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No. 14/6/2009 - DGAD
GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
(DEPARTMENT OF COMMERCE)
DIRECTORATE GENERAL OF ANTI DUMPING & ALLIED DUTIES

New Delhi, the 17th May 2010

Final Findings

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

No. 14/6/2009-DGAD- Whereas the Designated authority, 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, as amended form time to time, (hereinafter referred to as the AD Rules); recommended imposition of Anti Dumping duty on the imports of 'Viscose Staple Fibre excluding Bamboo fibre' (hereinafter also referred to as the subject goods) originating in or exported from China PR and Indonesia (hereinafter also referred to as the subject countries).

A. Background of the Case

2. Having regard to the Act and the AD Rules, the Designated Authority (hereinafter referred to as the Authority) received a written application from the Association of Man Made Fibre Industry of India (AMFII) on behalf of the domestic industry, alleging dumping of 'Viscose Staple Fibre excluding Bamboo fibre' originating in or exported from China PR and Indonesia.

3. Preliminary scrutiny of the application revealed certain deficiencies, which were subsequently rectified by the Applicant. The application was, therefore, considered as properly documented. The Authority on the basis of sufficient evidence submitted by the Applicant to justify initiation of the investigation, decided to initiate the investigation against imports of the subject goods from the subject countries. The Authority notified the Embassies of the subject countries in India about the receipt of the application claiming, *inter alia*, allegations of dumping and consequent injury to the domestic industry before proceeding to initiate the investigation in accordance with Rule 5(5) of the AD Rules. The Authority issued a public notice dated 19th March, 2009 published in the Gazette of India, Extraordinary, initiating Anti-dumping investigation concerning imports of the subject goods originating in or exported from the subject countries, in accordance with the 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.

4. The Authority recommended imposition of provisional Anti-dumping duty on the imports of 'Viscose Staple Fibre excluding Bamboo fibre' originating in or exported from China PR and Indonesia falling under Sub-heading 5504.10.00. The Preliminary findings were notified vide Notification No 14/6/2009-DGAD dated 5th August 2009.

B. PROCEDURE

5. In these proceedings the procedure described herein below has been followed:

i. The Embassies of the subject countries in India were informed about the initiation of the investigation, in accordance with Rule 6(2) of the AD Rules.

ii. The Designated Authority sent copies of the initiation notification dated 19th March 2009 to the Embassies of the subject countries in India, known exporters from the subject countries, known importers and other interested parties, and the domestic industry, as per the information available with it. Parties to this investigation were requested to file the questionnaires' responses and make their views known in writing within the prescribed time limit. Copies of the letter and questionnaires sent to the exporters were also sent to the Embassies of the subject countries along with a list of known exporters / producers with a request to advise the exporters/ producers from the subject countries to respond to the questionnaires within the prescribed time.

iii. Copy of the non-confidential version of the application filed on behalf of the domestic industry was made available to the known exporters and the Embassies of the subject countries in accordance with Rule 6(3) of the AD Rules.

iv. Questionnaires were sent to the following known exporters from the subject countries in accordance with Rule 6(4) of the AD Rules to elicit relevant information:

S.N.	Company's Name
	Indonesia
1.	P.T.South Pacific Viscose
2.	PT. Indo Bharat Rayon
	China PR
3.	Hebei Jigao Chemical Fiber Co. Ltd
4.	Kunshan Hengsheng Chemical Fiber Co. Ltd.
5.	Zibo Hualong Chemical Fiber Co., Ltd.
6.	Hubei Chemical Fiber Group Ltd.,
7.	Gaomi Silver Hawk Chemical Fibre Co. Ltd
8.	Sateri(Jiangxi)Chemical Fiber Co., Ltd
9.	Fulida Group Holding Co.,Ltd
10.	Manasi Aoyang Technical Co.,Ltd
11.	Yibin Grace Group Co.,Ltd

v. In response to the initiation notification, the following exporters / producers from Indonesia have responded:

· PT Indo Bharat Rayon

· PT South Pacific Viscose

None of the exporters / producers from China PR responded in the instant matter.

vi. Questionnaires were sent to the following known importers and users of the subject goods in India for necessary information in accordance with Rule 6(4) of the AD Rules:

• Pallava Textiles • Cheran Spintex (I) Ltd., • Pallipalayam Spinners, • Shri Cheran Syn. India Ltd. • Keshar Multiyarn Mill Ltd. • Soundararaja Mills Ltd., • Ginni Filaments Ltd. • PKPN Spinning Mills (P) Ltd. • Adani Enterprises Ltd. • Rajapalayam Mills Ltd. • Sutlet Inds. Ltd. • Pallava Textiles • Zenith Spinners, • Cheran Spintex (I) Ltd., • Pee Vee Textiles, • Birla Textiles Mills, • AGT Mills P. Ltd. • Mothi Spinner Ltd, • Orient Syntex, • SMP Textile Mills (P) Ltd. • Sarmangal Synthetics, • Shree Rajasthan Syntex Ltd, • Maharaja Sathayam Ind. Pvt. • Nahar Spinning • Chola Spinning Mills P Ltd, • Sri Karthikeya Spg & Wvg Mills, • KRV Spinning Mills P. Ltd. • Velatal Spinninh Mills P Ltd, • Sree Dinakar Fabrics • Arcot Textile Mill Ltd • Valli Spg Mills • Banswara Syntex Ltd,	• RSWM Ltd. • Reliance Chemotex Ind Ltd, • Rajaguru Spinning Mills, • Deepak Spinners Ltd, • Ankur Ugyog, • Chola Spg Mills • Gimatex Industries Pvt. Ltd., • Sri Bhagirath Textiles Ltd, • Suryalata Spinning Mills • Gillanders Arbuthnot & Co. • Victory Spg. Mills, • Arunkumar Spinning Mills P., • Cheran Spinner Ltd • Shree Bharani Spinning • Sutlet Inds. Ltd. • Rajaguru Spinning Mills, • Pallava Textiles • Sidharth Exports Pvt. Ltd., • Cholеeswarar Spinning Mills, • Sree Karpagambal Mills • Sri Hariprasath Textiles • Vardhman Textile Ltd. • Sri Nallathal Spinning Mills • Mothi Spinner Ltd, • Supertex Mills India Pvt. Ltd., • GVS Spinners, • Nru Spinning Mills • Saraf Yarn Pvt.Ltd • Sangam Spinners Ltd. • Chenab Textile Mills , • Spentex Industries Ltd

In response to the above notification and thereafter, the following importers and users and their Associations have responded:

S.N.	Company's Name
1	Indian Spinners Association – Mumbai
2	Shree Rajasthan Syntex Ltd
3	Suryalata Spinning Mills Ltd, Secunderabad.
4	Spentex Industries Ltd, New Delhi
5	Pee Vee Textiles Ltd
6	Shree Cheran Synthetics India Limited
7	Pallava Textiles Ltd, Tamilnadu
8	RSWM Ltd
9	Pallipalayam Spinners Pvt Limited
10	Northern India Textiles Mills Association
11	The Synthetics and Rayion Textiles Export Promotion Council
12.	Rajasthan Textiles Mills Association
13.	Ginni Filaments Limited
14.	Keshar Multiyarn Mills, Kolkata
15.	Gimatex Industries Pvt.Ltd, Mumbai

vii. The imports data for the period of investigation and preceding three years was called from Directorate General of Commercial Intelligence and Statistics (DGCI&S).

viii. The Authority made available non-confidential version of the evidence presented by the interested parties in the form of a public file kept open for inspection by the interested parties.

ix. 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 the Domestic Industry.

x. In accordance with Rule 6(6) of the AD Rules, the Authority also provided opportunity to all interested parties to present their views orally in a public hearing held on 22nd December 2009. The parties, which presented their views in the public hearing, were requested to file written submissions of the views expressed orally. The arguments made in the written submissions/rejoinders received from the interested parties have been considered, wherever found relevant, while arriving at the present findings.

xi. Some interested parties requested for a second hearing due to change in the Designated Authority. However, the Authority on a careful perusal of the AD Rules considered that holding of a second hearing is not warranted on this ground alone. The party seeking hearing has not raised any contention which warrants presenting the same orally before the Authority. Further, the submissions made by interested parties have been duly considered by the Authority while arriving at the present findings.

xii. Verification to the extent deemed necessary was carried out in respect of the information & data submitted by the domestic industry and the co-operating producers/exporters.

xiii. Investigation was carried out for period starting from 1st July 2008 to 31st Dec 2008 (POI). The examination of trends, in the context of injury analysis, covered the period from 2005-06, 2006-07, 2007-08, April 08-June 08 and POI.

xiv. In accordance with the Rule 16 of the AD Rules, the essential facts under consideration before the Authority in the instant matter were disclosed to the known interested parties. The comments received on the disclosure statement have been duly considered in the final findings.

xv. Information provided by interested parties on confidential basis was examined with regard to sufficiency of the confidentiality claim. On being satisfied, the Authority has accepted the confidentiality claims wherever warranted and such information has been considered as confidential and not disclosed to other interested parties. Wherever possible, parties providing information on confidential basis were directed to provide sufficient non-confidential version of the information filed on confidential basis.

xvi. Wherever an interested party has refused access to, or has otherwise not provided necessary information during the course of the present investigation, or has significantly impeded the investigation, the Authority has recorded these findings on the basis of the 'facts available'.

xvii. *** in this statement represents information furnished by the interested parties on confidential basis and so considered by the Authority under the AD Rules.

C. PRODUCT UNDER CONSIDERATION AND DOMESTIC LIKE ARTICLE:

C.1 Submissions made by the importers and exporters.

6. M/s. Ginni Filament has made the following submissions:

- the basic issue is that they are a non-woven manufacturer, which requires special type of Viscose Staple Fibre and that the submissions made by domestic industry do not contain proper facts. It manufactures non-woven by using hydro entanglement technology. The names of buyers mentioned by the domestic industry are not using the same technology as of theirs and therefore, it is incorrect to state that a number of companies are using domestic fibre for same goods. None of the customers mentioned by domestic industry are the customers of Ginni Filaments Ltd. as contended by domestic industry. Accordingly, they seek exemption for their industry from levying of antidumping duty in the instant matter.

- Domestic fibre is not at all suitable for their end product, sample consignment tested shows that domestic product does not meet the requirement

- Use of domestic fibre leads to choking of Jet Strips, cartridges, filter etc, which leads to stoppages in production process. Grasim do not use H2O2 for bleaching, which leads to bad smell in the fabric manufactured.

- Grasim does not use dulling agent, hence ash content is low. They need lower oil pickup in fibre, which is not there in domestic fibre.

C.2 Submissions made by the domestic industry.

7. Domestic industry has made the following submissions:

- Referring to M/s. Ginni Filament's submissions, the domestic industry has stated that it is incorrect to state that domestic product is not suitable for their product. A number of companies are using their product and producing same goods. Sales made to such customers is given in the table below:

Sales in MT

S.N.	Company's Name	2008-09	2009-10 9 months
1	Ginni Filaments Limited	***	***
2	UNI Products Limited	***	***
3	Supreme Non Woven P Limited	***	***
4	Pacific Harish Industries	***	***
5	Unique Non Woven Co	***	***
6	Tata Mills	***	***
7	Cosmos Non Woven Mills P Ltd	***	***
8	Thakar Felts Pvt Limited	***	***
9	Jiwan Products	***	***
10	Alpha Foam Limited	***	***
11	Ruby Surgical & Allied Products	***	***
12	Total	***	***

- The domestic industry has contended that they have been selling to these customers on regular basis. Even Ginni Filament has been buying from them on regular basis; there is no reason, why Ginni Filament cannot buy from them further.

C.3 Examination by the Authority.

