

**No.-14/1/2011-DGAD**  
**Government of India**  
**Ministry of Commerce & Industry**  
**Department of Commerce**  
**(Directorate General of Anti-Dumping & Allied Duties)**  
**Udyog Bhawan, New Delhi**

**Dated 28th September, 2012**

**Notification**

**(Final Findings)**

**Subject: -Anti Dumping Duty Investigation concerning imports of Phthalic Anhydride from Korea RP, Taiwan (Chinese Taipei) and Israel-reg.**

**No.14/1/2011-DGAD:** - Having regard to the Customs Tariff Act, 1975, as amended from time to time (hereinafter referred to as the Act) and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 thereof, as amended from time to time (hereinafter referred to as the Rules or the AD Rules);

**A. Procedure**

1. In this investigation, the procedure described herein below has been followed:
  - i. The Designated Authority (hereinafter referred to as the Authority) under the above Rules received a written application from M/s IG Petrochemicals Limited, M/s Mysore Petrochemicals Limited, M/s Thirumalai Chemicals Limited and M/s SI Group Limited on behalf of the domestic industry (hereinafter referred to as the Applicant), alleging dumping of 'Phthalic Anhydride' (hereinafter referred to as PA or PAN or the subject goods) originating in or exported from Korea RP, Taiwan (Chinese Taipei) and Israel (hereinafter also referred to as the subject countries).
  - ii. The Authority notified the Embassies of Korea RP and Israel in India and Taipei Economic and Cultural Centre of Taiwan in India about the receipt of the anti-dumping duty application before proceeding to initiate the investigation in accordance with sub-rule (5) of the AD Rule, 1995.
  - iii. The Authority on the basis of sufficient evidence submitted by the applicant on behalf of the domestic industry issued a initiation notification No.14/1/2011-DGAD dated 29th April, 2011 published in the Gazette of India, Extraordinary, initiating anti-dumping duty investigations concerning imports of 'Phthalic Anhydride' originating in or exported from the subject countries in accordance with sub-Rule 6(1) of the AD Rules to determine the existence, degree and

effect of alleged dumping and to recommend the amount of anti-dumping duty, which if levied, would be adequate to remove the injury to the domestic industry.

- iv. The Designated Authority sent a copy of initiation notification dated 29<sup>th</sup> April, 2011 to the Embassies of Korea RP and Israel in India and Taipei Economic and Cultural Centre of Taiwan in India; known exporters of the subject goods from the subject countries; known importers/users of the subject goods in India and the domestic industry as per the addresses made available by the applicant and requested them to make their views known in writing within 40 days from the initiation notification.
- v. The Authority provided a copy of the non-confidential version of the application to the known exporters and to the Embassies of Korea RP and Israel in India and Taipei Economic and Cultural Centre of Taiwan in India in accordance with Rule 6(3) of the AD Rules.
- vi. The Embassies of Korea RP and Israel in India and Taipei Economic and Cultural Centre of Taiwan in India were informed about the initiation of the investigation in accordance with Rule 6(2) of the AD Rules with a request to advise other exporters/producers from their countries to respond to the questionnaire within the prescribed time limit. A copy of the letter and questionnaire sent to the known exporters was also sent to them along with the names and addresses of the known exporters.
- vii. The Authority sent questionnaires to elicit relevant information to the following known exporters in the subject countries in accordance with Rule 6(4) of the AD Rules:
  - a. Aekyung Petrochemical Co. Ltd., South Korea
  - b. L.G. Petrochemical, Yeochon, South Korea
  - c. Nan Ya Plastics Corporation, Chinese Taipei
  - d. UPC Technology Corporation, Chinese Taipei
- viii. In response to the above notification, the following exporters responded:
  - a. Aekyung Petrochemical Co. Ltd., South Korea
  - b. Humade Corporation, South Korea
  - c. Nan Ya Plastics Corporation, Chinese Taipei
  - d. Gadiv Petrochemicals Industries Ltd., Israel
- ix. Questionnaires were sent to the following known importers / users of the subject goods in India calling for necessary information in accordance with Rule 6(4) of the AD Rules:
  - a. Cray Valley Resins India Ltd., Navi Mumbai
  - b. Gargi Industries, Navi Mumbai
  - c. Kemrock Industries & Exports Ltd., Vadodara

- d. U.K. Paints India Pvt. Ltd., Gautambudh Nagar, U.P.
  - e. Goodlass Nerolac Paints Ltd., Chennai
  - f. Hindustan Insecticides Limited, Rasayani
  - g. Shalimar Paints Limited, Howrah
- x. In response to the above notification, the following importers and importer association responded:
- a. PCL Oil and Solvents Ltd.
  - b. N. K. Polymers & Additives Mfg. Co.
  - c. KLJ Plasticizers Ltd.
  - d. Rachna Plasticizers
  - e. Silvassa Plast
  - f. Indian Plasticizers Manufacturing Association
- xi. The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties.
- xii. The Authority held an Oral Hearing on 7<sup>th</sup> March, 2012 with the interested parties and the views presented by the interested parties orally were taken in the form of written submissions and the same were considered by the Authority to the extent found relevant in the investigation.
- xiii. Investigation was carried out for the Period of Investigation (POI) from 1<sup>st</sup> January 2010 to 31<sup>st</sup> December 2010. The examination of trends for the purpose of injury analysis covered the periods 2007-08, 2008-09, 2009-10 and the Period of Investigation.
- xiv. Request was made to the Directorate General of Commercial Intelligence and Statistics (DGCI&S) to arrange details of imports of subject goods for the past three years, including the period of investigation, which was received and considered by the Authority.
- xv. Optimum cost of production and cost to make & sell the subject goods in India based on the information furnished by the applicant on the basis of Generally Accepted Accounting Principles (GAAP) was worked out so as to ascertain if anti-dumping duty lower than the dumping margin would be sufficient to remove injury to Domestic Industry.
- xvi. A Disclosure Statement containing the essential facts under consideration of the Designated Authority which would form the basis for its recommendations in the Final Findings in the above mentioned investigation was issued on 21<sup>st</sup> September, 2012. Comments of all the interested parties on the Disclosure Statement to the extent found relevant to this investigation have been examined in the Final Findings.

xvii. \*\*\*in this Final Findings Notification represents information furnished by an interested party on confidential basis and so considered by the Authority under the AD Rules.

## **B. General Views of the interested parties**

2. The views of the interested parties are listed below and the issues raised by them have been addressed by the Authority.

### **B.1 Indian Plasticizers Manufacturers Association (IPMA), Nan Ya Plastics (Taiwan), Aekyung Petrochemical Co. Ltd, Korea RP & Humade Corporation, Korea RP and Gadiv Petrochemicals Industries Ltd, Israel:-**

- a) GPL and TCL are in the process of increasing additional capacities. AR (2010-11) of IGPL has announced expansion in capacity of PA by 50,000 MT. Investment will not be made into loss making operations in the normal course.
- b) The petitioners have claimed that the exporters enjoyed large scale subsidies. The DA must consider that till 2005-06, IGPL was a BIFR company.
- c) PA is an intermediary product for plasticizers made by the Association members. The duty differential between the input PA and output plasticizer is (post the imposition of safeguard duty) virtually nil. Should an anti-dumping duty be imposed, this differential will be further exacerbated, leaving very little margin for the plasticizer producers to survive.
- d) Additional Information circulated at Public Hearing is against the Trade Notice. Post POI data should not be accepted.
- e) The history of dumping is erroneous and liable to be dismissed. The safeguard duty imposed itself shows that injury is due to sudden surge in imports to India, and not alleged against any specific country. There is no history of dumping and, therefore, no retrospective imposition of duty is justified.
- f) Asian Paints Ltd is a major producer of PAN and has reported profits from PAN in Annual Report 2009-10.
- g) There is abuse of confidentiality by petitioners with respect to costing information, constructing the normal value, methodology and evidence relating to adjustments in export price, price underselling and volume parameters such as stock, export volumes and productivity.
- h) Domestic Industry is misusing trade remedial protection and has sought protection in the form of safeguard or antidumping duties since 1999. At present the petitioners are also seeking and enjoying simultaneous safeguard duty protection @10% ad valorem on imports. The petitioners are seeking further undue protection in the form of an antidumping duty when they are themselves importing the subject goods. Further, the petitioners are also manufacturers of other products and have also sought antidumping protection for the same. PAN industry is already enjoying a total tariff protection @ 2.5% in the form of custom duty.

- i) Petitioners had submitted a detailed Adjustment Plan in their petition for the imposition of safeguard duties in the year 2008. Hence, the DA must also examine whether the same have been employed by the Petitioners and whether the injury claimed by the Petitioners is on account of the continued inefficiency as highlighted by their Adjustment Plan.
- j) Imposition of AD Duty would affect the costs of the plasticizer manufacturers and other downstream industries and it may result in closure of the downstream user plants. This will also impact employment.
- k) DA must take into account that the safeguard duty has been imposed and is likely to be levied prior to recommendation of AD Duty.
- l) Petitioners are also affected by global recession as accepted in Annual Reports of the petitioners.
- m) It is denied that there is no mechanism to prevent circumvention of the anti-dumping duties as claimed by the Petitioners.
- n) It is denied that the submission of the interested parties requiring the Petitioners to provide company-wise injury information is without any legal basis.
- o) Designated Authority must conduct an element to element examination of the conversion costs as has been submitted by the Petitioners to verify that in the case of differences in the conversion costs of the Petitioners and that of the foreign producers, whether the conversion costs of the Petitioners have been over-inflated or misrepresented and the non-injurious price is accurately established.
- p) The post-period investigation of the information provided by the Petitioners has not been verified and in the light of the recurrent inconsistencies highlighted by the interested parties, the said information cannot be relied upon and is liable to be disregarded.
- q) Imports against Advance License should be excluded from total imports as imports under Advance License are not capable of causing any injury to the domestic producers.

## B.2 Views of the Domestic industry

- a) None of the members of IPMA has filed questionnaire response. Thus, the Association is participating in the present investigations without their members participating and without questionnaire responses from their members. The domestic industry requests the Designated Authority to hold that the importers, consumers and members of IPMA are non cooperative as they have not filed questionnaire response.
- b) The interested parties have resorted to excessive confidentiality as is evident from the following:
  - i) The exporters have suppressed complete replies of the responses, making responses completely meaningless. For instance, questionnaire requires whether the inputs used in production are purchased or captively produced by the company. The reply, however, states that it is a Business Sensitive

information concerning purchase of the company and is not amenable to summarization.

- ii) Domestic industry fails to appreciate how such disclosures are so business sensitive. The issue involved is not sensitivity of information. The real intention is to withhold information from the domestic industry.
  - iii) Such suppression of information is in a situation where it is a well known fact that producer is buying Ox from its related party. Despite the fact that the information is publicly known, the same has not been disclosed in the response.
  - iv) The exporter has not given any information at all in the appendices. All appendices are totally blanked or starred (\*\*\*) , which does not provide any substance of the information given in the appendices. Domestic industry has a simple question – can they provide injury information in Proforma-IV-A wherein they can mark all the information with “stars”. If the domestic industry can index information, why the exporters should not be directed to provide indexed information?
  - v) The exporters have grossly and intentionally misused confidentiality provisions and the same should not be permitted.
- c) Domestic industry submits that present case is a fit case for imposition of anti dumping duties on retrospective basis in view of the following:- (i) there is a history of dumping; (ii) dumping has intensified after initiation of investigations and (iii) there are massive imports in a relatively short period.
  - d) Performance of domestic industry has significantly deteriorated in post investigation period. The present investigation is a fit investigation in which the Authority should have recommended imposition of interim anti dumping duty.
  - e) There are massive imports in a relatively short period. This is established by *de facto* 100% share of subject countries in imports into India at present, increase in imports, significant market share of subject countries in the consumption in the country and imposition of safeguard duty by the Govt. of India.
  - f) Imports made under duty exemption scheme are being included by the Authority for the purpose of determining dumping and injury. However, if the interested parties so desire, the Authority may determine injury by excluding imports made under advance license. This would in no way show a different position. In fact, it will show a position more in favor of the domestic industry.

### B.3 Examination by the Authority:

3. The Authority has examined the above issues as under:-

- a) With regard to the expansion plans of the domestic industry, it is noted that these are plans to expand and the plans have not been executed yet. The petitioners have claimed that in the event of non imposition of anti-dumping duty, the expansion plans shall be in jeopardy. Further, it is noted that expansion plans were not planned considering the dumping of Phthalic Anhydride.

