian exporter and where only three sales transactions (during the period of investigation) took place between PT Indo Bharat Rayon and Indian importer/consumer, that too for imports of the material under duty exemption scheme, it cannot be concluded that the parties colluded to force other competitors out of Indian market. The Authority further notes that there is no evidence whatsoever provided by opposing interested parties establishing that the two parties have colluded. Besides, no evidence is available on record to establish that the unrelated Indonesian producer has been forced to lower the prices due to alleged low prices quoted by PT Indo Bharat Rayon. The allegation by PT South Pacific Viscose, *inter alia*, that dumping was provoked and triggered by PT Indo Bharat Rayon – Indonesia was looked into during the verification of the two companies and was found to be unfounded and incorrect. This view is further buttressed by the analysis of imports of the subject goods from Indonesia, as seen in the following table.

	Imports in MT		Total Imports	Share of	Share of
	PT Indo Bharat	PT South Pacific	From Indonesia	PT Indo Bharat	PT South Pacific Viscose

	Rayon Exports	Viscose Exports	Indonesia	Rayon	Pacific Viscose
2006	-	***	***	0.00%	100.00%
2007	***	***	***	5.51%	94.49%
2008 Jan- June	-	***	***	0.00%	100.00%
POI	***	***	***	2.29%	97.71%

191. The Authority has also examined the share of Indonesia in respect of imports of the product under consideration in India. The imports from Indonesia were only about 38% of total imports into India in 2006-07, but the same increased to 74% in 2007-08, 93% in April-June, 2008 and 84% during POI. Thus, it is evident that share of Indonesian imports steadily increased in gross imports of the subject goods in India. Besides, the share of PT South Pacific Viscose was very high in these imports from Indonesia as may be seen from the following table:

	Gross Imports in India	Imports from Indonesia	Share of Indonesia in gross imports	Export by PT South Pacific Viscose	Share of PT South Pacific Viscose in total imports
2006-07	6,774	2,554	37.70%	***	29.02%
2007-08	6,842	5,069	74.09%	***	71.67%
April-June08	1,890	1,757	92.95%	***	92.95%
POI	6,329	5,305	83.82%	***	81.90%

192. With regard to the WTO decision referred to by the interested parties, the Authority notes that the issue in that case is not relevant to the present case. The issue in that case was whether the transactions between the affiliated parties could be considered as transactions in the ordinary course of trade for the purpose of determination of normal value. Thus, while the issue in that case arose in the context of normal value and transactions between related parties; the issue under consideration in the present case is whether M/s Grasim Industries Ltd. should be held as ineligible as a domestic industry within the meaning of Rule 2(b) in view of its relationship with its affiliates in the subject countries. It is also relevant to note that even in the context of determination of normal value; all transactions between the related parties may not be treated as reliable or unreliable and thus is to be examined on the merits of each case. Whereas in the instant case, the transactions are not even between such related parties but are between PT Indo Bharat Rayon and unrelated Indian consumers.

193. It has also been argued by opposing interested parties that the domestic industry and PT Indo Bharat Rayon's objective was to block fair competition in the Indian market. However, given the positive dumping margin that has been established in the instant case, it is evident that the unrelated Indonesian producer resorted to dumping due to its own commercial interests and this dumping has been found to be unprovoked and not due to the three small shipments made by PT Indo Bharat Rayon and significant volume of the subject goods have been exported by PT South Pacific Viscose at dumped prices. The Authority on investigation has come to the conclusion that dumped imports of the subject goods from the subject countries have caused 'injury' to the domestic industry. The Authority further notes that small and sporadic exports by PT Indo Bharat Rayon have not been a significant factor in such injury. Besides, the focus of M/s Grasim Industries Ltd continues to be production and sale of the subject goods. Thus, there does not appear to be case of self-inflicted injury. The Authority has also taken note of anti-dumping cases, wherein even though the imports were effected by the related domestic producer from its affiliate, then too they have been considered by the investigating authorities as a part of the domestic industry. Thus, the Authority does not find any justifiable reason to exclude M/s Grasim Industries Ltd from the ambit and scope of the domestic industry.
194. The Authority therefore, reiterates that the M/s Grasim Industries Ltd is not required to be excluded from the scope of the domestic industry under Rule 2(b) of the AD Rules. Thus, the application has been filed by Association of Man Made Fibre Industry of India on behalf of the domestic industry. M/s Grasim Industries Ltd. is the sole producer of the Like Article in India and has provided injury and costing information. The claim of the applicant that there is no other producer of the Like Article in India has not been disputed by any interested party. As per the evidence available on record, the production of M/s Grasim Industries Ltd. accounts for a major proportion of the domestic production of the subject goods, as M/s Grasim Industries Ltd. is the sole producer of the subject goods in India.
195. Thus, the Authority reiterates its view that it is appropriate to consider M/s Grasim Industries Ltd. as the domestic industry under Rule 2(b) of the AD Rules. Accordingly, the Authority has determined that the application satisfies the requirements of Rule 2(b) and Rule 5(3) of the AD Rules.
196. As regards the issue that the petitioner has intentionally omitted the vital question from the prescribed sets of questions just to avoid the nature of relationship with Indonesia.