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

9. Viscose Staple Fibre was the first man-made fibre, and unlike other man-made fibres, is not a synthetic fibre. It is made through wet spinning technology and is a regenerated cellulose fibre made from wood pulp, which is essentially cellulose extracted from a sustainable natural resource i.e. wood, by subjecting it to various chemical and mechanical processes. On account of its cellulosic base, viscose staple fibre properties are similar to those of natural cellulosic fibres than those of thermoplastic, petroleum based synthetic fibres such as nylon or polyester. Further, it has a distinct advantage of engineered specification and uniformity.

10. Viscose Staple Fibre has silk-like aesthetic with superb drape, soft feel and retains rich brilliant colours. Fabrics made from it are moisture absorbent (even more than cotton), breathable, comfortable to wear, and easily dyeable in vivid colours. They do not build up static electricity, and are pill-resistant.

11. Main strength of VSF is its versatility and ability to blend easily with nearly all other textile fibres to impart lusture, softness, absorbency and resulting comfort to the fabric made from such blends. Bamboo fibre, one of the types of Viscose Staple Fibre is excluded from the scope of this investigation. In the initiation notification, Designated Authority has specifically requested the interested parties to make their submissions with regard to exclusion of Bamboo Fibre. None of the interested parties had made any submissions in this regard.

12. 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*

13. The applicant has claimed that there is no known difference in the subject goods produced by the domestic industry and the subject goods exported from the subject countries. The subject goods produced by the domestic industry and the subject goods imported from subject countries are comparable in terms of characteristics such as physical and chemical characteristics, manufacturing process and technology, functions and uses, product specifications, distribution and market & tariff classification of the goods.

14. The Authority notes that M/s. Ginni Filament while making its submissions has not substantiated their claim with any evidence to that effect. Whereas, the domestic industry has provided evidence showing sale of this particular type of fibre to (a) Ginni Filament, (b) other consumers in India, who are producing similar goods, (c) a number of global consumers. The domestic industry has also provided evidence to show that Ginni Filament is in fact discussing procurement of more material from the domestic industry. It is also not established that M/s Grasim Industries does not produce this type of fibre or that it lacks production facilities or capabilities to produce this type of fibre. The

available information on record of the Authority does not show that there is any material difference in the domestic like article and imported subject goods. The Authority, therefore, holds that the subject goods produced by the domestic industry is like article to the subject goods imported from subject countries in accordance with the AD rules for the purpose of the present investigation.

D. Scope of the Domestic Industry

D.1 Views of the domestic industry

15. The submissions of the Applicant with respect to its claim of the domestic industry are as under:

(i) M/s Grasim Industries is the only producer of the product under consideration in India. Therefore, the application has been made by or on behalf of the domestic industry.

(ii) The application, therefore, satisfies the requirement of standing under the AD Rules. Further, applicant constitutes the domestic industry within the meaning of the AD Rules.

(iii) The applicant has affiliated companies in China PR and Indonesia producing & selling the product, namely Birla Jingwai Fibres Company Limited, China and PT Indo Bharat Rayon, Indonesia. The relationship between these entities is given in the table below:-

Sr.No	Name of the entity	Common directors
1	Grasim Industries Ltd	*** *** ***
2	Birla Jingwai Fibres Company Limited, China PR	***
3	PT Indo Bharat Rayon, Indonesia	*** *** ***

(iv) Since the applicant itself has stated that these entities are related, the basis on which these companies are related becomes irrelevant. Information establishing relationship is relevant only in those situations where a party disputes existence of such a relationship.

(v) The affiliated producers are largely selling their products either in the respective domestic markets or exporting to third countries. In general, there are no exports to India.

(vi) The Chinese affiliated company has not exported the product to India, whereas the Indonesian Company has exported a small quantity to India, which is less than 3% of imports and negligible with reference to Indian production. The exports have been made because some customers of the applicant required imported material under duty exemption schemes. Since the volumes of these imports are quite small, hence the Authority has rightly considered that the applicant should not be considered ineligible under the Rules.

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

(viii) An issue that arises for consideration and determination in the present case is in a situation where a producer is related to an exporter in one of the exporting countries, should that producer be considered as eligible domestic industry. In other words, whether the Designated Authority has discretion under the Rule 2(b), and if so, how the discretion is required to be applied. The anti dumping rules were amended in 1999, wherein one of the amendments related to the definition of domestic industry. The Rule (2(b)) prior to this amendment was as follows:

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

(ix) The rule after the amendment is as follows:

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

(x) That the rule was amended with a view to provide discretion to the Designated Authority to decide on merits whether a company who is importing the product under consideration or which is related to an exporter or importer should be included or excluded for the determination of the domestic industry. Rule 2(b) has been amended with the sole objective of providing discretion to the Designated Authority to decide whether to include or exclude a company who has itself imported the alleged dumped product, or who is related to an exporter or importer of the subject goods. Such

discretion has been exercised in an even manner by the Designated Authority in the instant case.

(xi) The facts relating to relationship are under full knowledge of the Authority. Factual information on this account is in full public domain. Notwithstanding this, the interested parties have not been able to establish that how the nature of relationship vitiates the present investigation.

(xii) To support their contentions, the applicant have given references to the followings:

- 'Dumping and Subsidies-The Law and Procedures Governing the Imposition of Anti-dumping and Countervailing Duties in the European Community – by M/s. Clive Stanbrook and Philip Bentley, Kumer Law International, 3rd Edition
- A Handbook on Anti-dumping Investigations – by Judith Czako, Johann Human and Jorge Miranda, Cambridge University Press, page 234
- Appendix-F, Antidumping and Countervailing Duty Handbook – Publication 3482, 9th Edition, United States International Trade Commission, page App. F-33

(xiii) Various decisions of the investigating authorities with regard to imports by applicant itself-from related exporter have been referred to by the applicant, such as:

a. Council Regulation (EC) No 423/97 of 3 March 1997 amending Regulation (EEC) No 3433/91 in respect of imports originating in Thailand and imposing definitive anti-dumping duties on imports of gas-fuelled, non- refillable pocket flint lighters originating in Thailand, the Philippines and Mexico. Official Journal L 065 , 06/03/1997 P. 0001 – 0016.
b. COMMISSION REGULATION (EC) No 2318/95 of 27 September 1995 imposing a provisional anti-dumping duty on imports of certain tube or pipe fittings, of iron or steel, originating in the People' s Republic of China, Croatia and Thailand and terminating the anti-dumping proceeding in respect of imports of these fittings, originating in the Slovak Republic and Taiwan. Official Journal L 234, 03/10/1995 P.0004- 0015
c. Council Regulation (EC) No 2022/95 of 16 August 1995 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia Official Journal L 198, 23/08/1995 P.0001-0014
d. COMMISSION REGULATION (EC) No 823/95 of 10 April 1995 imposing a provisional anti-dumping duty on imports of disodium carbonate originating in the United States of America Official Journal L 083 , 13/04/1995 P. 0008 – 0018
e. Council Regulation (EC) No 2025/97 of 15 October 1997 imposing a definitive anti-dumping duty on imports into the Community of advertising matches originating in Japan and collecting definitively the provisional duty imposed Official Journal L 284 , 16/10/1997 P. 0057 – 0067

f. COMMISSION REGULATION (EC) No 1845/98 of 27 August 1998 imposing a provisional anti-dumping duty on imports of certain large electrolytic aluminium capacitors originating in the United States of America and in Thailand
g. Designated Authority's Final Findings Anti-Dumping investigation concerning imports of Nylon Tyre Cord Fabric- (NTCF) from Indonesia, South Korea, Thailand and Taiwan
h. Anti-Dumping Investigation concerning imports of Pentaerythritol originating in or exported from China PR and Sweden
i. Designated Authority's Final Findings in the matter of Anti-Dumping Investigations concerning imports of 'Carbon Black used in rubber applications' originating in or exported from Australia, China PR, Iran, Malaysia, Russia and Thailand

(xiv) Various decisions of the investigating authorities with regard to imports by applicant itself-from unrelated exporter have also been referred to, such as:

a. Commission Decision No 307/2000/ECSC of 10 February 2000 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of non-alloy steel originating in the People's Republic of China, India and Romania. Official Journal L 036 , 11/02/2000 P. 0004 – 0019
b. Commission Regulation (EC) No 1497/2001 of 20 July 2001 imposing provisional anti-dumping duties on imports of urea originating in Belarus, Bulgaria, Croatia, Estonia, Libya, Lithuania, Romania and the Ukraine, accepting an undertaking offered by the exporting producer in Bulgaria and terminating the proceeding as regards imports of urea originating from Egypt and Poland. Official Journal L 197, 21/07/2001 P. 0004 – 0027.
c. Commission Regulation (EEC) No 1418/88 of 17 May 1988 imposing a provisional anti-dumping duty on imports of serial-Impact dot-matrix printers originating in Japan. Official Journal L 130, 26/05/1988 P. 0012 – 0033
d. Commission Regulation (EC) No 165/97 of 28 January 1997 imposing a provisional anti-dumping duty on imports of certain footwear with textile uppers originating in the People's Republic of China and Indonesia. Official Journal L 029 , 31/01/1997 P. 0003 – 0018
e. Commission Regulation (EC) No 1069/97 of 12 June 1997 imposing a provisional anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan. Official Journal L-156, 13/06/1997 P. 0011–0033
f. Commission Regulation (EC) No 1023/97 of 6 June 1997 imposing a provisional anti-dumping duty on certain imports of flat pallets of wood originating in Poland and accepting undertakings offered from certain exporters in connection with those imports. Official Journal L 150 , 07/06/1997 P. 0004 – 0017
g. Commission Regulation (EC) No 255/2001 of 7 February 2001 imposing a provisional anti-dumping duty on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China. Official Journal L 038 , 08/02/2001 P. 0008 – 0021

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

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

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

(xv) The decision of other investigating authorities with regard to imports by applicant itself-from other than the subject country referred to by the applicant is:

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

(xvi) The decision of the investigating authorities with regard to imports by affiliated company in India from related exporter referred to by the applicant is:

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

(xvii) The decision of the investigating authorities with regard to imports by affiliated company in India from unrelated exporter referred to by the applicant is:

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

(xviii) Various decisions of the investigating authorities with regard to relationship with exporter exported during POI that have been referred to by the applicant are:

- COMMISSION REGULATION (EC) No 1742/2000 of 4 August 2000 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand
- COUNCIL REGULATION (EC) No 173/2000 of 24 January 2000 terminating the anti-dumping proceedings concerning imports of certain large aluminium electrolytic capacitors originating in Japan, the Republic of Korea and Taiwan

- Commission Regulation (EC) No 1472/2000 of 6 July 2000 imposing a provisional anti-dumping duty on imports of Polyester Staple Fibres originating in India and the Republic of Korea Official Journal L 166, 06/07/2000 P. 0001- 0013
- Final Findings in the matter of Anti-dumping investigation concerning import of Para Cresol originating in or exported from People's Republic of China.

(xix) Various decisions of the investigating authorities with regard to cases where the domestic industry is related to exporters but no exports has been made during the POI that have been referred to by the applicant are:

- Council Regulation (EC) No 771/98 of 7 April 1998 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China Official Journal L 111 , 09/04/1998 P. 0001 – 0009
- Council Regulation (EEC) No 535/87 of 23 February 1987 imposing a definitive anti-dumping duty on imports of plain paper photocopiers originating in Japan Official Journal L 054, 24/02/1987 P. 0012 – 0035

(xx) The cases, wherein one of the producer was related to one of the exporter, that have been referred to by the applicant are:

- Gas-Fuelled, non refillable pocket flint lighter originating in Thailand.
- Certain tubes or pipe fittings of Iron & Steel, originating in China PR, Croatia and Thailand.
- Polyethylene terephthalate (PET) film from India, Indonesia, Malaysia and Korea RP.
- Synthetic Staple Fibre of Polyester from Australia, Indonesia and Thailand.

