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**Government of India  
MINISTRY OF COMMERCE & INDUSTRY  
DEPARTMENT OF COMMERCE  
(DIRECTORATE GENERAL OF ANTI-DUMPING & ALLIED DUTIES)**

**New Delhi  
The 26<sup>th</sup> December 2007**

**Final Finding**

**Subject: Final Findings in the Antidumping investigation involving import of Poly Vinyl Chloride (PVC) Suspension Grade from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA**

**No.14/8/2006-DGAD:** Having regard to the Customs Tariff Act, 1975 as amended in 1995 (hereinafter referred to as Act) and the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1995 (hereinafter referred to as Rules);

**A. Background and initiation:**

1. Having regard to the Antidumping Rules, the Designated Authority (herein after referred to as Authority), on the basis of a fully documented application filed by M/s Indian Petrochemicals Corporation Ltd. (IPCL), M/s. Dhargandhra Chemical & Works (DCW), M/s. Chemplast Sanmar Ltd., (Chemplast) and M/s. DCM Shriram Consolidated Ltd. (DSCL) (hereinafter referred to as the applicants) alleging dumping of Poly Vinyl Chloride (PVC)- Suspension Grade (hereinafter referred to as subject goods), originating in or exported from Taiwan, China PR, Indonesia, Japan, Korea RP, Malaysia, Thailand and USA (hereinafter referred to as subject countries) and consequent injury to them, initiated an anti-dumping investigation, vide notification dated 28<sup>th</sup> June 2006, published in the Gazette of India, Extraordinary, in accordance with the sub-Rule 5(5) of the said Rules, to determine the existence, degree, and extent 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.

2. And whereas on the request of the Designated Authority the time period for completion of this investigation was extended by the Central Government till 28<sup>th</sup> December 2007 in terms of Rule 17 of the Rules.

## B. Procedure

3. Procedure described below has been followed with regard to this investigation after initiation of the investigation:

- (i) The Designated Authority sent copies of initiation notifications dated 28<sup>th</sup> June 2006 to the Embassies of the subject countries in India, known exporters from the subject countries, importers and the domestic industry as per the list available and requested them to make their views known in writing within 40 days of the initiation notification.
- (ii) Copies of the non-confidential version of the application filed by the domestic industry were made available to the known exporters and the Embassies of the subject countries in accordance with Rules 6(3) supra.
- (iii) The Embassies of the subject countries in New Delhi were informed about the initiation of the investigations in accordance with Rule 6(2) with a request to advise the exporters/producers from their countries to respond to the questionnaire within the prescribed time. A copy of the letter, non-confidential application and questionnaire sent to the exporters was also sent to the Embassies of the subject countries along with a list of known exporters/ producers.
- (iv) The Authority sent questionnaire to the following known exporters from subject countries to elicit relevant information in accordance with the Rule 6(4):-

- 01 M/s. LG Chem Ltd., Seoul, Korea;
- 02 M/s. Chemical, Seoul, Korea;
- 03 M/s. Petronas; Kuala Lumpur, Malaysia;
- 04 M/s Thai Plastics & Chemicals Public Co. Ltd., Thailand;
- 05. M/s Formosa Plastics Corporation, Taipei, Taiwan, R.O.C;
- 06 M/s. Shin-Etsu, Tokyo, Japan;
- 07 M/s. Kanegafuchi, Tokyo, Japan;
- 08 M/s. Taiyo Vinyls Corporation, Tokyo, Japan;
- 09 M/s. PT. Asahimas Chemical, Jakarta, Indonesia;
- 10 M/s. CGPC, Taipei, Taiwan, R.O.C.;
- 11 M/s Tianjin Dagu, DAGU USA International Trading Corp,
- 12 M/s Siam Maspion, The Siam Cement Pcl., Bangkok,
- 13 M/s. Shantou Ocean, Taipei, Taiwan;
- 14 M/s. Xinjiang Tianye, P.R.China;
- 15 M/s Formosa Plastics Corporation, U.S.A, NJ, U.S.A;
- 16 M/s Ocean Plastics Co., Ltd., Taipei, Taiwan R.O.C;

(v) In response to the initiation of the investigation, China Chlor-Alkali Industry Association (CCAIA) filed the information of following 11 Chinese producers/exporters who were interested in participating in the investigation:-

1. Xinjiang Tianye Co Ltd
2. Yichang Yihua Pacific Cogen Ltd
3. Tianjin DAGU Chemical Co Ltd
4. Haohua Yuhang Chemical Co Ltd
5. Ningxia Yinglige Chemicals Co Ltd
6. Shandong Ocean Chemical Import and Export Co Ltd (exporter) with Shandong Haihua Chlor Alkali Resin Co Ltd (Producer)
7. Qingdao Haijing Chemical Group Co Ltd
8. Yibin Tianyuan Co Ltd
9. Shanghai Chlor Alkali Chemical Co Ltd
10. Tianjin LG DAGU Chemical Co Ltd
11. Inner Mongolia Sanlian Chemical Corporation Ltd

vi) However, in view of large participation from producers-exporters from China PR, the Authority resorted to sampling in terms of Rule 17 of Rules and selected the following three exporters from China, who represented major portion of exports from that country to India during the POI, for further examination:

1. M/s Tianjin Dagu Chemical Company Limited (Producer) and M/s Tianjin Bohai Chemical Industries Imp. & Exp. Corporation (Exporter);
2. M/s Xinjiang Shihezi Zhongfa Chemical Co. Ltd. - Producer and M/s Xinjiang Tianye Foreign Trade Co. Ltd. - Trader & Exporter;
3. M/s Yichang Yihua Pacific Cogen Co. Ltd. - Producer and M/s Hubei Yihua Group Co. Ltd. - Trader & Exporter

vii) The sampled exporters as above have filed their questionnaire response and market economy questionnaire responses. The other non-sampled exporter have filed limited responses and dumping margins for these exporters have been determined in terms of Rule 17(3) of the Rules based on the determination made for the sampled exporters.

vii) The following exporters from the other countries named in the investigation have also filed their questionnaire response and participated in the investigation.

- I) M/s. Taiyo Vinyl Corpn. Japan,
- II) M/s. Kaneka Corporation, Japan,
- III) M/s. Thai Plastic, Thailand,
- IV) M/s. Hanwha Chemical, Korea RP,
- V) M/s L G Chem, Korea RP
- VI) M/s. Formosa Plastics Corpon, Taiwan,
- VII) M/s. Ocean Plastics, Taiwan,

VIII) M/s. PT Asahimas, Indonesia

- ix) No questionnaire response has been received from the United States of America (USA) and Malaysia.
- (x) The Authority made available non-confidential version of the evidence presented by various interested parties in the form of a public file kept open for inspection by the interested parties
- (xi) The Authority has examined the confidentiality claims of various interested parties in respect of the data submitted by them. The information, which is by nature confidential or which has been provided on a confidential basis by the interested parties, alongwith non-confidential summary thereof, has been treated confidential. \*\*\* in this finding represents information furnished by all the interested parties on confidential basis and so considered by the Authority under the Rules.
- (xii) The comments of the interested parties, in response to the initiation of the investigation, have been taken on record and the Authority has examined the issues raised therein in this finding.
- (xiii) The Authority verified the information submitted by the interested parties, including the domestic industry, to the extent possible. Cost verification of the domestic industry was carried out to determine the Non-Injurious Price (NIP) of the domestic industry as per the consistent practice of the Authority.
- (xiv) The Authority held a public hearing on 29<sup>th</sup> November 2006 to provide an opportunity to all interested parties to present their views. The oral submissions made by the parties during the public hearing, and reproduced in writing, have been taken on record for the purpose of this investigation.
- (xv) In accordance with Rule 16 of the Rules supra, the essential facts considered for these findings and basis of determination, were disclosed to known interested parties, vide general disclosure and confidential disclosures to parties involved, vide letters dated 7<sup>th</sup> December 2007. Comments to the disclosures received from the interested parties have also been duly considered in these findings to the extent the arguments and claims made by various parties are substantiated with evidence and data;
- (xvi) Investigation was carried out for the period starting from 01.01.2005 to 31.12.2005 (POI). However, injury investigation was carried out for the period 2002-03, 2003-04, 2004-05 and the POI.

- (xvii) For the sake of brevity, the arguments and facts submitted by various interested parties have been summarized and reported in the finding to the extent possible.

#### **B.1 Interested Parties to the investigation**

4. As per the records of the Authority, following parties have made themselves known as interested parties to this investigation:

##### **a) Responding exporters and other non-sampled exporters**

5. The sampled exporters from China and responding exporters from other countries as listed in the previous section have filed questionnaire responses as required and have been listed as interested parties in this case. Three other exporters from China PR have also submitted their request for grant of individual treatment and filed their MET responses. Other non-sampled exporters from China PR are also interested parties to this investigation.

6. In addition to the above, M/s. Malaysian International Trading Corporation SDN. BHD (MITCO) has also made only written submissions on various aspects of the case without filing any questionnaire response.

##### **b) Importers and other Interested Parties**

7. The following imports and other interested parties have also filed their responses and other submissions:

- i. M/s Diamond Pipes & Tubes Pvt. Ltd
- ii. M/s Organization of Plastics Processors of India
- iii. M/s Association of ISI PVC Pipe Manufacturers of Tamil Nadu
- iv. M/s Premier Poly Film Ltd
- v. M/s RMG Poly Vinyl India Limited
- vi. M/s Sankhala Industries
- vii. M/s PVC Converters India Pvt. Ltd
- viii. M/s All India Federation of Plastic Industries
- ix. M/s Marvel Vinyls Limited
- x. M/s The All India Plastic Manufacturers Association

8. In addition to the above, the following parties also attended the public hearing as interested parties and filed brief submissions:

- i. Gujarat State Plastic Manufacturers Association,
- ii. M/s Jain Irrigation System and
- iii. Andhra Pradesh Plastic Manufacturers Association.

### **C. Product under Consideration and Like Articles**

9. It has been submitted by the domestic industry that Poly Vinyl Chloride (PVC) is one of the earliest plastics and most extensively used commodity, with enormous variety of applications. Through a chemical reaction, Ethylene and Chlorine is combined to form Ethylene Dichloride (EDC), which is in turn transformed into Vinyl Chloride Monomer (VCM). Through polymerization process, the VCM monomer is converted into vinyl polymer, a fine-grained, white powder i.e. PVC resin. The Authority also notes that PVC resin is also produced using a different route in which acetylene is produced from Calcium Carbide and acetylene is reacted with Hydrochloric Acid to produce VCM which is polymerized to obtain PVC. There are different types of polymerization processes viz. 1) Suspension polymerization, 2) Emulsion polymerization, 3) Bulk Mass polymerization and 4) Micro Suspension polymerization process. About 85% of the world's PVC production is by suspension polymerization. The scope of the product under consideration in the present petition covers Poly Vinyl Chloride (PVC) - Suspension Grade only. The product is classified under Chapter 39 of the Customs Tariff Act, 1975 under subheading 3904.2110 under the Indian Tariff Classification. The customs classifications are however, indicative only and are in no way binding on the scope of the investigation.

10. Most important properties of the PVC resin are molecular weight, porosity, particle size and its distribution. Molecular weight is controlled by the reactor temperature, initiator concentration, agitation and emulsification. Particle size and porosity is controlled by agitation and quantity/nature of suspending agents. To achieve processibility and optimum performance characteristics, PVC resin must be compounded i.e. combined with selected chemical additives and modifiers to achieve the desired properties. These additives are classified as stabilizers, plasticizers, lubricants, fillers, impact modifiers, processing aids, colorants and other miscellaneous ingredients. Once these are added, the resulting material vinyl compound can be converted into wide range of products. The selection of a particular package of additives depends upon the end products to be manufactured.

11. PVC is used in manufacturing of various products like Pipes & Fittings, Flexible Hoses, Films/Sheets, Bottles, Profiles, Wire & Cables, and Foot-wears etc. PVC Pipes & Fittings are used for Irrigation, Drinking water supply, Buildings construction and Sanitation for plumbing, Sewerage, Rainwater ducting, Conduits for concealing electrical wiring, etc. PVC Films/sheets are used for packaging application, rainwear, insulation tapes, table covers, stationery items, inflatable toys, photo albums, collar bands, stretch cling/stretch wrap/twist wrap films, bill board film and many more applications. PVC Profiles are used mainly in applications like doors, windows, panels, partitions, frames, kiosks etc. PVC is used in Wire & Cables, which are used mainly in manufacturing domestic wiring, electrical chords and low voltage power cables.

12. It has been argued that PVC produced by the applicants and imported from subject countries is comparable in terms of characteristics such as physical and chemical characteristics, product properties, manufacturing process & technology, functions and uses, product specifications, pricing, distribution and marketing and therefore, treated as like articles within the meaning of the term.

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

13. M/s Kaneka Corporation, Japan in its submissions has argued that the petition gives a very brief general overview of PVC Resin. Even though it has been categorically stated in the application that the scope of the product under consideration in the present petition covers PVC - Suspension Grade only, the applicants have not adequately elaborated on what PVC Suspension Resin is. Therefore, it is important that subject PVC Resin is adequately explained so that the Designated Authority may appreciate the scope of the product under consideration in the present petition and investigations. The exporter has given very elaborate technical details of various types of PVC Resins and their application areas. On the basis of extensive review of the product catalogue of the PVC suspension resin produced by the Indian Producers, the exporter has argued that certain special grade PVC are not manufactured by the Indian Producers and as such those special grade PVC are not like articles compared to the general grade PVC manufactured and sold by the Indian producers in the domestic market. Therefore, it has been argued that special grade PVC should be exempted from the investigation.

14. It has also been argued by Kaneka that certain low K-Value and High K-value PVC resins (K-value below 57 and above 71) are not produced by the domestic industry as they do not have the capability to control certain critical parameters to manufacture PVC resins in this range of K values which require more technical know how and ability to control the process parameters.

15. On the basis of these technical arguments, the exporter has submitted that the scope of the product under consideration should be restricted to the PVC resin produced by the domestic industry and described as "homopolymer of Vinyl Chloride Monomer, where various polymer chains are not linked to each other, having K-Value between 55-71 and average particle size between 100-180, falling under customs classification no. 3904.21." It has also been argued that the Authority should adequately clarify that all other types of PVC Resins are beyond the scope of the present investigation.

16. Embassy of Japan vide its letter dated 31<sup>st</sup> July 2006 has also made a similar submission for exclusion of specialty grade PVC from the scope of product under consideration and clarification of the same is in the findings of the Authority.

17. M/s. Sankhla Industries in its submission has submitted that they are regular importer of specialty grade PVC Resin which is of K-value 57, 70, 84. These are generally used for desired flexible properties as well as higher electrical properties and specialty compounds. They have argued that except PVC Resin of K-67, all others should be classified as specialty grades of PVC resin as all the grades of PVC Resin are not manufactured by local manufacturers.

18. In summary, the interested parties have argued that the scope of the product under consideration should be limited to the general grade PVC manufactured by the domestic industry and all special grade PVC should be excluded from the scope of product under consideration as they are not like articles in terms of physical and chemical characteristics and technical as well as commercial substitutability.

## **C.2 Views of the domestic industry**

19. Commenting on letter No. 3/7/06 dated 31<sup>st</sup> July 2006 from the Embassy of Japan and submissions made on behalf of Kaneka Corporation, Japan, the domestic industry has clarified that specialty grade PVC such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin, are different from the subject goods under investigation and are not technically and commercially substitutable in terms of characteristics such as physical and chemical characteristics, manufacturing process, functions and uses, product specifications and pricing. It has been submitted by the domestic industry that cross-linked PVC, CPVC and VC-VAc are chemically and technically different from the product under consideration. The PVC paste resin and PVC blending resin are physically different with respect to resin particle size. The specialty grade PVC's i.e., cross-linked PVC, CPVC and VC-VAc are also priced higher than the product under consideration. In view of their physical, chemical, technical and commercial difference from the product under consideration, the above specialty grade PVC resins are not 'like article' compared to the PVC resin under investigation. Therefore, the domestic industry has agreed for their specific exclusion from the scope of the product under consideration and like articles.

20. However, commenting upon the arguments of M/s Kaneka Corporation, Japan and other interested parties for exclusion of high and low K-value PVC resins from the scope of the product under consideration, the domestic industry has argued that these parties have attempted to make a differentiation of the Product concerned by calling them High K-Value and Low K-Value PVC Resin. The Product under Investigation is Poly Vinyl Chloride (PVC) – Suspension Grade and covers all grades of PVC resin (suspension grade) irrespective of any K- Value. In India, the industry produces PVC resin (suspension grade) of K-Value ranging between 50 -90. It has been argued that the assertion that Indian producers cannot control the parameters needed for production of PVC Resin

outside the K-Value range of 57-71 is totally incorrect and false. Therefore, there is no justification in the submission of Kaneka Corporation, Japan for further delineating the product scope of the Product concerned on the basis of the K-Value of PVC resin.