Period of investigation

197. As regards the six-months period of investigation adopted in the instant matter, the Authority has noted the submissions made by the interested parties. The Authority notes that there is no prescription either in the AD Rules or in the WTO's Anti-dumping Agreement regarding the precise period of POI. The investigation authorities have adopted the POI ranging from a six months period to 18 months period. As regards the recommendations of the CADP, the Authority notes that these are only recommendations and even these recommendations acknowledge that the

POI could be of lesser duration than a 12 months period. Adoption of six-months POI has also been upheld by the Hon'ble CESTAT in the matter of Virchow laboratories Ltd. v/s Ministry of Finance.

198. The Authority has already recorded that POI in the instant matter was appropriately chosen considering the facts of the case, which also covers the most recent available data on the subject. Besides, the opposing interested parties also concede that fixation of six-months period as the period of investigation is not illegal. The Authority notes that it is incorrect to state that it is the DGAD's practice to take 12 months period as the POI; in fact the Authority has adopted six-months period to eighteen months period as the POI.
199. The Authority notes that it has adopted six-months period as POI in a number of cases. As stated, even the interested parties agree that consideration of 6 months as the investigation period is not illegal. CADP guidelines cannot be read as mandatory prescription. In any case, these guidelines cannot apply in all situations, irrespective of the facts of a case. Factors, such as, financial reporting cannot be considered alone; as it would imply consideration of only one period as the period of investigation viz. April-March. As regards the argument that 6 months period of investigation covers 4 months of the recessionary period; the Authority notes that the fact of recession cannot be selectively pleaded in support of export price below normal values; as the fact of recession would equally apply to normal value as well. It is, however, noted that the domestic prices of the subject goods in Indonesia were materially higher than the export price to India. Thus, recession in the global market cannot be stated as a justified reason to be considered in fixing the period of investigation.
200. As regards the fall in demand, the Authority notes that the drop in demand should have equally impacted the domestic industry and the imports. But in the instant matter, while the demand of the subject goods has fallen but the volume of imports from the subject countries has increased. The Authority considers that 6 months period of investigation was justified in view of significant drop in import prices and significant deterioration in financial situation of the domestic industry.
201. The Authority notes that product under consideration in the present investigation is Viscose staple fibre – except bamboo fibre. The Customs' classification for the product under consideration does not exclude bamboo fibre. Therefore, summary information published by the Applicant cannot be relied upon as it may include imports of product other than product under consideration. The domestic industry has furnished information as provided by TIPS, which was accepted at the time of initiating the investigation.
202. The domestic industry has alleged that significant import volumes have been reported under Customs Sub-heading No. 5504 9090. The Authority requested the O/o DGCI&S for import information for Custom classification Nos. 55041000 and 55049090, which has been received and analysed. Accordingly, the imports volumes of the subject goods have been determined. A comparison of imports claimed by the Applicant as per TIPS data and as per DGCI&S data shows the following:

	TIPS data		DGCI&S data	
	Qty Kg	Rs./Kg	Qty Kg	Rs./Kg
China PR	907252	96.03	1023971	94.13
Indonesia	4533741	98.44	4689364	98.47

203. From the material available on record, it is seen that there are no imports of the subject goods from any other country except from the subject countries during the POI. Further, the volume and price as per DGCI&S and TIPS are broadly comparable.
204. As regards the determination of Normal value in respect of China PR, the Authority notes that consequent upon the initiation notice issued by the Authority; none of the Chinese producers/exporters submitted any response including the market economy questionnaire response and thus failed to rebut the non-market economy presumption. In the initiation notification itself, the Authority had indicated that the Applicant has suggested Indonesia as appropriate surrogate country. Interested parties were requested to make submissions in this regard. However, none of the exporter/producer from China PR responded and made any submissions in response thereto. Thus, the Authority examined whether Indonesia could be considered as a surrogate market economy for the purpose of determination of Normal value for China PR. For this purpose, the Authority took into cognizance the level of development of Indonesia and that of the subject goods in question. It was, *inter alia*, noted that there were two major producers of the subject goods in Indonesia and incidentally both had co-operated in this investigation. It was also noted that significant domestic sales were made by these producers in the domestic market of Indonesia. Thus, the Authority considered it appropriate to consider Indonesia as an appropriate surrogate country in the instant matter. Thus, considering Indonesia as an appropriate surrogate country for China PR, the Authority confirms that it rightly adopted the weighted average Normal value of Indonesia so determined for China PR, in terms of the relevant provisions of the AD Rules.
205. The Authority has taken note of submissions made by various interested parties; including the domestic industry's contention that since no benefit has been obtained by them under the foreign trade policy for the so-called "deemed exports", such sales should be treated as domestic sales. These were cross checked during the spot verification by the team and seen that these sales were in fact domestic sales.
206. Annexure II of AD Rules provides for objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in domestic market, for the like article; and (b) the consequent impact on domestic producers of such products. While examining the volume effect of the dumped imports, the Authority is required to examine whether there has been a significant increase in dumped imports either in absolute term or relative to production or consumption in India. With regard to price effect of dumped imports, the Authority is required to examine whether there has been significant price undercutting by the dumped imports as compared to price of the like article in India, or whether the effect of such imports is otherwise to depress the prices to

a significant degree, or prevent price increase, which would have otherwise occurred to a significant degree.