- b) With regard to the contention of IPMA that IGPL was a BIFR company till 2005-06, which is based on the petitioners' claim that the exporters enjoyed large scale subsidies, it is observed that past BIFR issue is entirely irrelevant to the present issue. Further, the petitioners have not disputed the fact that IGPL was a BIFR company. The petitioners have contended that the whole basis of the argument that exporters enjoy large scale support is to demonstrate that these supports have led to lower prices of Phthalic Anhydride being offered by these exporters. In this regard, the Authority notes that the said petitioner company was not in BIFR during the injury period.
- c) With regard to the duty differential between the input PA and output plasticizer, the domestic industry has claimed that if the duty differential between the input PA and the output plasticizer is virtually nil, the consumers should plead their case before the Ministry of Finance. In this regard, the Authority notes that the Authority is not the relevant authority for the purpose. Nor the Designated Authority would deny fair market opportunity to the domestic industry because the Govt. of India has considered it unnecessary to keep a duty differential in the two products. However, if the raw material suppliers are suffering injury, such producers would be entitled to seek anti dumping duty protection in case it is found that dumping of the product is causing injury. The argument that should there be a duty differential or not between the product and inputs is not covered by the present investigation.
- d) With regard to the additional information circulated at the time of public hearing, the domestic industry has submitted that there is no such trade notice barring any party to submit any additional information at the time of the hearing. In fact, the objective of the hearing is to permit interested parties to present information orally and the same shall be defeated if the interested parties are barred from presenting information. In this regard, the Authority notes that the POI of the present investigation is January – December 2010 and the public hearing was held on 7<sup>th</sup> March, 2012. Substantial period had elapsed between the POI and the public hearing. Therefore, the information filed by the petitioner in the public hearing for the post POI period is for the sole purpose of substantiating its arguments on the injury and likelihood of injury suffered by the domestic industry.
- e) With regard to the contention of other parties that Asian Paints is a major producer of PAN and has reported profits, it is noted from the Annual Report of Asian Paints for the said year that the company had setup Phthalic Anhydride plant as backward integration initiative in the late 1980s. Asian Paints does not seek PAN as growth driver for the company. Further, the company has commented only on production and sales volumes of PAN and not on profitability of PAN. Further, the petitioner company is a multi product company and, therefore, any financial information provided in the annual report is not product specific.
- f) With regard to the contention of confidentiality, it is noted that the domestic industry has claimed confidentiality on costing information, which is consistently permitted by the Designated Authority. The disclosures with regard to normal value, export price, price undercutting/underselling, etc. are all consistent with the practice of the Authority.

- g) With regard to the contention that import against advance license should be excluded from total imports as imports under advance license are not capable of causing any injury to the domestic producers, the Authority notes the Authority has in the past been including imports made under advance license for the purpose of determining dumping and injury.
- h) With regard to the contention that the domestic industry is misusing trade remedial protection and has sought protection in the form of safeguard or antidumping duties since 1999; the Authority notes that there is no bar in simultaneous imposition of safeguard duty and anti-dumping duty. Also imposition of anti-dumping duty on other product has no relevance to the present investigation. Further, the Government of India will cap the total duty protection under the two laws.
- i) With regard to the contention that the Authority must examine the adjustment plans of the petitioners, the petitioners have submitted that whole purpose of adjustment plan is for authorities to consider whether the measure was commensurate with the objective of preventing or remedying serious injury and facilitating adjustment.
- j) With regard to the impact of anti dumping duty on cost of downstream products, it is noted that the domestic industry for PAN has approached the Authority for required protection under the Rules.
- k) With regard to the contention that safeguard duty has been imposed and is likely to be levied prior to recommendation of ADD, it is noted that non imposition of anti-dumping duty on an assumption that the safeguard duty is likely to be levied is against the very purpose of law. The purpose of anti-dumping duty law is to prevent unfair trade practice which cannot be ignored on the premise that some other duty is likely to be levied. In any case, the Government of India will cap the total duty protection under the two laws.
- l) With regard to the contention that petitioners are also affected by global recession and have accepted this fact in Annual Reports of petitioners, it is noted that Indian market has shown increase in demand.

### **C. Product under consideration**

4. The product under consideration in the present investigation is “Phthalic Anhydride”, having molecular formula ‘C<sub>8</sub>H<sub>4</sub>O<sub>3</sub>’. Phthalic Anhydride, also referred as PAN or PA, is an anhydride of Phthalic Acid, and is commercially produced by catalytic oxidation of Ortho-xylene or Naphthalene. It is a colourless solid, variously referred as Phthalic Anhydride flakes, Phthalic Anhydride (98% min.), Phthalic Acid Anhydrous, Phthalic Anhydride (99.8% min), etc. The product is produced only in one grade. As regards different applications, it does not have distinguishable different types of forms. It is mainly used in the production of phthalate esters, which functions as plasticizers. It is an important chemical intermediate in plastic industry. It is also used in making of the products like Polyester Resins, Alkyd Resins used in paints and lacquers, Unsaturated Polyester Resins, Polyester Polyols, Dyes and Pigments, Halogenated Anhydrides, Polyetherimide Resins, Isatonic Anhydride, Insect Repellents etc.

5. Phthalic Anhydride is an organic chemical classified under Customs Sub-Heading No. 29173500 under the Custom Tariff Act, 1975. The classification is, however, indicative only and in no way binding on the scope of the present investigation.

#### C.1 Views of other interested parties

6. It has been contended by Nan Ya Plastics, Taiwan that Phthalic Anhydride is produced and sold in solid and molten (liquid) states. As per Initiation Notification, only solid Phthalic Anhydride is under the scope of product under consideration in the present investigation and the Authority shall proceed accordingly.

#### C.2 Views of the Domestic industry

7. The argument of Nan Ya Plastics that the initiation notification restricted scope of the product under consideration to only solid form of Phthalic Anhydride is without any basis. Further, the domestic industry has shown that product is produced in molten form first, which is converted into solid form (flaked). Since domestic industry produces molten form of Phthalic Anhydride and further, since solid and molten forms of Phthalic Anhydride are nothing but different physical forms of Phthalic Anhydride, it would not be appropriate to exclude molten form of Phthalic Anhydride.

#### C.3 Examination by the Authority

8. The Authority notes that in the initiation notification, first sentence of the product under consideration clearly states that Product under consideration in the present investigation is "Phthalic Anhydride", having molecular formula ' $C_8H_4O_3$ '. Subsequently, while further describing the product, it is stated that it is a colourless solid, variously referred as Phthalic Anhydride flakes, Phthalic Anhydride (98% min.), Phthalic Acid Anhydrous, Phthalic Anhydride (99.8% min), etc. It is nowhere stated that the only the solid form of product is the product under consideration in this investigation. The Authority further notes that during the production of the product, the product is first produced in molten form and converted into flake (solid) thereafter. Domestic industry is in a position to supply product in molten form if desired by the customers. Further, Nan Ya Plastics has not argued that molten form of product is not a like article to solid/flake form of product.

9. The Authority, therefore, holds that product under consideration in the present investigation is Phthalic Anhydride in all its forms.

#### **D. Like article**

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

"like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such article,

another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation.

11. The petitioners have claimed that there is no known difference in petitioners' product and subject goods imported from the subject countries and both are comparable in terms of parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification of the goods. There is no significant difference in the subject goods produced by the applicant and those imported from the subject countries and both are technically and commercially substitutable. The consumers are using the two interchangeably.

12. None of the opposing interested parties has raised any objection in this regard. The Authority, therefore, holds that the subject goods produced by the domestic industry are like article to the same imported from the subject countries in terms of the parameters such as physical & chemical characteristics, manufacturing process & technology, functions & uses, product specifications, pricing, distribution & marketing and tariff classification.

#### **E. Scope of the Domestic Industry and Standing**

13. Views of the interested parties with regard to scope and standing of the domestic industry are as follows:

##### **E.1 Submissions by other interested parties**

- a) IGPL and TCL have imported subject goods from the Korea RP in the POI. They should be considered ineligible to form Domestic industry. Further, IGPL and MPCL have technical collaboration with Lurgi AG, Germany.
- b) TCL has stated that imports have been made by another division and not the unit engaged in PAN production. It is immaterial as they are related parties. Secondly, why would a related division resort to import instead of buying from the Group Company.
- c) In 2008-09, IGPL was converted from EOU to DTA and utilized imports in making domestic sales. Injury alleged by the said company in the earlier years cannot be attributed to the imports of the subject goods into India. Secondly, why IGPL resorted to imports instead of purchasing from other domestic producers including MPCL.
- d) IGPL has arranged Bill of Lading, while Bill of Entries have been filed directly by consumers. This establishes a nexus between IGPL and importers and traders.
- e) The reliance of the Petitioners on the amended definition of the said Rule 2(b) of the Anti-dumping Rules is erroneous and misleading and is liable to be ignored.

##### **E.2 Submissions by the domestic industry**

- a) M/s Thirumalai Chemicals Ltd. has imported 100 MT during POI (0.41% of total imports from Korea RP during the POI). Whereas M/s IG Petrochemicals has

imported 1,142 MT (4.6% of total imports from Korea RP during the POI) from Korea RP. The imports made by IG Petro were cleared under advance license and in respect of M/s Thirumalai Chemicals Ltd., out of total imports of 100 MT from Korea RP, 33 MT got cleared under advance license.

- b) The imports made by the petitioners are insignificant in relation to (1) total imports in India, (2) imports from Korea RP, (3) production in India and (4) production by the company concerned. Further, IG Petro had only facilitated its customers by arranging imports, which was made and sold on high sea sales basis, which were cleared under duty free category and imports made by TCL were made for export purpose and were partly cleared against DEPB licenses. DEPB licenses available with the company at that point of time were not sufficient, and hence, remaining amount has been paid in cash.
- c) With respect to IGPL, the petitioners have verified the entire information once again and submit as follows:
- (i) At the time of initiation, there was a clear understanding even with the Designated Authority was that the Designated Authority has discretion under the law. Therefore, the petitioners, while submitting the information, did not analyze the situation carefully.
  - (ii) Petitioners claim that IGPL should not be considered as an importer for more than one reason. The claim is being made without prejudice to the submissions of the petitioners that the Designated Authority has discretion under the law.
  - (iii) IGPL has merely facilitated the imports – IGPL has ordered the goods from the exporter and sold the same via high sea agreements. Therefore all the liabilities of an importer were borne by the customer and not by IGPL.
  - (iv) It is clarified that IGPL neither filed any bill of lading nor bill of entry for clearance of the goods for home consumption.
  - (v) IGPL has facilitated the imports of these materials in order to prevent the customers from directly importing the material at the time of suspension/disruption of production, or against advance licence requirements of the consumers. This has been done so that these customers do not start resorting to direct import of dumped goods and cause long term damage to the domestic industry. This is for the reason that once the customers start importing the goods, given the price difference, the company can lose its own natural market.
  - (vi) Meaning of importer – Under Rule 2(b), only an “importer” can be excluded from the purview of the domestic industry and not one who has “facilitated” the imports. IGPL is mere facilitator of imports and hence cannot be excluded from the definition of domestic industry.
  - (vii) Discretion to the Authority – Without prejudice to the above, the petitioners submit that the Designated Authority has discretion under Rule 2(b) 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.
  - (viii) IGPL has not sold such material at significant profits. In general, IGPL policy is to sell the material at price comparable to import price. However, there

may be small variations in the purchase and sale price in view of exchange fluctuations and such other factors.

- (ix) IGPL is not resorting to imports in order to benefit from dumping. Thrust of IGPL has not turned to imports. The company's thrust continues to be on its own production. In fact, the company has imported only because of production suspension in the company.
- d) With regard to TCL, petitioners submit that the imports are under duty exemption scheme and, therefore, the same should not construe to hold TCL as ineligible domestic industry.
- e) In view of the above, the imports made by these companies should be ignored and these companies should be considered eligible domestic industry.
- f) Technical collaboration does not debar a company from being considered as eligible domestic industry. In any case, Germany is not amongst the subject countries in the present case.
- g) It is submitted that the imports are under duty exemption scheme by another division of TCL. Imports by the company under duty exemption scheme have been condoned by the Designated Authority in past several cases.

### E.3 Examination by the Authority

14. Rule 2 (b) of the AD Rules defines domestic industry 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 which case the term 'domestic industry' may be construed as referring to the rest of the producers only".*

15. The petition has been jointly filed by IG Petrochemicals Limited, Mysore Petrochemicals Limited, Thirumalai Chemicals Ltd and SI Group India Limited. There is one more producer of the product under consideration in India, viz., M/s. Asian Paints India Limited. As per the production figures provided in the application, the applicants' share in the domestic production is to the tune of 90.61% during the POI.