### **C.3 Examination by the Authority**

21. The Authority has examined various arguments of the interested parties and clarification given by the domestic industry on the issue of product under consideration and like article. Rule 2(d) of the Antidumping Rules provide that "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 respect, has characteristics closely resembling those of the articles under investigation". In the instant case, both the domestic industry and the interested parties have argued that the specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin, are different from the subject goods under investigation and are not technically and commercially substitutable in terms of characteristics such as physical and chemical characteristics, manufacturing process, functions and uses, product specifications and pricing. Therefore, the Authority holds that such specialty PVC resins are not like article to the general grade (homopolymers of PVC) PVC resins manufactured and sold by the domestic industry. Accordingly, such special grade PVC resins described as above are excluded from the scope of the product under consideration.

22. As far as exclusion of certain grades of PVC on the basis of their K values is concerned, the Authority notes that the entire submission of the interested parties is based on the arguments that the domestic industry either does not produce these grades or does not have the capability to produce these grades by controlling the relevant parameters. No argument has been extended to prove that these grades are not alike to the PVC resin in the K value range of 57-71 in respect of their physical and chemical characteristics and technical and commercial substitutability. The Authority notes that PVC resin of all K-value ranges are being imported to India and the interested parties have not placed any evidence on record to prove that the low K value or high K value PVC resins are different and are not technically and commercially substitutable with the PVC with K-values 55 -71. Therefore, the Authority does not find any merit in the arguments of the interested parties for exclusion of these grades.

23. Accordingly, the product under consideration is hereby described as "homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification no. 3904.21. The product under consideration however, excludes the specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC),

vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin".

24. In their post disclosure submissions Kaneka Corporation has reiterated their arguments about exclusion of certain grades of PVC on the basis of K values. It has been argued that technical and commercial substitutability is not a parameter in itself but an end-result of a determination based on a number of parameters. It has been further argued that the domestic industry submissions does not establish that the contentions of Kaneka with regard to differences in these products in terms of parameters such as product characteristics, functions & usage, manufacturing technology, pricing etc. are incorrect. M/s Sankhla Industries in its comments has provided certain information regarding the use of PVC suspension grades of different K values and viscosity and has submitted that producer makes a range of PVC polymers which vary in morphology and in molecular mass, depending on the intended end use. But suspension grade of PVC resin of K-67 which is general pipe grade is the largest consumed and all the companies produce this grade highest. All the local suppliers are producing K67 pipe grade at 90% of their installed capacity. Therefore, there is no reason to include other grades of PVC in this investigation. In this connection the Authority notes that though product PVC has several grades and sub-types all of them have similar physical and chemical characteristics and end uses though specifications in terms of K values and other parameters are controlled by the manufacturers to produce these grades. No material evidence has been placed by any interested party to establish that these different grades are not like articles to each other. Therefore, the arguments of this party and other interested parties in this respect are not valid. Accordingly, all grades of PVC have been treated as like article and covered under the product under consideration except the specialty types specifically exempted in these findings on the basis of technical evidence placed before the Authority.

#### **D. Standing of the Domestic Industry and initiation of the investigation**

25. The application for imposition of antidumping duty on the subject goods was filed by M/s Indian Petrochemicals Corporation Ltd. (IPCL), M/s. Dhargandhra Chemical & Works (DCW), M/s. Chemplast Sanmar Ltd., (Chemplast) and M/s. DCM Shriram Consolidated Ltd. (DSCL). The application was supported by M/s Reliance Industries Ltd. (RIL). The applicants have claimed that the applicants, alongwith the supporter, constitute 100% of the production of product under consideration in India, therefore, constitute the domestic industry in this case.

##### **D.1 Views of Interested Parties**

26. Organization of Plastics Processors of India, All India Federation of Plastic Industries and other interested parties, in their respective submissions, have argued that while the Petitioners have claimed enough support of the other

producers, it is also imperative for the Designated Authority to independently verify the supporting companies in view of the fact that the other producers M/s. RIL and M/s. Finolex Industries Limited constitute approximately 50% of the Domestic Industry. By its own admissions, Reliance Industries Limited is one of India's largest producers. However, data from Reliance Industries Limited has not been included for the purpose of conducting an injury analysis and to determine whether the domestic industry as a whole has suffered any injury. It has been argued that Reliance Industry must join the investigation alongwith IPCL as both the entities are entirely under M/s RIL's management. IPCL's production system and business strategy decisions are entirely aligned with that of RIL. Therefore, the interested parties have argued that the authority should force the petitioners to come out with complete facts of the domestic industry including that of M/s RIL.

27. Further, quoting the recent judgment of the Hon'ble Supreme Court in Reliance Industries Limited vs. Designated Authority and Others passed in Civil Appeal No. 1294 of 2001 on 11<sup>th</sup> September, 2006 and WTO Appellate Body rulings in EC-Bed Linen case, the interested parties have argued that the injury analysis should take into account all domestic producers of subject goods, including M/s RIL.

28. It has also been argued that certain producers in India use the Calcium Carbide route to produce the subject goods as opposed to Ethylene / EDC / VCM route. Therefore, the Authority should take into consideration the raw material inputs costs, captive consumption and the by-products, if any, associated with the product under consideration. The analysis on this aspect will have substantial impact on the calculation of the NIP for the Domestic Industry.

## **D.2 Views of the domestic industry**

29. The domestic industry and M/s RIL, in their submissions have inter-alia argued that the Supreme Court judgment has been wrongly interpreted by the interested parties as the Supreme Court has not changed the definition of domestic industry as defined under Rule 2 (b). It has been argued that a plain reading of the Supreme Court judgment clearly reveals that by using the words "domestic industry as a whole", the Court is merely emphasizing the fact the Authority has to assess injury and compute NIP for all units constituting the "domestic industry". The words "domestic industry" has to be given the same meaning as given in the definition and under the Rules, particularly when the Supreme Court has not said anything contrary to the definition or quashed the same. If an interpretation is sought to be placed that the injury and NIP has to be determined for all the producers in the country, it would tantamount to reading the words "domestic industry as a whole" as "domestic producers as a whole", which is neither said nor intended in the said order. It may be added that the NIP is determined for the defined domestic industry; it has to be made applicable to the entire country. This is what has been referred to as country specific in the

Reliance judgment and this is also the current practice of the Designated Authority. Even under the WTO Agreement, the term “domestic industry” has been given a particular meaning and assigning any meaning outside the context of statutory definition would not be proper. The applicant producers command major proportion of the total domestic production and have been supported by other producers, including M/s RIL. Therefore, the applicants command standing as the domestic industry in this case to file this application before the Authority and other domestic producers are under no obligation to file their cost and injury data. However, notwithstanding the above objections, M/s RIL has filed its cost and injury data for determination of injury as per the request of the Authority.

### **D.3 Examination by the Authority**

30. The Authority notes that there are six known producers of the subject goods in India viz. 1) M/s Reliance Industries Ltd. (RIL) 2) M/s. Finolex Industries Limited (Finolex) 3) M/s Indian Petrochemicals Corporation Ltd. (IPCL), 4) M/s. Dhargandhra Chemical & Works (DCW), 5) M/s. Chemplast Sanmar Ltd., (Chemplast), and 6) M/s. DCM Shriram Consolidated Ltd. (DSCL). Out of these producers, M/s Finolex is also a major importer of the subject goods and therefore, does not qualify to be considered as a part of the domestic industry. The application has been filed by the last four producers commanding about 53% of the domestic production of the subject goods and accordingly, constitutes the domestic industry within the meaning of the Rules.

31. M/s RIL which commands the remaining portion of the domestic production had not initially joined the application but supported the application of the other producers. In pursuance of the Supreme Court Judgment, M/s RIL was asked to file its cost and injury data for determination of NIP and injury for the domestic industry as a whole. RIL has complied with the request of the Authority and the data of this domestic producer has also been verified by the Authority. Therefore, the Authority holds that the injury investigation covers the applicants and supporters of the application which covers 100% of the eligible domestic production of the subject goods.

### **E. Import Volumes and De-Minimis Limits**

32. The Authority has examined the volume of imports of the subject goods as reported by DGCI&S and as per the information submitted by various interested parties, including the domestic industry. The domestic industry has also provided the import data sourced from the secondary sources i.e. IBIS, Mumbai and has argued that certain import data might not have been captured by DGCIS due to description problems and misclassification under different other heads. On the basis of the import data submitted by the domestic industry at the time of initiation, the import volume from the subject countries were found to be above the de-minimis levels and further on the basis of prima-facie evidence of dumping from the subject countries, injury to the domestic industry and causal link

between the dumping and injury, the Authority initiated this investigation against the countries named in the initiation notification.

33. However, the interested parties have argued that Imports from European Union (EU) taken as a territory is above de-minimus level and hence EU too needs to be included in the countries for investigation purposes to consider cumulative assessment of the effect of imports including those from EU, in terms of the provisions of the anti-dumping rules. It has been argued that the import prices from the EU, given by the petitioners themselves, show that they are quite low and in some cases lower than those from the subject countries. Therefore, if such low prices from EU are not causing any injury to the domestic industry, imports from the subject countries cannot cause injury to the domestic industry. The interested parties have reiterated their arguments in their post disclosure submissions

34. Domestic Industry, in its submissions has argued that such submissions of interested parties are without any basis or supported by actual data. Prices from some of the individual countries of the territory (EU as a whole) have been flashed by the interested parties to claim that they were lower than subject countries. It has been argued that such an approach is against the basics of anti-dumping investigations. The law does not carve out an exception for imposition of duty when the conditions of imposition are not satisfied i.e. when there is dumping, injury and causal link.

35. The Authority has examined the import data of the subject goods as provided by the Directorate General of Commercial Intelligence and Statistics and IBIS and it is noticed that the imports of the subject goods from the individual member countries are very small and account for very small percentage of total imports during the POI. However, cumulatively these imports constitute about 6% of total imports of the subject goods to India. But the average price of imports from these countries, taken together as well as considered separately, is significantly higher than the average price from the countries named in this investigation.

<b>Country</b>	<b>MT</b>	<b>Rs. Lacs</b>	<b>Average Price Rs./MT</b>	<b>Share</b>
Total Subject Countries	<b>215947</b>	<b>79067.85</b>	<b>36614.00</b>	<b>85.03%</b>
Total EU	<b>15506</b>	<b>5786.30</b>	<b>37315.62</b>	<b>6.11%</b>
Total	<b>253975</b>	<b>92647.33</b>	<b>36478.87</b>	<b>100.00%</b>

36. The Authority also notes that an investigation can be initiated against a country or territory only when there is sufficient evidence of dumping from that country or territory and consequent injury on account of such dumping, with further conditions that the volume of imports from such country or territory, is not negligible and the margin of dumping is not de-minimis. In the instant case, there is no allegation of dumping from the member countries of the European Union though the cumulative volume of imports from that territory is significant and

above de-minimis level. The price level from this territory is also significantly higher than the price from the subject countries under investigation. Therefore, the Authority does not find any merit in the arguments of the interested parties for inclusion of the European Union in the investigation.

## **F. Other submissions and issues raised by interested parties**

### **F.1 Confidentiality issues**

#### **F.1.1 Domestic Industry**

37. The domestic industry, in its various submissions have inter-alia raised several issues on confidentiality and inadequate disclosures made by the exporters and other interested parties and has inter-alia argued that the responding exporters have failed to fulfill their obligation under the Indian law by not providing the meaningful summary of the response to exporters' questionnaire. It has been argued that the exporters have claimed excessive confidentiality without any justification and Non-Confidential Version (NCV) of the questionnaire response has not been given for all the information contained in the confidential version without assigning any reasons. It was obligatory for the exporters to give proper statement of reasons as to why confidentiality was claimed and why summarization was not possible for certain information. Even, the NCV is not in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. This has resulted in depriving domestic industry a legitimate right to make effective submissions as contemplated under the object and scope of framing of provisions on confidentiality. It has been argued that the law provides that if the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information. The domestic industry has further argued that the questionnaire responses by the responding exporters are grossly deficient and do not respond to a number of questions raised therein. Therefore, the Authority should disregard the response of the exporters and declare them as non-cooperative by denial of individual treatment.

#### **F.1.2 Other Interested parties**

38. Commenting on the confidentiality claims of the domestic industry the Organization of Plastic Processors of India, representing the industrial users of the subject goods has raised the issue of insufficient non-confidential disclosure of information by the domestic industry in their non-confidential petition. It has been argued inter-alia that the evidence as to calculation of normal value in the NCV is incomplete and the Industrial Users are unable to comment upon the allegations of dumping of imports of the subject goods from the subject countries for the reasons that details of methodology and elements of determination has

not been disclosed by the applicants. It has been argued that the Petitioners has not fulfilled even the bare minimum requirement of providing non-confidential summaries of the information relied upon in arriving at the normal value and has significantly hampered the right of the industrial users to submit itself in this investigation.

39. M/s Formosa Plastics and M/s LG Chem in their submissions have also raised the issue of excessive confidentiality claim of the domestic industry in its petition and has argued that the petitioners have not submitted any information in NCV of part VI of the application which has deprived the interested parties to comment on the crucial issue of cost of production and other parameters flowing from this part which forms the basis for determination of NIP.

### **F.1.3 Examination by the Authority**

40. As far as the confidentiality and insufficient non-confidential disclosure of information by the parties to the investigation is concerned, the issues raised by the parties have been examined. The Authority notes that to the extent possible and practicable the confidentiality claims of various parties submitting the information have been examined and admitted on the basis of nature of information provided by the parties. The information, such as cost and price information of the parties involved, which are by nature confidential, have been treated so by the Authority and the non-confidential summaries submitted by the parties have been placed in the public folder.

### **F.2 Timely submissions of comments**

41. Responding to various objections raised by the interested parties to the initiation and standard of initiation in their legal submissions after the public hearing, the domestic industry has argued that it is apparent from the public file that none of the interested parties has filed their comments on initiation within the prescribed time limit from the date of initiation notification. Therefore, the interested parties cannot be allowed to raise any objection with respect to the initiation of the present investigation at such a later stage and the same may not be taken on record. It has been argued that it is not open for the interested parties to raise all kinds of issues at all points of time. If the issue relates to initiation, the interested parties can offer their comments at that stage itself within the prescribed time limits.

42. The interested parties have argued that there is no such stipulation in the law that objections to initiation has to be filed within 40 days from the date of initiation as argued by the domestic industry and they have the right to raise the issues during the course of the investigation.

43. The Authority notes that the exporters, importers and other interested parties have filed their questionnaire response within the prescribed time and

also filed their written submissions and rejoinders after the public hearing within the stipulated time. Therefore, the objections raised by the domestic industry in this respect are not tenable.

44. The domestic industry, in its various submissions, has also commented upon the questionnaire responses filed by the participating exporters and has argued that there are significant deficiencies and inadequate information in those questionnaire responses and therefore, those submissions of the exporters should be rejected and all of them should be declared non-cooperative.

45. The Authority notes that on the basis of comments of the domestic industry and examination done by the Authority, the participating exporters were asked to submit additional information to the extent required for this information. The exporters have complied with those requests from the Authority and the responses filed by the exporters have also been verified by the Authority to the extent required and feasible. Therefore, the arguments of the domestic industry in this respect have not been found to be tenable.

### **F.3 Miscellaneous submissions and injury arguments by interested parties**

#### **F.3.1 Organization of Plastics Processors of India and M/s Formosa Plastics, Taiwan**

46. The above interested parties have argued that analysis of injury parameters would show that the petitioning domestic industry does not suffer material injury as the capacity, production and sales have increased significantly and the petitioners have failed to provide information on all listed parameters of injury as mandated under Article 3.4 of the Act. Information about the performance of the petitioning companies as available in the public domain indicates a very healthy position. Therefore, their claim of injury is not justified. It has been further argued that third countries' average prices are in the same band of prices, or even lower as compared to the imports from the subject countries indicating thereby that there is no causal link between the imports from the subject countries and injury allegedly suffered by the petitioners.

#### **F.3.2 Diamond Pipes & Tubes Pvt. Ltd**

47. The above interested party has submitted that the PVC resin manufacturers in India are increasing and decreasing prices very often as per their wish, without any substantial change in their input costs. They also stop the supply 5-7 days before of any upward price revision creating scarcity of the product and affecting production of small-scale industries. Hence, any change in the duty structure by imposing Anti-Dumping Duty will lead to further monopoly and cartelization and put the thousands of small-scale industries into inconvenience and hardship. The demand of PVC being higher than the

domestic production and with the growth of over 12% in the industry, the imports are a necessity to meet the shortfall and also to keep on check the price of local manufacturers.

### **F.3.3 Association of ISI PVC Pipe Manufacturers of Tamil Nadu**

48. The Association in its brief submission has argued that local demand of PVC Resin is growing by almost 8 to 10% per annum and the PVC Resin manufacturers are adopting frequent price changes especially when the prices are to be increased based on international offer and non-availability for short period. If anti-dumping duty is imposed on the subject goods, it will increase the raw material price of the user industry and remove the competitiveness of the small-scale industrial sectors forcing them to close the industries. It has been argued that PVC pipes made out of PVC Resin was recognized by the Government as one of the key inputs for the growth of agriculture, rural water supply management and sewerage applications, etc. Abnormal price increase/decrease by the PVC resin manufacturers very often has seriously affected the working of thousands of small and medium scale industries who are at the mercy of procuring the raw materials from local PVC resin manufacturers.