D.2 <u>Views of the importers, consumers, exporters and other interested parties</u>

16. Following submissions have been made by the Indian Spinners Association, Rajasthan Textiles Mills Association and PT South Pacific Viscose – Indonesia with regard to 'standing' of the domestic industry:

- The initiation of investigation in this case is without jurisdiction as the applicant has related companies in the subject countries. Further, since PT Indo Bharat Rayon, Indonesia, a wholly owned company of the applicant has been found to be dumping, the applicant is not eligible to file the present application under the Rules and the jurisprudence on the subject. The injury to the sole domestic producer under such circumstances is, at best, a self-inflicted injury which ought not to be protected by way of anti-dumping duty. Further, the Indian producer and its subsidiary in Indonesia have colluded to ensure that the other competitors are first forced to lower their prices and then the Indian arm brings an anti-dumping investigation with the sole objective of blocking fair competition in the Indian market. It is submitted that

the process of anti-dumping investigations should not be allowed to be so brazenly abused by the sole monopoly producer in India.

- The fact that the related entity of the applicant is seeking determination of individual dumping margin goes against the object and purpose of introduction of deeming fiction in Rule 2(b) which contemplates exclusion of such producers who are related to the exporters, if the Designated Authority deems it fit. Exercise of discretion in favour of Domestic Industry would be an antithesis to the object and purpose of introduction of deeming fiction in Rule 2(b).
- The entire issue of related party transactions goes by the doctrine of "Single Economic Enterprise". In the US Hot Rolled Steel, paragraphs 141-158; Ref. WT/DS-184/AB/R, the Appellate Body has held that "There are many reasons relating to corporate law and strategy, and to fiscal law, which may lead to resources being allocated, in these ways, within a single economic enterprise".
- Under the EC jurisprudence and academic literature, the authorities exclude the domestic producer from the definition of "Domestic Industry" if they find
  (i) that the related exporter had participated in the dumping practices, or

  (ii) that the related exporter provoked or contributed to a fall in prices in the market.

- As per the EC jurisprudence related producers which fulfill any of the two conditions above, would have to be excluded from the definition of Domestic Industry. However, in the instant case both the conditions are met as related exporter from Indonesia has significantly higher dumping margin than the other cooperated exporter from Indonesia and a detailed analysis would indicate that the related exporter himself had contributed to the price fall. In view of the above also, there is no question for not to exclude the applicant from the purview of the domestic industry.
- Quantum of imports cannot be a decisive factor for exercising discretion. There are no criteria in Rule 2(b) in this regard.
- The Application proforma does not ask about import volume. It does ask only about relationship.
- Various cases referred to by the applicant deal with the situation, wherein applicant themselves imported the product concern, which is not the situation in the present case.

D.3 <u>Examination by the authority</u>

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

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

17.1 However, post initiation, this Rule has been amended as follows:

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

17.2 Thus, Rule 2(b) of the AD Rules provides that domestic producers which are related to the exporters or importers or which are themselves importers of the allegedly dumped articles may be excluded when determining the domestic industry in certain situations.

As the use of the word 'may' in Rule 2(b) suggests, the two types of producers in question, i.e. related producers and producers importing the dumped product, are not automatically excluded from being part of the domestic industry. Rather, it is the consistent practice of the investigating authorities that the exclusion of such producers must be decided on a case-by-case basis, on reasonable and equitable grounds, and by taking into consideration all the legal and economic aspects involved.

17.3 The question of excluding or including a domestic producer from the ambit and scope of the domestic industry is of practical importance as the question arises whether or not they are really part of the domestic industry in the sense of Rule 2(b) of the AD Rules. This in turn may have an effect on the standing of the application i.e. whether or not their (the domestic producers that have filed or supported the application) production reaches the necessary level of representativity as stipulated under the AD Rules; as the output of domestic producers, which are excluded from the definition of the domestic industry because of their relationship to exporters or importers; or because of their own dumped imports, will not be taken into consideration while calculating total domestic production and when determining if the applicant along with supporting domestic producers represent a major proportion of such production.

17.4 The Authority notes that Rule 2(b) has been amended twice. The Rule 2(b) as enshrined in the AD Rules as on 1.1.1995 provided no discretion to the Designated Authority in such situations where one or more domestic producer has imported the product under consideration or is related to an importer or exporter of the product under consideration. However, WTO Agreement on Anti Dumping and Municipal laws of other investigating authorities vested a discretion to the investigating authorities in such situations, which were to be applied on a case by case basis. Rule 2(b) was amended with effect from 15th July 1999 vide Customs Notification No.44/1999 (N.T.) vesting discretion to the Designated Authority in such situations, which could be applied on case by case basis. Rule 2 (b) has further been amended recently as stated above. The Authority considers that this discretion is consistent with meeting the situations wherein:-

(a) Some domestic producers may not wish to support an anti-dumping application merely because they themselves are importing the product, or they are related to an importer or exporter of the product. Such domestic producers may even wish to force closure of other domestic producers in order to eliminate competition through unfair

practice of dumping. One reason for vesting the discretion in the Authority could be to exclude such related entities, who may seek to thwart an attempt by the remaining domestic producers to seek redressal of injury caused to them on account of dumping by filing an anti-dumping application and seeking suitable relief against the unfair trade practice of dumping. If it were not so, the remaining domestic producers may not be able to meet the 'Standing requirement' as stipulated in the law to file an anti-dumping application and seek suitable remedy against the unfair trade practice of dumping. In short, the Authority considers that there was a need to exclude certain entities from the scope of domestic industry in order to enable the Authority to address injurious dumping in the Country.

(b) One or more of the domestic producers might have imported the product under consideration or their related company might have imported or exported the product under consideration for one or more *bona-fide* reasons. Some of these reasons are listed below:

(i) imports made under advance license in order to compete in the international market in the downstream product;

(ii) imports made at the time of temporary suspension of production (due to variety of *bona-fide* reasons, such as fire, strike, natural calamities etc);

(iii) imports made to supplement the product line by importing a particular type which the applicant may not be producing and which might constitute a very small portion of its total business operations;

(iv) imports made for testing, research & development, seed-marketing purposes (imports of the product to test the quality and other parameters when faced with low priced imports);

(v) imports of the part of the product which does not form the core activity in the manufacturing of the product.

Axiomatically, the Authority considers that it would be inappropriate to exclude such *bona-fide* domestic producers from being treated as domestic industry.

17.5 Thus, the Authority is of the view that the modified Rule provides discretion to the Authority in the above mentioned situations. In other words, the AD Rules have been amended to provide discretion to the Authority to include a domestic producer in certain situations or to exclude a domestic producer in certain situations.

17.6 The Authority has relied upon the jurisprudence available on the subject that suggests the circumstances in which a related domestic producer may be included or excluded as follows:-

(a) one of the important factor in this regard is the balance of business of the domestic producer between manufacturing and importing. If the company predominantly manufactures the product in India, it should be included. However, if the domestic producer closes or reduces its production and instead imports the product or the general emphasis of its business shifts from production to imports, it should be excluded.

(b) if a domestic producer has shielded itself from the effect of dumping by resorting to imports or exports to a related party, the company must be excluded.

(c) if a domestic producer has participated in some way in the dumping practices or has otherwise unduly benefitted from it, it must be excluded.

(d) if inclusion of a domestic producer would distort the injury findings, it must be excluded.

(e) if a domestic producer does not cooperate with the Authority, the Authority tends to consider such domestic producer as ineligible.

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

(a) The percentage of domestic production of the product in question that is accounted for by the related producers.

(b) Whether imports of the product in question by the related producers allow them to benefit, or serve to shield them, from the effects of dumping.

(c) Whether exclusion of the related parties would unduly skew the data for the remaining members of the industry.

(d) The level or long term nature of the commitment shown by the producer to the domestic production, as opposed to importing activities.

(e) The ratio of import shipments to domestic production for the related producers.

17.8 The Authority considers that the purpose of the discretion to include or exclude certain domestic producers is to enable the Authority to come to an objective and undistorted determination with regard to the effects of dumped import on the domestic industry in India by excluding those domestic producers from the relevant domestic industry which have participated in injurious dumping. The Investigating authorities may exclude a related producer, where the related parties either:

(a) provoked or contributed to a fall in prices on the market,

(b) are shielded from their effects, or

(c) where they benefited unduly from them.

With regard to the first category, i.e. the participation in dumping practices, the Authority considers that several typical situations may be distinguished. On the one hand, the exclusion is indeed appropriate where the injury of a domestic producer is self-inflicted because imports from dumped producers reduced the use of domestic producers' own capacity, or resulted in the abandonment of domestic producers' projects designed to increase their own production.

17.9 The Authority further considers that exclusion of a domestic producer is prima facie not appropriate, if its participation in the dumping was an act of self-defence. Such a domestic producer should, therefore, be taken into account when defining the relevant domestic industry.

17.10 The Authority considers that domestic producers that import the dumped product or whose related exporter exports the dumped product or whose related importer imports the dumped product do not unduly benefit from dumping practices, if these imports do not represent a significant part of their sales or market size. Indeed, no advantage occurs to such domestic producers because of the competition from other suppliers in the market. The Authority also notes that another distinction drawn by the Investigating authorities of other countries while deciding whether a domestic producer should be excluded is: Is the domestic producer merely supplementing its domestic production with some dumped imports or whether it is primarily an importer with relatively limited production? The Authority considers that in the latter case, such company should be excluded from the scope of domestic industry. Another element which can be considered is whether or not the domestic producer in question is committed to production in the country of imports.

17.11 While disputing the claim of M/s Grasim Industries Ltd to treat it as the domestic industry, the opposing interested parties have contended that M/s Grasim Industries Ltd should be treated as ineligible for consideration as the domestic industry. Reference has also been made to WTO Appellate Body's decision in the matter of US Hot Rolled Steel Case, which is in the context of determination of normal value and deals with the treatment of transactions between related parties.

17.12 After careful examination of the legal provisions and facts of the case, the Authority notes that facts on record do not justify exclusion of M/s Grasim Industries Ltd from considering it as the domestic industry in the instant matter. The opposing parties have argued that the cases referred by the domestic industry are not relevant to the present situations. It is, however, noted that the cases relied upon by the domestic industry are not limited to those situations where the applicant company(s) had imported the product under consideration. The applicant has referred to some decisions wherein one of the domestic producers was related to exporter from subject or non-subject countries and it was found by the investigating authorities that inclusion of such domestic producers within the category of domestic industry was justified.

The contention of the opposing parties that the domestic industry is ordinarily to be excluded is not borne out either from a plain reading of the law or from the jurisprudence on the subject.

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

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

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

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

17.15 PT South Pacific Viscose has, *inter alia*, argued that they have been forced by PT Indo Bharat Rayon to resort to dumping, that is, they have resorted to unfair competition in the form of dumping because the other party was dumping. The Authority, however, notes

that reasons for dumping are entirely irrelevant under the law and it is only the factum of dumping that is relevant. Only existence and degree of dumping is relevant in an anti-dumping proceeding and the reasons leading to such dumping are not material. Even if one or more foreign producers (from the same or different countries) have been forced to resort to dumping by one or more other foreign producers, the law does not condone the same. Besides, on facts of the case, this allegation was found to be false, as PT South Pacific Viscose had exported the subject goods much earlier than the shipments exported by PT Indo Bharat Rayon. The volumes of exports made by PT South Pacific Viscose are significantly higher than the volume of exports made by PT Indo Bharat Rayon. PT South Pacific Viscose was found to be selling the product concerned even in its domestic market at a loss and therefore, the allegation that they resorted to dumping because the other party was dumping is not based on the facts.