207. As regards the impact of dumped imports on the domestic industry, para (iv) of Annexure-II of the AD Rules states as follows:

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

208. The Authority has examined the injury parameters objectively taking into account the facts and submissions of the interested parties. Since there are more than one country involved in the present investigation, the Authority has examined whether the conditions for cumulative assessment are satisfied. The Authority observes that:

- i. The margins of dumping from each of the subject countries are more than the *de-minimis* limits prescribed;
- ii. The volume of imports from each of the subject countries is more than the *de-minimis* limits prescribed;
- iii. Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like article offered by the domestic industry in the Indian market. This is, *inter alia*, evident from the fact that the domestic product and imported product are like Article; imports from each of the subject countries are significant; goods produced by the Indian Producers and imported from the subject countries are in direct competition; common parties are resorting to use of imported material and domestic material; Indian users/customers are using domestic material and imported material interchangeably; the exporters from the subject countries and the domestic industry have sold the subject goods in the same periods to the same set of customers,

In view of the above, the Authority considers it would be appropriate to assess injury to the domestic industry cumulatively from the dumped imports of the subject goods from the subject countries.

Demand and market share:-

209. Demand of the product in the Country has been assessed as the sum of the domestic sales of the domestic producers and imports from all sources.

							In MT	
	2005-06	2006-07	2007-08	April- June 08	July- Dec 08 (POI)	April- June 08	POI Annualized	

Sales of	223,147	226,178	237,395	49,784	100,925	199,136	201,850
Indexed	100	101	106	89	90	8	90
Imports in	198	6,774	6,842	1,890	6,329	7,561	12,658
Indexed	100	3,421	3,456	3,818	6,392	3,818	6,392
Demand	223,345	232,952	244,237	51,674	107,254	206,697	214,508
Indexed	100	104	109	93	96	9	96
Market Share in Demand							
Subject	0.06%	1.34%	2.78%	3.66%	5.90%	3.66%	5.90%
Other Countries	0.03%	1.57%	0.03%	0.00%	0.00%	0.00%	0.00%
Domestic	99.91%	97.09%	97.20%	96.34%	94.10%	96.34%	94.10%

- i. It is noted that the demand for the product under consideration was increasing till 2007- 08. The same has however declined (on prorata basis) during April-June 08 period and the period of investigation.
- ii. It is also noted that although demand for the product under consideration has shown decline during the POI as against same year; import volumes have increased significantly (on prorata basis).
- iii. It has been argued by opposing parties that there is a decline in demand of product in India and therefore, injury to the domestic industry, if any, is not from the alleged imports. The Authority, however, notes that impact of decline in demand should have resulted into decline in imports as well on proportionate basis, but it is seen that the imports of the subject goods at dumped prices have increased.
- iv. The market share of dumped imports from subject countries is significantly higher during the POI as against the base year.

Import volumes and market share

210. The imports of the subject goods and the market share are given in the following table:

	In MT						
	2005-06	2006-07	2007-08	April- June 08	July- Dec 08 (POI)	April- June 08	POI Annualized
Imports from the Subject Countries	125	3,121	6,779	1,890	6,329	7,561	12,658
Imports from Other Countries	73	3,653	62	-	-	-	-
Total Imports	198	6,774	6,841	1,890	6,329	7,561	12,658
Dumped Imports in relation to -							
- Indian Production	0.05%	1.26%	2.44%	3.27%	10.05%	3.27%	10.05%

- Indian Consumption	0.06%	1.34%	2.78%	3.66%	5.90%	3.66%	5.90%
Market Share of Domestic Industry	99.91%	97.09%	97.20%	96.34%	94.10%	96.34%	94.10%

It is observed that:

- i. The imports have shown a significant increase in absolute terms during the POI (Annualised on prorata basis).
- ii. The imports have increased in relation to production and consumption in India.
- iii. While the market shares of the subject countries have increased but that of the domestic industry has declined.
- iv. With regard to the argument that the decline in market share is insignificant, particularly in view of macro-economic problems, the Authority holds that there is no legal prescription with regard to the extent to which indices would show deterioration to conclude that the domestic industry has or has not suffered injury. As per the legal provisions, while there is no de-minimis criterion on the basis of market share in demand either in the AD Rules or the WTO's AD Agreement, some authorities do consider 1% market share of imports as significant. If 1% of market share of import from a particular country in consumption can be considered as "significant", the decline in market share by Nearly 6% cannot be considered as insignificant
- v. With regard to macro-economic problems (the interested parties are apparently referring to the global meltdown), however, the Authority notes that existence of such factors do not justify dumping and stop redressal of consequent injury to the domestic industry. In a situation where domestic demand for the product has fallen, increase in imports only aggravates the injury.