### **F.3.4 M/s Premier Poly Film Ltd and M/s RMG Poly Vinyl India Limited**

49. The above interested parties have argued that the applicants have mentioned in their petition the name of almost all the countries from where PVC suspension grade is being imported except European countries, which shows that only European countries are not dumping their goods into India below its normal value. It has been argued that the goods are not being sold below its normal value or dumped into India as alleged. The Custom Authority assess the import consignment based on Platt's Polymer price applicable for above countries irrespective of invoice value, thus, the imported material becomes at par with the domestic price and sometimes, slightly higher.

### **F.3.5 M/s Sankhala Industries**

50. It has been argued by this party that whereas the prices of PVC resin has gone up in the domestic market, there has been marginal change in the prices of feed stock in the corresponding period and the domestic manufacturers are correcting the prices in tune with the international prices. During this period, the local manufacturers have enjoyed the custom duty arbitrage and priced the product taking note of the custom duties and CIF landed costs for the imports and the conversion factor for currencies i.e. USD to INR. International price of PVC Resin has been fluctuating according to market conditions in the world. The custom duty arbitrage between inputs for manufacturer of PVC Resin such as EDC/VCM and PVC resin itself was very high which helped all the local manufacturers to make bumper profits. It has been argued that the Resin manufacturers in India have formed cartel and are increasing the prices or

reducing month on month basis without any substantial change in the input costs. They have been keeping the price artificially higher and making profits whenever the international prices have moved up notwithstanding the fact that the buyers have not imported during the period. Any change in the duty structure by imposing anti-dumping duties will lead to further monopoly/cartelization and put the thousands of small-scale industries into inconvenience and hardship.

51. It has been argued that the local manufacturers of PVC resin have been correcting the prices both up and down with the international trend either weekly or monthly since last few years. The changes effected are at least 12 to 20 times a year which are based on the international pricing trend and Platt report which is released every Wednesday from the far-east and considered authentic equivalent to LME for metals. Further, the demand and supply are the only basis on which prices changes and all the exporting countries are adopting this method to price the product. India has witnessed shortages since last three years due to no additional capacity has been built up and demand has exceeded supply, the local manufacturers were arbitrarily increasing the prices for generating more profits. All the local manufacturers have been able to sell all their productions notwithstanding the import and are profit making.

52. It has been argued that there is no threat from dumped imports as some of the domestic industries have planned investments and further growth of the domestic industry and are expanding to meet the unprecedented growth in the construction boom and telecom revolution where PVC pipes are used. It has been argued that M/s. Finolex has doubled its capacity and are utilizing the same in 2006-07. M/s. Chemplat is expanding with a new facility by 2,00,000 MT at Cuddalore in 2007-08. M/s. IPCL/RIL have expansion plans for doubling in the next five years which is confirmed by Board resolution in the respective firms.

53. Hence, the demand being higher than the local production and with the growth of over 10% in the industry, the imports are a necessity to bridge the shortfall till the expanded capacities comes into full production. Therefore, any curtailment due to anti-dumping duty will result in higher domestic prices and act as hindrance in growth.

54. It has been argued that M/s. Finolex Ltd, which is also manufacturer of PVC Resin in local market, has also been importing PVC resin for their pipes plant as well as cable plant since last several years taking advantage of the competitive pricing and maximizing the profits by selling their resin local at higher prices, indicates that the local manufacturers do not have inventory nor are able to meet the local demand. The profitability of this company is on the rise and the company is also adding significant capacity. It has been further argued that the profits and ROCE of the companies are maintained and the companies are going for expansion. M/s. RIL and M/s. Finolex Industries whose production accounts for about 47% of the total production are not parties to this petition, which means there is no dumping.

### **F.3.6 M/s Marvel Vinyls Ltd.**

55. M/s Marvel Industries Ltd. in its submissions has argued inter-alia that there is no significant difference in average rates of the subject goods charged by exporters from the countries subject to investigation and other countries. Therefore, discriminating against the subject countries is not justified. They have also argued that actual price of the subject goods in the countries involved should be obtained for determination of Normal Value (NV) instead of Constructed Normal Value (CNV) suggested by the Domestic industry and export price and adjustments should be taken from reliable sources. It has been argued that the increase in import is due to significant increase in demand without corresponding increase in domestic production. The petitioners have added significant capacities during this period. It has also been argued that the prices of PVC resin is directly linked to the price of feedstock and has remained volatile through out the period of investigation and the domestic producers have also changed their prices as per the trend of international prices on more than 12 occasions.

### **F.3.7 All India Federation of Plastic Industries**

56. All India Federation of Plastic Industries, in its submissions, has inter-alia argued that

- The petition is based on 'Constructed Value' approach for determination of 'Normal Value' under the plea that the domestic market price in each of the eight subject countries is not available. It has also been argued that onus of obtaining the prices in the domestic markets of exports in the subject countries lies on the petitioners and the same can neither be shifted to the respondents or to the Authority. It has been further argued that determination of NV should follow the hierarchy laid down in the Rules. 'NV' therefore must be determined with respect to prices prevailing in each of the subject eight countries.
- It has been argued that PVC suspension grade is used by the user industry which manufacturers finished goods such as pipes and pipe fittings and plastic footwear and the Government has been recently making huge efforts for development work so that poor sections of society are uplifted. All such development work, where pipes and fittings are used will be very badly affected if anti-dumping duty is imposed on this product.
- That the domestic industry does not have the capacity to meet the entire demand in the country. During the period of investigation, while the total demand of PVC suspension grade was 1061920 MT, the total production of the domestic industry by all units was 747727 MT. Thus, the shortfall in supply during POI was met through imports of 215947 MTs, as per petitioners' own statistics. Thus, imports were inevitable no matter to what levels the domestic industry stretched their production capacity.

- That the domestic industry was operating above 100% capacity utilization and the drop in capacity utilization during the POI is due to capacity addition during this period. It is common knowledge that there are plants shut down and other reasons, due to which it was not possible to achieve 100% capacity utilisation. The average capacity utilization at 80%, in any industry at international level, is in fact considered very good.
- All the four units and RIL as well as M/s Finolex have been painting very rosy picture in their annual reports, in respect of demand and sale of PVC suspension grade. .
- That the prices of PVC suspension grade is moving in tandem with prices of crude petroleum and prices of their raw materials like EDC and VCM. Therefore, it is not correct to say that there has been any dumping as the prices are governed by crude oil prices which have been fluctuating very widely at international levels in the recent past.
- That not only prices are completely dictated by the domestic industry, but the quantity of supply is also being restricted, in order to create a shortage in the market. The domestic industry has further strengthened the cartel, in order to dictate prices.
- As claimed by the petitioners, the volume has increased from the subject countries but at the same time, the volume of imports has also increased substantially from other countries, specifically the EU, not alleged for dumping. The import prices from the other countries are also more or less in the same range.
- That the data presented by the petitioners indicate that while imports have been rising, the capacity utilization of the domestic industry was also going up simultaneously. Because of very positive prevailing market situation only, the domestic industry thought it appropriate to invest in expansion of the installed capacity, which went up by nearly 10% in 2004-05. Had the market situation not been positive, the domestic industry would not have made investment in up-gradation of the installed capacity and may have found it difficult to fund the project. Therefore, rise in import of the subject goods is totally immaterial for the purpose of determination of injury to the domestic industry.
- The annual reports of the applicant companies would show that during 2004-05 onwards, the demand in India has increased tremendously, which even the domestic industry could not project correctly. The use of PVC has also expanded in the areas like construction, infrastructure and irrigation, etc. in a big manner. Per capita consumption of PVC in India is far lower as compared to per capita consumption globally. With new thrust on the promotion and modernization of agriculture sector, the use of PVC is expected to grow manifold.
- Because of the sudden demand in the above-mentioned sectors, from 2003-04 onwards, the demand supply situation get reversed and imports become inevitable to cater the higher demand of PVC in India. The Indian producers also started expanding their capacities by way of expansion/ de-bottlenecking of existing capacities. In the process, the production

during 2004-05 and POI was also affected. During the same period, M/s. Finolex, one of the largest producers of the subject material in India also started expanding its capacities which has affected its productivity. M/s. Finolex in the circumstances also imported the material in substantial quantities to cater to the growing needs of the agricultural and construction industry.

- In the circumstances, the volume of imports has increased but at the same time the prices of the imports remain constant as per the international trend. In fact, the prices of PVC increased substantially during 2004-05 along with the volumes in India, during POI, volumes have increased but the prices fell down little bit during the mid of POI but started increasing from July/Aug'05 onwards. Further, after POI the import quantities have been reduced and prices have firmed-up as per the international trend. The quantities of imports have declined after POI due to increased capacities after expansion/de-bottlenecking and better capacity utilization by the domestic industry. Here, it may be noted that after POI, though the quantities have reduced, the prices have increased instead of decreasing as exporters have no intention to dump the material at lower price and capture the market share in India.
- PVC is a commodity and the prices of PVC are moving world-over as per the international trend in the market. Not only the PVC, but also the prices of raw material used for the production of PVC, like EDC and VCM, move internationally in line with the movement of PVC price. The price movement of PVC, EDC and VCM as per PLATT for the year 2003, 2004 and 2005 shows that the prices of all the three are moving simultaneously in tandem.
- The Petitioners have claimed that the landed value of imports has declined by 14% during POI as compared to preceding year 2004-05, but it has increased slightly as compared to the base year 2002-03. The basic customs duty during 2002-03 was 30%, which has come down to 10% during 2005-06. The CIF of subject material has rather increased substantially as compared to 2002-03 though the quantities of imports has increased which was inevitable because of rising demand and lower supplies by the domestic producers due to their plant shutdowns on account of expansion/de-bottlenecking/non-availability of raw materials. This shows that exporters have no intention to reduce the price and dump the material in India with an intention to cause injury to domestic industry.
- The petitioners have claimed that the market share of the domestic industry has declined during the injury investigation period. For the purpose of domestic industry's market share, the petitioners have very cleverly mentioned about the market share of four petitioner companies only. Respondents submit that if the market share of RIL and Finolex is added in the total of the petitioners share, an entirely different picture will emerge.
- The decline in profitability can be for various other reasons such as sharp rise in wages, as in the present case, one-time expenditure on account of

VRS as in IPCL and several other factors. Further, there is a robust increase in profits by the petitioners. Only, in the case of Chemplast in the year 2003-04, the profit declined from the previous year i.e, 2002-03. In fact, the worst sufferer is Finolex, which has not joined in the petition. Thus, there is no continuous decline in profits as claimed by the petitioners. Further, decline in profitability, if any, is not related to imports, as can be seen from the example of Finolex.

- There has been no price undercutting from the imports from the subject countries and therefore, the dumped imports could not have caused any injury to the domestic industry.
- The Domestic industry has been depending on the import of their raw materials and the PVC prices in the international market have been moving in tandem with the EDC/VCM prices. The domestic industry has no reason to complain as the prices of both PVC as well as Caustic Soda have remained good.
- The domestic industry has been selling the materials at dictated prices which are reflected in the capacity utilization beyond 100%. If they were incurring losses and were not able to realise genuine profits, they would have certainly not worked at more than 100% of their installed capacity. It is not correct to state that exporters from the subject countries have been depressing and suppressing the domestic price. The export price from the subject countries have moved in tandem with the cost of the main raw materials and this is also proved by the prices given in PLATT Bulletins. Prices have not gone uniformly up and there is no uniform depression as alleged.
- The contention of the petitioners that domestic industry has lost market share to the extent of 24% during POI as compared to the base year is quite misleading. It has already been stated that domestic industry has been working at near full capacity and even beyond the installed capacity. Further, the domestic industry made fresh investment in increasing the installed capacity, since they had already reached 121% of installed capacity for production of PVC in the year 2003-04. There was no way that this figure of 121% could move upwards in accordance with the rate of growth in market demand. Even after expansion, they have achieved 94% of capacity utilization very quickly. Therefore, there is no question of loss of market share as stated by the petitioners and there is also no direct threat to survival which prima-facie is a misleading statement in view of the utilization of installed capacity.
- The petitioner's contention that there has been material injury to the domestic industry is not correct and the threat of material injury being eminent is equally incorrect.

### **F.3.8 The All India Plastic Manufacturers Association**

57. The All India Plastic Manufacturers Association, in its submissions has argued that volatility of PVC Resin is positively not based on the volatility of

crude prices but has become a common phenomenon of international pricing. The countries named in the petition are having huge installed capacities of VCM/EDC/PVC and as such they have to follow the international trends to maximize their profits. The Indian manufacturers have also based their prices based on the landed cost of PVC Resin from abroad. The domestic manufacturers have taken full advantage of the higher duties on PVC all these years and under group guidance have conducted the business by fixing up their prices based on international pricing instead of basing on their production costs which could vary from producer to producer. It has also been argued that the Indian producers export the subject goods at huge discounts in line with the international prices.

58 It has also been submitted that the resin prices of K value 57-60 and K value 67 are many times same. Some manufacturers charge USD10 per ton more for K value 57-60. However, Indian PVC manufacturers have kept Rs. 2500/- basic price difference between these K values and controlled production.

59. The association has also raised the issues of gap in demand and supply in the domestic market and inevitability of imports to fill the gap, capacity utilization of the domestic industry, and profitability of the industry as has been raised by the other interested parties.

#### **F.3.9 M/s LG Chem, Korea**

60. M/s LG Chem in its submissions has raised the issue of excessive confidentiality claim of the domestic industry as recorded earlier. It has also been argued that the domestic industry should also file grade-wise (K-value-wise) information on cost of production, sales realization and other parameters as the exporters have been asked to file grade-wise information.

#### **F.3.10 M/s Taiyo Vinyl Corporation**

61. Commenting on the Domestic industry's claim that none of the interested parties have filed their comments on initiation within 40 days of initiation notification, therefore, they shall not be allowed to raise any issue relating to initiation thereafter referring to the WTO Appellate Body Report in the case of *US: Sunset Review of Oil Country Tubular Goods from Argentina* (WT/DS 268/AB/R). M/s Taiyo Vinyl Corporation has submitted that the decision of the appellate body was in the context of sunset review and not in the context of an original investigation. Further, neither the anti-dumping agreement nor the Indian law provides that no issues regarding initiation shall be raised after 40 days of the initiation of the investigation. Such a contention would be a violation of the first sentence of Article 6.2 which states throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defense of their interests.

62. It has also been argued that domestic industry has failed to file a NCV of Part VI – Costing Information of the application. The authority may direct the domestic industry to file a NCV of the same. If the information relating to costs and prices are confidential for the domestic industry, similar treatment ought to be given to the exporters also.

### **F.3.11 M/s LakshmiKumaran and Sridharan**

63. M/s LakshmiKumaran and Sridharan representing the following interested parties have made similar submissions on behalf of the parties represented by them:

- China Chlor-Alkali Industry Association, China PR
- M/s. Xinjiang Shihezi Zhongfa Chemical Co. Ltd. & M/s.Xinjiang Tianye Foreign Trade Co. Ltd.
- M/s. Yichang Yihua Pacific Cogen Co. Ltd. & Hubei Yihua Group Co. Ltd. & M/s. Shandong Ocean Chemical Import & Export Limited Company
- M/s. Shandong Ocean Chemical Chlor-Alkali Resin Limited Company
- M/s. Qingdao Haijing Chemical (Group) Co., Ltd., and
- M/s Malaysian International Trading Corporation SDN. BDH

64. In the submissions made on behalf of these interested parties, it has been argued that the application of the petitioners is grossly deficient in many respects and should not have been accepted by the Authority. One of the four petitioners viz. M/s Indian Petrochemicals Corporation Ltd (IPCL) is related to another domestic producer of the product concerned namely M/s Reliance Industries Ltd. (RIL). Of the two Reliance Group companies that manufacture the product concerned, only one of them has joined the petition. Therefore, one can easily presume that RIL is not at all suffering injury from the 'alleged' dumped imports and if their data is included, injury to the domestic industry might not be substantiated. It is a well established custom in anti-dumping cases that operations of related companies concerning the product concerned are examined together. RIL and IPCL put together command a market share of 53%. However, Reliance group has chosen to give information only with respect of 22% of the market share held by them and to hide the information relating to 31% of the market share, though they hold all the relevant information with them. It has been argued that Authority is required to determine NIP for the Indian industry as a whole in terms of the Supreme Court decision in Reliance Industries Ltd Vs DA & Others [In Purified Terephthalic Acid from Spain, Japan, Malaysia and Taiwan, Civil appeal No.1294/2001]. RIL is the appellant in the said case and they should abide by the decision of the Hon'ble Supreme Court.