17.16 The opposing interested parties have further argued that the Authority should not permit the process of anti-dumping to be abused by the "sole monopoly producer" in India. The Authority, however, notes that 'dumping' is an unfair trade practice and must be condemned if it causes injury to an established domestic industry, even though there is only one domestic producer; as the intent of anti-dumping duty is only to redress the injury caused to the domestic industry on account of the unfair trade practice of dumping. Imposition of the duties shall not restrict the rights of foreign producers to sell the subject goods at un-dumped prices in the Indian market.

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

17.18 The Authority notes that the opposing interested parties have erred while contending that the criteria based on quantum of exports is not a rational criterion. As the issue at hand is "exports" made by a related exporter; the Authority considers that the quantum of imports is indeed an important factor to decide the exclusion of the related domestic producer. Further, it would, *inter alia*, be one of the factors in assessing whether the injury claimed is a self-inflicted injury or otherwise.

17.19 The Authority notes that in the instant case, M/s Grasim Industries Ltd. has affiliated companies in Indonesia and China PR producing & selling the product concerned, namely Birla Jingwai Fibres Company Limited, China PR and PT Indo Bharat Rayon, Indonesia. PT Indo Bharat Rayon – Indonesia have also filed their detailed response to the questionnaire sent, which has been verified by the Authority and has been dealt appropriately in the relevant sections of these findings. PT Indo Bharat Rayon is not a

subsidiary of M/s Grasim Industries Ltd. It is noted that M/s Grasim Industries Ltd holds only *** % shareholding in PT Indo Bharat Rayon, Indonesia and ***% in Birla Jingwai Fibres Company Limited, China PR. M/s Grasim Industries Ltd. is the sole producer of the subject goods in India and has claimed injury on account of the dumped imports from the subject countries. Despite being a related party, the Authority did not notice any difference in its behaviour, were it not a related party. No evidence was found by the Authority in respect of stifling the competition by M/s Grasim Industries Ltd. or taking any other undue advantage by seeking application of the anti-dumping duty in the instant matter.

17.20 Besides, the volume of exports made by PT Indo Bharat Rayon is quite small and sporadic in nature; these imports have been made by the unrelated importers under duty exemption category. M/s Grasim Industries Ltd has not imported the subject goods. The Authority notes in this regard that in a situation where majority of the exports are by other unrelated Indonesian exporter and where only three sales transactions (during the period of investigation) took place between PT Indo Bharat Rayon and Indian importer/consumer, that too for imports of the material under duty exemption scheme, it could not be concluded that the parties colluded to force other competitors out of Indian market. The Authority also notes that there is no evidence whatsoever provided by the interested parties establishing that the two parties have colluded. Further no evidence has been provided to establish that the unrelated Indonesian producer has been forced to lower the prices due to alleged low prices quoted by PT Indo Bharat Rayon. The allegation by PT South Pacific Viscose, *inter alia*, that dumping was provoked and triggered by PT Indo Bharat Rayon – Indonesia was looked into during the verification of the two companies and was found to be unfounded and incorrect. This view is further buttressed by the analysis of imports of the subject goods from Indonesia, as seen in the following table.

	Imports in MT		Total Imports	Share of	Share of
	PT Indo Bharat Rayon Exports	PT South Pacific Viscose Exports	From Indonesia	PT Indo Bharat Rayon	PT South Pacific Viscose
2006	-	***	***	0.00%	100.00%
2007	***	***	***	5.51%	94.49%
2008 Jan-June	-	***	***	0.00%	100.00%
POI	***	***	***	2.29%	97.71%

17.21 Further, the Authority examined the share of Indonesia in respect of imports of the product under consideration in India. It was found that whereas imports from Indonesia were only about 38% of total imports into India in 2006-07, the same increased to 74% in 2007-08, 93% in April-June, 2008 and 84% during POI. It is thus evident that share of Indonesian imports steadily increased in gross imports of the subject goods in India.

Further, share of PT South Pacific Viscose was very high in these imports from Indonesia as may be seen from the following table:

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

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

17.23 PT South Pacific Viscose has, *inter alia*, argued that the domestic industry and PT Indo Bharat Rayon's objective was to block fair competition in the Indian market. However, given the positive dumping margin that has been established in the instant case, it is evident that the unrelated Indonesian producer did resort to dumping, which has been found to be unprovoked and not due to the three small shipments made by PT Indo Bharat Rayon. Significant volume of the subject goods have been exported by PT South Pacific Viscose at dumped prices. The Authority on investigation has come to the conclusion that dumped imports of the subject goods from the subject countries have caused 'injury' to the domestic industry, as may be seen from the relevant sections of these findings. The Authority further notes that small and sporadic exports have not been a significant factor in such injury. Besides, the focus of M/s Grasim Industries Ltd continues to be production and sale of the subject goods. Thus, there does not appear to be case of self-inflicted injury. The Authority has also taken note of anti-dumping cases, wherein even though the imports were effected by the related domestic producer from its affiliate, then too they have been considered by the investigating authorities as a part of the domestic industry. Thus, the Authority does not find any justifiable reason to exclude M/s Grasim Industries Ltd form the ambit and scope of the domestic industry.

17.24 The Authority therefore, reiterates that the Applicant is not required to be excluded from the scope of the domestic industry under Rule 2(b) of the AD Rules. Thus, the application has been filed by Association of Man Made Fibre Industry of India on behalf of the domestic industry. M/s Grasim Industries Ltd. is the sole producer of the Like Article in India and has provided injury and costing information. The claim of the applicant that there is no other producer of the Like Article in India has not been disputed by any interested party. As per the evidence available on record, the production of M/s Grasim Industries Ltd. accounts for a major proportion of the domestic production of the subject goods, as M/s Grasim Industries Ltd. is the sole producer of the subject goods in India.

17.25 Thus, the Authority reiterates its view that it is appropriate to consider M/s Grasim Industries Ltd. as the domestic industry under Rule 2(b) of the AD Rules. Accordingly, the Authority has determined that the application satisfies the requirements of Rule 2(b) and Rule 5(3) of the AD Rules.

E. Other issues

E.1 Submissions made by Indian Spinners Association, Rajasthan Textiles Mills Association and P T South Pacific Viscose

18. Following submissions have been made by Indian Spinners Association, Rajasthan Textiles Mills Association and P T South Pacific Viscose:

- They have objected to the data collected by domestic industry from secondary source. They consider that it was bounden responsibility of the Applicant to give official data. Since data given by the Applicant is not official, conclusion reached by the applicant is wrong.
- Product concerned has dedicated customs code; therefore, consideration of secondary source as basis of imports is not justified. DGCI&S data shows much higher volumes compared to secondary source and at higher prices.
- There have been imports from other countries as per DGCI&S; however, the Applicant claims that no imports have been made from other than the subject countries.
- Due to recessionary conditions, the consumption of the fabric has been greatly affected all over the world and it has impacted prices of not only fabrics but also yarn and fibre including viscose staple fibre.
- The Applicant has always operated on full capacity except when there is water shortage at its NAGDA plant. But in 2008-09 because of recession, it has closed down its Kharach Plant and capacity utilization is also affected.
- Average CIF price of imports during the POI is higher than the average CIF price of 2007-08.
- Basic problem with the domestic industry is continuous increase of capacity without taking into account changing of trends.
- The Applicant has vast resources and worldwide contacts, must be on front foot to help spinning industry.

- The Applicant is the sole producer of the product concerned in India. The imposition of anti-dumping duty will create monopolistic situation in favour of Grasim and their group companies, which has large VSF capacities in other countries including Thailand.
- Six month period of investigation is too short for assessment and analysis of dumping and injury to the domestic industry. Trade notice issued by the Designated Authority earlier also clearly mandates that the period of investigation should normally be twelve months. DGAD practice is to determine POI as financial year. While determining POI, factors like financial reporting, availability of data/information, characteristics of product, seasonality, cyclicality etc are not taken into consideration. The selection of 6 months period of investigation is also contrary to guidelines of the Committee on Anti-Dumping Practices.
- Out of six months of POI, world has faced unprecedented financial crises, hence the industry suffered. In fact, the practice of normally taking a year as the period of investigation is precisely to ensure that no anti-dumping investigations are initiated due to short-term fluctuations in prices. Moreover the Authority is fully aware that the shortest permissible POI of six months covers about four months when the entire world was passing through an unprecedented economic and financial crisis in which the fabric and consequently the yarn and the fibre industry suffered considerably. It is an admitted fact that there was a substantial fall in demand in an otherwise growing market and, therefore, the Designated Authority ought not to have taken a period craftily selected by the Domestic Industry even if the same is legally permissible. It may be clarified that the issue here is not about the legality of selecting a six month POI but the propriety and appropriateness of the same.

E.2 Submissions made by the Domestic industry

19. Following are the other submissions made by the applicant:

- Period of investigation – The application contains specific reasons for consideration of six months as the investigation period. It is not even the argument of interested parties that six months investigation period is impermissible. Even the trade notice uses the word “normally” and not “always”. Relevant extracts of decision of CESTAT in the matter of HAS have been enclosed, wherein the Tribunal has clearly held that there is no bar in consideration of six months as the investigation period. As regards reasons for choosing six months period, the application contains the same. The argument to such an extent is factually incorrect.
- The notice of initiation issued by the Designated Authority contains reasons for choosing 6 months as the POI
- Decision to take six-months period as POI has been upheld by the Hon’ble Tribunal in the matter of Virchow Laboratories Ltd. v/s Ministry of Finance.
- Even the WTO Agreement contains no legal provision with regard to choice of POI.

- The application itself contains reasoning of 6 months POI. It is incorrect to state that 6 months POI is a short period. Following are some of the cases, wherein the investigation period was taken as 6 months:

Acrylic Fibre from USA, Thailand and Korea RP	April95-Sep95
Cathode Ray television picture tube	July09-Dec09
Dry Batteries	April00-Sep00
Hydrofluoric Acid	April01-Sep01
Hydroxyl Amine Sulphate	July99-Dec99
Lead Acid Batteries – Bangladesh, Japan, Korea, China PR	Sep02-Feb03
Penicillin G and Potassium 6 APA	Oct08-Mar09
Vinyl Acetate monomer	April01-Sep01
Vitrified Tiles	Sep04-Feb05
	April05-Sep05
	Sep05-Feb06

- The applicant has clearly mentioned that the information has been procured from TIPS. Such being the case, the argument that the source has not been mentioned is without basis. As regards use of DGCI&S data, the same could not have been adopted for the reason that the product under consideration does not have dedicated customs classification. The interested parties appear to have some misunderstanding that the product under consideration has dedicated customs classification. Further, transaction-by-transaction data can be available only after an application is filed before the Designated Authority. As regards comparison of DGCI&S data with the application data, since the product scope itself does not include all types of VSF, any comparison with the DGCI&S data is, at the least, misleading.
- Kharach plant of the company earlier had two production lines. Two more lines were added, which commenced production in March-April 2008 period. These capacity additions were based on the market feedback given by the consumers. In fact, the company had planned capacity expansion only upon feedback received from the customers that the product had good demand. However, because of dumping and adverse market situation, these two lines could not be fully utilized during the investigation period

E.3 <u>Examination by the Authority.</u>

20. The Authority has noted the submissions made by the interested parties regarding period of investigation and is of the view that the period of investigation chosen in the instant matter has been appropriately chosen considering the facts of the case, which also covers the most recent available data on the subject.

21. With regard to the period of investigation, the Authority notes that the opposing interested parties concede that fixation of 6 months period as the period of investigation is not illegal. It has, however, been contended by them that it was inappropriate for a

number of factual positions in the present case. The issue has been carefully examined by the Authority. It is incorrect to state that it is the DGAD's practice to take 12 months period as the POI; the decision to take a particular period as the POI is taken based on the merits of each case. Besides, the decision to take six-month period as POI has also been upheld by the Hon'ble tribunal in the matter of Virchow laboratories ltd. v/s Ministry of Finance.