Price effect of imports

211. It is seen from the following table that there is marginal negative price-undercutting.

Rs/Kg.	China PR	Indonesia
CIF Import Price	94.13	95.39
Landed Price	99.03	100.35
Net Selling price of Domestic Industry	98.72	98.72
Price Undercutting	(0.31)	(0.31)
Price Undercutting % range	-1% to 1%	-2% to 2%

212. However, the Domestic industry has claimed that it fixes the prices periodically based on the prevailing international prices. If the import price decline, the domestic industry may

also be forced to reduce its selling prices. If the import price increases, but not to the full extent of increase in the cost of production, the domestic industry may be prevented from increasing its price commensurate with the increase in cost of production. Absence of positive undercutting does not mean lack of injury.

213. The Authority notes that the price effect of the dumped imports has been adverse as regards the domestic industry. The Authority has further made comparison of the cost of production and the selling price of the domestic industry along with the landed price of imports, which is given in the following table:

Rs /Kg.	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)
Cost of Production	60.54	64.28	71.09	90.99	88.677
Indexed	100	106	117	150	146
Selling Price	72.94	84.89	102.62	108.60	98.72
Indexed	100	116	141	149	135
Landed Price China PR	138.02	86.59	112.66	110.79	99.03
Indexed	100	63	82	80	72
Landed Price Indonesia	77.28	87.58	99.47	107.78	100.35
Indexed	100	113	129	139	130
Average Landed Price from the subject countries	77.77	87.40	102.80	108.07	100.14
Indexed	100.00	112.39	132.19	138.97	128.77

214. It is seen that while selling price of the domestic industry increased from 100 in base year to 135 during the POI. However, its cost of production increased from 100 in the base year to 146 during the POI. Apparently, the domestic industry could not increase its selling price in line with the increase in its cost of production; thereby indicating that the dumped imports are significantly suppressing the prices of the domestic industry.
215. The Authority has also examined price underselling of the domestic industry and notes that the landed value from subject countries is significantly below the non-injurious price of domestic industry as may be seen from the following table.

In Rs./Kg.	NIP (Grey fibre)	Landed price	Price Underselling	Price Underselling
China PR	107.97	99.03	8.94	5 to 15
Indonesia	107.97	100.35	7.62	5 to 15
Subject Countries	107.97	100.14	7.83	5 to 15

Apparently the domestic industry is forced to sell the subject goods below the non-injurious price due to the presence of dumped imports.

Economic Parameters of the Domestic Industry

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

Sales volumes

217. The sales volumes of domestic industry are given in the following table:

In MT	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)	April-June 08	POI - Annualize
Sales volume	223,147	226,178	237,395	49,784	100,925	199,136	201,850
Trend indexed	100	101	106	89	90	89	90

218. It is noted that sales of domestic industry had increased up to 2007-08 and then declined during April-June 08 period and the POI. Though, decline in demand would have resulted in decline in sales but the imports have not declined proportionately, but have actually increased.

219. With regard to the argument that sales volumes have declined due to consumers restricting purchases and sharp fall in exports of textile products, the Authority notes that situation where (a) consumers are restricting purchases from domestic source, but increasing purchases through imports; and (b) domestic prices decline due to import prices in fact establishes that injury to the domestic industry is due to dumped imports.

Production, Capacity and Capacity utilization

220. Information relating to production, capacity and capacity utilization is given in the following table:

In MT	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)	April-June 08 Annualized	POI Annualize
Capacity	253,450	266,450	266,450	82,355	166,520	329420	333040
Indexed	100	105	105	130	131	130	131
Production	228,981	246,832	277,818	57,829	114,314	231,317	228,628

Indexed	100	108	121	101	100	101	100
Capacity Utilization	90.35%	92.64%	104.27%	70.22%	68.65%	70.22%	68.65%
Indexed	100	103	115	78	76	78	76

221. It is seen that production and capacity utilization of the domestic industry was improving till 2007-08, which declined during the April-June 08 period and the POI. It has been alleged by some interested parties that domestic industry had increased its capacity in March 2008 and a new capacity cannot perform at same level of old capacity. The Authority has examined performance of domestic industry on same capacity level, which was there before expansion and notes that even with the same capacity levels, the capacity utilization has declined from 104.27 % in 2007-08 to 85.8% in the POI.

Profit/Loss, return on investment and cash profits

222. Information relating to profit/loss, return on investment and cash profits is given in the following table:

	2005-06	2006-07	2007-08	April-June	July-Dec 08 (POI)	April-June 08 Annualized	POI Annualized
PBT Rs. Lacs	27,670	46,615	7485	8767	10143	35068	20286
Indexed	100	168	27	127	73	127	73
PBT Rs. KG	12	21	32	18	10	18	10
Indexed	100	166	25	142	81	142	81
PBIT Rs. Lacs	30,990	50474	7968	1068	149272	42756	298555
Indexed	100	163	25	138	96	138	9
PBIT Rs. Kg	14	22	34	21	15	21	15
Indexed	100	161	24	155	107	155	10
Cash Profit Rs. Lacs	31083	50703	7926	10169	130555	40676	2610909
Indexed	100	163	25	131	84	131	8
Cash Profit Rs. Kg	14	22	33	20	13	20	13
Indexed	100	161	24	147	93	147	93
ROI - GFA Basis	23.55%	34.97%	43.54	23.4	14.69%	23.46	14.69
Indexed	100	149	18	100	62	100	6
ROI - NFA Basis	37.44%	55.64%	63.90	32.4	21.16%	32.42	21.16
Indexed	100	149	17	8	57	87	57