65. It has been argued that the construction of NV by the petitioners based on the experience of the domestic industry is legally flawed. Use of data based on the experience of importing country or the complaining domestic producers is not permitted under the rules. It has to be based on the conditions prevailing in the

'country of origin'. Therefore, CNV projected by the petitioner is violative of the relevant legal provisions. The exporter has also questioned the estimation of export price based on secondary data sources and adjustments made.

66. In addition to the above, the exporter has raised several issues on the injury and causal link claims of the domestic industry which is similar to the arguments of other interested parties recorded above.

### **F.3.12 Domestic Industry**

67. Domestic industry in its submission has stated that the subject goods have been subjected to investigation by various countries. As per information of the domestic industry, following countries have initiated anti-dumping investigations against subject goods and have resorted to measures at appropriate levels:-

- a. China: against USA, Korea, Japan, Russia & Taiwan
- b. Turkey: against China PRC
- c. Australia: against USA, Japan, Israel, Hungary, Thailand & Korea
- d. Pakistan: against Korea & Iran

68. Therefore, clearly, majority of participating interested parties have been found to be habitual dumpers in most of such investigations including LG Chem., LG International Corporation, Hanwha Chemicals, Formosa Plastics, Taiyo Vinyl Corporation, Taiyo Plastics Corporation, and Kaneka Corporation. It has been argued that none of the exporters or producers, during the hearing, denied that they are not dumping their subject goods in India. Most of the present interested parties are only resorting to "country hopping" once they find that their supplies are blocked in other jurisdictions.

69. As regards the issues of injury and causal link, the domestic industry has argued that none of the interested parties have made any submissions disputing the claims of the domestic industry which have been duly substantiated in the petition. The domestic industry submits that the financial condition of the domestic industry has become very precarious which is apparent from the fact that the imports made at extremely low values and at dumped prices and there has been a substantial rise in imports from the subject countries. Dumped imports from the subject countries have increased from 69% to 85% as a share of total imports, 2.25% to 20.34% as a share of total demand and 2.55% to 28.88% as a share of domestic production. The landed value has declined by 14% over the preceding period despite increase in the raw material prices. The domestic prices have also declined by 10% over the preceding year due to dumped imports. The effect of these factors can be seen in the form of decline in market share from 46.44% to 37% while the domestic demand has grown by 43% during the injury period. Capacity utilization has declined from 114% to 94% during the POI. Sales Value has negligibly increased from 100 to 104 but the raw material costs alone have gone up from 100 to 117. Profit per unit has come

down from 100 to 3.34 (indexed). ROCE has declined to a meager 1% during period of investigation. Price underselling despite suppression of prices is visible. Price undercutting is indeed positive but this is due to the fact that the domestic sales attract an element of 4% sales tax/VAT which is not there in the case of imports. Therefore, the prices of the domestic industry have to be adjusted to match the landed value of imports. It has been argued that none of the so-called exporters had made any claim of sales to India at fair and undumped prices during the public hearing.

#### **F.4. Examination of the issues by the Authority**

70. The Authority notes that in the above submissions the interested parties have raised the issues of injury claims of the domestic industry and certain public interest concerns. These issues raised have been examined in appropriate sections in this finding.

#### **G. Dumping Determination**

71. As recorded in the previous section, 11 producers from China PR, 2 producers from Japan, 2 producers from Korea RP, 2 producers from Taiwan, one producer from Thailand, one producer from Indonesia submitted their questionnaire response in this investigation. However, due to participation of large number of producers-exporters from China PR, Authority resorted to sampling in terms of Rule 17 of the Rules for determination of dumping margin in respect of the Chinese exporters and selected three producers for detailed examination:

72. One of the responding exporters from Japan i.e. M/s Kaneka Corporation, Japan has pleaded that the goods exported by them is of specialty grades/types and as such those grades/types are not covered within the scope of product under consideration. Therefore, they have pleaded for their exclusion from this investigation. However, they have not filed complete questionnaire response for any meaningful determination of their dumping margin.

73. In addition to the two responding exporters from Taiwan, another exporter viz. M/s China General Plastics Corporation also has intimated vide e-mail dated 22<sup>nd</sup> November 2007 that they had sent the questionnaire response to the Authority in August 2006. However, these responses have not been received by the Authority. The exporter has also not made any communication with the Authority after August 2006 till 21<sup>st</sup> November 2007. Therefore, this exporter has not been considered for examination. This exporter has also mailed the copies of certain submissions and questionnaire responses supposed to have been filed and after disclosure of essential facts have made a plea that since their submissions have not been taken on record they should be provided an opportunity to request for a review.

74. The data submitted by other co-operating exporters to this investigation were verified in accordance with the Rules and reports of such verification carried out by the Authority were made available to the exporters for their comments. The dumping margins in respect of these exporters have been worked out based on the verified data taking into account the comments of the exporters to the verification reports to the extent they are relevant and valid.

### **G.1 Methodology of determination**

75. The Authority notes that the Hon'ble Supreme Court of India, in the Civil Appeal No. 1294 of 2001, M/s RIL Vs Designated Authority & Others, has held that normal value is not exporter-specific but exporting country-specific.

76. In pursuance of the above orders, Normal values of the subject goods for the subject countries have been determined. For the purpose of such determination, normal values of individual product types/grades have been determined first for the individual co-operating exporters and then a single weighted average normal value has been worked out for each of the product types/grades of the product under consideration at the product type/grade levels for the exporting country as a whole based on the normal values determined for the co-operating exporters, to the extent the grades/types are identical,. These country-specific normal values at the product type/grade levels have been compared with the export prices for the corresponding product types/grades of the individual exporters to determine individual dumping margins at product type/grade levels of the concerned exporters. The weighted average dumping margin for each exporter has been calculated on the basis of the product type/grade level dumping margins for that exporter. In their post disclosure submissions the domestic industry as well as several exporters have argued that determination of country specific normal value is not in order and violates the principles of the Agreement, The domestic industry has argued that computation of single normal value in terms of the Supreme Court Judgment is provided for the non-cooperative exporters and not for the cooperative exporters. It has been argued that individual normal value is required to be determined for each cooperative exporter separately. In this connection the Authority notes that the determination of the normal value has been done keeping in view the above judgment as explained above and therefore, the arguments of the domestic industry cannot be accepted.

### **G.2 Thailand**

#### **a) Normal value: M/s Thai Plastic and Chemicals Public Company Limited (TPC), Bangkok**

77. In response to the above anti-dumping investigation initiated by the Designated Authority, only one exporter from Thailand i.e. M/s Thai Plastic and Chemicals Public Company Limited (TPC), Bangkok filed its questionnaire

response and also responded to subsequent clarifications. On-the-spot investigation and verification of the data submitted by this producer-exporter was also conducted in the premises of the producer-exporter in accordance of the Rules. On the basis of the data submitted by this exporter and verified by the Authority, Normal Value for this co-operating exporter has been determined. Since there is no other co-operating exporter from this country, the Normal values determined for this exporter at the individual grade levels has been adopted as the normal value for Thailand as a whole as per the Hon'ble Supreme Court of India judgment quoted above

78. This is producer of the subject goods in Thailand and has two integrated production facilities in Thailand with a total capacity to produce \*\*\*\*\* MT of PVC Suspension Grade from Ethylene and Chlorine. Cost of production of PVC suspension grade was verified as per the records maintained by the company for conducting ordinary course of trade test.

79. The company has made \*\*\*\*\* transactions in the domestic market for total quantity of \*\*\*\*\* MT of PVC resin covering several grades of PVC. However, the company has exported only two grades of PVC resin to India during the POI. The company has significant quantities of sales of these two grades (\*\*\*\*\* MT and \*\*\*\*\* MT respectively) in its domestic market during the POI. Therefore, for the purpose of fair comparison, sales of these two grades in the domestic market and sales to India have been considered as like articles.

80. Out of total sales of \*\*\*\*\* MT of the two specific grades in the domestic market, the company has sold \*\*\*\*\* MT to its 3 affiliated companies in Thailand at an average price of \*\*\*\*\*baht per Kg. These affiliated companies are major users of PVC resin and sales are directly to these companies without involvement of an agent. Balance \*\*\*\*\* MT has been sold to unaffiliated customers at \*\*\*\*\*baht per Kg. Therefore, price structure to the affiliate does not show any significant difference and accordingly all sales transaction in domestic market for the above two grades have been examined for determination of normal value in Thailand.

81. The company sales the goods in the domestic market through certain agents and also sales directly to the customers. The agent-sales are on commission basis and the company pays a commission of \*\*\*\*\*% on all sales through the agents. Such transactions are against bank guarantees for which the guaranty fee and interest costs are also borne by TPC.

82. The company has claimed that since the transactions to India are through agents, for the purpose of fair comparison at the same level of trade, only domestic sales through the agents should be considered. However, the Authority notes that export sales to India are both, through agents and direct. The exporter has claimed all such adjustments towards the level of trade in their transaction-wise data and the selling price has been brought back to the ex-factory level for

the domestic sales. Therefore, it is appropriate to compare the export sales and domestic sales at the ex-factory level, irrespective of channel of distribution used.

83. For domestic sales, the resin is packed in 25kg two ply paper bag which can be loose stuffed or palletized. The company also sales the goods in the domestic market using jumbo packs or flexi packs. Certain major users also buy the resin in bulk using tank cars. Accordingly, average packing cost for packed materials has also been adjusted from the domestic selling prices of relevant transactions. Adjustments towards credit cost for the credit period against domestic transactions has also been allowed towards the credit period against the transactions involving credit to customers/agents.

84. The cost verification indicates that the costs of production of the two grades are same and average cost works out to \*\*\*\*\*Baht per Kg. The domestic transactions of these two grades were in sufficient quantity and not affected by affiliation as recorded earlier. Therefore, all transactions of these grades, after deducting all direct selling expenses have been subjected to ordinary course of trade test with the above cost of production including SGA expenses upto the ex-factory level.

Total Sales MT	*****
Profitable Sales MT	*****
% of Profitable sales	86%

85. Since profitable sales are more than 80% of total sales all domestic transactions are required to be considered for determination of normal value for this producer/exporter.

Product	Net Invoice		Total Adjustments	Net Value	Ex-Factory Price
	Qty. (Kg)	Value (Baht)	Baht	Baht	(Baht/kg)
SG660G2	*****	*****	*****	*****	*****
SP660G2	*****	*****	*****	*****	*****

**b) Export Price: M/s Thai Plastic and Chemicals Public Company Limited (TPC), Bangkok**

86. During the POI, this co-operating exporter has exported \*\*\*\*\* MT of the subject goods to India against \*\*\*\*\* transactions. Out of which, \*\*\*\*\* MTs have been exported through 5 traders' ex-stock and rest \*\*\*\*\*MT has been exported directly to India through their commission agents. Sales through traders are invoiced to the traders and goods have been shipped directly to India. Direct sales have been invoiced to India and payment has been realized against such transactions.

87. Against these invoice prices, the exporter has claimed adjustments against various direct selling expenses, including interest expenses, credit costs, commission, packing expenses, inland and ocean freights, insurance, terminal handling charges, labour cost and liff off charges, customs charges, gate charges etc. No discount or rebate has been paid by the company against any of the transactions. Direct selling expenses and adjustments towards the above have been verified from the records of the company and have been allowed to arrive at net ex-works export price. Taking into account the invoice prices and various direct selling expenses, net-ex-works export price of individual types of PVC has been worked out at ex-factory level as follows:

Product Code	Quantity MT	Net Invoice Value ( Baht)	Total Adjustments Baht	Net Value Ex-factory Baht	Price Baht/Kg
SP660G2	*****	*****	*****	*****	*****
SG660G2	*****	*****	*****	*****	*****

**C. Dumping Margin: M/s Thai Plastic and Chemicals Public Company Limited (TPC), Bangkok**

88. The Normal value determined for individual product types at the ex-factory level has been compared with the ex-factory export price of comparable products of the co-operating exporter to determine weighted average dumping margin for the exporter as follows:

Type	Quantity MT	Normal Value (Baht/kg)	Export Price Baht/Kg	DM Baht/Kg	DM USD/Kg
SP660G2	*****	*****	*****	*****	*****
SG660G2	*****	*****	*****	*****	*****
Weighted average	*****	*****	*****	*****	*****
Dumping Margin %				9.20%	9.20%

Average Exchange Rate: 40.35

**d) Dumping Margin: All other exporters from Thailand**

89. Dumping Margin for all other exporters from Thailand has been determined based on the product type-wise normal value determined for Thailand as per co-operating exporter's data and lowest export price of the co-operating exporter from Thailand as per best facts available. Accordingly, the dumping margin for all other exporters from Thailand works out as follows:

	NV Baht/Kg *****	EP Baht.Kg *****	DM Baht/Kg *****	DM USD/MT *****
All others			11.31%	

### G.3 Korea RP

#### a) Normal value:

90. In response to the above antidumping investigation initiated by the Designated Authority, two exporters from Korea RP i.e., M/s LG Chem Limited, Seoul, Korea and M/s Hanwha Chemical Corporation, Seoul, Korea filed their questionnaire responses and also responded to subsequent clarifications. On-the-spot investigation and verification of the data submitted by this producer-exporter was also conducted in the premises of the producer-exporters in accordance of the Rules. On the basis of the data submitted by these exporters and verified by the Authority, Normal Value for these co-operating exporters have been determined. Normal values determined for these exporters at the individual grade levels have been used for determining the weighted average Normal Value for Korea RP as a whole as per the Hon'ble Supreme Court of India judgment quoted above.

#### a.1) M/s LG Chem Limited

91. This Company has two production units producing PVC suspension grade, located at Yeosu and Daesan with a total capacity to produce \*\*\*\*\*MT of PVC Suspension Grade. The plants are fully integrated from Chlorine–Ethylene stage. The plants have dedicated lines for major grades of PVC. Cost of production of PVC suspension grade was verified as per the records maintained by the Company for conducting ordinary course of trade test.

92. The company had \*\*\*\*\* transactions of PVC suspension grade during the POI, in the domestic market for total quantity of \*\*\*\*\*MT of PVC resin. The exporter has classified the goods into 7 grades as per the K-values and other parameters. For the purpose of determination of normal value, the like article in the domestic market was examined. The company has exported only three grades corresponding to their grades LS080S, LS100, and LS130S to India during the POI and it had significant quantities of sales of these three grades in domestic market also. Quantities of domestic sales of these three grades are as follows:

Grade	Qty of domestic sales in MT	Qty of Export sales to India in MT
LS080S	*****	*****
LS100	*****	*****
LS130S	*****	*****

Total	*****	*****
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93. Therefore, total sales of the subject goods as well as sales of these three grades as indicated above are in sufficient quantities in the domestic market. Domestic sales of the company are to affiliated customers as well as unaffiliated customers. Significant quantities have been sold to three affiliated customers and rest of the sales are to unaffiliated customers in Korea. Affiliated sales are to two sister concerns of LG Chem. Details of sales in domestic market are as follows:

Type	Customer type	Qty Kg	Value KWon	Price	Difference
LS080S	Unaffiliated	*****	*****	*****	
LS100	Unaffiliated	*****	*****	*****	*****%
	Affiliated	*****	*****	*****	
LS130S	Unaffiliated	*****	*****	*****	*****%
	Affiliated	*****	*****	*****	

94. Since the average price to the affiliated customers is lower than the average price to unaffiliated customers by more than 5%, the sales to unaffiliated customers only has been considered for determination of normal value of this exporter.

95. Against the domestic sales, the exporter has claimed adjustments towards freight, commission, credit expenses, packing cost and post-sales technical service expenses to arrive at net-ex-works price of the domestic sales. The adjustment claims on domestic sales have been verified. It is found that the exporter sales the goods in the home market for domestic consumption as well as further export processing (dollar denominated). Domestic sales to major customers operating under open account system are against credit. The credit cost has been worked out based on average outstanding payment period of individual customer. Average interest rate of \*\*\*\*\*% per annum has been taken for transactions in Korean Won based on their monthly balance of monthly short term borrowings and interests paid. Deemed export supplies against local LCs also have credit period and credit cost has been computed on the actual credit period taking into account average Dollar denominated interest rate of \*\*\*\*\*% computed using the same methodology.

96. The Company pays commission to the agents who carry out marketing activities for LG Chem. The commission amount varies from agent to agent and is based on contract which indicates the performance linked commission rates for individual agents. The commission rate varies from \*\*\*\*\*% to \*\*\*\*\*% depending upon the customer/agent.

97. The domestic sales are ex-works as well as delivered basis depending upon the customers. On delivered sales, the exporter has incurred expenses towards Inland freight from the factory to the buyer for which adjustment has

been claimed. The transport cost including handling and other expenses were checked from the monthly freight invoices traced to individual transactions.

98. The Company had claimed uniform adjustment of Kwon \*\*\*\*\*per Kg for both domestic as well as export sales on account of packing. However, it was noticed that the exporter sales the goods in the domestic market in 25 Kg paper bags, 500 Kg jumbo bags and bulk cargo in tank cars whereas for the export market, only 25 Kg bags are used. 61% (\*\*\*\*\* MT) of domestic sales are in tank car requiring no packing. Remaining quantities are in packed condition. Based on the verified cost of packaging and total volume of packed sales, average packing cost PVC in packed condition was worked out to Kwon \*\*\*\*\* per MT for deduction from the domestic sales price transactions of PVC sold in packed condition to arrive at ex-factory level.