22. As far as guidelines and practice followed by the Designated Authority or the guideline of the Committee on Anti Dumping Practices is concerned, the Authority notes that (a) in fact, the Designated Authority has adopted 6 months period of investigation in a number of cases, (b) the interested parties agree that consideration of 6 months as the investigation period is not illegal, (c) the stated guidelines cannot be read as mandatory prescription applicable in all situations, irrespective of the facts of a case. Factors such as financial reporting cannot be considered as the same would imply consideration of only one period as the period of investigation viz. April-March. With regard to reasons for considering 6 months as the period of investigation, the Authority notes that the same have been mentioned in the preliminary findings. With regard to the argument that 6 months period of investigation covers 4 months of the recessionary period, the Authority holds that the fact of recession cannot be selectively pleaded in support of export price below normal values; as the fact of recession would equally apply to normal value as well. It is, however, noted that the domestic prices of the subject goods in Indonesia were materially higher than the export price to India. Thus, recession in the global market cannot be stated as a justified reason to be considered in fixing the period of investigation.

23. As regards fall in demand, the Authority notes that the fall in demand would have equally impacted the domestic industry and imports. However, here is a situation where the demand has fallen but volume of imports from the subject countries increased. The Authority considers that 6 months period of investigation was justified in view of significant drop in import prices and significant deterioration in financial situation of the domestic industry.

24. The Authority notes that product under consideration in the present investigation is Viscose staple fibre – except bamboo fibre. The Customs' classification for the product under consideration does not exclude bamboo fibre. Therefore, summary information published by the Applicant cannot be relied upon as it may include imports of product other than product under consideration. The domestic industry has furnished information as provided by TIPS, which was accepted at the time of initiating the investigation.

25. The domestic industry has alleged that significant import volumes have been reported under Customs Sub-heading No. 5504 9090. The Authority requested the O/o DGCI&S for import information for Custom classification Nos. 55041000 and 55049090, which has been received and analysed. Accordingly, the imports volumes of the subject goods have been determined. A comparison of imports claimed by the Applicant as per TIPS data and as per DGCI&S data shows the following:

	TIPS data		DGCI&S data	
	Qty Kg	Rs./Kg	Qty Kg	Rs./Kg

China PR	907252	96.03	1023971	94.13
Indonesia	4533741	98.44	4689364	98.47

26. From the material available on record, it is seen that there are no imports of the subject goods from any other country except from the subject countries during the POI. Further, the volume and price as per DGCI&S and TIPS are broadly comparable.

F. DUMPING MARGIN

F.1 Views of the domestic industry

- As none of the exporters/producers from China PR has responded and filed any submission with regard to their claim of market economy treatment, the normal value may be determined for all exporters/producers from China PR as per Rules applicable for non-market economy country.
- Applicant has referred to para 7 of Annexure I under the AD Rules, which has been inserted by notification no. 44/99 – Cus (NT) dated 15th July, 1999. The Rules clearly provide various methods for determination of normal values in case of a non-market economy country
- Rules have been amended twice so as to provide Chinese producers liberty to establish that they satisfy market economy status, after meeting the detailed criteria laid down under the Rules.
- China PR is a non-market economy. No country has granted market economy status to China PR after following elaborated evaluation procedure. China PR has been treated as non-market economy by European Union and United States in the past three years. Even China PR agreed in the accession treaty that WTO Members could use an NME anti-dumping methodology through December 11, 2016. European Union and United States are members of World Trade Organization. In India also, the Designated Authority has treated China PR as non-market economy in practically all the investigations initiated against China PR after the amendment. Even after the amendment dated 4th Jan., 02, the Designated Authority has treated China PR as a non-market economy.
- European Commission, in the matter of Certain Compressors, Wire Rod, Certain prepared or preserved citrus fruits (namely mandarins, etc.), Certain welded tubes and pipes of iron or non-alloy steel, Citric Acid from China PR, has treated China PR as a non-market economy. USA has treated China PR as a non-market economy in the matter of anti-dumping investigations concerning imports of Barium Carbonate, Small Diameter Graphite Electrodes, Folding Metal Tables and Chairs Tapered Roller Bearings and Parts Thereof, Finished and Unfinished.
- There are 15 mandatory conditions prescribed under the Rules, each one of which an intending exporter has to satisfy in order to claim market economy treatment and the information and evidence relevant and necessary to establish such a claim. Unless the responding Chinese exporters conform to these standards, the Designated Authority is required to determine normal value in accordance with Para 7 of Annexure-I to the Rules.

- Because, none of the Chinese exporter/producer has responded, the normal value in China PR thus should be determined on the basis of (a) price in India, and (b) cost of production in India, duly adjusted, including selling, general and administrative expenses and profit.
- Dumping Margin determined by the Authority in preliminary finding was provisional estimates and based on earlier definition and understanding of the Rules. Once, the normal value is determined separately for each producer and exporter, petitioner estimates that the dumping margin for SPV would be significantly higher than determined in the preliminary finding.
- Difference in dumping margin does not mean that the IBR is setting up the prices in the Indian market. Out of 6329 MT exported in POI, IBR has exported just 121 MT, which also were invoiced in August 2008, September 2008 and December 2008. Such being the case, it is just imagination/ conjecture that SPV was forced to lower the prices because of IBR low prices.

F.2. Views of exporter/importers and other interested parties including Indian Spinners Association, Rajasthan Textiles Mills Association and PT South Pacific Viscose – Indonesia

- Dumping margin of PT Indo Bharat Rayon is 11.26%, whereas the same for PT South Pacific Viscose is just 6.30%. Dumping margin for PT Indo Bharat Rayon is almost twice of South Pacific Viscose.
- PT South Pacific Viscose has no choice but have to follow the pricing of PT Indo Bharat Rayon. PT Indo Bharat Rayon have tried to ensure that PT South Pacific Viscose produces first forced to reduce price and applicant file a case of Anti Dumping Duty.
- Claiming of individual dumping margin by PT Indo Bharat Rayon is against the purpose and object of introduction of Rule 2(b).

F.3. Examination by the Authority

27. The Authority sent questionnaire to the known exporters from China PR, advising them to provide information in the form and manner prescribed. However, no response has been received to the questionnaires from any of the Chinese producer/exporter. Some of the issues mentioned above, have already been addressed by the Authority in the relevant sections of these findings.

28. Para 7 of Annexure I of the AD Rules provides that

> *"In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in the market economy third country, or the price from such a third country to other countries, including India or where it is not possible, or on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable*

manner, keeping in view the level of development of the country concerned and the product in question, and due account shall be taken of any reliable information made available at the time of selection. Accounts shall be taken within time limits, where appropriate, of the investigation made in any similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without any unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments"

29. The Authority notes that in the past three years China PR has been treated as a non-market economy country in anti-dumping investigations by India and other WTO Members. China PR has been treated as a non-market economy country subject to rebuttal of the presumption by the exporting country or individual exporters in terms of the AD Rules.

30. As per Paragraph 8 of Annexure I of the AD Rules, the presumption of a non-market economy can be rebutted, if the exporter(s) from China PR provide information and sufficient evidence on the basis of the criteria specified in sub paragraph (3) of Paragraph 8 and establish the facts to the contrary. The cooperating exporters/producers of the subject goods from People's Republic of China are required to furnish necessary information / sufficient evidence as mentioned in sub-paragraph (3) of paragraph 8 in response to the Market Economy Treatment questionnaire to enable the Authority to consider the following criteria as to whether:-

a) the decisions of concerned firms in China PR regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs substantially reflect market values;

b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets, other write-offs, barter trade and payment via compensation of debts;

c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms and

d) the exchange rate conversions are carried out at the market rate.

31. The Authority notes that consequent upon the initiation notice issued by the Authority; none of the Chinese producers/exporters have submitted any response including the market economy questionnaire response and sought to rebut the non-market economy presumption. In the initiation notification itself, the Authority had indicated that the Applicant has suggested Indonesia as appropriate surrogate country. Interested parties were requested to make submissions in this regard. However, none of the exporter/producer from China PR has responded and made any submissions in this regard. Therefore, the Authority examined whether Indonesia could be treated as a

surrogate market economy for the purpose of determination of Normal value for China PR. For this purpose, the Authority took into account the level of development of Indonesia and that of the subject goods in question. It is, *inter alia*, noted that there are two major producers of the subject goods in Indonesia and incidentally both have co-operated in this investigation. It is further noted that significant domestic sales have been made by these producers in the domestic market of Indonesia. Thus, the Authority considers that it would be appropriate to treat Indonesia as an appropriate surrogate country in the instant matter. Thus, considering Indonesia as an appropriate surrogate country for China PR, the Authority has adopted the weighted average Normal value of Indonesia so determined for China PR, which works out as USD *** per Kg.

F.4 DETERMINATION OF EXPORT PRICE FOR CHINA PR.

32. As none of the producer/exporter from China PR has responded, the Authority has therefore, determined the Export price as per facts available on record. The Authority notes that the Applicant has furnished transaction-wise information as per secondary sources. Subsequently, the Authority procured the imports data from DGCI&S. The Authority has therefore determined export price for all exporters/producers from China PR based on weighted average export prices of the subject goods during the POI from China PR. The Export price has been adjusted for ocean freight, marine insurance, commission, inland freight, port expenses and bank commission, as per information available on record. The Export price so determined works out to USD *** per KG.

F.5 Normal Value in respect of exporters/ producers from Indonesia

33. The Authority sent the questionnaire to known exporters and producers of product under consideration in Indonesia and China PR. Only the following two producers from Indonesia have responded thereto and filed their responses.

1 PT Indo Bharat Rayon

2 PT South Pacific Viscose

Determination of Normal Value for Co-operating exporters and producers from Indonesia

P T South Pacific Viscose

34. P T South Pacific Viscose from Indonesia has responded and provided information. Certain deficiencies were observed in the response filed and clarifications sought. The company has furnished information relating to domestic sales in Appendix 1 and exports to India in Appendix 2. The perusal of the data shows that the company's weighted average domestic sales price is lower than the weighted average domestic cost of production. The cost of production of the respondent has been compared with the transaction-wise domestic sales and it has been found that ***% as against ***% of the domestic sales are profitable, due to corrections made in the credit costs. Thus, the Normal value has been determined on the basis of profitable domestic sales. The

adjustments on account of commission, bank charges and rebate are being allowed as noted during the spot verification. Thus, the Normal value is worked out as USD *** per KG.

Pt Indo Bharat Rayon

35. P T Indo Bharat Rayon from Indonesia has responded and provided information in the form and manner prescribed. The respondent has furnished information relating to domestic sales in Appendix 1. The respondent has furnished information relating to cost of production in Appendix 5 to 9. The Authority notes that the respondent has made profit on overall basis on its domestic sales. The cost of production of the respondent has been compared with the transaction-wise domestic sales and it has been found that ***% of the domestic sales are profitable. Thus, the Normal value has been determined on the basis of total domestic sales. The adjustments on account of transport charges, internal insurance, rebate and credit costs are being allowed, as noted during the spot verification. Thus, the Normal value is worked out as USD *** per KG

F. 6 Export price

P T South Pacific Viscose

36. The information/data submitted by the respondent and verified by the Authority is being relied upon for the determination of the export price. The respondent has claimed adjustments on account of inland transportation, ocean transportation, overseas insurance, credit costs and bank charges; the same are being accepted, as noted during the spot verification. Thus, the Authority has determined the export price for the exporter as USD *** per Kg.

Pt Indo Bharat Rayon

37. The information/data submitted by the respondent and verified by the Authority is being relied upon for the determination of the export price. The respondent has claimed adjustments on account of international freight, inland transportation, international insurance, internal insurance and other expenses; the same are being accepted, as noted during the spot verification. Thus, the Authority has determined the export price for the exporter as USD *** per Kg.