223. The Authority notes that the profitability was improving till 2007-08, which declined thereafter significantly. The return on investment and the cash profits have followed the same trend as that of profitability. It is noted that though during the POI, the average return on investment was positive, however, it declined significantly over the injury period. The Authority further examined profits and ROI situation of the domestic industry on quarterly basis within the POI. It is further noted that performance of the domestic industry declined significantly in the 2nd quarter of POI, as may be seen from the following table:

	Jul-Sept 08	Oct-Dec 08	July-Dec 08 (POI)
ROI - GFA Basis	20.04%	9.19%	14.69%
Indexed	100	46	73
ROI - NFA Basis	28.21%	13.13%	21.16%
Indexed	100	47	75

Inventories:

224. Inventory levels of the domestic industry have been as under:

In MT	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)
Inventory	13,654	5236	8233	13587	13539
Inventory – equal to no. of days sales	20	7	11	21	20

It is noted that inventory of the domestic industry declined in 2006-07, which again increased in 2007-08. The inventory further increased during April-June 08 period and the POI as compared to the 2007-08 period.

Employment, wages and productivity

225. Information relating to employment, wages and productivity of the domestic industry has been as under:

	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)	July-Dec 08 (POI Annualized)
Employment	4813	4683	4640	4552	4563	4563
Indexed	100	97	96	95	95	95
Wages Rs. Lacs	5037	5893	6292	1719	3088	6176
Indexed	100	117	125	137	123	123
Productivity per day	654	705	794	661	653	653
Indexed	100	108	121	101	100	100
Productivity per Employee	48	53	60	51	50	50
Indexed	100	111	126	107	105	105

It is noted that employment level of the domestic industry declined over the injury period.

226. The Authority, however, notes that this decline is not only seen in the POI, but was there even before the POI. The wages of the domestic industry shows normal increase. As regards productivity per employee, it increased till 2007-08 and showed a decline during April-June 08 period and the POI.

Dumping Margin:

227. It is observed that dumping margin in respect of the exports from the subject countries is positive and more than the de-minimis limits prescribed.

Growth

228. The Authority notes that the growth of the domestic industry is negative in terms of volume parameters such as sales (declined by 9.54% from the base year and 16% from 2007-08), production (0.15% from the base year and 21.48% from 2007-08) and capacity utilization (declined by about 24% from the base year and 39.42 % from 2007-08). The growth in price parameters is also seen as negative. Profits before tax (declined by 26.69% from the base year and 197 % from 2007-08) of the domestic industry and the ROI (declined by 43.49 % from the base year and 114.13 % from 2007-08) too deteriorated significantly during the POI.

Threat of material injury

229. The Authority has taken note of the submissions made by the domestic industry regarding availability of surplus capacities of the subject goods in the subject countries. From the information available on record, it is seen that there is a significant increase in the capacities in the subject countries, whereas the capacity utilization has gone down significantly, indicating the surplus capacities of the subject goods in the subject countries. The Authority notes that the rate of increase of dumped imports over the injury period has been significant, indicating the likelihood of substantially increased importation. The data of the co-operating exporters from Indonesia shows significant increase in their inventory levels. There is a significant price underselling and significant price suppression indicating the threat of material injury to the domestic industry. This view is further buttressed if the landed value of the subject goods from the subject countries during the quarter immediately following the POI is seen. It is noted that the landed value has further fallen by 7.81 % as may be seen from the following table in case of imports from Indonesia. As regards imports from China PR during the period, it is seen that the landed value has fallen by 18.03 %. Cumulatively, the landed value of the subject goods from the subject countries has fallen by 7.97% during the period.

Rs./Kg.	Jul-Dec08 (POI)	Jan-Mar09 (Post POI quarter)
Landed Value –China PR	99.03	81.17
Landed Value -Indonesia	100.35	92.51
Average Landed Value from the subject countries	100.02	92.05

Causal Link

Views of the Domestic Industry

230. The Authority has already examined all other known factors. Regarding injury due to decline in demand, the same has been examined by the Authority in the preliminary finding. As regards global downturn, it has not been demonstrated that profitability should indeed decline, because of global downturn. As regards increase in input cost, the same is specially covered under the Rules.
231. As regards weakening of INR, the same should have been benefitted the domestic industry rather than going against the domestic industry. While the applicant depends upon the imported wood pulp only and would have got adversely impacted on this account only because of this, landed price of imported pulp have substantially increased.
232. As regards capacity expansion, the same are results of earlier decisions. In any case, the domestic industry cannot be expected to terminate its expansion plans only because of dumping.

Views of other interested parties

233. The Authority should have examined other factors, which might have caused injury to the domestic industry.
234. In its annual report, the domestic industry have stated that deterioration in production and sales and profits is due to (1) lower demand, (2) global turndown, (3) steep rise in input cost and weakening of INR. Thus injury due to alleged dumping is a false allegations and conjunctures.
235. The price reductions have nothing to do with the alleged dumping. (Reference has been made to the Annual report of 2007-08 in this regard)
236. Lower profitability is due to increase in input costs, lower volumes and weak margins. Interest and depreciation cost appears to be very high. (reference has been made to the Annual report of 2007-08, corporate presentation, Q2FY09 presentation, Q3FY09 presentation).
237. Despite restrained outlook, the domestic industry expended its capacity.