99. In addition to the above direct selling expenses, the exporter has also claimed adjustment on its domestic sales towards after-sales technical services provided by them to their domestic customers for product development through their technical teams in the branch offices. The exporter argued that this support is an integral part of the product sales expenses in domestic market which is not the case in the export market and therefore, adjustments towards these expenses should be allowed. However, the expense details of the branch offices submitted by the company shows that the expenses are towards salaries and employee benefits in the branch offices and therefore, these expenses do not qualify for such adjustment.

100. The domestic sales of the exporter were subjected to ordinary course of trade test based on the cost of production of the company at the ex-factory level and accordingly the ex-factory domestic selling price of this exporter worked out as follows:

Product type	Total Domestic sales (KG)	Average Price USD/MT	COP US\$/MT	Profitable sales Volume	Average Price US\$/MT	% of profitable sales	NV US\$/MT
LBS100	*****	*****	*****	*****	*****	87%	*****
LBS130 S	*****	*****	*****	*****	*****	82%	*****
LBS80S	*****	*****	*****	*****	*****	65%	*****

**a.2) M/s Hanwha Chemical Corporation**

101. The Company has two production units producing PVC, located at Yeosu and Ulsan with a total capacity to produce \*\*\*\*\*MT of PVC Suspension Grade. The plants are fully integrated from Chlorine–Ethylene stage. Cost of production of PVC suspension grade was verified as per the records maintained by the Company for conducting ordinary course of trade test.

102. Company has\*\*\*\*\* transactions in the domestic market for total quantity of \*\*\*\*\*MT of suspension grade PVC resin, covering several grades of PVC (P700 to P2500). For the purpose of determination of normal value, the like article in the domestic market was examined. The company has exported only three grades (P-700, P-1000 & P-1300) grades of PVC resin to India during the POI and it had significant quantities of sales of these three grades in domestic industry also. Quantities of domestic sales of these three grades are as follows:

Grade	Qty of domestic sales in MT	Qty of Export sales to India in MT
P-700	*****	*****
P-1000	*****	*****
P-1300	*****	*****
	*****	*****

103. Therefore, sales of these three grades in the domestic market are in sufficient quantities and are like articles for the purpose of fair comparison with export to India.

104. Domestic sales of the company are to affiliated customers as well as unaffiliated customers. Significant quantities have been sold to three affiliated customers and rest of the sales are to unaffiliated customers in Korea. Details of sales in of the grades sold in export market and domestic market are as follows:

	Qty	Value	Price	Difference
P-700				
Affiliate sales	*****	*****	*****	
Non-Affiliate sales	*****	*****	*****	*****%
Total	*****	*****	*****	
P-1000				
Affiliate sales	*****	*****	*****	
Non-Affiliate sales	*****	*****	*****	*****%
Total	*****	*****	*****	
P-1300				
Affiliate sales	*****	*****	*****	
Non-Affiliate sales	*****	*****	*****	*****%
Total	*****	*****	*****	

105. Since the average price to the affiliated customers is lower than the average price to unaffiliated customers by more than 5%, the sales to unaffiliated customers only have been considered for determination of normal value of this exporter.

106. Against the domestic sales, the exporter has claimed adjustments towards agent's commission, credit costs and inland transport cost. The domestic sales of the company are on consignment basis and consignment agents get a

commission of average \*\*\*\*\*% on the invoice value on most of the unaffiliated sales contracts. As far as credit is concerned, credit cost on the credit period agreed between the seller and the buyer has been worked out taking into account short- term borrowing rate during POI. On the domestic invoice values, the exporter has incurred expenses towards Inland freight from the factory to the buyer for which adjustment has been claimed. The transport cost charged by the transporter includes handling and other expenses and rates have been fixed based on distances involved.

107. The Company did not claim any adjustment in domestic selling price on account of packing cost and indicated that the packing cost is included in the cost of production. However, it was noticed that the exporter sales the goods in the domestic market in 25 Kg paper bags, 500 Kg jumbo bags and bulk cargo in tank cars whereas for the export market, only 25 Kg bags are used. Domestic sales of bulk material are more than 55% of their total sales and remaining quantities are in packed condition. It was also noticed that packing cost is not included in the cost of production. Therefore, for the purpose of ordinary course of trade test as well as for comparison at ex-factory level, adjustment for packing materials been done on the domestic selling price of transactions involving packing. Based on the verified cost of packaging and total volume of packed sales, average packing cost per MT of PVC was worked out as US\$ \*\*\*\*\*per MT

108. Unaffiliated domestic sales were subjected to ordinary course of trade test against the verified cost of production and the normal value has been worked based on this data as follows:

Grade	Qty MT	Price US\$/MT	COP US\$/MT	Profitable sales volumes	Percentage of profitable sales	NV US\$/MT
P700	*****	*****	*****	*****	95%	*****
P1000	*****	*****	*****	*****	89%	*****
P1300	*****	*****	*****	*****	92%	*****

**a.3) Normal Value for Korea RP**

109. On the basis of the normal values determined for individual exporters, weighted average normal value for Korea RP have been determined at product type/grade level for determination of dumping margin of individual exporters.

**b) Export Prices**

**b.1) Export Price- LG Chem**

110. During the POI, the LG Chem has exported \*\*\*\*\* MT of 3 different grades of the subject goods to India against 3822 transactions. Out of which, \*\*\*\*\*MTs have been exported directly by the company to customers in India and balance

quantity \*\*\*\*\* MT have been exported through traders including its affiliated trader viz. M/s LG International. The goods have been invoiced to India and payment has been realized against LC/LC at sight. Against these invoice prices, the exporter has claimed adjustments against various direct selling expenses including credit costs, commission, packing expenses, logistic expenses, insurance, customs brokerage fee and duty drawback. Individual adjustments claimed have been verified from the records of the company. Export sales to India are in 25 Kg two ply paper bags. Packing expense adjustment on its exports to India as claimed by the exporter in its questionnaire response was found to be wrong. Therefore, the packing expenses were re-worked out taking into account different types of packing used in domestic and export sales. Accordingly, adjustment towards packing cost on exports worked out to Kwon \*\*\*\*\*/ MT.

111. The drawback is claimed by the exporter and admitted by the Customs on export transactions based on the duty paid on imported raw material consumed on the export product during the POI. Adjustments towards drawback claims on the export sales as verified from the records of the company have been allowed for the purpose of determination of net EP at ex-factory level. On the basis of the above, net ex-works export price of the product types/grades of this exporter works out as follows:

Product code	Sum of Quantity (MT)	Sum of Net Invoice Value USD	Sum of Ex-factory USD	EP USD/MT
LS080S	*****	*****	*****	*****
LS130S	*****	*****	*****	*****
LS100	*****	*****	*****	*****

**b.2) Export Price-Hanwha Chemical Corporation**

112. During the POI, M/s Hanwha Chemical Corporation (HCC) has exported \*\*\*\*\* MT of the subject goods to India against \*\*\*\*\* transactions. During the POI, HCC has sold only three grades of PVC Suspension. All exports to India are on CIF term and LC at sight or usance basis. All sales except two transactions are through its affiliated trader viz. M/s Hanwha Corporation (HWC). HWC acts as a commission agent between HCC and Indian Customers against payment of fixed commission on the shipments to India under a service contract between the parties. The Commission amount takes care of documentation and negotiation of shipping documents, ocean insurance expense and sub-agent’s commission less than US\$ \*\*\*\*\* per MT. The unit price to the Indian customer is the invoice price of HWC. HCC raises the invoice to HWC excluding the HWC commission.

113. Against the export transactions, the exporter has incurred inland transport expenses, ocean freight expenses and port handling expenses, and commission paid to HWC which were verified from the records of the company. Ocean

insurance and subagent's commissions are included in HWC's commission and hence no deduction is required from the invoice value.

114. It was also noticed that the exporter has not made any allowance towards the packing cost in the export transactions though all exports are in 25 Kg paper bags. However, average packing cost as worked out above @ US\$ \*\*\*\*\* per MT is applicable for the export transactions and deduction from the invoice prices has been made towards this cost to arrive at net export price at ex-works level. The exporter has not claimed addition of drawback amount to the export price. It was noticed that this producer imports only salt for production of chlorine and all other raw materials are captively produced in-house or procured from its Joint Venture partner in Korea. Therefore, their drawback claim of duty paid on imported inputs, on export of PVC is very marginal and hence no adjustment towards this has been claimed.

115. On the basis of the above, net export price of the product types/grades at ex-works level works out as follows:

	Data				EP
Product code	Sum of Qty (MT)	Sum of Gross Invoice Value (US\$)	Sum of Total adjustment (US\$)	Net Value (US\$)	Net Price US\$/MT
P1000	*****	*****	*****	*****	*****
P1300	*****	*****	*****	*****	*****
P700	*****	*****	*****	*****	*****

### b.3) Export Price-Others

116. `Export Price for other non-cooperative exporters in Korea RP has been determined based on the lowest export price determined for the co-operative exporters. Accordingly, net ex-works export price for other exporters in Korea has been determined as USD \*\*\*\*\*Per MT

### c. Dumping Margins: Korea RP

#### c.1 LG Chem

117. Normal value determined for Korea RP at ex-works level for individual types/grades has been compared with the ex-works export price of LG Chem for the corresponding product types/grades to arrive at weighted average dumping margin for this exporter as follows:

Product Type	Sum of Quantity (MT)	EP USD/MT	NV USD/MT	DM USD/MT

LS080S	*****	*****	*****	*****
LS130S	*****	*****	*****	*****
LS100	*****	*****	*****	*****
Weighted average	*****	*****	*****	*****
DM Percentage				<b>0.03%</b>

### c.2 Hanwha Chemical Corporation

118. Normal value determined for Korea RP at ex-works level for individual types have been compared with the ex-works export price of Hanwha for the corresponding product types to arrive at weighted average dumping margin for this exporter as follows:

	Data	EP	NV	
Product code	Sum of Qty (MT)	Net Price US\$/MT	US\$/MT	DM US\$/MT
P1000	*****	*****	*****	*****
P1300	*****	*****	*****	*****
P700	*****	*****	*****	*****
Weighted Average	*****	*****	*****	*****
DM Percentage				1.36%

### c.3) All others

119. Highest normal value of all product types from Korea RP at ex-works level has been compared with the lowest ex-works export price as determined above for all other exporters from this country to work out the dumping margin for all non-cooperating exporters from Korea which works out as follows:

	NV USD/MT	EP USD/MT	DM USD/MT	DM %
All others	*****	*****	*****	8%

## G.4 Indonesia

### a) Normal value: M/s PT Asahimas Chemicals, Indonesia

120. In response to the above anti-dumping investigation initiated by the Designated Authority, only one exporter from Indonesia viz. M/s PT Asahimas Chemicals, Indonesia filed its questionnaire response and also responded to subsequent clarifications. On-the-spot investigation and verification of the data submitted by this producer-exporter was also conducted in the premises of the producer-exporter in accordance of the Rules. On the basis of the data submitted by this exporter and verified by the Authority, Normal Value for this co-operating

exporter has been determined. Since there is no other co-operating exporter from this country the Normal values determined for this exporter at the individual grade level has been adopted as the normal value for Indonesia as a whole as per the Hon'ble Supreme Court of India judgment quoted above.

121. The company has \*\*\*\*\* transactions in the domestic market for total quantity of \*\*\*\*\*MT of PVC resin covering 5 grades. Domestic sales of the company are to the unaffiliated customers. Major portion of the domestic sales are through two distributors and rest are to direct customers. Sales through the distributors are partly on cash basis and partly against credit of 15 days. Sales to direct customers are on various credit terms.

122. For the purpose of determination of normal value, the like article in the domestic market was examined. The company has exported only four grades of PVC suspension grades i.e., FJ 57, FJ 65R, FJ 65S and FJ 70 to India during the POI and it had significant quantities of sales of these four grades in domestic market also. Quantities of domestic sales of these four grades are as follows:

Grade	Qty of domestic sales in MT	Qty of Export sales to India in MT
FJ 57	*****	*****
FJ 65R	*****	*****
FJ 65S	*****	*****
FJ 70	*****	*****

123. Therefore, total sales of the subject goods as well as sales of the above grades are in sufficient quantities in the domestic market.

124. Against the domestic sales transactions, the exporter has claimed adjustments towards discounts, transportation cost, warehouse expenses, insurance expenses, pallet costs, royalty and advisory fee expenses and credit costs to arrive at net ex-works prices. The adjustments claimed were verified from their records. Total distribution cost of the company was checked from the profit and loss accounts of the company and the distribution expenses statement of the company for the period 2005. It was noticed that the distribution expense of PVC includes the logistic/transportation expenses, warehousing cost, insurance expenses and handling expenses. Therefore, adjustments wrongly claimed separately on these accounts have been disallowed. The credit adjustment claimed by the exporter on a higher rate of interest has been revised taking into account Bank of Indonesia interest rate during the period.

125. As per the license agreement with its main promoter and major shareholder for production of PVC, the producer pays a royalty of \*\*\*\*\*% of its sales value in the domestic market only. Accordingly, adjustment towards this expense has been allowed on domestic sales.

126. The sales in domestic market and exports to India are in packed condition in paper bags. Therefore, no adjustment towards packing cost was required. However, the sales in domestic market are in palletized form whereas exports to India are loose stuffing of 25 Kg paper bags in containers. Therefore, an adjustment towards pallet cost only has been allowed on the domestic sales.

127. The exporter has submitted that their cost of production had a significant monthly variation due to price variation of the crude oil during this period and accordingly, their domestic as well as export sales prices varied significantly during such months. It was also argued that price variation is not in terms of grades but is a function of time and customer. Since they had export sales only during few months, it would be appropriate to compare the domestic sales of the corresponding months only for a fair comparison on transaction to transaction basis. They also submitted statements of monthly cost of production and SGA expenses as well as monthly sales and export data in support of this claim to demonstrate that the monthly cost and price variations are significant. The exporter also demonstrated that the price of different grades supplied to one customer is same during a particular month and therefore, the price differential is not in terms of grades but the prices have varied from month to month. Accordingly, the exporter has argued that the like to like comparison should be done in terms of time and not on grade to grade basis. The domestic industry, in its post disclosure submissions has argued that the determination for this exporter's should be done in the same manner in which determination has been made for the other exporters.

129. The Authority has examined the above issues raised by this exporter and notes that Rule 6 (1) of the AD Rules provides that

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

130. In the instant case, the Company has demonstrated that their cost of production, therefore, domestic prices and export prices have varied significantly from month to month during the POI due to the fluctuation of raw material prices. It has also been demonstrated that there is no significant price variation between different grades at a particular point of time. Therefore, in terms of the above provision, the Authority finds it appropriate to compare the normal value determined on monthly basis for the purpose of fair comparison with the export prices of the corresponding months. Accordingly, monthly domestic sales have

been subjected to ordinary course of trade test based on verified monthly cost of production and normal values have been determined as follows:

Month	Sum of Quantity(MT)	Sum of net invoice value (USD)	Sum of total adjustments (USD)	Net invoice value (USD)	Net Price USD/MT	Cost USD/MT	NV USD/MT
Jan	*****	*****	*****	*****	*****	*****	*****
Feb	*****	*****	*****	*****	*****	*****	*****
Mar	*****	*****	*****	*****	*****	*****	*****
April	*****	*****	*****	*****	*****	*****	*****
May	*****	*****	*****	*****	*****	*****	*****
June	*****	*****	*****	*****	*****	*****	*****
July	*****	*****	*****	*****	*****	*****	*****
Aug	*****	*****	*****	*****	*****	*****	*****
Sept	*****	*****	*****	*****	*****	*****	*****
Oct	*****	*****	*****	*****	*****	*****	*****
Nov	*****	*****	*****	*****	*****	*****	*****
Dec	*****	*****	*****	*****	*****	*****	*****

**b) Export Price: M/s PT Asahimas Chemicals, Indonesia**

131. During the POI, the Asahimas has exported \*\*\*\*\*MT of the subject goods (FJ 57, FJ 65R, FJ 65S and FJ 70) to India against \*\*\*\* transactions. Out of which, \*\*\*\*\*MTs have been exported through its affiliated company viz. M/s Mitsubishi Corporation and balance quantity has been exported through an unrelated trader viz. M/s Mitsui and Co. The company did not have any direct sales to India during the POI. The traders involved have not provided any information about their actual selling price in India. However, the Company clarified that prices with the Indian customers are negotiated by the traders and after conclusion of the negotiation, the traders place order on Asahimas for shipping the goods to Indian customers. The price arrangement between the traders and Asahimas is such that Asahimas raises the invoice on the traders for an amount which is \*\*\*\*\*% less than the price negotiated between the Indian buyer and the traders. The traders in turn raise another invoice on the Indian customer. Accordingly, the company claimed that its export price should be based on the price supposed to have been charged by the traders as per the information available with it, instead of resorting to best facts available in view of non-cooperation of the traders involved on whom they have no control. In their post disclosure submissions the exporter has again reiterated its argument for determination of their export price for both dumping and injury margin calculations based on the assumed sales price of the traders or the import price from the import statistics in India.