Determination of Normal Value & Export Price for Non-cooperating Exporters and Producers from Indonesia

38. No other exporter and producer from Indonesia has responded to the Questionnaire. The Authority has determined their Normal value & Export price based on the facts available on record.

F.7. Dumping margin

39. Considering the Normal values and the Export prices as determined above, the dumping margins work out as follows:

USD per Kg

	Normal Value	Export Price	Dumping Margin	Dumping Margin range (%)
Indonesia				
M/s PT South Pacific Viscose	***	***	***	5-10 %
M/s PT Indo Bharat Rayon	***	***	***	5-10 %
All Other exporters/ and producers except the two Companies mentioned above	***	***	***	30-35%
China PR				
All exporters and producers	***	***	***	10-15 %

39.1 The Authority notes that dumping margins from China PR and Indonesia are more than the *de-minimis* limits prescribed.

G. Injury

G.1 Submissions of exporter/importers and other interested parties including Indian Spinners Association, Rajasthan Textiles Mills Association and PT South Pacific Viscose –Indonesia

40. It has been contended by them that:

- The decline in market share of 2.3% is meager. It may be appreciated that this small loss of market share is based on incomplete data. In any case, a drop in market share by about 2% within a short period of six months out of which bulk of the period saw macroeconomic problems, cannot be a ground of injury, let alone material injury. Further, the demand in India has significantly come down by 31813 MT over the injury investigation period whereas the alleged increase in exports is 3977 MT only. However, there are no reasons for the balance gap of 27836 MT of decline in sales of the applicant on account of the contraction in demand.
- As regards the increase in imports inspite of decline in demand, it has been contended that the orders were booked much earlier, which could not have stopped with the decline in demand, hence imports increased.
- Production & Capacity Utilization of Domestic Industry: It is submitted that the analysis is completely flawed as it does not take into account the fact that the applicant had increased its installed capacity by 25.30% during 2008-09. Obviously, it cannot be expected that the new capacity shall also operate at the same level as that of the existing capacity. Further, it appears that the fall in the national and international demand has certainly contributed to the drop in production and the capacity utilization during the short POI which has not been factored in at all.
- It can be seen that there is no price undercutting from Indonesia and the price undercutting from China is negligible.

- The Return on Capital Employed for the product under consideration for the applicant as per their own published statements for the years 2005-06, POI and 2008-09 is 43%, 17% and 23% respectively. The industry cannot claim injury with such robust financial performance over the years including the POI. Even during the financial year 2008-09, which subsumes the short POI, the admitted ROCE for the product under consideration has been as high as 23%. It would be unfortunate if the Designated Authority decides to pick up a particularly short period for injury analysis when the performance has been exemplary during a reasonable period like a full financial year.
- Incentives are being given on deemed exports; had these sales were considered at normal price, realization would have significantly changed.
- Sales by domestic industry for eventual exports seem to have been included in domestic sales by domestic industry.
- Significant sales are made to affiliated parties; such sales needs to be examined separately and non confidential version of the same may be given.
- There is decline in demand, which have affected the domestic industry; therefore, alleged dumped imports are not responsible for injury to the domestic industry.
- Price Reduction by Domestic Industry: The applicant has stated in the application that "In view of the price reductions offered by the foreign producers, the domestic industry was forced to undertake a number of price revisions". However, it appears that these price reductions offered by the domestic industry has nothing to do with the alleged dumping of the subject goods by the subject countries. It is clear beyond any doubt that the frequent price revisions, if any, were admittedly made for reasons stated above and not because of the alleged dumping of viscose staple fibre as claimed by the petitioner.
- Pricing Policy of the Applicant: It appears that the domestic industry is offering incentives for their supplies against deemed exports in the form of rebates. As per the pricing policy of the Applicant, rebates are given if certain conditions are met with for their supplies against deemed exports. It is thus clear from the scheme that the petitioner is offering incentive schemes in the form of rebates from the basic price of the subject article offered to the customers. The Authority would appreciate that had the subject article been offered to customers for normal domestic sale, the price charged by the petitioner would have been higher. It has been observed that the price charged for the supplies against deemed exports are much below the prices charged for the domestic sales. This may be seen from the price lists of the petitioner. It therefore, appears from the pricing strategy and policy of the domestic industry that certain sales made to customers for eventual exports have also been included under domestic sales for the purposes of injury analysis. Inclusion of known export sales for injury analysis is inconsistent with the anti-dumping rules and regulations. It may be seen that the applicant is fully aware that the subject goods are meant for eventual exports and therefore it follows a different pricing policy to ensure that the export market is not lost. This has nothing to do with its performance in the domestic market which is the requirement of law. The domestic industry cannot take shelter of injury under alleged dumping when the so-called injury may have been caused due to its own

pricing policies. Thus, there is clearly absence of causal link between alleged dumping and injury to the petitioner.

- It is further contended that the domestic industry has suffered injury on account of decline in profitability due to the alleged dumping of the subject goods from the subject countries. A careful analysis of the various annual reports and performance review of the domestic industry shows that the lower profitability of the company is mainly due to increasing input costs, lower volumes and weak margins. Moreover, it may been seen from the submissions made by the domestic industry in pro-forma IVA that the interest and depreciation component of cost appears to be very high which may also be one of the reasons of lower profitability. It is abundantly clear that even if it is assumed that the domestic industry might have suffered some temporary slowdown of their profitability the same cannot be attributed to the alleged dumping of the subject goods.
- The domestic industry, despite the restrained outlook, expended its capacity in March 2008; it is not possible for any industrial unit to achieve same level of capacity at the very beginning of operations.
- The sales volume declined but not because of alleged dumping.
- The domestic industry is continuing with its expansion project despite the alleged dumping of the subject goods and the global recession. Therefore, there is no injury to the domestic industry so far investment and expansion program are concerned.
- There is no evidence given with regard to threat of any material injury.
- The domestic industry follows a pricing policy through which it gives a substantial rebate. The Designated Authority should analyze the pricing policy before accepting any claim of injury to the domestic industry.
- Major imports from Indonesia are against advance license.
- The petitioner is selling significant volumes in the domestic market on deemed exports basis on which significant discounts are being offered by the petitioners. These sales are not domestic sales and should be excluded from the domestic sales for the purpose of the present investigation.
- The company is offering significant discounts in sales in domestic market, which is evident from the price list of petitioners itself. Injury to the domestic industry, if any is on account of its own pricing policy and not due to alleged dumping.
- There is no injury on account of employment as the level remains virtually the same.
- Wages & Productivity: Since no information has been provided for wages per capita, we presume that there is no injury on account of this fact. For productivity, it is submitted that if the production comes down due to other factors and productivity is simplistically defined as production per capita, the downward trend is obvious but this is of no consequence. It is further submitted that this factor would be relevant in cases where there is significant mobility of labour which is not true in case of India.
- There is no causal link between the alleged dumping and injury to the domestic industry. The injury to the applicant was at best self-inflicted or clearly attributable to factors other than dumping. The domestic industry itself, in its annual report and various performance review reports has accepted the fact that

the deterioration in production, sales and profitability is due to lower demand, prevailing global downturn coupled with steep rise in input costs and weakening of Indian Rupee. Thus, the conclusion of material injury to the domestic industry due to the alleged dumping of subject goods is based on mere conjectures.

Submissions of the domestic industry

41. It has been contended by the domestic industry that:

- The margin of dumping from each of the subject countries and volume of imports from each of the subject countries is more than the limits prescribed.
- 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
- There are common parties/customers who are resorting to the use of imported material from various sources and domestic material. Imported and domestic material is being used interchangeably and there is direct competition between the domestic product & imported product and inter-se imported product
- Market share of imports from each of the subject countries is more than *de-minimis*. Volume of imports from each of the subject countries is significant.
- Domestic producer and exporters from the subject countries sell the like product to the same category of customers and both are competing in the same market. Both are being used by the consumers interchangeably.
- The demand for the product under consideration was increasing till 2007-08. The same has, however, declined (on proportionate basis) in the investigation period. However, whereas the demand for the product under consideration has shown decline in the POI, import volumes have increased by more than 50% (on proportionate basis). A natural impact of decline in demand should have been decline in imports as well on proportionate basis. However, the dumped prices offered by the Foreign Producers led to a situation where the demand for the product under consideration declined, but import volumes increased.
- Imports from subject countries increased significantly in absolute terms.
- Imports form the subject countries increased significantly in relation to total imports of the subject goods in India.
- Imports increased significantly in relation to production in India.
- Imports increased significantly in relation to consumption in India.
- In view of price reductions offered by the Foreign Producers, the domestic industry was forced to undertake a number of price revisions.
- The volume of imports would have been far more than the present and indeed devastating, had the domestic industry not taken preventive prudent action by reducing the prices.
- Given the capacity and demand in the Country, any flooding of imports would have had a very devastating impact on the established domestic industry.
- The domestic industry has no option but to keep aligning its prices to the prices offered by the Foreign Producers in the market. The current increased volume of

imports must be seen in the light of these price revision steps taken by the domestic industry.

- It would be seen that the landed value of imports from the subject countries are lower than the net sales realization of the domestic industry thereby establishing that the imports are undercutting the selling price of the domestic industry.
- Cost of production was increasing over the injury period; selling prices increased up to 2007-08, but declined in POI.
- The domestic industry has been forced to reduce the selling prices significantly.
- The sales and consequently production and capacity utilization were improving till 2007-08, the same have declined thereafter in POI
- Profitability and consequently profits on gross domestic sales, return on investment and cash profits were improving till 2007-08, but declined steeply in the period of investigation due to increase in dumped imports from subject countries and offers for sale at further reduced prices.
- Return on capital employed and cash profits show the same trend as that of profits. The return on capital employed is at low levels in a situation where some of the investments of the domestic industry are fairly old and significant assets are largely depreciated by now.
- So significant has been the decline in the profitability that the company had abysmally low level of cash profits in the last quarter of POI.
- The domestic industry has in fact faced financial losses in the production and sale of the product under consideration in the investigation period. In other words, while the captive inputs continued to be profitable even during the alleged recession period, so significant was the dumping that the producers started pricing VSF below the cost of production.
- The market share of the domestic industry declined and that of subject imports increased. Domestic industry lost market share to imports from the subject countries.
- Current level of reduced market share must be seen along with the price reductions affected by the domestic industry. Had the domestic industry maintained its prices at the same level to protect its profitability, it would have suffered significantly higher loss of market.
- Inventory levels of the domestic industry declined till 2007-08 and increased again thereafter. Inventory with the domestic industry increased significantly. In fact, so significant was the increase in inventories that the petitioner had to decide to resort to production cuts.
- The growth of the domestic industry was positive up to 2007-08. Growth has become negative in POI with increased competition from imports. Growth on account of production, sales, capacity utilization, market share, inventories was positive up to 2007-08 and became negative in POI. In spite of the same, inventories increased very significantly. In value parameters, growth in profits, return on investment and cash flow was positive up to 2007-08 and became negative in POI.
- Further, the domestic industry has collected transaction wise information of imports in post POI (table below). It may be seen that there is further decline in prices from the subject countries

	Jan-Mar 09 USD KG	Apr-Jun 09 USD KG
China PR	1.57	1.57
Indonesia	1.79	1.65

- There is further decline in export price from the subject countries in post POI period. In fact, these are the orders booked at the end of POI and must therefore have been included in the questionnaire responses of the responding exporters.
- Increase in export price between 2007-08 and POI –there was increase in the raw material cost in POI over 2007-08, as would be seen from the table below. This led to increase in the export price.

Rs./kg	2007-08	POI	Change
Raw material	***	***	12.6
Import price			
China PR	107.09	94.13	-12.96
Indonesia	94.55	98.47	3.92

It would be seen that whereas raw material cost in POI increased by 23.48%, export price from China PR declined by 12.10%, which the same increased by just 4.14% in case of Indonesia.