16. From the imports made by the petitioners during the POI, the Authority notes that a) the imports are insignificant to cause self-inflicted injury to the domestic industry and b) the imports by IG Petrochemicals Limited got cleared under advance license scheme and a significant portion of imports by Thirumalai Chemicals Ltd is under advance license scheme. In view of this and keeping in view the reasoned position in this regard taken by the Authority in past cases, the Authority does not consider it appropriate to exclude these two entities, namely, M/s IG Petrochemicals Ltd. and M/s Thirumalai Chemicals Ltd. (TCL) from the scope of the domestic industry.

17. The Authority notes that Rule 2(b) prevailing on the date of initiation granted discretion to the Authority in those situations where a domestic producer is either an importer of the subject goods or is related to an importer or exporter of the subject goods in the subject country. This has been upheld by the Hon'ble High Court of Chennai in the matter of Nirma Ltd. vs. Saint Gobain Glass India Ltd. wherein the High Court has, inter alia, held as follows:

- (i) *the term "domestic industry" as it was amended on 27.2.2010, has not taken away the discretionary power of the Designated Authority and the Designated Authority is entitled to proceed further;*

18. The Authority after examining the above holds that the petitioners constitute Domestic Industry within the meaning of the Rule 2(b) and they satisfy the criteria of standing in terms of Rule 5 of the Rules supra.

## **ASSESSMENT OF DUMPING – Methodology and Parameters**

### **F. Normal Value, Export Price and Dumping Margin**

19. The following producers and exporters have responded to the questionnaire response:

- a. M/s Aekyung Petrochemical Co. Ltd., Korea RP
- b. M/s Humade Corporation, Korea RP
- c. M/s Nan Ya Plastics Corporation, Chinese Taipei
- d. M/s Gadiv Petrochemicals Industry Ltd., Israel

#### **F.1 Normal Value in Korea RP**

##### **F.1.1 Submissions made by the producer/exporter from Korea RP**

20. M/s Aekyung Petrochemical Co. Ltd. (producer) and M/s Humade Corporation (exporter) have responded to the exporter questionnaire. The following submissions have been made by them:-

- a) M/s. Aekyung Petrochemical Co. Ltd. was incorporated on 13<sup>th</sup> October, 1970. It was listed on Korean Stock Exchange since 11<sup>th</sup> August, 1997.
- b) PAN is produced Aekyung in Ulsan Plant alongwith other products – Maleic Anhydride, Itaconic Acid, Plasticizer and Polyol.
- d) Aekyung is the second largest producer of PAN in the world.
- e) Sales in domestic market are made straight to the end-user.
- d) Export sales to India are made only through traders. M/s Aekyung is the producer of the subject goods exported by M/s Humade Corporation who is a trader in Korea RP.
- e) Aekyung is entitled for duty drawback.

## F.2 Normal Value in Taiwan

### F.2.1 Submissions made by the producer/exporter from Taiwan

21. M/s Nan Ya Plastics Corporation (producer) has responded to the exporter questionnaire. The following submissions have been made by the producer:-

- a) Exports to India are made directly and also through traders in or outside India.
- b) There was a substantial price fluctuation in both global and relevant national markets in the period of investigation. Considering this fact, even if an export sale was invoiced in the same month as a domestic sale, its price cannot be compared with that domestic sale because the export order was confirmed in the previous 1 or 2 months, thus, reflecting the market price in those previous months, and not the month of shipment.
- c) The product sold in domestic market and exported to India is solid PA. Therefore, normal value for solid PA should be calculated for Nan Ya Plastics.
- d) In view of the above, the order date should be used instead of invoice date as date of sale for comparison.
- e) The exporter has claimed individual margin to the producer-exporter on the basis of co-operation of the export channel.

## F.3 Normal Value in Israel

### F.3.1 Submissions made by the producer/exporter from Israel

22. M/s Gadiv Petrochemicals Industry Ltd (producer) has responded to the exporter questionnaire. The following submissions have been made by the producer:-

- a) Gadiv is wholly owned by Bazan (Oil Refineries Ltd.).
- b) Sales to India are made through an agent.
- c) No sales have been made in Israeli domestic market in 2010.
- d) Portugal should be considered as appropriate third country, given no sales by Gadiv in its home market.
- e) The Petitioners ignored the arguments set out by Gadiv in its response to the petition and in the written submissions and did not refer to any of these arguments, apparently since they have no answer to it.
- f) Gadiv presented the real export prices throughout the investigation period, by giving the details regarding its sales to the Indian market. Therefore, all the "information" presented by the Petitioners regarding the export prices from Israel, should be disregarded.
- g) The fair comparison between the export prices and the local prices in India should be made with the local prices 1 month before the time that the imported products arrived to India.

- h) Gadiv also argued and provided supporting evidence that during the year 2011, its export prices of PA to India [increased], due to the [increase] of OX prices, and, therefore, Gadiv's PA export prices during 2011 are higher (about 60\$ averagely) than the prices of PA in south- east Asia (including India).

#### F.4 Views of the domestic industry

23. It has been contended by the domestic industry that:-

- (i) The petitioners, despite efforts, have not been able to get any information/evidence of price or quotations of the subject goods in the domestic market of the subject countries.
- (ii) In the absence of any information as per the above, the petitioners have constructed the normal value by adopting international prices of O-Xyelene, consumption norms and conversion cost of the petitioners.
- (iii) The petitioners have adopted export prices of O-Xyelene as per Korea Customs in case of South Korea; export prices of O-Xyelene as per Taiwan Customs in case of Chinese Taipei and import prices of O-Xyelene as per IBIS in case of Israel for calculation of the normal value in the respective countries.
- (iv) Further, the petitioners have claimed normal value on monthly basis as prices of PAN are highly volatile. Considering that as high as 80% cost is on account of O-Xyelene, even a difference of US\$ 50 pmt is quite significant in this product. The prices of Phthalic Anhydride were as high as Rs. 58 per kg in the month of June, 2010 and declined to as low as Rs. 48.23 per kg in Aug., 2010. At the same time, the O-Xyelene prices during this period increased from US\$ 920 pmt in June, 2010 to US\$ 980 pmt in Aug., 2010. Thus, whereas the Phthalic Anhydride price should have increased by more than US\$ 50 pmt, the same declined by about US\$ 200 pmt. In view of significant fluctuations in O-Xyelene and Phthalic Anhydride prices within the investigation period, the petitioners have claimed both normal value and export price should be considered on the basis of monthly averages.
- (v) Response filed by the producer/exporter from Korea RP is incomplete. M/s. Aekyung has admittedly sold in Indian market through four traders. However, out of these, only one exporter, Humade has responded. Therefore, the Authority does not have information about all imports made in India which have been exported by Aekyung.
- (vi) Humade has exported product produced by Aekyung and OCI. However, OCI has not responded to the Authority. It is thus clear that the response of the producer is incomplete because the concerned exporters have not responded and the response of exporter is incomplete because all the concerned producers have not responded. Further, since Humade can admittedly export the goods

produced by two producers and must have been exporting goods produced by these two exporters in several countries, there is no mechanism which would ensure that the anti dumping duty is not circumvented.

- (vii) Aekyung is getting special price for Ox from its raw material suppliers. The Authority may, therefore, compare the Ox price claimed by the company with the prevailing Ox prices reported in Journals.
- (viii) With regard to adjustment on account of duty drawback claimed by the Korean producer, domestic industry submits that merely because the adjustment is claimed in the name of "duty drawback", the same does not justify its acceptance. The exporter is required to establish with verifiable evidence that the drawback received by the company is in respect of the input that was consumed in the production of exported product. There is no information in the questionnaire response that establishes linkages between the duty drawback, duty paid and input consumed in the production of the exported product.
- (ix) Orthoxylene is a major raw material for production of product concerned, which accounts for 80-85% of total cost of production of Phthalic Anhydride for any producer the world over. Nan Ya Plastics from Taiwan is closely related to and shares ownership with Formosa Plastics, Taiwan and sourcing its raw material from this related company. The Authority should examine at what price Orthoxylene has been purchased by Nan Ya from Formosa Plastics. Rules provide for disregarding such sales which are not in ordinary course of trade. For examination of whether sales are made in ordinary course of trade or not, the Authority needs to determine whether the cost of production claimed by the company is correctly established. Therefore, the key issue involved in the present case is what the price of Ox considered by the producer has been and what conversion cost has been claimed thereon. Domestic industry submits that the price at which goods were exported during the investigation period were clearly below reasonable costs associated with production and sale of the product.
- (x) Nan Ya Plastics cannot demand date of order to be taken as a relevant date without substantiating the need for the same, particularly when the Authority has the practice of adopting invoice date or arrival date as the relevant date. It is only in extreme situations where the facts of the case so support that the Authority could consider order date as the relevant date. The exporter has given insufficient justification for considering date of order as the relevant date.
- (xi) The Authority should deny the individual dumping margin to Nan Ya Plastics unless the exporter fully establishes that it is entitled for the same. Mere filing of questionnaire response is insufficient for the purposes.
- (xii) The exporter from Israel, M/s. Gadiv, has not established how Portugal represents an appropriate third country for the purpose of assessment of normal value. The exporter should be directed to first establish its claim and thereafter

the domestic industry may be given opportunity to defend its interests. Only thereafter the authority can consider the claim.

- (xiii) Ox price is being widely reported in the trade journal on a regular basis. Domestic industry requests the Authority to kindly compare the Ox prices reported by the producers with the prevailing prices. In case lower Ox prices have been claimed, such claims should be rejected and prevailing Ox prices should be considered.
- (xiv) It appears that the conversion cost claims of the producers are also highly understated. It is relevant to point out in this regard that the scale of operations of the domestic industry (particularly IG Petro and Thirumalai) is comparable to the scale of operations of the foreign producers. Therefore, there cannot be significant variations in the conversion costs. The domestic industry requests the Authority to kindly compare the domestic industry's conversion costs with the foreign producers – element by element and in case of significant variations, directs the foreign producers to establish correctness of their claims.
- (xv) Domestic industry submits that the key issue involved in the present case is correct assessment of cost of production involved in production and sale of the product under consideration. Because the foreign producers are multi product entity, it is quite possible for them to understate their cost of production.

#### F.5 Examination by the Authority

24. The Authority notes that the petitioners claimed determination of Normal value on the basis of constructed cost of production considering Oxylene prices in the subject countries and conversion cost on the basis of cost of production of the subject goods in India of the most efficient of the petitioner companies, including selling, general & administrative expenses and reasonable profit.

25. With regard to the claim of the domestic industry that M/s Aekyung has sold PAN in Indian market through four traders but only one exporter, Humade has responded and, therefore, the response of Aekyung is incomplete, the Authority notes that Humade's sales to India during the POI constitute about \*\*\*% of the total sales of Aekyung to India. Other exporters have made very less exports to India.

26. With regard to the claim of the domestic industry that Aekyung is getting special price for Ox from its raw material suppliers and the Authority may, therefore, compare the Ox price claimed by the company with the prevailing Ox prices reported in Journals, the Authority notes that it was verified during the on the spot verification that the inputs used for production of PAN by Aekyung were sourced from unrelated parties.

27. With regard to the claim of the domestic industry that Humade has exported product produced by Aekyung and OCI but OCI has not responded to the Authority and, therefore, the response is incomplete, the Authority notes that only \*\*\*% of the total exports by Humade to India during the POI are sourced from OCI.

28. With regard to adjustment on account of duty drawback claimed by the Korean producer, the Authority has verified the evidence that the drawback received by the company is in respect of the input that was consumed in the production of exported product.

29. With regard to the claim of the domestic industry that Nan Ya is sourcing Orthoxylene from its related company Formosa Plastics, Taiwan and, thus, the Authority should examine at what price Orthoxylene has been purchased by Nan Ya from Formosa Plastics, the Authority notes that the Authority has considered the price which the Authority has verified during the verification of the records of Nan Ya Plastics.

30. With regard to the claim of Nan Ya Plastics that the date of order should be taken as the relevant date, the Authority has noted that Nan Ya Plastics has not fully substantiated the need for the same and, therefore, the Authority has adopted the invoice date as the relevant date for the purpose of computation of dumping margin.