132. The Authority notes that though M/s Mitsubishi and Mitsui have not cooperated in the investigation and submitted any information in respect of exports made by them on behalf of Asahimas, verification carried out in the premises of Mitsui in connection with the export sales made by them on behalf of

another producer reveals that the final export price of these exporters are not necessarily same as reported by them to the producers. Depending upon the market conditions, they have sold the goods to Indian customers at a price which is higher or lower than the prices indicated by them to the producers. Therefore, the CIF price cannot be arrived at as claimed by Asahimas. Since the goods have been sold by the responding exporter for exports to India, the price at which the goods have been sold by them to the traders for exports to India constitute their export price and the traders would suffer for their non-cooperation and would attract residual duty. Therefore, the Authority proceeds to determine the export price of this exporter on the basis of its invoice price to the traders after deducting the direct selling expenses as verified.

133. Against the invoice prices, the exporter has claimed adjustments against various direct selling expenses, including credit costs, Inland freight and ocean freight expenses, and terminal handling charges. Discount of \*\*\*% has already been taken into account in the CNF/CIF prices reported by the exporter in its net invoice value to the traders, therefore, not adjusted separately.

134. Since there is no difference in packing types between the sales in the home market and the export to India as noted earlier, no adjustment towards packing has been made from the export price.

135. The exporter has argued and the Authority is of the view that comparison of the monthly average export price with monthly average domestic sales price in ordinary course of trade is appropriate for a fair comparison in view of wide fluctuation in cost and prices of the subject goods during the POI. On the basis of the above, net export price of this exporter has been worked out as follows:

Month	Sum of Quantity MT	Sum of invoice Value USD	Sum of Total adjustment USD	Sum of Net Value USD	Export Price USD/MT
Jan	*****	*****	*****	*****	*****
Feb	*****	*****	*****	*****	*****
May	*****	*****	*****	*****	*****
June	*****	*****	*****	*****	*****
Jul	*****	*****	*****	*****	*****
Aug	*****	*****	*****	*****	*****
Sep	*****	*****	*****	*****	*****
Oct	*****	*****	*****	*****	*****
Dec	*****	*****	*****	*****	*****

**b.2) All others**

136. Export Price of the non-cooperating exporters from Indonesia has been determined based on the basis of the co-operating exporter's data as per best facts available. Accordingly, net ex-works export price of the non-cooperating exporters from Indonesia has been determined as USD \*\*\*\*\*Per MT.

**c) Dumping Margins: Indonesia**

**c.1) M/s PT Asahimas Chemicals, Indonesia**

137. Monthly normal values determined for the above exporter at ex-works level have been compared with the monthly export prices to arrive at the weighted average dumping margin for this exporter as follows:

Month	NV USD/MT	EP USD/MT	DM USD/MT	Qty MT
Jan	*****	*****	*****	*****
Feb	*****	*****	*****	*****
May	*****	*****	*****	*****
June	*****	*****	*****	*****
July	*****	*****	*****	*****
Aug	*****	*****	*****	*****
Sept	*****	*****	*****	*****
Oct	*****	*****	*****	*****
Dec	*****	*****	*****	*****
Weighted average		*****	*****	*****
DM %			7.99%	

**c.2) All others**

137. Weighted average Normal value of Indonesia at ex-works level has been compared with the ex-works export price of all other exporters from that country as determined above to work out the dumping margin for all non-cooperating exporters from Indonesia which works out as follows:

	NV USD/MT	EP USD/MT	DM USD/MT	DM %
All others	*****	*****	*****	16.10%

**G.5 Chinese Taipei (Taiwan)**

**a) Normal value:**

139. In response to the above anti-dumping investigation initiated by the Designated Authority, two exporters from Chinese Taipei viz. M/s Formosa Plastics Corporation and M/s Ocean Plastics Corporation filed their questionnaire responses and also responded to subsequent clarifications. On-the-spot investigation and verification of the data submitted by these producers/exporters was also conducted in the premises of the producers/exporters in accordance with the Rules. On the basis of the data submitted by the producers/exporters and verified by the Authority, Normal Value for Chinese Taipei has been determined as per the method explained earlier.

**a.1) M/s Formosa Plastics Corporation**

140. The Company produces PVC suspension grade in three plants located in Central and Southern Taiwan. The production process of the Company is fully vertically integrated starting from basic raw material level. The Company produces its own Chlorine and EDC/VCM from Ethylene obtained from other petrochemical producers in Taiwan.

141. FPC has sold \*\*\*\*\*MTs of PVC suspension grade in its home market against \*\*\*\*\* transactions during the POI. However, out of total sales, \*\*\*\*\*MTs were sold to its own affiliated Companies i.e., M/s Naya Plastics and M/s Formosa Chemical Fibres and balance \*\*\*\*\*MTs have been sold to unaffiliated parties in the domestic market. Therefore, the sales to affiliated parties were found to be more than \*\*\*\*\*% of total sales in the domestic market. The average price of the grades sold in the home market to affiliated parties was found to be about \*\*\*\*\*% lower than the average price to unaffiliated customers. Therefore, the affiliated sales have not been considered for determination of normal value in Chinese Taipei.

142. The Company has sold eight different grades of PVC resin in its home market during the POI, out of which only 4 (S-60, S-65, S-65S and S-70) grades have been exported to India. The quantities of these grades sold in the home market to unrelated customers at arms length are in sufficient volumes for determination of Normal value and apple to apple comparison with the like grades exported to India. After disclosure of the essential facts the Company has pointed out certain errors in computation of Normal value and Comparison with the Export price as two Grades/Types not exported to India has been captured in the Normal Value computation and resulting in a skewed comparison. The data has been rechecked and it was noticed that while the export were of product subtypes S-60-T, S-60-U, S-65S-T, S-65-T and S-70-T, by mistake product subtypes S-60-T, S-60-U, S-65S-T, S-65S-U, S-70-T, and S-70-U was selected from the domestic sales for normal value determination resulting in a skewed comparison. The data has been rechecked and corrected for determination of normal value and export price on like to like basis.

143. The domestic sales are to direct end users with small quantity sold to the traders during the POI. The price is generally delivered price and customers preferring to get the goods at ex-works get a discount equivalent to the freight cost. Mode of payment in domestic transactions was also checked. Domestic sales are against cash advance or credit against mortgage for 60 days. Credit transactions are settled monthly at the end of the credit period. Most of the domestic customers pay in advance of shipment, with only a small portion enjoying credit periods. For the customers operating under credit facility, credit cost is factored in the price for those customers. Average rate of interest calculated on the basis of all short terms loans during the POI and interest pay

outs during this period. The Company also offers a quantity discount depending upon the quantity off-take by a party during the month which varies from \*\*\*\*\*NT\$/Kg to \*\*\*\*\*NT\$/Kg.

144. There are only two elements of adjustments in the domestic sales. Inland freight and credit cost against domestic transactions have been deducted to arrive at the net ex-works selling price of this producer/exporter.

145. It was also noticed that the exporter did not make any adjustment to the prices to take into account the Packing types and differential packing costs for the domestic and exports sales. Packing cost for various types of packing used in domestic as well as export sales has been worked out as per the cost records of the company and necessary adjustments have been made to domestic selling price to arrive at net selling price at ex-works level.

145. Unaffiliated domestic sales transactions were subjected to ordinary course of trade test against the verified cost of production and the normal value has been worked out based on this data as follows:

	Data	Average Exchange rate		31.81745
Grade	QUANTITY in Kg	Net Realization in NT\$	Net Price NT\$/Kg	NV USD/MT
S-60-T	*****	*****	*****	*****
S-60-U	*****	*****	*****	*****
S-65S-T	*****	*****	*****	*****
S-65-T	*****	*****	*****	*****
S-65-U	*****	*****	*****	*****
S-70-T	*****	*****	*****	*****

**a.2) M/s Ocean Plastics Corporation**

147. This responding company produces several products including PVC suspension grade and products manufactured out of PVC and major portion of the PVC resin manufactured by them is self consumed by the company for its PVC products. It has only one production unit manufacturing the subject goods located near Taipei with a capacity of \*\*\*\*\* MT of PVC suspension grade per annum. The company does not have Chlor-alkali plant to produce Chlorine and produces PVC from VCM stage procured locally as well as imported.

148. The company has sold \*\*\*\*\*MT of Suspension Grade PVC during the POI against \*\*\*\*\* transactions. The entire sale of the subject goods is to unaffiliated customers in the domestic market. Domestic sales are through traders as well as directly to end users. Domestic sales are in cash and TT terms. However, certain regular customers also avail credit facility up to 30 days Credit period is calculated as the period from the date of invoice to the date of payment and

standard average bank interest rate has been taken for notional adjustment towards the credit cost against the customers availing credit facility.

149. The company offers quantity discounts to regular customers based on their volume off-take during the month, which is adjusted at the end of the month. Quantity discount rate varies from NT\$ \*\*\*\*\*/kg to NT\$ \*\*\*\*\*/Kg depending upon the volume.

150. Actual direct selling expense towards inland freight has been adjusted from the selling price to arrive at the ex-works price. It was noticed that the Company did not claim any packing differential or differential packing cost for domestic and export sales as the exporter claims that there is no significant difference in cost of packing material for bulk pack and paper bag packing. But as per their standard pricing policy, the price difference between bulk and paper bag packs is NT\$ \*\*\*\* per Kg and there is no price difference between jumbo pack and tank car prices. Based on this, average packing cost for domestic and export sales have been worked out for adjustment to the domestic and export selling prices for fair comparison.

151. Unaffiliated domestic sales transactions of the exporter were subjected to ordinary course of trade test against the verified cost of production and the normal value has been worked based on this data as follows:

Grade	Total Qty Kg	Avg Price	COP NT\$/Kg	Profitable sales qty	Exch Rate		31.81745		
					Avg Price NT\$/Kg	% of Profitable sales	Packing adjustment	NV NT\$/Kg	NV USD/MT
S101	*****	*****	*****	*****	*****	*****	*****	*****	*****
S108	*****	*****	*****	*****	*****	*****	*****	*****	*****

### a.3) Normal Value: Chinese Taipei

152. On the basis of the normal values determined at product type/grade levels for the co-operating producers, weighted average normal value at product type levels for Chinese Taipei has been determined for comparison with the export price of individual exporters at the same level.

### b) Export Price

#### b.1) Export Price: M/s Formosa Plastics Corporation

153. During the POI, Formosa exported \*\*\*\*\* MT of the subject goods to India. The exports are directly to customers in India as well as through traders and resellers. The commission amount to the traders is fixed at US\$\*\*\*\*\*/MT for all traders. The goods are directly shipped to India under the instruction from the trader and/or customers from India. B/L and shipping documents are prepared by

Formosa. Delivery terms of all the sales are either CIF or C&F. Goods are delivered directly by the Company to the end-user.

154. Against the export sales, the Company has claimed adjustments towards direct selling expenses i.e., Inland and ocean freight and insurance expenses, document fee and handling fees, trade promotion fee and harbour service fee, credit cost and packing cost. After adjusting the direct selling expenses as verified from the records of the company, the net ex-works price for the exporter works out as follows:

Product Type	QUANTITY Kg	Sum of NET INVOICE VALUE USD	Sum of Sum Adjustments in USD	Sum of Net Value Realized USD	Net EP US\$/MT
S-60-T	*****	*****	*****	*****	*****
S-60-U	*****	*****	*****	*****	*****
S-65S-T	*****	*****	*****	*****	*****
S-65-T	*****	*****	*****	*****	*****
S-65-U	*****	*****	*****	*****	*****
S-70-T	*****	*****	*****	*****	*****

### b.2) Export Price: M/s Ocean Plastics Corporation

155. OPC has exported only \*\*\*\*\* MT of suspension grade PVC to India during the POI against \*\*\*\*\* transactions covering only two grades. Out of \*\*\*\*\* export transactions to India, \*\*\*\*\* transactions are through traders and rest is to direct customers in India. There is no difference in price to different customers as per the pricing policy of the company. However, the company pays agency commission against certain transactions to direct customers in India at the rate of US\$ \*\*\*\*\*/MT. There is no quantity discount on export sales. The exporter has claimed adjustments towards direct selling expenses viz. inland transportation, ocean freight cost and handling charges, insurance, harbour duties and export development charges which were verified. As noted above, the exporter has not made any adjustment towards the difference in export packaging. The export consignments are packed in 25Kg paper bags and accordingly, an adjustment @\*\*\*\*\* NT\$/MT is required to be made on the export transactions to arrive at ex-factory export price for like to like comparison at same level of trade. Accordingly, net ex-works export price of this exporter works out as follows:

PRODUCT CODE	QUANTI TY Kg	NET INVOICE VALUE (NT\$)	Sum of Total Adjustments (NT\$)	Sum of Net Value (NT\$)	EP NT\$/Kg	EP USD/MT
S-101	*****	*****	*****	*****	*****	*****
S-107	*****	*****	*****	*****	*****	*****

### b.3) Export Price: Others

156. Export Price of all other non-cooperating exporters from Taiwan has been determined on facts available basis taking into account the data of the cooperating exporters from Taiwan. Accordingly, weighted average net export price for all other exporters from Taiwan has been determined as USD \*\*\*\*\*per MT.

**c) Dumping margin**

**c.1) Dumping margin: M/s Formosa Plastics Corporation**

157. Normal values determined for Chinese Taipei at ex-works level for individual types have been compared with the ex-works export prices of Formosa for the corresponding product types to arrive at weighted average dumping margin for this exporter as follows:

PRODUCT CODE	Sum of QUANTITY Kg	Net EP US\$/MT	NV(US\$/MT)	DM USD/MT
S-60-T	*****	*****	*****	*****
S-60-U	*****	*****	*****	*****
S-65S-T	*****	*****	*****	*****
S-65-T	*****	*****	*****	*****
S-65-U	*****	*****	*****	*****
S-70-T	*****	*****	*****	*****
Weighted Average	*****	*****		*****
DM %				1.53%

**c.2) Dumping Margin: M/s Ocean Plastics Corporation**

158. Normal values determined for Chinese Taipei at ex-works level for individual types are have been compared with the ex-works export prices of Ocean Plastics for the corresponding product types to arrive at weighted average dumping margin for this exporter as follows:

PRODUCT CODE	Sum of QUANTITY Kg	EP NT\$/Kg	EP USD/MT	NV USD/MT	DM NT\$/Kg
S-101	*****	*****	*****	*****	*****
S-107	*****	*****	*****	*****	*****
Weighted average	*****	*****	*****		*****
%					8.88%

**c.3) Dumping Margin: All others**

159. Weighted average Normal value of all product types from Chinese Taipei at ex-works level has been compared with the weighted average ex-works export price of all other exporters from Chinese Taipei as determined above to work out the dumping margin for all other non-cooperating exporters from this country which works out as follows:

	NV USD/MT	EP USD/MT	DM USD/MT	DM %
All others	*****	*****	*****	9.28%

## G.6 Japan

160. The Authority notes that the following two exporters from Japan filed their questionnaire responses:

1. M/s Taiyo Vinyl Corporation, Japan, and
2. M/s Kaneka Corporation, Japan

161. However, M/s Kaneka Corporation filed only partial information on its exports to India made through M/s Mitsui & Co and the questionnaire response was later supplemented with the submissions of the trading Company viz. M/s Mitsui & Co. Ltd. But Kaneka did not file any information on its domestic selling price/third country export price and cost of production for determination of cost of production and normal value. The exporter was, vide letter dated 5<sup>th</sup> December 2006, issued a deficiency memo and asked to complete the submission in the form and manner prescribed. Vide e-mail dated 16<sup>th</sup> March 2007; the company was again given another opportunity to file the information as called for. However, the exporter has neither filed any information, nor the deficiency memo has been replied to in any manner. Therefore, this exporter has been treated as non-cooperative for the purpose of this investigation. In its post disclosure submissions the exporter has disputed the decision of the Authority to treat them as non-cooperative and has argued that even though they did not file any information on their normal value the Authority should have accepted their export price to determine their dumping margin using normal value determined on the basis of facts available. In this connection the Authority notes that Rule 6.8 provides that

*“In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.”*

162. Annexure II to the Antidumping Agreement also provides that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

The Authority notes that this exporter was provided ample opportunity to provide the information required for the determination of their dumping margin. However, in spite of being in possession of the information the exporter has deliberately not provided the information and now argues that the Authority should have accepted their export price and determined the normal value as per facts available. It is not a case where the exporter is not in possession of the information in respect of their normal value but they have deliberately not provided this information thereby significantly impeded the investigation. Therefore, this exporter has been rightly treated as non-cooperative as they have failed to cooperate with the Authority in any manner. In view of the above the Authority does not find any merit in their arguments at this stage.