238. Decline in sales is due to (1) consumer resisting purchases, (2) decline in textile exports led to decline in demand, (3) Global slowdown with inflationary pressure, (4) liquidation of inventory in value chain.
239. Capacity expended, hence no injury on account of ability of increase capacity/expansion. (reference has been made to the Annual report of 2007-08).
240. As per Q3 report, the production was curtailed due to lower demand. Different statements have been made by the domestic industry before different forums.
241. In Dept 09-H1 performance, the production increased by 15% inspite of NAGDA plant was shut for 48 days due to water shortage, 19% growth in sales, new divisional revenue increased by 17% and PBIDT increased by 35%.
242. The domestic industry is planning to invest in a project of 80000 MT in Vilayat in Gujarat.

Examination by the Authority

243. The Authority has examined whether other parameters could have contributed to the injury caused to the domestic industry. Following parameters were analyzed in this regard:
- a) Imports from Third Countries: - The Authority has collected the transaction-wise imports data of the subject goods from DGCI&S. From the information available on record, the Authority notes that there are no imports of the subject goods from any other country during the POI.
 - b) Contraction in Demand:- The Authority notes that the demand for the subject goods has shown significant improvement till 2007-08, and then shows decline during the POI. However, as compared to the demand, the imports have increased significantly, which ordinarily should have declined with the decline in demand. It is noted that within the available demand, the domestic industry has lost its market share. Apparently, the domestic industry was already facing the problem of declining demand, but the same was compounded by the dumped imports.
 - c) Pattern of consumption:- No significant change in the pattern of consumption has been noticed. Apparently, the product supplied by the domestic industry is directly competing with that of imported material from the subject countries.
 - d) Conditions of competition:- As per facts available on record, there

is no evidence that conditions of competition or trade restrictive practices have caused injury to the domestic industry.

e) Developments in technology:- As per facts available on record, there appears to be no change in technology over the injury period which could have caused injury to the domestic industry.

f) Export performance of the domestic industry: - The performance of the domestic industry has been segregated for domestic sales and exports sales; and only domestic performance of the domestic industry has been considered while assessing the injury to the domestic industry.

244. The Authority notes that the performance of the domestic industry over the injury period has deteriorated due to dumped imports from the subject countries. This is established by the following:
245. The imports from the subject countries have significantly increased over the injury period. It is noted that while the market share of the domestic industry has declined, that of the imports from the subject countries have increased.
246. There is price suppression as the domestic industry has not been able to increase its prices in proportion to the increase in the cost of production. The significant price-suppression caused by the dumped imports has adversely impacted the domestic industry, resulting in significant decline in profits and cash flow.
247. A comparison of the landed value of the subject goods with the NIP of the domestic industry shows that there is a case of price underselling as well.
248. Some interested parties have contended that production, sales and profitability had deteriorated due to lower demand, prevailing global down trend, steep rise in input costs and weakening of Indian Rupee; the Authority notes that these public statements in the Annual Report does not alter the conclusion that dumping of the product has contributed to injury to the domestic industry. Firstly, it has been wrongly assumed by the interested parties that dumping of the product should be the sole cause of injury to the domestic industry. Though production and sale undisputedly suffered due to decline in demand but dumping of the subject goods also caused material injury to the domestic industry. With regard to profitability, as the domestic industry fixes its prices on the basis of import prices; therefore, availability of dumped imports at lower prices in the market apparently have forced the domestic industry to offer such prices that did not permit recovery of increase in the input costs.

249. As regards the issue relating to steep increase in input costs, the Authority notes that if the domestic industry is not able to increase its prices in tandem with the increase in costs of production, then it would be a clear case of price suppression, which is an important injury indicator. As regards weakening of Indian Rupee, the Authority notes that the same should have reduced injury from imports, as the weakening of Indian Rupee should have had an impact of making imports less attractive.

Magnitude of Injury and Injury margin:-

In Rs/Kg.	Indonesia			China PR
	PT Indo	PT South Pacific	Others	
	Bharat Rayon	Viscose		
NIP	107.97	107.97	107.97	107.97
Landed Value	97.30	100.42	77.94	99.03
Injury Margin	10.67	7.55	30.03	8.94
Injury margin%	9.88%	6.99%	27.81%	8.28%
Injury margin Range (%)	5-15	5-15	25-35	5-15

Submissions made by interested parties on the Disclosure Statement

250. The following submissions, in brief, have been made by on behalf of M/s PT South Pacific Viscose, Indonesia; M/s Indian Spinners Association and M/s Rajasthan Textiles Mills Association.