#### F.5.1 General methodology followed for the responding exporters/producers for determination of Normal Value

31. The Authority has determined individual dumping margin in respect of cooperative exporters / producers who have provided the requisite information. The general methodology adopted for determination of Normal value is as follows.

32. The Authority has assessed the Normal Value based on the information submitted by the exporters and in accordance with the Rules. It has been contended by the Domestic Industry that there had been volatility of the prices of the subject goods during the Period of Investigation. The Authority has done a month-wise analysis of the entire data for the determination of dumping. Necessary data from the cooperating producers/exporters was called for undertaking the analysis on a month-wise basis, and wherever such data was provided by the cooperative producers/exporters, the same has been assessed and analysed to determine the dumping Margin on monthly basis. It was seen whether the domestic sales of the subject goods by the responding exporters/producers in their domestic markets were representative and viable for permitting determination of normal values on the basis of their domestic selling prices and whether the ordinary course of trade test was satisfied as per the data provided by the respondents. Wherever the respondents have provided transaction-wise details of the sales of the like article in their home markets, the information so provided has been verified and relied upon to determine the normal value for the subject goods after carrying out the ordinary course of trade test and sufficiency test. It was also seen whether the loss-ranking transactions account for over 20% of the sales or not. Wherever the profitable domestic sales transactions were found to be accounting for more than 80% of the total sales, the weighted average price of the total domestic sales has been taken into consideration. However, wherever the profitable sales volume were found to be less than 80%, the weighted average price of the profitable domestic sales has been

taken into consideration. Further, in view of the fact that there were significant fluctuations in the prices of the subject goods and raw materials within the POI, the Authority has computed the normal value on month-wise basis for each co-operative exporter/producer. Wherever there were no domestic sales or no sufficient domestic sales, the costs of production as claimed by the respondents and verified by the Authority have been accepted, subject to re-computation as above. And where it was not feasible, the normal value has been determined by the Authority on the basis of 'facts available' in terms of Rule 6(8) of the AD Rules.

#### F.5.2 Normal Value: M/s Aekyung Petrochemical Co. Ltd., Korea RP

33. The Authority notes that Aekyung Petrochemical Co. Ltd. Korea RP (Aekyung) is a producer of Phthalic Anhydride from Korea RP and has exported the subject goods to India through traders during the period of investigation. In addition, Aekyung sells the subject goods in the domestic market and also exports to a number of other countries. In Appendix-1, the company has reported \*\*\* domestic transactions. The company has sold \*\*\* MT of the subject goods in the domestic market. As per Appendix-1, the company has claimed adjustments on account of Inland Freight, Credit Expense and Packing Expense. The information provided on domestic sales in the home market by Aekyung was verified during the on the spot verification by the Authority. Various adjustments claimed were also verified and found to be in order. For determination of the ordinary course of trade test, the costs of production of the product concerned have been accepted. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. The Authority notes that the domestic sales of subject goods by Aekyung in the home market were representative for permitting determination of normal value on the basis of domestic selling prices, and the ordinary course of trade test was satisfied as per the data provided by Aekyung.

34. Considering that there have been significant changes in the cost of production and selling price from month to month during the POI due to fluctuation in input prices, the normal value has been worked out separately for the months during which the exports during the period of investigation are reported and subsequently verified for each month. The normal value so determined is mentioned in the Dumping Margin Table.

#### F.5.3 Normal Value: Non-cooperative Exporters/Producers from Korea RP

35. No other exporter and producer from Korea RP has responded to the Questionnaire. The Authority has determined their normal value based on the facts available on record. The normal value so determined for non-cooperative exporters/producers is mentioned in the Dumping Margin Table.

#### F.5.4 Normal Value: M/s Nan Ya Plastics Corporation, Taiwan (Chinese Taipei)

36. The Authority notes that Nan Ya Plastics Corporation, Chinese Taipei, is a producer of Phthalic Anhydride and has exported the subject goods to India directly as well as through traders during the period of investigation. In addition, Nan Ya Plastics sells the subject goods in the domestic market. In Appendix-1, the company has reported \*\*\* transactions as domestic sales. The company has sold \*\*\* MT of the subject goods in the domestic market. As per Appendix-1, the company has claimed adjustments on account of Rebate, Inland freight and Credit cost. The information provided on domestic sales in the home market by the subject producer was verified during the on the spot verification by the Authority. Various adjustments claimed were also verified and found to be in order. For the determination of the ordinary course of trade test, the costs of production of the product concerned have been accepted. Further, all domestic sales transactions were examined with reference to the costs of production of the subject goods to determine whether the domestic sales were in the ordinary course of trade. The Authority notes that the domestic sales of subject goods by Nan Ya Plastics in the home market were representative for permitting determination of normal value on the basis of domestic selling prices, and the ordinary course of trade test was satisfied as per the data provided by the responding producer/exporter.

37. Considering that there have been significant changes in the cost of production and selling price from month to month during the POI due to fluctuation in input prices, the normal value has been worked out separately for the months during which the exports during the period of investigation are reported and subsequently verified for each month. The normal value so determined is mentioned in the Dumping Margin Table.

#### F.5.6 Normal Value: Non-cooperative Exporters/Producers from Taiwan

38. No other exporter and producer from Taiwan has responded to the Questionnaire. The Authority has determined their normal value based on the facts available on record. The Normal value so determined for non-cooperative exporters/producers is mentioned in the Dumping Margin Table.

#### F.5.7 Normal Value: M/s Gadiv Petrochemicals Industry Ltd, Israel

39. The company has exported product under consideration to India directly. The company has no domestic sales. During the on the spot verification, the company was asked to furnish transaction wise sales made to all third countries. The company, however, did not furnish information requested for. The company submitted that Portugal may be treated as comparable third country for which information of exports has been furnished to determine its normal value and if the Authority does not consider Portugal as comparable third country, then the Authority may determine the normal value for them based on their actual production costs of PAN. The Authority examined this issue but did not accept Portugal as a comparable third country as the company did not provide any justifications why Portugal alone should be considered as appropriate third country when the company has exported to other third countries as well. The Authority also did not accept the cost of

production of Gadiv as they have allocated the total cost of production of the company to PAN based on the quantity of PAN produced and the total quantity of production of all production including PAN. In view of the above, the Authority has constructed the normal value for Gadiv based on facts available. The international price of Orthoxylene, the consumption norm of the main input, i.e., utilities and credit for by-product steam to the extent verified have been considered. Conversion cost and SGA expenses of the most efficient domestic industry and reasonable profit margin of 5% of cost of sales (excluding interest) have also been considered. The Normal value so determined is mentioned in the Dumping Margin Table.

#### F.5.8 Normal Value: Non-cooperative Exporters/Producers from Israel

40. No other exporter and producer from Israel has responded to the Questionnaire. The Authority has determined their normal value based on the facts available on record. The normal value so determined for non-cooperative exporters/producers is mentioned in the Dumping Margin Table.

#### F.6 Export Price

##### F.6.1 M/s. Aekyung Petrochemical Co. Ltd.(producer) and M/s. Humade Corporation (exporter), Korea RP

41. The Authority notes that during the period of investigation the subject goods produced by M/s Aekyung Petrochemical Co. Ltd. Korea RP have been exported to India through trader Humade Corporation, Korea RP (Humade) and three other traders. It was noted that except Humade, other Traders neither participated in the investigation nor submitted any information / response in respect of this sale and consequently, the complete chain of transaction through other traders cannot be established. Therefore, the Authority is not able to determine Export Price in respect of non cooperative traders, Net Export Price and consequential Dumping Margin. The Net Export Price has, therefore, been determined on monthly basis considering verified data of export sales to India through the following channel:- *M/s Aekyung Petrochemical Co. Ltd., Korea RP (Producer)>>>M/s Humade Corporation, Korea RP (Trader)>>>India.*

42. In Appendix-2, the company has reported \*\*\* export transactions which consist of \*\*\* MT of PA to India during the period of investigation. Exports to India through Humade constitute \*\*\*\*% of the total export sales made by Aekyung to India.

43. Aekyung has claimed adjustments on account of Inland Freight, Ocean Freight (in case of sales on CIF basis to India), Terminal Handling Charge, Wharfage, Document Fee, Credit Expense, Packing Expense, Bank Charge and Duty Drawback. The same have been duly verified during the verification visit.

44. In Appendix-2, Humade has reported \*\*\* export transactions which consist of 8,480 MT of PA to India during the period of investigation. Sales to India were made on CIF terms. The documents relating to export to India were verified. Humade has purchased Phthalic Anhydride from Aekyung as well as M/s OCI, Korea RP. During

the period of investigation, Humade sourced \*\*\* MT of PAN from Aekyung and \*\*\*MT from M/s OCI, Korea RP. It was explained by Humade that since M/s OCI has sold part of its plant to M/s Hanwha Corporation, Korea RP, M/s OCI has no interest in Indian market and, hence, has not participated in the investigation.

45. Humade has claimed adjustments on account of Ocean Freight (in respect of purchases made from Aekyung on FOB basis and sold to India on CIF basis) and related expense, Credit Expense and Bank Charge. The same have been duly verified during the verification visit.

46. The Net Export Price so determined in respect of verified sales channel of exports to India after deductions on account of verified adjustments is given in the Dumping Margin Table.

#### F.6.2 Export Price: Non-cooperative exporters/producers from Korea RP

47. No other exporter and producer from Korea RP have responded to the Questionnaire. The Authority has determined their net export price based on the facts available on record. The export price so determined for non-cooperative exporters/producers is mentioned in the Dumping Margin Table.

#### F. 6.3 Export price : M/s Nan Ya Plastics, Taiwan

48. M/s Nan Ya Plastics, Taiwan in their response to exporter's questionnaire, has provided transaction-wise information relating to exports to India in the form and manner prescribed. The company has reported \*\*\* invoices showing exports of \*\*\* MT of Phthalic Anhydride to India during the period of investigation. Out of \*\*\* transactions, \*\*\* (\*\*\*) are direct sales to end users in India and \*\*\* transactions (\*\*\*) are through international traders. All sales to India have been made on CIF/CFR/FOB basis. The producer has claimed adjustments on account of Commission, inland freight, maritime freight, international insurance, custom clearance fee, document fee, Bank Discount Interest, Bank charges, Harbour Facility Charge, Harbour Management Fee, Trade Promotion Service Fee and Harbour Management fee. The above mentioned adjustments were verified by the Authority from the records/supporting documents during the on the spot verification. The company's export prices to India during the POI and the adjustments claimed thereon and verified have been accepted by the Authority. Thus, the net export price, i.e., export price at ex-factory level, for M/s Nan Ya Plastics, Taiwan so determined is mentioned in the Dumping Margin Table.

#### F. 6.4 Export Price: Non-cooperative exporters/producers from Taiwan

49. No other exporter and producer from Taiwan has responded to the Questionnaire. The Authority has determined their export price based on the facts available on record. The export price so determined for non-cooperative exporters/producers is mentioned in the Dumping Margin Table.

#### F. 6.5 Export price : M/s. Gadiv Petrochemicals Industry Ltd., Israel

50. M/s Gadiv Petrochemicals Industry Ltd., Israel, in their response to exporter's questionnaire has provided transaction-wise information relating to exports to India in the form and manner prescribed. In Appendix-2, the company has reported \*\*\* export transactions to India during the period of investigation covering \*\*\* MT of PA for a net invoice value of US \$ \*\*. Goods to India were exported directly on CIF basis. The company claimed adjustments on account of Overseas Freight, Commission, Inland Freight, Overseas Insurance, Port Charge and Customs Broker's Fee. Claims of adjustments regarding above cited items were verified from the records/supporting documents. In addition to the above adjustments, the company has claimed incremental adjustment @ \*\*% of the gross invoice value on the plea that Indian customers are purchasing bigger volume as compared to the Portugal customers. However, the company could not provide any details/basis for claiming such incremental adjustments. The company's export price to India during the POI and the adjustments claimed thereon except incremental adjustments have been admitted by the Authority. Thus, the net export price for M/s Gadiv Petrochemicals Industry Ltd., Israel, so determined is mentioned in the Dumping Margin Table.

**F. 6.6 Export Price: Non-cooperative exporters/producers from Israel**

51. No other exporter and producer from Israel has responded to the Questionnaire. The Authority has determined their export price based on the facts available on record. The export price so determined for non-cooperative exporters/producers is mentioned in the Dumping Margin Table.