163. The other responding exporter from Japan, i.e., M/s Taiyo Vinyl Corporation filed its questionnaire responses and also responded to subsequent clarifications. On-the-spot investigation and verification of the data submitted by this producer/exporter was also conducted in their premises in accordance with the Rules. On the basis of the data submitted by the producer/exporter and verified by the Authority, Normal Value for Japan has been determined as per the method explained earlier.

**a) Normal Value: M/s Taiyo Vinyl Corporation**

164. M/s Taiyo Vinyl Corporation (Taiyo) was established through merger of PVC production units of M/s Tosoh Corporation, M/s Mitsui Chemicals, and M/s Denki Kagaku located at different locations in Japan and has a production capacity of \*\*\*\*MT of PVC resin per year. Taiyo is a single product company dealing with manufacture and sales of PVC alone by procuring the raw materials VCM, mainly from the parent companies. In addition to the supplies from the affiliated parties, Taiyo also procures VCM from unaffiliated suppliers. VCM price between the affiliated parties is based on a formula linked to Naphtha price. The related party procurement price is about \*\*\*\*% higher than the purchase from unrelated parties.

165. The company produces and sales about 28 different grades of PVC in the domestic market including certain special grades. However, only 4 general grade PVC resins have been exported to India during the POI.

166. The company has sold \*\*\*\*MT of PVC resin covering both General grades and Special grades in the domestic market during the POI. The home market sales of the company are direct to end-user (related/unrelated) or through Japanese trading companies (related/unrelated). However, domestic sales to the unrelated parties are 93% of total domestic sales and sales to related parties are 7% of total domestic sales. The prices to related parties are marginally higher than the price to unrelated parties. Therefore, entire domestic sales have been treated as at arms length for the purpose of determination of normal value.

167. For the purpose of determination of normal value, the like article in the domestic market was examined. The company has exported only four grades of

PVC suspension grades to India during the POI and it had significant quantities of sales of these four grades in domestic market also. Quantities of domestic sales of these four grades are as follows:

Grade	Qty. of Domestic sales (MT)	Qty. of Export sales to India (MT)
TH 700	*****	*****
TH 800	*****	*****
TH 1000	*****	*****
TH1300	*****	*****
Total	*****	*****

168. Total sales of the subject goods as well as sales of these four grades as mentioned above are in sufficient quantities in the domestic market and sales are at arm's length. Therefore, entire transactions of general grade PVC (TH series i.e. TH 700, 800, 1000, and 1300) sold in the home market have been considered for normal value determination.

169. Against the domestic sales transactions, Taiyo has claimed adjustments towards inland freight, credit cost, difference in fixed selling cost, difference in technical support cost, difference in advertisement cost, difference in general and administrative costs and difference in financial cost to bring the domestic selling prices to ex-works level for fair comparison with the export price at the same level. Direct selling expenses such as inland freight, credit costs and post sales price adjustments have been checked from the records of the company and has been allowed as per actual.

170. Other adjustments claimed on account of differential cost elements on export and domestic sales as verified from the records of the company and significantly reduced based on actual expenses under these heads and allocations based on turnovers have been allowed to bring the selling prices to ex-works level for fair comparison. The company has not given any discount and the selling price reported is net of commission/mark-up for the domestic traders. Therefore, no adjustments towards these two items have been shown.

171. The company has not claimed any difference towards the packing cost for domestic and export sales. However, it was noticed that the domestic packing is in 25 Kg paper bags, 1 MT jumbo packs and bulk by tankers/lorry, whereas export sales are in 25 Kg paper bags. Packed PVC for the domestic market is palletized whereas for exports, the paper bags are loose stuffed in the containers. Therefore, there is a significant difference in packing cost involved which has not been accounted for by the exporter in its response. Volume of bulk and packed goods and the expenses incurred were verified from the books of accounts of the company and revised packing cost for the domestic and export sales have been worked out. Accordingly, an amount of \*\*\*\*\*J. Yen per MT is

required to be deducted from the export sales transactions as a differential adjustment towards packing cost.

172. Domestic sales transactions of the exporter were subjected to ordinary course of trade test against the verified cost of production. Accordingly, Normal values of individual product types have been determined based on sales of these grades in the domestic market as follows:

Product code	Average exchange rate					110.207
	Sum of Qty (kg)	Sum of Gross Ex-factory Price (yen)	Sum of Total Adjustments (yen)	Sum of Net Ex-factory Price (yen)	Ex-works price yen/Kg	NV USD/MT
TH1000	*****	*****	*****	*****	*****	*****
TH1300	*****	*****	*****	*****	*****	*****
TH700	*****	*****	*****	*****	*****	*****
TH800	*****	*****	*****	*****	*****	*****

## b) Export Price

### b.1) M/s Taiyo Vinyl Corporation, Japan

173. The Company has exported \*\*\*\*\*MT of the subject goods to India under \*\*\*\*\* transactions during the POI. Sales transaction method of the company was examined. It was noticed that there was no direct export from Taiyo to India during the POI. All sales are through four Japanese Trading Companies. The trading companies negotiate the price with the Indian buyers and in turn place an order on Taiyo for directly shipping the goods to India. The order of the trader on Taiyo gives the breakup of their selling price to Taiyo for each transaction which shows the final CIF export price to Indian customer. On receipt of the order from the trading companies, Taiyo makes arrangement for shipment. The inland transport and ocean freight is paid by Taiyo and included in its price to the trading company which is on CFR basis. However, insurance and other expenses are paid by the trading company and factored into the breakup of prices given by the trading company to Taiyo. The trading company also charges a commission (\*\*\*\*\* to \*\*\*\*\* %) on the CIF price and the final CFR price of Taiyo to the trading company is arrived at after deducting the insurance, interest expenses and commission. Taiyo raises the invoices on the trading companies and realizes the payment from them on the B/L date. Therefore, Taiyo does not incur any credit expense. The invoice price submitted by Taiyo is the net CFR price of Taiyo and the Company has also indicated the final CIF price to Indian customer charged by the trading company, based on the final breakdown price provided by the trading company. However, actual invoice to the Indian customer is not available with Taiyo. On the basis of information provided by one of the trading companies associated with trading of goods of Taiyo i.e., M/s Mitsui & Co., verification was carried out to ascertain the correctness of the final price of the trader. It was however, noticed that the final price of the trader sometimes significantly differ from the price indicated in the breakdown order sheets and the

trader charges higher or lower price from Indian customer based on the actual market condition.

174. Against the CFR prices realized by Taiyo on the shipments made by them to India on behalf of the trading companies, Taiyo has claimed adjustments towards inland freight and ocean freight only as other expenses are borne by the trading companies as stated earlier. No cash discount has been given to any end-user in India as the sales are through the traders. Direct selling expenses have been adjusted as per the verified data.

175. Taiyo has not claimed any differential packing cost for export sales to India. However, it was noticed that exports to India are in 25 Kg two ply paper bags whereas the domestic sales are both in packed and bulk condition. Therefore, as recorded earlier, the packing expenses have been re-worked out and accordingly, differential packing cost @ \*\*\*\*\*Yen per MT has been deducted from the export sales to arrive at net export price to India. Accordingly, net export price of individual product types/grades of this exporter at ex-works level works out as follows:

	Data		Exchange rate		110.207
Product code	Sum of Qty(KGS)	Sum of Net Invoice Value (JPY)	Sum of Net Ex-Factory price(JPY)	Net EP JPY/MT	NET EP USD/MT
TH-1000	*****	*****	*****	*****	*****
TH-1300	*****	*****	*****	*****	*****
TH-700	*****	*****	*****	*****	*****
TH-800	*****	*****	*****	*****	*****

**b.2) Other exporters**

176. The Authority notes that there are several producers and exporters of the subject goods in Japan who have not co-operated in the investigation. Therefore, export price of all other non-cooperating exporters from Japan has been determined on facts available basis taking into account the data of the co-operating exporters from the said country. Accordingly, net export price of all other exporters from Japan has been determined as USD \*\*\*\*\*per MT.

**c. Dumping Margin**

**c.1) M/s Taiyo Vinyl Corporation**

177. Normal values determined for Japan at ex-works level for individual types have been compared with the ex-works export prices of Taiyo Vinyl for the corresponding product types to arrive at weighted average dumping margin for this exporter as follows:

	Data					
Product code	Sum of Qty(KGS)	Sum of Net Invoice Value (JPY)	Sum of Net Ex-Factory price(JPY)	NET EP USD/MT	NV USD/MT	DM USD/MT
TH-1000	*****	*****	*****	*****	*****	*****
TH-1300	*****	*****	*****	*****	*****	*****
TH-700	*****	*****	*****	*****	*****	*****
TH-800	*****	*****	*****	*****	*****	*****
Weighted Average	*****			*****		*****
DM %						9%

178. In its post disclosure statement this exporter has requested for review of some of their adjustment claims for determination of dumping margins. In this connection the Authority notes that the adjustments were revised during the verification of their data as the basis of those adjustments were not found to be in order and to the extent such claims were admissible the same has been allowed. This was also duly communicated to the exporter through the verification report. Therefore, the dumping determination is in order and no revision is required.

**c.2) Dumping Margin: All others**

179. Normal value of from Japan at ex-works level determined based on co-operative exporters data has been compared with the ex-works export price of all other exporters from the said country as determined above to work out the dumping margin for all non-cooperating exporters from this country which works out as follows:

	NV USD/MT	EP USD/MT	DM USD/MT	DM %
All others	*****	*****	*****	13%

**G.7 China PR**

180. As noted in the previous section in response to the initiation of the investigation, China Chlor-Alkali Industry Association (CCAIA) filed the information of following 11 Chinese producers/exporters who were interested in participating in the investigation:

- i. XinjiangTianye Co Ltd
- ii. Yichang Yihua Pacific Cogen Ltd
- iii. Tianjin DAGU Chemical Co Ltd
- iv. Haohua Yuhang Chemical Co Ltd
- v. Ningxia Yinglige Chemicals co Ltd
- vi. Shandong Ocean Chemical Import and Export Co Ltd with Shandong Haihua Chlor Alkali Resin Co Ltd

- vii. Qingdao Haijing Chemical Group Co Ltd
- viii. Yibin Tianyuan Co Ltd
- ix. Shanghai Chlor Alkali Chemical Co Ltd
- x. Tianjin LG DAGU Chemical Co Ltd
- xi. Inner Mongolia Sanlian Chemical Corporation Ltd

181. In view of large participation from exporters from China PR, the Authority resorted to sampling in terms of Rule 17(3) of the Rules and selected the following three exporters from China under intimation to CCAIA, who represented major portion of exports from that country to India during the POI, for further detailed examination:

- i. M/s Tianjin Dagu Chemical Company Limited (Producer) and M/s Tianjin Bohai Chemical Industries Imp. & Exp. Corporation (Exporter);
- ii. M/s Xinjiang Shihezi Zhongfa Chemical Co. Ltd. - Producer and M/s Xinjiang Tianye Foreign Trade Co. Ltd. - Trader & Exporter;
- iii. M/s Yichang Yihua Pacific Cogen Co. Ltd. - Producer and M/s Hubei Yihua Group Co. Ltd. - Trader & Exporter

182. The sampled exporters as mentioned above have filed their questionnaire response and market economy questionnaire responses and the same has been verified by the Authority to the extent possible. The following non-sampled exporters from China PR also filed request for individual treatment and separate margins:

- i. M/s Tianjin LG Dagu Chemical Company Limited;
- ii. M/s Yibin Tianyuan Co., Ltd.; and
- iii. Shanghai Chlor-Alkali Chemical Co., Ltd.

183. However, in view of participation of large number of exporters from the countries being investigated simultaneously and volume of data involved are so large that individual examination would have been unduly burdensome and prevented timely completion of the investigation. Therefore, the Authority did not find it feasible and practicable to examine the information submitted by the above non-sampled exporters for individual treatment.

184. Therefore, dumping margins for the non-sampled exporters has been determined based on the determination made for the sampled exporter in terms of Rule 17(3) read with Rule 18 (2) of the Rules.

185. The Authority notes that in terms of paragraph 8(2) of Annexure-I of the Rules, a non-market economy presumption was made against China PR and its exporters. However, the exporters from China PR have rebutted the non-market economy presumption in terms of the second proviso of the said paragraph and have claimed their normal value in China in terms of the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 of Annexure-I. The claims of the individual sampled producer/exporters for grant of market

economy treatment have been examined as per the parameters set in para 8.3 of the said Annexure as follows:

#### **G.7.1 Examination of Market Economy claims of sampled exporters**

##### **a) M/s Tianjin Dagou Chemical Company Limited (Producer) and M/s Tianjin Bohai Chemical Industries Imp. & Exp. Corporation (Exporter)**

186. This sampled producer-exporter combination has filed a detailed market economy questionnaire response and supplementary information in response to the clarification sought by the Authority. The information filed by this producer/exporter was also verified through an on-spot investigation and verification in their premises in China PR.

187. M/s Tianjin Dagou Chemical Company Limited (Tianjin Dagou) is a producer of the subject goods in China, having its production facility at Tianjin Development Area in Tianjin Province. The Company produces PVC using Ethylene as well as Acetylene routes with a total capacity \*\*\*\*MT during the POI. Acetylene process employs Calcium Carbide and Salt as the basic raw materials. The company procures these major raw materials locally from several unaffiliated state-owned enterprises and other private companies. In the Ethylene process, the company uses raw materials from various stages. The company imports Ethylene and cracks it to produce EDC and then VCM and PVC. It also imports EDC and VCM and directly uses them to produce PVC. The company has its own Chlor-Alkali plant which produces Chlorine and Caustic Soda. For production of PVC from Ethylene route, the company procures Ethylene from SINOPEC through pipeline. Ethylene is also imported through its subsidiary viz. M/s Tianjin Dagou International Corporation. The domestic purchase price is found to be lower as compared to import by \*\*\*\*%. The company also imports EDC and VCM in addition to its captive production.

188. The Company produces 4 grades of PVC from the above two routes. However, during the POI, only three grades produced from Ethylene Route have been exported to India. The product manufactured by Dagou is sold by the same company in the domestic market. However, export sales are carried out through the related trading company i.e. M/s Tianjin Bohai Chemical Industries Import & Export Corp.

189. M/s Tianjin Dagou Chemical Company Ltd was established on February 2004, approved by the Peoples' Government of the Tianjin Municipality, by stock reconstruction process of Tianjin Dagou Chemical Industry Limited Company. The new company was formally registered in March 2004 by investment of all operating assets of the former company by way of equity contribution amounting to \*\*\*\*% of total registered capital of the new company. The 6 other state-owned companies contributed the balance amount in cash to establish the new company.

190. The history of the promoting company i.e., M/s Tianjin Dagu Chemical Industry Limited Company shows that this company was established in 1996 by M/s Tianjin Bohai Chemical Industry Group Corporation as a wholly owned entity of the Group Corporation. M/s Tianjin Bohai Chemical Industry Group Corporation was established in 1990 by the Tianjin City Government and continues as a Government owned entity.

191. The process of formation and asset transfer of the responding Company i.e. M/s Tianjin Dagu Chemical Industry Limited Company was verified from the records of the company in order to find distortions, if any, carried over from the erstwhile non-market economy situation of this entity. It was found that transformation from the erstwhile M/s Tianjin Dagu Chemical Industry Limited Company to the new company i.e., M/s Tianjin Dagu Chemical Company Limited is as per the direction of the Government and the process of transformation has been carried out through other state-owned entities. The Company seems to have significant repayments and liquidation of liabilities and addition of assets after transformation though before transformation the Company had significant erosion of net asset value which stood at about \*\*\*\*% of the value of operating assets. It appears that the Company has resorted to certain long term borrowings to liquidate part of the liabilities. But details of such borrowings and interests liabilities, if any, could not be clarified. Management structure of the new Company was also checked to examine the involvement of the Government in the operation of the Company. It was found that the Company has a board of Directors with 7 Directors out of which 6 are Government Nominees and only one Director is representing private investor and Tianjin City Government appoints the Government Nominees in the Board.

192. The exporting Company i.e., M/s Tianjin Bohai Chemical Industries Imp. & Exp. Corporation is also a part of M/s Tianjin Bohai Chemical Industry Group Corporation, which was established in 1990 by the Tianjin City Government and continues as a Government owned entity.

193. In view of the above examination, the Authority proposes to hold that the producing Company continues to be significantly controlled and managed by the State and there has been significant carry over of distortions from the previous non-market economy oriented status of the earlier company from which the responding company has been formed. Therefore, the cost and prices of the responding producer i.e., M/s Tianjin Dagu Chemical Company Limited cannot be accepted for determination of their Normal value in terms of Para-6 of Annexure-1 of the Rules.

**b) M/s Xinjiang Shihezi Zhongfa Chemical Co. Ltd. - Producer and M/s Xinjiang Tianye Foreign Trade Co. Ltd. - Trader & Exporter;**

194. This sampled producer-exporter combination has filed a detailed market economy questionnaire response and supplementary information in response to

the clarification sought by the Authority. The information filed by this producer/exporter was also verified through an on-spot investigation and verification in their premises in China PR.