- **Preliminary Objection:** it has been contended that the present proceedings are being conducted in pursuance to remand directions dated 13.08.2011 issued by Appellate Tribunal. The Appellate Tribunal specifically directed that the process of carrying out any modification to the Customs Notification shall be completed within 6 months from the date of the order of the Appellate Tribunal. The said 6 months period lapsed on 12.02.2012. After lapse of said period, they have not been served with any order of the Appellate Tribunal by which the time period of 6 months for carrying out the modification if any, has been extended and that the Designated Authority cannot seek extension of time from the Appellate Tribunal as Designated Authority has not accepted the said order and has filed several Appeals before the Hon'ble Supreme Court in several other cases.
- As the proceedings have not been completed within the time period of 6 months fixed by the Appellate Tribunal, no further steps can be taken in furtherance to remand direction in subject proceedings.

- Non-Compliance of Trade Notice No. 1/2007: It has been concluded in the para 164 of the disclosure statement that trade notice are only issued to facilitate the examination of issues raised and therefore it is not necessary for interested parties to follow the guidelines suggested therein.
- Common Directors: It is submitted that from the disclosure statement for the first time we came to know that Grasim Ind. Ltd., Birla Jingwai Fibers Company ltd. China and PT Indo Bharat Rayon, Indonesia have common directors. By not disclosing relevant facts at appropriate stage of the investigations the Designated Authority has violated principles of natural justice.
- Standing of the Petitioner: The Authority has relied greatly on the December 2011 amendment vide Notification No. 86/2011-Customs (NT) which results in deletion of the word “only” from the definition of ‘domestic industry’ under Rule 2(b) of the AD Rules, 1995. It does not result in shifting of the discretion from the ‘rest of the producers’ to the ‘excluded category of producers’. It is therefore submitted that the December 2011 amendment has no bearing on the issue in controversy and that no reference needs to be made to the same. In any case the Designated Authority is legally bound to take law that was holding the field during the 18 month period prescribed under Rule 17 and not thereafter. Reference in this regard has been made to the views of the Ministry of Finance in Soda Ash case before Madras High Court on the interpretation of Rule 2(b). In view of the above, it has been contended that removal of word “only” has no bearing on the case and petitioner cannot be said to qualify for the domestic industry in terms of Rule 2(b). The petitioner has only provided some extracts of the decisions and most of them are not relevant to the case and some of them even contradict the claim of the petitioner. In para 186, the Authority concludes that there is no distinction available in the AD Rules between related and unrelated exporter. In this context, it has been contended that related party can plan its exports as initiation of anti-dumping investigation brings no surprise element for the related party. Therefore, to treat both the related and unrelated exporters on same level is incorrect. It has been contended that without examination of data and information and verification of the Chinese entity, there is no material based on which it can be concluded that there were no exports by Chinese entity directly or indirectly.
- Documents in Public File: Despite our request copies of documents in public file were never provided. Therefore, to mention that the Authority has kept public file in terms of AD Rule is not sufficient.
- Quantity of Exports: Even sales offers can disrupt the market and are enough to disturb the prevailing prices in the market. PT Indo Bharat Rayon has exported small quantities and this small and sporadic export kept PT South Pacific Viscose at price

check. Therefore, we request the Authority to kindly evaluate the purpose of exports and not the volume and number of shipments made by the related exporter. In this connection, we also like to submit that even in small exports PT Indo Bharat Rayon is liable for positive dumping margin. This factor is standalone enough to disentitle the applicant to be treated as domestic industry.

- Short Period of Investigation: We have never argued that the Authority cannot take 6 months as period of Investigation. In this connection we have only pointed out that 5% dumping margin cannot be said as intensified dumping which is the sole ground for taking POI as 6 months. Thus, it is not an appropriate criterion either in law or on facts. The applicant has attempted to link the issue of intensified dumping to the cost of production which is incomprehensible. Our argument that the low dumping margin determined by the Authority cannot lead to a conclusion that there was intensified dumping (which is the only justification for a shorter POI), remains unanswered by the Authority. In view of the above, there is no apparent reason on record for proceeding with the present POI.
- Injury: Deemed exports cannot be considered as domestic sales as the petitioner is availing the benefits which are available only because of export sales and simultaneously want to get benefited by adding these sales in normal domestic sales. Profit of the petitioner had only declined in 2008-09 that is only because of the economic turmoil worldwide. Accept that period petitioner is doing exceptionally well. Referring to the financial performance of 10 years, it has been contended that in 2008-09 petitioner profit declined by 16% as compared to previous year, whereas in next year i.e. in 2009-10 the profit increased by 41% in comparison to 2008-09 and 19% as compared to 2007-08. This fact clearly establishes that the injury, if any, to the Domestic Industry is certainly on account of global slowdown.

Submissions made on behalf of the domestic industry

251. The domestic industry, in brief, has contended that:

- The rules do not specify that the Authority shall “provide” evidence presented by one interested party to other interested parties. The Rules provide that the Authority shall “make available” evidence provided. This is done by the Authority through public file. It simply “make such files available” for “inspection and taking notes”. In fact, this is the requirement under the law. The law does not specify that copies of such documents shall be provided by the Designated Authority to interested parties. This cannot therefore be raised as a matter of legal right.
- Submissions may not be taken on record as the written submissions filed by applicants are without paragraph numbers: the argument is beyond the law and therefore must be rejected. Even electronic medium cannot be forced by the Designated Authority, leave aside things like paragraph numbering.