- Requirement of causal link under the Rules – the interested parties seems to have been interpreting the Rules to mean that the sole cause of injury must be dumped imports. This is not, however, the requirement. Under the Rules, one of the principal causes of injury must be dumped imports. The fact that the domestic industry prices its product based on import prices and the fact that the domestic industry has been forced to resort to price revisions downwards, that too more frequently than the normal, itself establishes that dumped imports are causing injury to the domestic industry.

42. Regarding the issue related to deemed exports sales and significant discount offered by the domestic industry on such sales, domestic industry has stated as under:

- The domestic industry follows a well laid down pricing policy. The domestic industry declares and sells the product as per "price list". The prices are not negotiated for each sale transaction. The domestic industry does not follow a system of responding to trade enquiries, giving quotations, price negotiations, procurement and execution of order. The domestic industry declares a "price list" and thereafter sells the material on the basis of declared price list. Barring exceptional circumstances, all sales made by the company are as per the price list with little or no discretion to the operating level of marketing executives to modify the prices.

- The domestic industry's price list must be used for comparison of imported product price with the domestic industry price. In a situation where the company sells material to different customers at different prices, negotiating prices each time, which vary from customer to customer, it might be relevant and appropriate to determine weighted average selling price for the quantities sold over the relevant period. However, in a situation where the company sells its product at pre-determined, declared public price lists and where such price lists are declared after considering international prices, the price comparison between the imported and domestic product must be carried out on the basis of such price lists. Domestic industry reiterates that the selling prices do not vary with customers and therefore there is no necessity of determining weighted average selling price of the quantities sold in a particular period.

- The price is fixed in a scientific and transparent manner. The basis of fixation of price is the prevailing international price. Considering prevailing international prices and various factors, which must be accounted for the differences which exists in different countries (such as exchange rate, customs duties etc), the company decides its basic price.

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

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

  (a) Supply of goods against Advance Authorization / Advance Authorization for annual requirement / DFIA;
  (b) Supply of goods to EOUs or STPs or EHTPs or BTPs;
  (c) Supply of capital goods to holders of Authorizations under EPCG Scheme;
  (d) Supply of goods to projects financed by multilateral or bilateral agencies / Funds as notified by Department of Economic Affairs (DEA), MOF under International Competitive Bidding (ICB) in accordance with procedures of those agencies / Funds, where legal agreements provide for tender evaluation without including customs duty;
  (e) Supply and installation of goods and equipment (single responsibility of turnkey contracts) to projects financed by multilateral or bilateral agencies / Funds as notified by DEA, MoF under ICB, in accordance with procedures of those agencies / Funds, which bids may have been invited and evaluated on the

basis of Delivered Duty Paid (DDP) prices for goods manufactured abroad;

(f) Supply of capital goods, including in unassembled/ disassembled condition, as well as plants, machinery, accessories, tools, dies and such goods which are used for installation purposes till stage of commercial production, and spares to extent of 10% of FOR value to fertilizer plants;

(g) Supply of goods to any project or purpose in respect of which the MoF, by a notification, permits import of such goods at zero customs duty;

(h) Supply of goods to power projects and refineries not covered in (f) above;

(i) Supply of marine freight containers by 100% EOU (Domestic freight containers-manufacturers) provided said containers are exported out of India within 6 months or such further period as permitted by customs;

(j) Supply to projects funded by UN agencies; and

(k) Supply of goods to nuclear power projects through competitive bidding as opposed to ICB."

- Since the Govt. of India considers deemed export sales as export sales and further since the injury assessment must be made for domestic sales, the opposing interested parties have rightly claimed that deemed export sales should not be included in the domestic sales.
- The domestic sales made by the domestic industry do not qualify as deemed export sales, even though it is using the terminology deemed exports in the market place. In fact, the consumer claims export benefits on the exports they make and the domestic industry uses the nomenclature "deemed export" simply for the reason that the fibre has been consumed in a product, which has been exported. However, all export benefits have been taken by the consumers and not by the domestic industry. If these were deemed exports sales, the domestic industry would have been entitled for various benefits granted under Foreign Trade Policy.
- It is therefore submitted that these sales are not deemed export sales as understood by opposing interested parties but domestic sales only. Therefore, the sales have been rightly included under the head "domestic sales".

G.3. Examination by the Authority

43. The Authority has taken note of submissions made by various interested parties; including the domestic industry's contention that since no benefit has been obtained by them under the foreign trade policy for the so-called "deemed exports", such sales should be treated as domestic sales. These were cross checked during the spot verification and seen that these sales were in fact domestic sales.

43.1 The Authority has taken on board various submissions made by the interested parties and have undertaken the injury analysis as under:

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

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

> *"The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing or 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."*

43.4 The Authority has examined the injury parameters objectively taking into account the facts and submissions of the interested parties.

Cumulative assessment

44. Since there are more than one country involved in the present investigation, the Authority has examined whether the conditions for cumulative assessment are satisfied. The Authority observes that:

i. The margins of dumping from each of the subject countries are more than the *de-minimis* limits prescribed;

ii. The volume of imports from each of the subject countries is more than the *de-minimis* limits prescribed;

iii. Cumulative assessment of the effects of imports is appropriate since the exports from the subject countries directly compete with the like article offered by the domestic industry in the Indian market. This is, *inter alia*, evident from the fact that the domestic product and imported product are like Article; imports from

each of the subject countries are significant; goods produced by the Indian Producers and imported from the subject countries are in direct competition; common parties are resorting to use of imported material and domestic material; Indian users/customers are using domestic material and imported material interchangeably; the exporters from the subject countries and the domestic industry have sold the subject goods in the same periods to the same set of customers,

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

Demand and market share:-

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

In MT

	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)	April-June 08 Annualized	POI Annualized
Sales of Domestic Industry	223,147	226,178	237,395	49,784	100,925	199,136	201,850
Indexed	100	101	106	89	90	89	90
Imports in India	198	6,774	6,842	1,890	6,329	7,561	12,658
Indexed	100	3,415	3,450	3,812	6,382	3,812	6,382
Demand	223,345	232,952	244,237	51,674	107,254	206,697	214,508
Indexed	100	104	109	93	96	93	96
Market Share in Demand							
Subject Countries	0.06%	1.34%	2.78%	3.66%	5.90%	3.66%	5.90%
Other Countries	0.03%	1.57%	0.03%	0.00%	0.00%	0.00%	0.00%
Domestic Industry	99.91%	97.09%	97.20%	96.34%	94.10%	96.34%	94.10%

45.1 It is noted that the demand for the product under consideration was increasing till 2007-08. The same has however declined (on proportionate basis) during April-June 08 period and the period of investigation. It is also noted that whereas demand for the product under consideration has shown decline during the POI; import volumes have increased significantly (on proportionate basis). It has been contended by opposing interested parties that there is a decline in demand of product in India and therefore, injury to the domestic industry, if any, is not from the alleged imports. The Authority, however, notes that impact of decline in demand should have resulted into decline in imports as well on proportionate basis. However, it is seen that the imports of the subject goods at dumped prices from the subject countries have apparently led to a situation where the demand for the product under consideration has declined and that of imports have increased significantly.

45.2 This effect of the increase in imports is visible in the market share of imports as well. The market share of dumped imports from subject countries is significantly higher during the POI.

Import volumes and market share

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

In MT

	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)	April-June 08 Annualized	POI Annualized
Imports from the Subject Countries	125	3,121	6,779	1,890	6,329	7,561	12,658
Imports from Other Countries	73	3,653	62	-	-	-	-
Total Imports	198	6,774	6,841	1,890	6,329	7,561	12,658
Dumped Imports in relation to -							
- Indian Production	0.05%	1.26%	2.44%	3.27%	10.05%	3.27%	10.05%
- Indian Consumption	0.06%	1.34%	2.78%	3.66%	5.90%	3.66%	5.90%
Market Share of Domestic Industry	99.91%	97.09%	97.20%	96.34%	94.10%	96.34%	94.10%

46.1 It is seen that:

- The imports have shown a significant increase in absolute terms.
- The imports have increased in relation to production and consumption in India.
- While the market shares of the subject countries have increased but that of the domestic industry has declined. It is thus evident that the impact of the imports on the domestic industry has been adverse.

With regard to the argument that the decline in market share is insignificant, particularly in view of macro-economic problems, the Authority holds that there is no legal prescription with regard to the extent to which indices would show deterioration to conclude that the domestic industry has or has not suffered injury. As per the legal provisions, while there is no *de-minimis* criterion on the basis of market share in demand either in the AD Rules or the WTO's AD Agreement, some authorities do consider 1% market share of imports as significant. If 1% of market share of import from a particular country in consumption can be considered as "significant", the decline in market share by 2.3% cannot be considered as insignificant.

With regard to macro-economic problems (the interested parties are apparently referring to the global meltdown), however, the Authority notes that existence of such factors do not justify dumping and stop redressal of consequent injury to the domestic industry. In a situation where domestic demand for the product has fallen, increase in imports only aggravates the injury.

Price effect of imports

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

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

However, the Domestic industry has claimed that it fixes the prices of the subject goods in tandem with the landed value of the product under consideration and this comparison should be made after including the turnover discount in the net selling price that it gives to its customers which is evidently contingent upon the turnover achieved; and if this turnover discount is included in the average selling prices, the price undercutting would be significantly positive.

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

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

47.2 It is seen that while selling price of the domestic industry increased from 100 in base year to 135 during the POI. However, its cost of production increased from 100 in the base year to 146 during the POI. Apparently, the domestic industry could not increase its selling price in line with the increase in its cost of production; thereby indicating that the dumped imports are significantly suppressing the prices of the domestic industry.

47.3 The Authority has also examined price underselling of the domestic industry and notes that the landed value from subject countries is significantly below the non-injurious price of domestic industry as may be seen from the following table.

In Rs./Kg.	NIP (Grey fibre)	Landed price	Price Underselling	Price Underselling % range
China PR	***	99.03	***	5 to 15
Indonesia	***	100.35	***	5 to 15
Subject Countries	***	100.14	***	5 to 15

47.4 Apparently the domestic industry is forced to sell the subject goods below the non-injurious price due to the presence of dumped imports. Interested parties have, inter alia, argued that price undercutting in the instant case is negative, and therefore, injury to the domestic industry has not occurred due to dumped imports. The Authority, therefore, examined the legal and factual position in detail. It is noted that the domestic industry fixes its prices periodically based on prevailing international prices. In fact, this fact itself establishes that the increase in the selling prices was incommensurate with the increase in cost of production because of presence of the dumped imports from the subject countries.

47.5 The Authority also observes that the purpose of determining price undercutting is to assess whether such dumped imports are causing injury to the domestic industry. If the import price decline, the domestic industry may also be forced to reduce its selling prices. If the import price increases, but not to the full extent of increase in the cost of production, the domestic industry may be prevented from increasing its prices commensurate with the increase in the cost of production. Under the AD Rules, the Authority is required to determine whether imports are undercutting the domestic prices or whether the effect of imports was to otherwise depress or suppress the prices of domestic industry in the market. Thus, the rules clearly provide for establishing either price undercutting, price suppression or price depression.

47.6 It is relevant to note in this regard that the Authority determined price undercutting by considering net sales realization at ex-factory level and after deducting discounts & commissions, freight & transportation cost etc. While the domestic industry has contended that it is not appropriate to deduct post invoice discount. In any case, absence of positive undercutting does not mean lack of injury.

Economic parameters of the domestic industry

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

Sales volumes

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

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

49.1 It is noted that sales of domestic industry had increased up to 2007-08 and then declined during April-June 08 period and the POI. Though, there has been a decline in demand and sales could have declined on this account but it is also noted that with the decline in demand, the imports have not declined proportionately, but have actually increased.