**F. 6.7 Dumping margin**

52. The rules relating to determination of dumping margin provides as follows:-  
*"While arriving at margin of dumping, the Designated Authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at ex-works level, and in respect of sales made at as nearly possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sales, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability"*

53. On the basis of comparison of normal value and export price at ex-factory level as determined above, the dumping margin for the producers/exporters of the subject goods in the subject countries is worked out as under:-

<b>Korea RP</b>	<b>Normal Value (US\$/MT)</b>	<b>Net Export Price (US\$/MT)</b>	<b>Dumping Margin (US\$/MT)</b>	<b>Dumping Margin %</b>	<b>Dumping Margin Range</b>
M/s Aekyung Petrochemical Co., Ltd, (Producer) and M/s Humade Corporation (Exporter)	***	***	***	***	(0-10)
Any Other	***	***	***	***	5-15

<b>Taiwan</b>	***	***	***	***	
M/s Nan Ya Plastics Corporation (producer and exporter)	***	***	***	***	5-15
Any Other	***	***	***	***	10-20
<b>Israel</b>					
M/s Gadiv Petrochemicals Industry Ltd (producer and exporter)	***	***	***	***	5-15
Any Other	***	***	***	***	15-28

## **G. Assessment of Injury and Examination of Causal Link**

54. Views of the interested parties with regard to injury and causal link are as follows:

### **G.1 Views of the exporters, importers and other interested parties**

- a) Petitioners sell power to grids. The claim that the petitioners are incurring high costs of electricity needs to be dismissed.
- b) One unit of Ortho-xylene gives an output of 1.13 units of PA. Accordingly, DA should confirm during the cost verification.
- c) The DA must consider adjustment for credit of by-products used captively in the calculation of non-injurious price.
- d) Petitioners' plants are highly depreciated and they seem to claim replacement value for these plants while calculating cost of production. In previous antidumping proceedings, the cost of depreciation as per the Balance Sheet were given full effect thereto and factored into their non injurious price. To continue to grant them this type of protection would be contrary to the practice of DA.
- e) During the course of public hearing, the Petitioners forwarded theories for calculation of non-injurious price without any basis in law practice. These should be given in written submissions.
- f) Imports from Thailand for Jan-June 2010 period are 9579 MT as per DGCIS data and also relied upon by the petitioners and for April'10-March'11 9619 MT as per DGCIS and for POI, it is 40 MT (as per IBIS data) given in the petition. The share of Thailand is 29.72% which is above de-minimis and price is less than other subject country. Thus the injury to the petitioners if any cannot show casual nexus with subject countries only. Reference made to Kothari Sugars and Chemicals Limited v Designated Authority and Anti-Dumping investigation concerning imports of Polypropylene originating in or exported from Korea RP, Taiwan and USA.
- g) There is significant variation in import data submitted by the domestic industry as per IBIS to DA and the findings issued by DG Safeguard as per DGCI&S.
- h) There is variation in the data submitted before the DG Safeguard and DGAD by the same producers for the same period with respect to assessed demand, total domestic sales and total imports.
- i) DA must examine the landed value of duty paid imports with the non-injurious price and NSR of the domestic industry.
- j) The market share of DI is showing increasing trend whereas the share of the subject countries has not increased at a rate comparable to the petitioners.
- k) Domestic sales of petitioners are increasing and export sales are drastically falling which clearly shows that fall in exports of the petitioners has caused

injury, if any to the petitioners, not the imports of the subject goods. Domestic sales increased at a greater rate than the total demand.

- l) Capacity Utilization has dipped marginally over the injury period but has recovered during POI. Further, production of IGPL is affected by other factors such as shut down, fire and catalyst change. It is given in Annual Report of IGPL.
- m) TCL is making losses because of inefficient running of plant. They have huge break downs and the costs of each breakdown are in lacs of rupees.
- n) Steep increase in stock is due to steep decrease in export sales.
- o) Petitioners are not suffering because of imports of subject goods but due to changes in govt. policies and this fact are also admitted by IGPL in its Annual Report. In the earlier years the custom duty was 30% and the same has been reduced to currently 7.5%. Hence, the petitioners have resorted to seeking undue trade remedial protection to cope with the change in governmental policies.
- p) Inexplicable differences in demand, domestic industry sale and imports in ADD and Safeguard Case.
- q) Special Reports attached to the submissions show positive growth in the PAN industry in India and globally.
- r) Cumulative assessment is unjustified because the conditions of competition of subject countries are not the same.
- s) The combined IV-A of Industry cannot be confidential. So petitioners should be instructed to provide the IV-A in actual form
- t) Individual Company IV-A should be given in Indexed Form.
- u) Prices are higher from Israel and hence no price undercutting.
- v) For cumulative assessment, the conditions of competition must be similar in terms of volume, prices, share of imports from the subject countries, types, purity and specifications of product under consideration.
- w) Landed value of the subject goods imported under Advance license is lower as compared to the landed value of the duty paid imports. Hence, in order to accurately examine the price effect of the imports of the subject goods, the Authority must examine the landed value of duty paid imports with the non-injurious price and the Net Sales Realization of the petitioners.
- x) The claims made by the petitioners do not establish any injury to the Petitioners.
- y) The petitioners have not provided any information to substantiate the alleged idle capacities of the exporters from the subject countries and the rationale of the petitioners that the exporters shall be forced to sell at dumped prices is not only frivolous but also fanciful and baseless.
- z) Determination of the NIP is to facilitate negation of the effects the injury caused due to dumping. Hence the submission that injury suffered due to dumped imports cannot be segregated is erroneous.
- aa) This is also critical for the Authority to consider whether these factors alone are self-inflicted injury factors which have been projected as injury that is attributable to dumping and the same should be separately analysed and reported as "non-attributive factors".
- bb) Any reasons of product mix and material composition cannot be considered and these are clearly factors which cannot be attributed to alleged dumping from the subject countries. The product mix is linked to the consumption of raw materials. The purity of the raw material is a determinant factor which is to be monitored by the domestic manufacturers from time to time and for any reason if there is a volatility in consumption pattern in a one year vis-a-vis another year, it is for the Petitioners to rectify the same rather than allege dumping within the facts of this case.

- cc) If the fine-tuning leads to significant consumption of the raw materials, it can be presumed that the modification in the production process was erroneous and clearly self-inflicted injury which is not attributable to any alleged dumping.
- dd) In case there is any decline in capacity utilisation for reasons other than dumping, the Anti-dumping Rules require the same to be ignored for calculation of NIP and consider the same as “non-attributive” factors.
- ee) The additional submissions of the domestic industry on non injurious price have been circulated by means of an attachment entitled Submissions of the domestic industry on non injurious price. At the outset, this submission is presumed to be raised on behalf of the Petitioners as the names of the Petitioners or their representative is absent from the submission and there is no means to gather who has filed the same. The said document is neither on a letter-head nor appears to have been validly executed or submitted on behalf of the Petitioners. Therefore, the Authority should forthwith reject the same.
- ff) The said submission is misrepresented by the fact that the increase in the raw material and the utility rate was caused due to the change in the production process.
- gg) The Authority is liable to consider the costing data as per the records maintained by the Petitioners. In case of any conflict between the Cost Accounting Rules and the practice followed by the Petitioners in maintaining the books of account, then the Authority has the discretion to apply the methodology based on the principles provided under Annexure III of the Anti-dumping Rules. Further, Annexure III (4)(v) clearly specifies that depreciation of re-valued assets, if any, may be identified and excluded while arriving at reasonable cost of production and Annexure III (4)(vii) reaffirms the legal provision for exclusion of freight outward and bad debts. Whereas Annexure III (4) (viii) and (ix) amply clarify the principles for calculation of the capital employed and the interest costs. Hence, the aforesaid submissions on NIP are erroneous, contrary to and incompatible with the specific legislative provisions on determination of NIP.
- hh) Prior to the year 2008-09, IG Petrochemicals was not a domestic producer and any injury alleged by the said company in the earlier years cannot be attributed to the imports of the subject goods into India.
- ii) The Petitioners repeat their vague argument that the increase in their domestic sales and in their profitability and market share during the period of injury investigation was caused by the safeguard duty imposed in January 2009.
- jj) The Petitioners also ignore the requirement to establish "material" injury, and not just any "injury" according to Article VI:6 of the GATT 1994 and footnote 9 to Article 3 of the Anti- Dumping Agreement. Finally, we note that if there was any decrease in profits during the POI it can be attributed to the increase in wages and the consequent increase in expense of production for the Indian producers.
- kk) Any alleged injury after the period of investigation should be disregarded.
- ll) Injury must be established for each company.

## G.2 Views of the Domestic Industry

55. The domestic industry has submitted as under:

- a) Imports from subject countries have increased substantially in absolute terms.
- b) Imports from subject countries have increased substantially in relation to total imports, production and consumption in India.
- c) Imports are significantly undercutting the prices of the domestic industry.
- d) Imports are suppressing the domestic prices.

- e) Imports are resulting in significant price underselling, as evidenced by the difference between the non injurious price and selling price of the domestic industry.
- f) Performance of the domestic industry has deteriorated in terms of capacity utilization, profits, return on investments, cash flow, inventories and market share.
- g) Performance of the domestic industry has improved in respect of production, sales volumes and productivity. However, despite these improvements, the financial situation of the domestic industry has very significantly deteriorated. Further, capacity utilization is still below the levels earlier registered. Thus, even when production and sales have improved, the same is below the levels that could have been achieved by the domestic industry. Further, the deterioration in profits, return on investment and cash profits far outweigh the improvements in production and sales volumes.
- h) Export sales have declined as one of the petitioners' shifted its plant from EOU to DTA. However, the petitioners have provided entire information for domestic market and, therefore, this has not distorted the data with regard to injury claimed by the domestic industry. Therefore, decline in exports does not mean that this fact has caused the claimed injury to the domestic industry. Landed price of imports were much lower than selling price of the domestic industry. It was the imports that forced the domestic industry to keep unremunerative prices.
- i) Even if it is admitted that the domestic industry has not suffered adverse volume effect, undisputedly, the domestic industry has suffered adverse price effect. This alone is sufficient to establish that consequent impact of dumped imports on the domestic industry is adverse.
- j) With regard to the duty differential between the input PA and output plasticizer, the domestic industry has contended that if the duty differential between the input PA and output plasticizer is virtually nil, the consumers should plead their case before the Ministry of Finance. The Designated Authority is not the relevant authority for the purpose. Nor the Designated Authority would deny fair market opportunity to the domestic industry because the Govt. of India has considered it unnecessary to keep a duty differential in the two products. It is for the Govt. of India to consider whether or not there should be customs duty differential between a product and its inputs. There are in fact host of products which have inverted duty structure (i.e., lower duty on finished product and higher duty on raw materials). Even in that case, if the raw material suppliers are suffering injury, such producers would be entitled to seek anti dumping duty protection, in case it is found that dumping of the product is causing injury.
- k) With regard to the issue of imports from Thailand, the domestic industry claims that majority of PA is being imported by the members of IPMA. If 9,579 MT PA has been imported into the Country, majority of such imports must have been made by the members of IPMA. The Designated Authority may kindly direct the IPMA to advise its members to file the imports information to show that PA of this high volume was imported from Thailand. IPMA cannot merely advance an argument and ignore its own responsibility of providing relevant information. As stated in the preliminary submissions, none of the IPMA members have filed questionnaire responses. Thus, IPMA cannot argue that goods have been imported from Thailand. IPMA at the least should check with their members whether they have imported product under consideration and if so to what extent.
- l) The various parameters relating to domestic industry collectively and cumulatively establish that the domestic industry has suffered material injury.