- On 'Standing' issue, the Saint Gobin decision has been stayed by the division bench of the Hon'ble High Court and therefore same cannot be quoted for the purpose of the present investigation.
- It has been contended that the rule prevailing at the stage of initiation and now when the findings are to be recorded shall apply. Without prejudice, 2010 amendment also grants discretion to the Authority.
- As regards relationship, all relevant information is on the record of the Authority. It was clearly stated that it has production set ups in the subject countries. Since petitioner itself had agreed that these entities are related, the basis on which these companies are related becomes irrelevant. Information establishing relationship is relevant only in those situations where a party disputes existence of such relationship.
- All the cases cited are relevant in order to determine whether the Authority has discretion.
- On shorter POI, it has contended that the intensified dumping was within the investigation period. If the data for the investigation period is considered on month by month basis, the same shall clearly establish intensified dumping. Information of imports in Jan.-March, 09 period shows that there was further significant decline in prices from subject countries. In fact, these are the orders booked at the end of POI and must therefore have been included in the questionnaire responses of the responding exporters.
- On injury and causal link, it has been contended that while there is decline in demand, the same is not the sole or principal cause of injury to the domestic industry. Firstly, decline in demand should have equally impacted the domestic industry and Foreign Producers. However, whereas the Foreign Producers gained significant market share, the domestic industry lost the same. Secondly, the Foreign Producers have reduced the prices too significantly. Resultantly, the domestic industry was forced to undertake too significant price cuts. Deterioration in the performance of the domestic industry in respect of price parameters is due to dumped imports.
- Applicant cannot be allowed to change its position and facts which were the very basis of the initiation, Preliminary Findings as well as the Final Findings in remand proceedings. Moreover, if the parties are not related, then it is all the more curious that the same lawyer is representing two unrelated but conflicting parties in the same proceedings. - One lawyer has several times represented more than one related party. Does this mean that all those foreign producers were related? For instance, the same lawyer represented foreign producers from different countries, have no relationship at all. Does this common lawyer representing them make them related? The same lawyer in the present case is representing foreign producer and Indian consumer association. Does this make these foreign producer and Indian consumer association related?

- On Injury and Causal Link; the domestic industry has reiterated its submissions. The injury to the domestic industry is established as the imports from the subject countries have significantly increased over the injury period. While the market share of the domestic industry has declined, those of the imports from the subject countries have increased. There is price suppression as the domestic industry has not been able to increase its prices in proportion to the increase in the cost of production. The significant price-suppression caused by the dumped imports has adversely impacted the domestic industry, resulting in significant decline in profits and cash flow. A comparison of the landed value of the subject goods with the NIP of the domestic industry shows that there is a case of price underselling as well.
- It has been contended that the anti dumping duty may be imposed only as fixed quantum of anti dumping duty and on dollar basis.

Examination by the Authority

252. The submissions made by the interested parties that were considered pertinent to this investigation, have been examined as follows:

- As regards the preliminary objection; the Authority notes that it has taken appropriate steps seeking extension of time from the Appellate Tribunal. Besides, the Authority does not concur with the view that as it has filed Appeals before the Hon'ble Supreme Court; no further steps can be taken in furtherance to remand direction in subject proceedings.
- As regards non-compliance of Trade Notice No. 1/2007: the Authority reiterates its view that the said trade notice was issued to facilitate examination of the issues raised by the parties and therefore the interested parties should have ordinarily followed the guidelines suggested therein.
- As regards Common Directors; the Authority notes that information/data filed by the interested parties was kept in a public file, which was accessible to all the interested parties participating in the investigation in terms of the AD Rules.
- As regards 'Standing of the Petitioner'; the Authority notes that it has examined the issue at length, and reiterates that it has a discretion to exclude or include a domestic producer to qualify for the domestic industry in terms of Rule 2(b) and reiterates its findings on the issue.

- As regards the documents in Public File; the Authority notes that information/data filed by the interested parties was kept in a public file, which was accessible to all the interested parties participating in the investigation in terms of the AD Rules.
- As regards the quantity of exports by M/s PT Indo Bharat Rayon; the Authority notes that it has examined the issue and reiterates its findings on the subject based on the facts available on record.
- As regards the Period of Investigation: the Authority reiterates its findings on the subject. Further, the issue of intensified dumping needs also to be seen *vis a vis* the volume of the subject goods sold at dumped prices.
- As regards the injury; the Authority notes all pertinent issues have already been appropriately addressed in the Final findings dated 17th May 2010 and therefore the same is confirmed.
- As regards the form of duty, the Authority notes that the duty has already been recommended on fixed from basis and does not find any reason to modify the same.

Conclusion:

253. Having given opportunity in terms of the orders of Hon'ble CESTAT to all the parties to make oral as well as written submissions, the Authority has examined the same in the paras given above. After having examined the submissions of all the parties, the Authority confirms the conclusions arrived at earlier and indicated in the final findings dated 17th May 2010.

254. The Authority therefore confirms its earlier recommendation of imposition of the definitive anti-dumping duties on the subject goods from the date of notification issued in this regard by the Central Government on all imports of the subject goods originating in or exported from the subject countries. The Authority further concludes that no change to the relevant Government of India, Ministry of Finance's Notification is warranted.

(Vijaylaxmi Joshi)
Designated Authority