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

Production, Capacity and Capacity Utilization

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

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

Indexed	100	108	121	101	100	101	100
Capacity Utilization	90.35%	92.64%	104.27%	70.22%	68.65%	70.22%	68.65%
Indexed	100	103	115	311	152	78	76

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

Profit/Loss, return on investment and cash profits

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

	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)	April-June 08 Annualized	POI Annualized
PBT Rs. Lacs	***	***	***	***	***	***	***
Indexed	100	168	271	127	73	127	73
PBT Rs. KG	***	***	***	***	***	***	***
Indexed	100	166	254	142	81	142	81
PBIT Rs. Lacs	***	***	***	***	***	***	***
Indexed	100	163	257	138	96	138	96
PBIT Rs. Kg	***	***	***	***	***	***	***
Indexed	100	161	242	155	107	155	107
Cash Profit Rs. Lacs	***	***	***	***	***	***	***
Indexed	100	163	255	131	84	131	84
Cash Profit Rs. Kg	***	***	***	***	***	***	***
Indexed	100	161	240	147	93	147	93
ROI - GFA Basis	***	***	***	***	***	***	***
Indexed	100	149	185	100	62	100	62
ROI - NFA Basis	***	***	***	***	***	***	***
Indexed	100	149	171	87	57	87	57

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

	Jul-Sept 08	Oct-Dec 08	July-Dec 08 (POI)
ROI - GFA Basis	***	***	***
Indexed	85.09	39.01	62.37
ROI - NFA Basis	***	***	***

Indexed	75.35	35.06	56.51

51.2 Some interested parties have argued that published statements of the domestic industry show significantly robust financial performances, as reflected in high ROCE. It is noted in this regard that the return on capital employed was 43%, 17% and 23% respectively for the period 2005-06, period of investigation and 2008-09. The Authority has, however, noted that this ROCE has been determined (a) without adjusting for unallocable corporate overhead expenses, (b) is in respect of Fibre & Pulp segment. The profitability of the product under consideration and ROCE relevant to the Authority is, however, a sub-set of Fibre & Pulp segment of the domestic industry. VSF segment of the domestic industry includes not only the subject goods but also pulp, utilities, engineering division, consumer product division etc. It is also relevant to point out that in any case, the published financial statement also shown a significant reduction in ROCE from 43% in 2005-06 to 17% in the period of investigation.

51.3 Some interested parties have contended that profitability of the domestic industry might have suffered due to high cost on account of interest and depreciation. On the other hand, the domestic industry has contended that its interests & depreciation cost is low in view of the fact that a significant portion of the capacities were created/installed long way back and these plants are now fully depreciated but fully operational. The domestic industry has in fact, claimed that it is entitled to a higher prices on these accounts. The Authority has, however, taken a consistent position that actual cost of production of the domestic industry shall be considered to assess its profitability rather than any notional determination.

Inventories:

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

In MT	2005-06	2006-07	2007-08	April-June 08	July-Dec 08 (POI)
Inventory	***	***	***	***	***
Inventory – equal to no. of days sales	***	***	***	***	***

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

Employment, wages and productivity

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

	2005-	2006-	2007-	April-	July-Dec	July-Dec 08

	06	07	08	June 08	08 (POI)	(POI Annualized)
Employment	***	***	***	***	***	***
Indexed	100	97	96	95	95	95
Wages Rs. Lacs	***	***	***	***	***	***
Indexed	100	117	125	137	123	123
Productivity per day	***	***	***	***	***	***
Indexed	100	108	121	101	100	100
Productivity per Employee	***	***	***	***	***	***
Indexed	100	111	126	107	105	105

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

Dumping Margin:

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

Growth

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

Threat of material injury

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

of imports from Indonesia. As regards imports from China PR during the period, it is seen that the landed value has fallen by 18.03 %. Cumulatively, the landed value of the subject goods from the subject countries has fallen by 7.97% during the period.

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

H. Causal Link

57. Views of the Domestic Industry

- The Authority has already examined all other known factors. Regarding injury due to decline in demand, the same has been examined by the Authority in the preliminary finding. As regards global downturn, it has not been demonstrated that profitability should indeed decline, because of global downturn. As regards increase in input cost, the same is specially covered under the Rules.

- As regards weakening of INR, the same should have been benefitted the domestic industry rather than going against the domestic industry. While the applicant depends upon the imported wood pulp only and would have got adversely impacted on this account only because of this, landed price of imported pulp have substantially increased.

- As regards capacity expansion, the same are results of earlier decisions. In any case, the domestic industry cannot be expected to terminate its expansion plans only because of dumping.

58. Views of other interested parties

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

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

Examination by the Authority

59. The Authority has examined whether other parameters could have contributed to the injury caused to the domestic industry. Following parameters were analyzed in this regard:

a) Imports from Third Countries: - The Authority has collected the transaction-wise imports data of the subject goods from DGCI&S. From the information available on record, the Authority notes that there are no imports of the subject goods from any other country during the POI.

b) Contraction in Demand:- The Authority notes that the demand for the subject goods has shown significant improvement till 2007-08, and then shows decline during the POI. However, as compared to the demand, the imports have increased significantly, which ordinarily should have declined with the decline in demand. It is noted that within the available demand, the domestic industry has lost its market share. Apparently, the domestic industry was already facing the problem of declining demand, but the same was compounded by the dumped imports.

c) Pattern of consumption:- No significant change in the pattern of consumption has been noticed. Apparently, the product supplied by the domestic industry is directly competing with that of imported material from the subject countries.

d) Conditions of competition:- As per facts available on record, there is no evidence that conditions of competition or trade restrictive practices have caused injury to the domestic industry.

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

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

60. The Authority notes that the performance of the domestic industry over the injury period has deteriorated due to dumped imports from the subject countries. This is established by the following:

i. The imports from the subject countries have significantly increased over the injury period. It is noted that while the market share of the domestic industry has declined, that of the imports from the subject countries have increased.

ii. There is price suppression as the domestic industry has not been able to increase its prices in proportion to the increase in the cost of production. The significant price-suppression caused by the dumped imports has adversely impacted the domestic industry, resulting in significant decline in profits and cash flow.

iii. A comparison of the landed value of the subject goods with the NIP of the domestic industry shows that there is a case of price underselling as well.

60.1 Some interested parties have contended that production, sales and profitability had deteriorated due to lower demand, prevailing global down trend, steep rise in input costs and weakening of Indian Rupee; the Authority notes that these public statements in the Annual Report does not alter the conclusion that dumping of the product has contributed to injury to the domestic industry. Firstly, it has been wrongly assumed by the interested parties that dumping of the product should be the sole cause of injury to the domestic industry. Though production and sale undisputedly suffered due to decline in demand but dumping of the subject goods also caused material injury to the domestic industry. With regard to profitability, as the domestic industry fixes its prices on the basis of import prices; therefore, availability of dumped imports at lower prices in the market apparently have forced the domestic industry to offer such prices that did not permit recovery of increase in the input costs.

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

Magnitude of Injury and Injury margin:-

61. In response to the Disclosure statement, the Domestic industry had disputed the determination of the Non-injurious price of the product concerned. The issues raised have been examined and duly dealt with while rectifying the Non-injurious price. The Non-injurious price of the subject goods produced by the domestic industry so determined by the Authority has been compared with the landed value of the exports from the subject countries for determination of the injury margins during the POI. Thus compared, the injury margins are worked out as under:

In Rs/Kg.	Indonesia	China PR

	PT Indo Bharat Rayon	PT South Pacific Viscose	Others	
NIP	***	***	***	***
Landed Value	***	***	***	***
Injury Margin	***	***	***	***
Injury margin%	***	***	***	***
Injury margin Range (%)	5-15	5-15	25-35	5-15

I. Conclusions:

62. After examining the submissions made by the interested parties and issues raised therein; and considering the facts available on record, the Authority concludes that:

(a) The product under consideration has been exported to India from the subject countries below their associated normal values.

(b) The domestic industry has suffered material injury in respect of the product under consideration. Besides, there is a case of threat of material injury as well.

(c) The material injury and threat thereof has been caused by the dumped imports of the subject goods from the subject countries.

J. Indian industry's interest & other issues

63. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate 'injury' caused to the Domestic Industry by the unfair trade practices of dumping so as to re-establish a situation of open and fair competition in the Indian market, which is in the general interest of the Country. Imposition of anti-dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the products to the consumers.

64. It is recognized that the imposition of anti-dumping duties might affect the price levels of the products manufactured using the subject goods and consequently might have some influence on relative competitiveness of these products. However, fair competition in the Indian market will not be reduced by the antidumping measures, particularly if the levy of the anti- dumping duty is restricted to an amount necessary to redress the injury to the domestic industry. 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 the subject goods. With a view to minimize the impact on the downstream industry, the Authority has considered it appropriate to recommend anti-dumping duty based on the lower of the dumping and injury margins. The Authority notes that the imposition of anti dumping measures would not restrict imports from the subject countries in any way, and therefore, would not affect the availability of the product to the consumers.

K. Recommendations

65. The Authority notes that the investigation was initiated and notified to all interested parties and adequate opportunity was given to the exporters, importers and other interested parties to provide positive information on the aspects of dumping, injury and causal link. Having initiated and conducted the investigation into dumping, injury and the causal link thereof in terms of the Act and the AD Rules and having established definitively positive dumping margins concerning imports of the subject goods originating in or exported from the subject countries and as well as material injury and threat thereof to the domestic industry caused by such dumped imports; the Authority is of the view that imposition of definitive duty is required to offset the dumping and 'injury' in the instant matter. Therefore, the Authority considers it necessary to recommend imposition of definitive anti-dumping duties concerning imports of the subject goods from the subject countries in the form and manner described hereunder.

66. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive anti-dumping duty equal to the lesser of margin of dumping and margin of injury, so as to remove the injury to the domestic industry. Accordingly, the antidumping duty equal to the amount indicated in Col 8 of the table below is recommended to be imposed concerning all imports of the subject goods originating in or exported from the subject countries.

Sl. No	Heading / Subheading	Description of goods	Country of Origin	Country of Exports	Producer	Exporter	Duty Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)		
1	5504.10.00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Indonesia	Indonesia	M/s P T South Pacific Viscose	M/s P T South Pacific Viscose	0.103	Kg	US $
2	5504.10.00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Indonesia	Indonesia	PT. Indo Bharat Rayon	PT. Indo Bharat Rayon	0.164	Kg	US $
3	5504.10.00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Indonesia	Indonesia	Any combination other than as specified at Sr. No.1 & 2		0.512	Kg	US $
4.	5504.10.00	'Viscose	Indonesia	Any	Any	Any	0.512	Kg	US $

		Staple Fibre (VSF) excluding Bamboo fibre'		country other than Indonesia					
5.	5504.10.00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Any country other than attracting Anti-dumping duty	Indonesia	Any	Any	0.512	Kg	US $
6.	5504.10.00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	China PR	China PR	Any	Any	0.194	Kg	US $
7.	5504.10.00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	China PR	Any country other than China PR	Any	Any	0.194	Kg	US $
8..	5504.10.00	'Viscose Staple Fibre (VSF) excluding Bamboo fibre'	Any country other than attracting Anti-dumping duty	China PR	Any	Any	0.194	Kg	US $

67. Landed value of imports for the purpose shall be the assessable value as determined by the Customs under the Customs Act, 1962 and all duties of customs except duties under Sections 3, 3A, 8B, 8C, 9 and 9A of the Customs Tariff Act, 1975.

68. An appeal against this order shall lie before the Customs, Excise and Service Tax Appellate Tribunal in accordance with the Customs Tariff Act.

P.K. Chaudhery
The Designated Authority