### G.3 Examination by the Authority

56. The Authority has addressed the issues raised by all interested parties as follows:

- a) With regard to sale of power to the grids by the domestic industry, it is noted that the heat generated from exothermic process involved in the production of Phthalic Anhydride is used in electricity generation by the domestic industry. In general the electricity generated from such heat is not sufficient to meet the electricity requirement for Phthalic Anhydride production. The domestic industry has claimed that whenever there is an excess of electricity generated, the same is sold to the grids as electricity cannot be stored.
- b) With regard to the input output ratio of Ortho-xylene, it is noted that the Standard Input Output Norms (SION) provide that one unit of Ortho-xylene gives an output of 1.02 units of PA and the petitioners have claimed an output of 1.07-1.08 which is still higher than SION norms.
- c) With regard to adjustment for credit of by-products used captively in the calculation of non-injurious price; the Authority has considered the relevant information provided by the domestic industry and made necessary adjustments to that effect.
- d) With regard to the contention of IPMA that the petitioners have claimed replacement value for highly depreciated plants while calculating cost of production, it is noted that the domestic industry has reported the actual cost of production based on the depreciated value. The Authority has considered the net fixed assets for the purpose of determining capital employed in terms of AD Rules.
- e) With regard to the variation in data, it has been clarified by the petitioners that the difference in the data furnished in the anti-dumping investigation and the safeguard petition is due to the difference in approach adopted by these Authorities. The Authority has verified the figures based on the financial records and adopted the same.
- f) It is noted that there is no significant import of the subject goods from Thailand. Petitioners have provided information from Thai customs to show that exports of the subject goods from Thailand to India and globally. Further, the petitioners have provided import data from another independent agency, namely, Balaji Data Information Services. It is noted that there is no significant import of the subject goods from Thailand from the information available on record.
- g) With regard to variation in the import data, the Authority has adopted the import data for the injury period including POI furnished by DGCI&S for its analysis.
- h) With regard to the comparison with the safeguard case, it is noted that the period of investigation in the present case is different from that of safeguard duty investigation. Further, the petitioners have submitted that the injury claimed in the present case by the domestic industry is caused due to dumped imports of the product under consideration from the subject countries. The Authority has made the injury analysis separately in the relevant headings in this statement.
- i) With regard to the contention that DA must examine the landed value of duty paid imports with the non-injurious price and NSR of domestic industry, it is noted that the Authority has computed the landed price based on all imports as per its consistent practice.
- j) With regard to the contention that the market share of Domestic Industry is showing increasing trend whereas the share of the subject countries has not increased at a rate comparable to the petitioners, it is noted that the market

- share of the domestic industry has not increased at the rate at which the rate of increase in imports from subject countries.
- k) With regard to the contention that fall in exports of the petitioners has caused injury and not imports, it is noted that the export sales have declined as one of the petitioners' shifted its plant from EOU to DTA. It is further noted that the petitioners have provided entire information for domestic market and therefore this has not distorted the data with regard to injury claimed by the domestic industry. It is also seen that the landed price of imports were lower than selling price of the domestic industry.
- l) It is noted that the domestic industry has suffered adverse price effect which is sufficient to establish that the dumped imports have adversely affected the domestic industry.
- m) With regard to the contention that profitability of the petitioner companies has not suffered any adverse effect as alleged in the petition, the information on profitability, return on investment and cash profits of the domestic industry on record shows that:
- i) Profitability declined steeply in 2008-09 due to global recession and resultant surge in imports.
  - ii) Profitability improved to some extent in 2009-10 and thereafter declined significantly once again in the period of investigation.
  - iii) Return on investment and cash profits have followed the same trend as that of profits. Thus, return on investment and cash profits have deteriorated significantly during the period of investigation.
- n) With regard to the contention that TCL is making losses because of inefficient running of plant, it is noted that no evidence has been provided by the opposing parties to corroborate the above statement. The Authority further notes that it had computed the non-injurious price of the domestic industry in terms of AD Rules which envisage exclusion of the inefficiencies.
- o) With regard to the contention that steep increase in stock is due to steep decrease in export sales, it is noted that the claimed injury to the domestic industry is on account of domestic operations. Petitioners have provided costing and injury information for domestic operation. The domestic industry has submitted that the decline in exports is because of shifting of plant to DTA from EOU by one of the major producers. The domestic industry has claimed that it is being forced to export its production, despite significant domestic demand and such exports are not a matter of choice, but a compulsion for the domestic industry, driven out of continuous increased imports of the product in the Country. The Authority notes that in view of dumping of the product and consequent increase in imports, the domestic industry was prevented from selling its production, leading to piling up of inventories.
- p) With regard to the contention that domestic industry is suffering injury due to changes in custom duty rate, it is noted that there is no change in customs duty throughout the injury period.
- q) With regard to the contention that there are inexplicable differences in demand, domestic industry sales and imports in ADD and Safeguard Case, it has been claimed by the DI that the difference in the data in Anti-dumping petition and Safeguard petition is due to the difference in the approach adopted by the respective Authorities. The Authority notes that it had considered the data as per the financial records of the domestic industry after due verification.

- r) With regard to the contention that positive growth in the PAN industry in India and globally is reflected in some reports, it is noted that there is no conclusive evidence in this regard.
- s) With regard to the contention that cumulative assessment is unjustified because the conditions of competition of subject countries are not same, it is noted that the Authority has cumulatively assessed the effect of such imports as per Annexure II (iii) of the Anti Dumping Rules. It is noted that (i) the margins of dumping from each of the subject countries are more than the limits prescribed above; (ii) the volume of imports from each of the subject countries is more than the limits prescribed; and, (iii) cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like goods offered by the domestic industry in the Indian market.
- t) With regard to the contention that the combined IVA of Industry cannot be confidential; it is noted that sufficient reasoning for claiming confidentiality has been provided by the domestic industry in this regard.
- u) With regard to the contention that Individual Company IVA should be given in Indexed Form, it is noted that the Authority is required to examine injury to the “domestic industry” on cumulative basis and not on individual companies.
- v) With regard to the contention of M/s Gadiv that prices are higher from Israel, and, hence, there is no price undercutting; it is noted that prices from individual companies/countries have no relevance unless it is established that cumulative assessment of injury is inappropriate. Further, in a situation of negative price undercutting, the Authority shall consider whether imports are suppressing or depressing the prices of the domestic industry in the market.
- w) With regard to the contention that injury to domestic industry is not material, the Authority notes that the performance of the domestic industry deteriorated significantly in terms of profits, return on investments and cash flow. Deterioration in these parameters is quite significant and establishes significant adverse impact of dumping on the domestic industry.
- x) With regard to issue of landed value of the subject goods imported under advance license being lower than as compared to the landed value of the duty paid imports, the Authority notes that the Authority has determined the landed value after addition of customs duty on CIF import price in order to determine price undercutting and injury margin, regardless whether or not imports were made after payment of customs duty. Thus even if imports were made without payment of customs duty, the undercutting and injury margin can be determined after adding customs duty.
- y) With regard to examination of injury for each company, the Authority notes that the argument is not in accordance to the Rules. The Anti Dumping Rules require authority to determine injury to the domestic industry. Under Section 9(B), the Authority shall determine whether imports of the product under consideration have caused or are threatening material injury to an established industry in India or materially retarding establishment of domestic industry in India. Further, Rule 11 and Annexure-II requires authority to determine, in case of imports from a specific country, whether dumped imports are causing or threatening material injury to the domestic industry. It would, therefore, not be appropriate to determine injury to individual companies.

#### F.4 Injury Examination

57. Annexure II (iii) of the Anti Dumping Rules requires that in case imports of a product from more than one country are being simultaneously subject to anti

dumping investigations, the Designated Authority will cumulatively assess the effect of such dumped imports, in case it determines that:

- (i) The margin of dumping established in relation to the imports from each country is more than two percent expressed as percentage of export price and the volume of the imports from each country is three percent of the imports of the like article or where the export of the individual countries is less than three percent, the imports cumulatively accounts for more than seven percent of the imports of like article, and;
- (ii) Cumulative assessment of the effect of imports is appropriate in the light of the conditions of competition between the imported article and the like domestic articles.

58. In this regard, it is noted that:

- a) The margin of dumping from each of the subject countries is more than the limit prescribed above;
- b) Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like goods offered by the domestic industry in the Indian market.

59. In view of the above, the Authority notes that it is appropriate to cumulatively assess the effects of imports of the subject goods from the subject countries on the domestically produced like article, in the light of conditions of competition between the imported products and the like domestic product.

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

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

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

62. The Authority notes that the margin of dumping and quantum of imports from subject countries are more than the limits prescribed above. Cumulative assessment of the effects of imports is appropriate since the export prices from the subject countries were directly competing with the prices offered by the domestic industry in the Indian market.

63. For the examination of the impact of dumped imports on the domestic industry in India, the Authority has considered the parameters such as production quantity, capacity utilization, sales quantity, stock, profitability, net sales realization, the magnitude and margin of dumping, etc. in accordance with para (iv) of Annexure II of the rules supra.

**I. Volume effect of imports:**

a) Volume of Imports

64. Table below summarizes the factual position with regard to import volumes and market share:

Particulars	Unit	2007-08	2008-09	2009-10	POI
Imports – Korea RP	MT	14,015	13,938	11,420	28,696
<i>Trend</i>	Indexed	100	99	81	205
Imports – Taiwan	MT	1,642	4,179	1,836	7,858
<i>Trend</i>	Indexed	100	255	112	479
Imports – Israel	MT	6,699	7,605	5,730	4,051
<i>Trend</i>	Indexed	100	114	86	60
Imports - subject countries	MT	22,356	25,722	18,986	40,605
<i>Trend</i>	Indexed	100	115	85	182
Imports - Other Countries	MT	7,997	9,894	8,295	4,956
Market Share in Imports-Korea RP	%	46%	39%	42%	63%
Market Share in Imports-Taiwan	%	5%	12%	7%	17%
Market Share in Imports-Israel	%	22%	21%	21%	9%
Market Share in Imports-Subject countries	%	74%	72%	70%	89%
Market Share in Imports-Other Countries	%	26%	28%	30%	11%

65. From the above table, the Authority notes that:

- i) The volume of imports from Taiwan increased in 2008-09. However, the same declined in 2009-10 and then increased significantly in the period of investigation.
- ii) The volume of imports from Korea after showing a declining trend in 2008-09 and 2009-10, increased sharply in POI as compared to the base year i.e. 2007-08.
- iii) The volume of imports from Israel increased in 2008-09 and then declined in 2009-10 and the POI. It is, however, noted that the share of imports from Israel is significant in total imports in the country.
- iv) The imports from the subject countries have a major share in total imports.

b) Demand and market share

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

Particulars	Unit	2007-08	2008-09	2009-10	POI
Sales of Domestic industry	MT	140,272	135,967	181,705	199,439
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>97</i>	<i>130</i>	<i>142</i>
Sales of other Indian producers	MT	24,261	19,941	23,721	23,721
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>82</i>	<i>98</i>	<i>98</i>
Imports in India from subject countries	MT	22,356	25,722	18,986	40,605
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>115</i>	<i>85</i>	<i>182</i>
Imports in India from other countries	MT	7,997	9,894	8,295	4,956
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>124</i>	<i>104</i>	<i>62</i>
Demand in India	MT	194,885	191,524	232,707	269,028
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>98</i>	<i>119</i>	<i>138</i>
Market Share in demand					
Subject Countries	%	11.47%	13.43%	8.16%	15.21%
Korea RP	%	7.19%	7.28%	4.91%	10.78%
Taiwan	%	0.84%	2.18%	0.79%	2.92%
Israel	%	3.44%	3.97%	2.46%	1.51%
Other Countries	%	4.10%	5.17%	3.56%	1.84%
Share of Domestic Industry	%	71.98%	70.99%	78.08%	74.13%
Share of other Indian producers	%	12.45%	10.41%	10.19%	8.82%

67. The Authority notes that demand for the subject goods in India has shown an increasing trend except a slight decline in 2008-09 in comparison to the POI. The growth in demand during period of investigation over the base year was 38%; whereas the imports from subject countries increased by 82% between the base year and the POI. However, the sales of the domestic industry have increased by 42% during the same period.

## **II. Price effect of Imports**

68. In order to ascertain the price effect of the imports of the subject goods from the subject countries on the domestic industry, the Authority has examined whether there has been a significant price undercutting by the dumped imports as compared with the price of the like article in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. In order to assess the extent of price undercutting, the Authority has compared net sales realization of the domestic industry with the landed price of imports. The Authority has determined the net sales realization by excluding the taxes & duties, rebates, discounts & commissions from the selling price. The landed value of imports was compared with net sales realization of the domestic industry and it was found that the dumped imports are undercutting the prices of the domestic industry.

### **a) Price undercutting**

69. In order to determine whether the imports are undercutting the prices of the domestic industry in the market, the Authority has compared landed price of imports

with net sales realization of the domestic industry. The Authority has determined the net sales realization by excluding the taxes & duties, rebates, discounts & commissions from the selling price. Landed price of imports has been determined considering weighted average CIF import price, with 1% landing charges and applicable customs duty. The comparison was done between net sales realization and landed price of imports. The Authority notes that the landed prices of the subject goods from the subject countries are below the selling price of the domestic industry.

<b>Particulars- Korea RP</b>	<b>Unit</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>POI Jan'10 to Dec'10</b>
Landed Price	Rs/MT	58,100	56,568	54,779	56,733
NSR	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	(0 - 10)	(0 - 10)	(0 - 10)	0-10
<b>Particulars- Taiwan</b>					
Landed Price	Rs/MT	58,874	58,982	53,714	57,309
NSR	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	(0 - 10)	(5 - 15)	0-10	(0 - 10)
<b>Particulars-Israel</b>					
Landed Price	Rs/MT	53,439	56,013	52,364	56,664
NSR	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	0-10	(0 - 10)	0-10	0-10
<b>Particulars-Subject Countries</b>					
Landed Price	Rs/MT	56,781	56,818	53,945	56,837
NSR	Rs/MT	***	***	***	***
Price Undercutting	Rs/MT	***	***	***	***
Price Undercutting	%	***	***	***	***
Price Undercutting	Range	0-10	(0 - 10)	0-10	0-10

70. It is noted that the landed price of imports of the subject goods from the subject countries except Taiwan, in the POI is below the net selling price of the domestic industry, resulting in price undercutting.

b) Price Underselling

71. The Authority has assessed the extent of price underselling by comparing non-injurious price of the domestic industry with the landed price of imports (for POI), as shown below:

Particulars	Unit	Korea RP	Taiwan	Israel	For Subject country as a whole
NIP of the Domestic Industry	Rs./MT	***	***	***	***
Landed Value	Rs./MT	56,733	57,309	56,664	56,837
Price Underselling	Rs./MT	***	***	***	***
Price Underselling as a % of landed value	%	***	***	***	***
Price Underselling as a % of landed value	Range	0-10	0-10	0-10	0-10

72. From the above, the Authority notes that:

- i) The landed price of imports of Phthalic Anhydride from each of the subject countries is below the non-injurious price (NIP) of the domestic industry. Thus, the imports from the subject countries are underselling the NIP of domestic industry.
- ii) The NIP of the domestic industry is higher than the net selling price of the domestic industry. Thus, the domestic industry is not able to realize fair selling price (i.e., NIP) for the subject goods.
- c) Price suppression/depression

73. In order to determine whether the dumped imports are suppressing or depressing the domestic prices, the Authority determined whether the effect of such imports is to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. For the purpose, the import prices of subject goods have been compared with the trends in cost of production and selling price of the domestic industry.

Particulars	Unit	2007-08	2008-09	2009-10	POI
Cost of Sales	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	111	102	110
Selling Price	Rs./MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	98	99	104

74. From the above, it is apparent that there is an increase in both the cost of sales and the selling price of the domestic industry during POI as compared to the base year. However, the increase in the selling price is proportionately lower compared to the increase in the cost of sales, thereby reflecting price suppression.

### III. Economic parameters relating to the domestic industry

75. Annexure II to the AD Rules requires that the determination of injury shall involve an objective examination of the consequent impact of these imports on domestic producers of such products. Further para (iv) of Annexure II of the Rules lays down 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."*

a) Actual Production, Capacity, Capacity Utilization and Sales:

76. Information on capacity, production, capacity utilization and sales volumes of the domestic industry has been as under:-

Particulars	Unit	2007-08	2008-09	2009-10	POI
Installed Capacity	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	100	115	115
Production	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	85	94	104
Capacity Utilization	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	85	82	90
Domestic Sales	MT	140,272	135,967	181,705	199,439
<i>Trend</i>	<i>Indexed</i>	100	97	130	142
Demand	MT	194,885	191,524	232,707	269,028
<i>Trend</i>	<i>Indexed</i>	100	98	119	138

77. The Authority notes that the share of sales of the Domestic Industry in relation to demand in the period of investigation has increased in line with the increase in demand. The production has also increased in POI compared to base year. However, the capacity utilization of the domestic industry has declined as compared to base year. This is due to the fact that the capacity has increased between base year and POI, which has been expanded in anticipation of enhancement in sales as a result of growing demand for the product under consideration. However, the utilization has not increased as anticipated. The Authority also notes that the export sales of the domestic industry have also declined steeply over the injury period and the POI.

b) Profits, Return on investments and cash flow

78. Profits, return on investment and cash flow of the domestic industry has been examined as under:

Particulars	Unit	2007-08	2008-09	2009-10	POI
Cost of Sales	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	111	102	110
Selling price	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	98	99	104
Profit/loss	Rs/MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	(146)	53	4
Profit before tax	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	(142)	68	6
Profit before interest and tax	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	(51)	95	50
Return on capital employed (NFA basis)	%	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	(46)	74	37
Cash profit	Rs. Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	(80)	88	44

79. The Authority notes that profitability of the domestic industry for the subject goods has significantly deteriorated in 2008-09 to the extent that loss was suffered; and then improved in 2009-10. The profitability has once again deteriorated to the extent that reduced profits were reported in the POI. Profit before interest and tax, return on investment and cash profit also show a similar trend.

c) Employment and wages

Particulars	Unit	2007-08	2008-09	2009-10	POI
Employment	No	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	94	99
Wages	Rs Lacs	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	126	160	184

80. The Authority notes that the level of employment has marginally declined in 2009-10 as compared to the base year. However, the employment level in POI is lower as compared to base year. At the same time, it is noted that there has been a significant increase in the wage cost over the injury period. It has been claimed by the petitioners that employment and wages would not reflect impact of dumping, as the petitioner companies do not have the option of hiring or firing people on daily basis. However, persistent dumping is bound to adversely impact the employment and wages.

d) Productivity

Particulars	Unit	2007-08	2008-09	2009-10	POI
Productivity per Employee	MT/No	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	86	100	105
Productivity per day	MT/Day	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	85	94	104

81. The Authority notes that the productivity in terms of both, productivity per employee and productivity per day, declined in 2008-09 and then increased in 2009-10 and POI. This is in line with increase in the volume of production in the POI.

e) Inventories:

82. The Authority has examined the inventory level of the domestic industry, which is given in the table below:-

Particulars	Unit	2007-08	2008-09	2009-10	POI
Average Stock	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	99	104	153
Average Stock in terms of No. of days sales	MT	***	***	***	***
<i>Trend</i>	<i>Indexed</i>	100	140	120	230

83. The Authority notes that inventories have shown significant increasing trend over the injury period as compared to the base year. The domestic industry has contended that they have not been able to sell its goods due to dumped imports from subject countries.

f) Magnitude of dumping

84. The Authority determines that the dumping margin in respect of cooperative exporters other than Aekyung Petrochemical Co. Ltd. (Producer) Humade Corporation (Exporter) and non cooperative exporters is considered significant and above the de minimis level.

g) Growth:

Growth (year to year basis)	Unit	2007-08	2008-09	2009-10	POI
Production	MT	-	***	***	***
Domestic Sales Volume	MT	-	***	***	***
Cost of Sales	Rs./MT	-	***	***	***
Selling Price	Rs./MT	-	***	***	***
Profit/Loss	Rs./MT	-	***	***	***
Cash Profit	Rs./MT	-	***	***	***

Return on Investment	%	-	***	***	***
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85. The Authority notes that though the production and sales of the domestic industry have shown improvement; the growth of the domestic industry in terms of capacity utilization and inventories was negative. Growth in terms of price parameters, viz. selling price profits, cash profits and return on investment has been negative.

h) Ability to raise capital investments

86. The domestic industry has submitted that under the given state of affairs of the domestic industry where the product is consistently not performing well because of persistent dumping over last few years, substantial fresh investments cannot even be imagined.

**IV. Conclusion on injury parameters**

87. From the examination of the various injury parameters in the above paragraphs, the Authority concludes that: -

- a) Imports from subject countries have increased in absolute terms. The increase in imports is significant.
- b) Imports have increased in relation to production and consumption in India.
- c) Imports are undercutting the prices of domestic industry to some extent.
- d) Selling prices and cost of production of the domestic industry has increased. However, the increase in the selling price was lower than the increase in the cost of production. The dumped imports have thus caused price suppression.
- e) Imports are resulting in price underselling, as evidenced by the difference between the non injurious price and selling price of the domestic industry.
- f) Performance of the domestic industry has deteriorated in terms of capacity utilization, profits, return on investments, cash flow, inventories and market share.
- g) Performance of the domestic industry has improved in respect of production, sales volumes and productivity. However, the financial position of the domestic industry has very significantly deteriorated and far outweighs the improvements in production and sales volumes.
- h) Inventories with the domestic industry have increased.
- i) Dumping margin from each of the subject countries as a parameter of injury is significant.
- j) Employment, wages and productivity do not show adverse impact of dumping. However, deterioration in other vital parameters outweighs the improvement in these parameters.
- k) The petitioners have claimed that In addition to the material injury being caused by the dumped imports from the subject countries, the domestic industry is threatened with material injury due to dumped imports.

88. The Authority, therefore, concludes that the domestic industry has suffered material injury.

**H. Causal link**

Other Known Injury factors and Causal Link

89. Having examined the existence of material injury in terms of volume and price effects of dumped imports on the domestic industry, its price undercutting and price suppression effects and other vital parameters listed under the Anti Dumping Rules; the Authority is, inter alia, required to also examine any known factors other than the dumped imports, which at the same time are injuring the domestic industry, so that the injury caused by these other factors are not 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, trade restrictive practices and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.

90. It was examined whether these other parameters listed under the AD Rules could have contributed to injury to the domestic industry. It was noted that:-

(a) Imports from third countries - Imports of the subject goods from third countries have declined. Further, the import prices from third countries are at prices significantly higher than the import prices from subject countries.

(b) Contraction in demand - The Authority notes that demand of the product under consideration had declined in 2008-09 and then increased in 2009-10 and the POI. Decline in demand cannot be considered as the factor that would have impacted the domestic industry. It is noted that the overall demand for subject goods has shown positive growth during the injury period as is evident from the table below.

Particulars	Unit	2007-08	2008-09	2009-10	POI
Demand	MT	194,885	191,524	232,707	269,028
<i>Trend</i>	<i>Indexed</i>	<i>100</i>	<i>98</i>	<i>119</i>	<i>138</i>

(c) Pattern of consumption: - Neither any significant change in the pattern of consumption has come to the knowledge of the Authority, nor any interested party has made any submission in this regard.

(d) Conditions of competition: - The subject goods are freely importable and there are no trade restrictive practices in the domestic market. The domestic industry competes among one another and at the same time competes with the landed price of the subject goods. Moreover, imports from other sources have sizable presence in the Indian market.

(e) Developments in technology: - The investigation so far has not shown that there was any significant change in technology, which could have caused injury to the domestic industry.

(f) Export performance of the domestic industry - The Authority notes that the export sales of the domestic industry have declined during the injury period. However, the Authority has excluded the export performance of the domestic industry from the injury analysis made in earlier paragraphs.

91. No other factor which could have possibly caused injury to the domestic industry has been brought to the knowledge of the Authority. The Authority concludes that while listed known other factors do not show injury to the domestic

industry, the following parameters show that injury to the domestic industry has been caused by dumped imports.

- (i) The subject goods are entering the Indian market at dumped prices and dumping margin of the subject goods imported from subject sources are above de-minimis.
- (ii) Imports of the subject goods from subject countries are available at prices lower than that of the domestic industry. Consequently, the consumers are increasingly switching over to imports. The domestic industry is therefore forced to offer the subject goods at sub-optimal prices in order to avoid losing market share.
- (iii) Deterioration in profits, return on capital employed and cash profits are as a result of dumped imports.

92. The Authority concludes that material injury to the domestic industry has been caused by the dumped imports.

Indian Industry’s interest.

93. The purpose of anti dumping duties in general is to eliminate dumping which is causing injury to the domestic industry and to reestablish a situation of open and fair competition in the Indian market, which is in the general interest of the country. The Authority recognizes that the imposition of anti dumping duties might affect the price levels of the products manufactured by using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition on the Indian market will not be reduced by the anti dumping measures. On the contrary, imposition of anti dumping measures would remove the unfair advantages gained by dumping practices, would prevent the decline of the domestic industry and help maintain availability of wider choice to the consumers of subject goods. The Authority notes that the imposition of anti dumping measures would not restrict imports from subject countries in any way, and therefore, would not affect the availability of the product to the consumers. The consumers could still maintain two or even more sources of supply.

**I. Magnitude of injury and injury margin**

94. The Authority has determined non-injurious price for the domestic industry on the basis of principles laid down in the Rules. This non-injurious price of the domestic industry has been compared with the landed values of the subject imports from subject countries to determine injury margin. The injury margins have, thus, been worked out as follows:

**Table showing Injury Margin**

Country	Producer/Exporter	Non Injurious Price USD/MT	Landed value USD/MT	Injury Margin USD/MT	Injury Margin (%)	Injury Margin Range
Korea RP	M/s Aekyung Petrochemical Co.	***	***	***	***	(0-10)

	Ltd. (Producer) M/s Humade Corporation (Exporter)					
	Any other Producer/Exporter	***	***	***	***	10-20
Taiwan (Chinese Taipei)	M/s Nan Ya Plastics Corporation	***	***	***	***	0-10
	Any other Producer/Exporter	***	***	***	***	10-20
Israel	M/s Gadiv Petrochemicals Industries Ltd.	***	***	***	***	0-10
	Any other Producer/Exporter	***	***	***	***	15-25

95. The level of dumping margins and injury margins determined are considered significant.

### **Post Disclosure Statement submissions**

#### **Post Disclosure Statement submissions by the Domestic Industry**

96. Post Disclosure Statement submissions by the Domestic Industry are as under:
- i. Normal values for all the three responding exporters are grossly understated and export price in case of responding Korean exporter is overstated.
  - ii. Given selective questionnaire response from Aekyung and Humade, the two companies should have been considered non cooperative.
  - iii. Aekyung is getting special price (preferential price) for Ox from its raw material suppliers.
  - iv. With regard to adjustment on account of duty drawback claimed by the Korean producer, domestic industry submits that merely because the adjustment is claimed in the name of "duty drawback", the same does not justify its acceptance. It appears that Aekyung has not imported the raw materials. Such being the case, it is not understood how Aekyung has got duty drawback without paying customs duties.
  - v. In the case of Gadiv, the disclosure statement contains no information whatsoever on how the cost of production of foreign producers has been determined and how the same reasonably reflects the cost associated with production and sale of the product concerned.
  - vi. Fixed quantum of anti dumping duties is required to be expressed in terms of US\$.
  - vii. The Authority should have examine at what price Orthoxylene has been purchased by Nan Ya from Formosa Plastics and what is the international/market price or at what price Formosa have sold Ox to unaffiliated customers.

- viii. Domestic industry has serious issues in determination of NIP of the Thirumalai Chemicals in particular and Domestic Industry in general. The determination of non injurious price is grossly inappropriate and is leading to unduly low protection to the domestic industry.
- ix. Further there are issues regarding determination of working capital. Domestic industry submits that the non injurious price has been significantly understated and requests reconsideration of the same.

#### Post Disclosure Statement submissions by other opposing Interested Parties

97. Post Disclosure Statement submissions by the other opposing Interested Parties are as under:

- i. Gadiv has provided full details of sales to Portugal and, therefore, in terms of Article 2.2 of the WTO Antidumping Agreement, the Authority should accept Portugal as a comparable country for determination of normal value. Gadiv is under no obligation to provide confidential information about sales to other countries which are irrelevant to the present investigation.
- ii. Alternatively, the Authority must determine Gadiv's normal value on its actual production costs as notwithstanding Authority's arguments, the data relating to direct costs presented by Gadiv was based on specific calculation of the actual costs incurred for the production of PAN, especially the quantity and cost of Ortho-xylene.
- iii. The indirect costs, such as SGA costs, which cannot be precisely related to specific product, were allocated to production of PAN by Gadiv, according to a constant key of 3% which is the ration between the PAN production quantity and the total production quantity of the company. This is in tune with the decision of the US Appellate Authority in US-Hot-Rolled Steel case.
- iv. Petitioners claim to be suffering serious injury on one hand and on the other hand continue to increase their capacities by leaps and bounds.
- v. Petitioners have contravened the provisions for confidentiality by not disclosing such information as price underselling, methodology of the break-up of the indexed costing data used for constructing the Normal Values and methodology and evidence relating to ocean freight and other expenses for arriving at export price.
- vi. Providing an anti-dumping duty in addition to a safeguard duty would give undue double protection to the Petitioners.
- vii. Asian Paints Ltd., a major domestic producer having significant domestic sales of the subject goods shows profits which is in contrast to the picture submitted by the Petitioners.
- viii. The Authority should accept the order date fixed for export transactions for comparing the home market sales. In the recent finding of Anti-Dumping Investigation concerning imports of 'Poly Vinyl Chloride Paste Resin' originating in or exported from China PR, Japan, Korea RP, Malaysia, Russia, Taiwan and Thailand, the same group company, Formosa Plastics Corporation, claimed the date of order to be considered

as relevant while working out the monthly dumping margin and the Authority has accepted the same while calculating the dumping margin. Since the facts in both the cases remain the same, the methodology adopted by the Authority in both the cases cannot be contradictory.

- ix. The share of the Petitioners in total demand has risen consistently over the injury period at an increased rate than demand. Thus, the increase in imports from the subject countries has not caused any injury to the Petitioners.
- x. As far as imports from Taiwan are concerned, there is no price undercutting.
- xi. The capacity utilisation of the Petitioners has been affected on account of several other factors and not the imports of the subject goods from the subject countries.
- xii. The causal link in the present investigation fails on account of a major factor that the imports of the subject goods from Thailand have been excluded from the analysis.

#### Examination by the Authority

98. Submissions made by all the interested parties have been examined by the Authority. The Authority notes that majority of the submissions are repetitive and they have already been dealt with under appropriate headings in these findings. The Authority has examined the submissions hereunder to the extent found relevant to the present investigation:

- i. With regard to the claim of the domestic industry that only Humade has responded and other traders as well as OCI have not responded to the Authority and, therefore, the response is incomplete, the Authority notes that only \*\*\*% of the total exports by Humade to India during the POI are sourced from OCI. It is also noted that \*\*\*% exports by Humade to India during the POI have been sourced from Aekyung. As per DGAD practice, the Authority grants separate dumping margin to co-operating producers/exporters and the traders/exporters that do not cooperate would face adverse and residual dumping margin.
- ii. Regarding the allegation that Aekyung is getting special price (preferential price) for Ox from its raw material suppliers, the Authority notes that Aekyung has sourced Ox from two unrelated suppliers located in Ulsan Industrial Area through pipelines. The Authority has analysed the export prices of Orthoxylene from Korea RP to other countries as reported by Korean Customs Authority (KITA) and found that the export price to other countries is marginally higher than the prices at which Aekyung has sourced the material. The Authority notes that Aekyung is a regular and bulk buyer of Ox from these two sources and the export price reported by KITA is on FOB basis involving more expenses as compared to expenses incurred for sales to Aekyung. Accordingly, the marginal difference between exports to other countries and sale price to Aekyung appears to be logical.

- iii. The Authority verified the duty drawback claim of Aekyung during the onsite verification with the application filed before the concerned authorities and linked the duty drawback amount to the export transactions along with backup statements and other related documents. The Authority holds that the claim of Aekyung with regard to duty drawback was found to be in order.
- iv. Regarding the difference between the export quantity reported by Humade to India and as claimed by the Domestic Industry, the Authority notes that there is not much of difference between the export volume reported by KITA in its monthly exports statistics and that reported by Humade and verified by the Authority. It was explained that while the monthly exports statistics of KITA are based on the customs clearance, the exports reported by the exporter is based on its invoices exports and there is always a small time between the methodology adopted by both KITA and Aekyung.
- v. Regarding the claim of the domestic industry that export prices of Aekyung to India was 11 % higher than other Korean suppliers/exporters, the Authority has examined the monthly Korean Customs Data issued by KITA for exports to India and compared the same with export prices of Aekyung. The Authority notes that the average export price of Aekyung as verified by the Authority is comparable with the export price of other exporters.
- vi. With regard to the submission of the Domestic Industry that the Authority should have examined at what price Orthoxylene has been purchased by Nan Ya from Formosa Plastics and what is the international/market price, the Authority notes that it had examined the terms of sale of the Ox entered into by the exporter with its related company and found that they were at arm's length basis.
- vii. Regarding the claim of Nan Ya Plastics that the date of order should be considered as date of sales, the Authority holds that the normal practice of the Authority is to accept the invoice date and only if there is full justification and merit in an individual case, the order date is accepted. In the present case the company could not provide sufficient reasons as to why date of order should be considered as date of sales.
- viii. With regard to the claim of Gadiv for determining the normal value based on its sales to Portugal, the Authority notes that in order to verify Gadiv's claim in this regard, the Authority had requested the details of all third country exports. However, Gadiv refused to provide the details and requested the Authority to determine the normal value based on its cost of production. However, as explained in the confidential verification report submitted to the exporter, the Authority could not verify fully, the details of cost of production of PUC submitted by the exporter. In view of the above, the Authority has constructed the normal value based on available facts and as explained in relevant headings.
- ix. Post-disclosure, the Domestic Industry has stated that while determining the NIP, the Authority should consider actual levels of utilisation of raw materials,

utilities and capacity instead of the best achieved levels. In this connection, the Authority notes that it had determined the NIP in terms of the principles laid down in Annexure III to the AD Rules which envisage consideration of best utilisations achieved by the domestic industry.

- x. The domestic industry has requested the Authority to consider 'Gross Fixed Assets' instead of 'Net Fixed Assets' for determination of Capital Employed. The domestic industry further claimed that the 'Bills discounted with Banks' should be treated as part of capital employed even though the same has been shown under contingent liabilities for the reasons mentioned in their submissions. In this regard, the Authority notes that in terms of Annexure III to the Rules, it has considered the 'Net Fixed Assets' and 'Net working capital' for determination of capital employed. Since 'bills discounted with banks' are contingent liabilities, it has not been considered for determining the capital employed.
- xi. The domestic industry has submitted that certain minor errors have crept in the computation of NIP determined by the Authority. The submissions made by the domestic industry in this regard have been examined and the NIP has been revised to the extent warranted. The other issues raised by the domestic industry with regard to allocation of common expenses, utilities between PUC and non-PUC, treatment of certain expenses as variable and fixed, consideration of 'advance tax paid' as part of capital employed, etc have been examined by the Authority as per the consistent practices being followed by it and found that no change in the NIP determined earlier is warranted on this account.

### **Conclusion**

99. Having regard to contentions raised, information provided and submissions made by interested parties and facts available before the Authority as recorded in the above findings and on the basis of above analysis of the state of continuation of dumping and consequent injury to domestic industry, the Authority concludes that :

- (i) The product under consideration has been exported to India from the subject countries below their associated normal values, except in the cases wherein the dumping margin has been found to be negative.
- (ii) The domestic industry has suffered material injury in respect of the product under consideration.
- (iii) The material injury has been caused by the dumped imports of the subject goods from the subject countries.

### **Recommendations**

100. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of the margin of dumping and the margin of injury, so as to remove the injury to the domestic industry. Accordingly, definitive antidumping duty as per amount specified in the table below is recommended to be imposed from the date of the Notification to be issued by the Central Government, on all imports of the subject goods originating in or exported from the following subject countries.

## Duty Table

SN	Sub Heading	Description of goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit	Currency
1	291735 00	Phthalic Anhydride	Korea RP	Korea RP	M/s Aekyung Petrochemical Co., Ltd	M/s Humade Corporation	NIL	MT	USD
2	291735 00	Phthalic Anhydride	Korea RP	Any other than subject countries	Any	Any	91.12	MT	USD
3	291735 00	Phthalic Anhydride	Any other than subject countries	Korea RP	Any	Any	91.12	MT	USD
4	291735 00	Phthalic Anhydride	Taiwan	Taiwan	Nan Ya Plastics Corporation	Nan Ya Plastics Corporation	63.33	MT	USD
5	291735 00	Phthalic Anhydride	Taiwan	Any other than subject countries	Any	Any	150.88	MT	USD
6	291735 00	Phthalic Anhydride	Any other than subject countries	Taiwan	Any	Any	150.88	MT	USD
7	291735 00	Phthalic Anhydride	Israel	Israel	Gadiv Petrochemicals Industries Ltd.	Gadiv Petrochemicals Industries Ltd.	17.99	MT	USD
8	291735 00	Phthalic Anhydride	Any other than subject countries	Israel	Any	Any	139.76	MT	USD
9	291735 00	Phthalic Anhydride	Israel	Any other than subject countries	Any	Any	139.76	MT	USD

101. Landed value of imports for the purpose of this Notification shall be the assessable value as determined by the Customs under the Customs Act, 1962 (52 of 1962) and includes all duties of customs except duties under sections 3, 3A, 8B, 9 and 9A of the said Act.

102. An appeal against the order of the Central Government shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

Sd/-  
(Smt Vijaylaxmi Joshi)  
The Designated Authority