195. M/s Xinjiang Shihezi Zhongfa Chemical Co. Ltd. (Zhongfa) is a producer of the subject goods located at Shihezi City in the Xinjiang province of China and has exported the subject goods to India through its related trading Company i.e M/s Xinjiang Tianye Foreign Trade Co. Ltd. (Tianye) during the POI. The Company produces PVC using Calcium Carbide as the basic raw material (Acetylene route) with a capacity of \*\*\*\*\* MT of PVC of various grades during the POI. However, only one grade of PVC resin has been exported to India during the POI. The Company also has significant trading activity and purchases PVC from the market and resells the same in the domestic market.

196. The producing Company i.e. M/s Xinjiang Zhongfa Chemical Co Ltd, in its submission, has claimed market economy status for the purpose of normal value determination, as a limited liability company listed in Shanghai stock exchange. Therefore, the market economy claims of this Company was verified from the records of the Company and as per the clarification provided by the executives/lawyers of the Company. The production facility of Xinjiang Zhongfa Chemical Co Ltd is located in the Development Zone of Shihezi City. The Company has an old plant producing Caustic Soda and PVC. There is also an old production facility of the erstwhile Shihezi Chemical Factory (state-owned) located in the same complex producing certain chemical products. Zhongfa buys HCL from Shihezi for its PVC production. Zhongfa purchases Calcium Carbide from state-owned and other private entities and Calcium Carbide is reacted with HCL to produce crude VCM. Crude VCM is purified and polymerized to produce PVC. However, the relationship between the Shihezi Chemical industry factory, which is a state-owned entity and Zhongfa is extremely blurred.

197. Xinjiang Zhongfa Chemical Co Ltd (Responding Producer) was established on July 24, 1995 in the Shihezi Development Zone, by the Government of Xinjiang Province with the capital contributed by 5 state-owned entities, owned by the Xinjiang Province Government. The registered capital of Zhongfa was subsequently raised to \*\*\*\*\*Million in 1996 and again raised to \*\*\*\*\*Million in 2001.

198. In June 1996, a new Company in the name and style of M/s Xinjiang Tianye Plastic and Chemical Group Co Ltd. was established by the State and some of the assets of Plastic manufacturing plant and Shihezi chemical industry factory (PVC unit) were transferred to this Group Company. It appears that a part of the plants and assets of Shihezi chemical industry factory (HCL manufacturing units) continued to be with the State. The name of the above Company was changed to M/s Xinjiang Tianye Group Co Ltd in 2001. Consequently, the shareholding pattern of Zhongfa Chemical Co Ltd was changed. In 1997, M/s Xinjiang Tianye Plastic and Chemical Group Co Ltd promoted a new stock holding company in the name and style of M/s Xinjiang Tianye Co Ltd. The

Company was formally registered on 9<sup>th</sup> June 1997 as a company limited by shares with registered capital of \*\*\*\*\*RMB. As per the stock offer document (IPO document of the proposed Company) of 21<sup>st</sup> May 1997, the Company declared itself as a Company in preparation for production of plastic and chemical products. Out of total registered capital of RMB \*\*\*\*\*, the promoter company M/s Xinjiang Tianye Plastic and Chemical Group Co Ltd contributed \*\*\*\*\*% (RMB \*\*\*\*\*). Balance stock of \*\*\*\*\* shares (of RMB 1 each) was issued to the public through Shanghai Stock Exchange out of which \*\*\*\*\*shares were allotted to the employees of the promoting company. The Company was listed in Shanghai Stock Exchange in 1997. The Government holding in the stock listed Company, through M/s Xinjiang Tianye Plastic and Chemical Group Co Ltd, was \*\*\*\*\*% in the form of assets of the former plastic and chemical manufacturing units held by the Group Company.

199. Asset evaluation of Tianye Group was carried out by an independent evaluator in 1997 for the purpose of capitalization of the assets of the erstwhile chemical and plastic factories and contribution of share capital of the Group in the new Tianye company. As per the valuation report, total assets of the company at the end of 1996, stood at \*\*\*\*\* Million RMB which was increased to \*\*\*\*\* Million due to revaluation of land use right which was not accounted for earlier and revaluation of buildings and plants and machineries. The current liabilities which stood at \*\*\*\*\*Million, was also increased to \*\*\*\*\*Million (increase of \*\*\*\*\*Million) in the revaluation process.

200. Thus, the capital contribution of Group in Tianye was in the form of net assets of this company (assets of the chemical and plastic units) after revaluation without any cash contribution. Net assets of the units, after revaluation, was \*\*\*\*\*Million which was converted to equity of 36 Million shares of 1 RMB each at a transfer discount rate of \*\*\*\*\*% as per the regulations of the securities committee. (In 2005, assets of the company stood at RMB \*\*\*\*\* Million and liabilities \*\*\*\*\*Million, equity \*\*\*\*\* Million).

201. Since 1997 till 2001, there have been several transfers of shares of the original state-owned promoters of Zhongfa Chemical Co. Ltd to Xinjiang Tianye Co Ltd and\*\*\*\*\*% of shares were also given to 7 individuals who were its top management which was subsequently transferred to Xinjiang Tianye Co. Ltd making Zhongfa Chemical Co. Ltd a wholly owned subsidiary of Xinjiang Tianye Co. Ltd.

202. The responding trading company i.e. M/s Xinjiang Tianye Foreign Trade Co. Ltd was established in 2000 and continues to be held by Xinjiang Tianye Co. Ltd. The above examination indicates that the producing company i.e., M/s Xinjiang Zhongfa Chemical Co Ltd is 100% owned by M/s Xinjiang Tianye Co Ltd, which is a stock listed company with \*\*\*\*\*% holding by the State through M/s Xinjiang Tianye Group Co Ltd. The exporter is also a subsidiary of Xinjiang Tianye Co. Ltd., which is a listed company with majority of shares with the State.

Xinjiang Chemical Industry Factory, which continues to operate within the same factory premises of the producer, still continues as a 100% Government owned entity. Therefore, the provincial Government of Xinjiang Province of China PR continues to hold all the above entities through a maze of cross holdings though Taiyne Co. Ltd. has been listed as a stock holding company.

203. The management structures of all the above entities were also examined to verify the level of involvement of the State in the decision making process and management of these entities. The examination reveals that M/s Xinjiang Tiayne Group Co Ltd. controlled by State-owned Assets Supervision and Management Bureau/Commission of Xinjiang Province which carries out the investor's functions of the State and appoints the board of directors of the Companies involved. The listed company i.e. M/s Xinjiang Tianye Co has 8 directors in the board, out of which 3 directors are appointed by the Group. There are 2 independent directors in the board and others 3 are appointed by the other shareholders and financial institutions. The Board of Directors appoints the top management of the company. The responding producer i.e. M/s Xinjiang Zhongfa Chemical Co Ltd is 100% owned by M/s Xinjiang Tianye Co. Ltd, which appoints all 7 directors of the board of this Company.

204. The above examination indicates that the previous plastic and chemical units have been restructured from State ownership by a series of transfer of ownership through the Plastic and Chemicals Group Company to Tianye stock listed company in which State still maintains majority shareholding. The management control and management functions are also largely in the hands of the state through the Asset Management Bureau. The transformation process from the erstwhile fully state-owned entity into a listed Company with majority state-holding has also carried over significant distortions from the erstwhile non-market economy system. The company also procures significant volume of raw materials and other inputs from other state-owned entities for production of the subject goods. In view of the above, the Authority is of the view that the cost and prices of the responding producer i.e., M/s Xinjiang Zhongfa Chemical Co Ltd cannot be accepted for determination of their Normal value in terms of Para-6 of Annexure-1 of the Rules.

**c. M/s Yichang Yihua Pacific Cogen Co. Ltd. - Producer and M/s Hubei Yihua Group Co. Ltd. - Trader & Exporter**

205. The responding producer is located in the Yichang City of Hubei Province and has a manufacturing unit which produces PVC from the Calcium Carbide route with a capacity of \*\*\*\*\* MT per annum. The company produced only one grade of PVC and sold the same in domestic market as well as in the Indian market during the POI.

206. M/s Hubei Yihua Group Ltd. Liability Co. (Group Company) was established under the erstwhile centrally planned economy system as a fully

state-owned enterprise. Under the reform process of state owned enterprises, the Government holdings in this enterprise is now under the control and supervision of Yichang City State Assets Management Commission in terms of the Interim Regulation on Supervision and Management of State-owned Assets of Enterprises, promulgated by the State Council of the Peoples' Republic of China on 27<sup>th</sup> May 2003.

207. In April 1997, M/s Hubei Yihua Group Ltd. Liability Co. signed an agreement with M/s British International Power Corporation, U.K. to establish a 30:70 foreign equity joint venture. On 26.7.97, a Chinese-foreign joint venture in the name and style of M/s Yichang Yihua Pacific Cogen Co. Ltd (Pacific Cogen) for production of heat and electricity was set up with a modified Joint Venture (JV) equity participation of \*\*\*\*% by Hubei Group and \*\*\*\*% by British International Power Corporation.

208. In May 2001, British International Power Corporation transferred part of its shares (\*\*\*\*%) to M/s Hubei Yihua Chemical Industry Co. Ltd. (Chemical), a publicly listed co. in Shanghai stock exchange, and retained the remaining \*\*\*\*% shares. Chemical was originally set up as a chemical factory in 1970 under the State and reorganized as a listed Company in 1997. Major shares of the Company are held by Hubei Yihua Group (\*\*\*\*%) and other investment Companies/Funds. Hubei Yohua Group Company has several chemical and fertilizers manufacturing facilities in China.

209. In 2002, M/s British International Power Corporation transferred its shares in Pacific Cogen to M/s Anglo Cayman Energy Development Co. Ltd. (Anglo), a foreign company.

210. The management of the Company has been vested in a board of directors consisting of 5 directors, two each representing the Hubei Group and Yihua Chemicals and one representing Anglo Cayman. However, as per trusteeship agreement between Yihua Chemical Co and Anglo Cayman, the later has given full control of the operations of the Pacific Cogen Company to the former. Therefore, Pacific Cogen is controlled by Yihua Chemical, which is a listed Company with \*\*\*\*% of its shares held by Hubei Group. Hubei Group continues to be a state-owned enterprise under the supervision of Yichang City State Asset Management Commission.

211. In 2003, all the three shareholders of Pacific Cogen signed an agreement to change the business scope to include PVC business and the Articles of Association was also amended in that year. The Board of Directors also passed a resolution dated 14<sup>th</sup> January 2003 to that effect to set up a PVC manufacturing unit in Yichang City. The company obtained \*\*\*\* Sqr Meters of land from the City Government on 50 years lease for RMB \*\*\*\* Million. The company produced the lease agreement and land document for verification. It is noticed that the lease

amount has been paid as one-time lump sum payment and no annual lease rent is paid by the company to the City Government.

212. The PVC plant was set up on the land leased out from the Yichang City Government. Technology was obtained from Jinxi Technology Design Institute, Liaoning Province against payment of license fee of about \*\*\*\*\* Million RMB. Production was started in September 2004.

213. The responding companies has submitted that the producing company i.e. Pacific Cogen is a Sino-British Joint Venture and though the companies have significant state-holding, the business decision process of the companies, including their investment decisions are independent from the Government control.

214. It was also clarified by the company that the shares of the State are under the supervision of Yichang City State Asset Management Commission, which assumes the role of a shareholder and exercises all the functions of a shareholder to protect the interest of the state as an investor in the companies. It is observed that the Commission supervises the functions of the company through its nominee directors in the Board. The Commission has the power to appoint the board of directors and exercises administrative control over the board which is empowered to take business and investment decisions. But all investment decisions over \*\*\*\*\* Million RMB is required to be submitted to the Commission after the same has been passed by the board.

215. The Authority also notes that company enjoys concessional income tax benefits as a Foreign Joint Venture and pays income tax @15% as against normal rate of 33%. The company purchases the major raw material i.e. Calcium Carbide from Private as well as State/Semi-State owned Enterprises.

216. The exporter i.e. M/s Hubei Yihua Group Co. Ltd. Continues to be a 100% state-owned enterprise.

217 The above examination indicates that though the producing company i.e. Pacific Cogen is a Sino-British Joint Venture, the company continues to have significant state-holding and the business decision process of the company is significantly controlled by the state through the State Assets Management Commission. Process of transformation of the assets of the state into the joint venture appears to have carried forward certain distortions of the erstwhile non-market oriented system.

218. The company also procures significant volume of raw materials and other inputs from other state-owned entities for production of the subject goods. In view of the above, the Authority proposes to hold that the cost and prices of the responding producer i.e., M/s Xinjiang Zhongfa Chemical Co Ltd cannot be

accepted for determination of their Normal value in terms of Para 6 of Annexure 1 of the AD Rules.

219. Commenting upon the rejection of market economy claims of the sampled exporters from China these exporters have argued that merely because there is state ownership and the state nominates the directors in a company, one cannot say that the company does not operate in a market economy environment and 100% divestment of equity holdings by the State in a company shall not be a pre-requisite for granting market economy status to that company. It has been argued that State has dual role – one as an investor and another as a sovereign. By exercising the sovereign rights, State may introduce licensing, quotas, price controls, etc across all the companies in a particular industry or all industries. By exercising the rights as an investor, State may take decisions regarding appointment of directors, investment in plant and machinery, operations, etc. Even day-to-day operations may be carried out by directors or other officials appointed by the State. However, it must be noted that such directors or officials carry out the role of the State as an investor in that company and not as a sovereign. Only when the State intervenes as a sovereign, one can assume state interference in the operations of the company and not otherwise. It has been argued that China has recognized this distinction and has established the State Assets Supervision and Management Commission (SASMC) carry out the role of the State as an investor. SASMC does not have any sovereign role to play in the companies under its control. There is nothing on record to show that the transformation process from the erstwhile fully state-owned status into the present status has also carried over significant distortions from the erstwhile non-market economy system.

220. The Authority notes that after verification of their claim of market economy detailed verification reports were sent to both the exporters giving details of the grounds for not accepting their claims. The disclosure statement also contained adequate non-confidential summary of this determination. In respect of all the sampled exporters it was clearly established that these companies have either remained significantly under state control and state has been exercising management control and supervision on these companies, or they have migrated from the erstwhile non-market economy system carrying with them significant distortions from the earlier system in the form of capital asset valuation, land use rights etc as recorded in individual cases. In addition to this the companies were found to source their major raw materials from other related and unrelated state-owned entities at prices which are apparently not at market driven prices. Therefore, the Authority confirms its findings in this respect.

#### **G.7.2 Normal Value: China PR**

221. The Authority notes that none of the sampled producers/exporters from China have been found to be operating under market economy condition for

determination of normal value in China in terms of Para-6 of Annexure-1 to the Rules. Paragraph-7 of the Annexure-1 to the Anti-dumping 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”.*

222. In this connection, the Authority notes that some of the responding sampled and non-sampled producers of the subject goods in China PR produce PVC resin using Ethylene route while major part of the PVC resin produced in China is from Acetylene route. China Chlor-Alkali Association has provided consolidated information about the capacity, production and export sales of these producers which indicates that approximately 60% of the output of these producers in China is from Acetylene route and rest comes from the Ethylene route. However, the Authority notes that the price of PVC sold in market is not driven by the route from which it is manufactured. The published price list of the subject product in international journals (like Harriman Chemsult Ltd., London) do not distinguish the product prices based on the raw materials route. Therefore, the normal value of the product in the domestic market would be in the same range.

223. The Authority notes that in the initiation notification, the Authority intimated the interested parties that the domestic industry has suggested selection of Taiwan as appropriate market economy third country for China PR if the exporters from China fail to rebut the presumption of non-market economy. However, the interested parties have not commented upon this aspect during the course of this investigation. Therefore, in terms of the second proviso under para 7 of annexure I of the Rules, the Authority proposes to construct the normal value for the Chinese exporters. For the purpose of construction of normal value the Authority examined the international price of raw materials i.e. VCM as reported in Harriman Chemsult Ltd, London for the POI for Asia Region. The above data shows that average price of VCM in this region was US\$662.08 per MT. The Authority has adopted the above price with the consumption ratio of the cooperating exporters in china PR and optimum conversion cost of the best domestic unit/industry in India have been used as best facts available. The constructed normal value works out as USD \*\*\*\*\* per MT.

224. The constructed normal value as above has been compared with the normal value determined for Chinese Taipei and the average prices of PVC Suspension Grade reported by Harriman Chemsult Ltd, London for the Asia Region. The constructed normal value is close to these data and therefore, the Authority finds it appropriate to adopt this as the normal value for China PR.

### **G.7.3 Export Price and individual dumping margins of Sampled exporters for China PR**

#### **a) M/s Tianjin Dagu Chemical Company Limited (Producer) and M/s Tianjin Bohai Chemical Industries Imp. & Exp. Corporation (Exporter)**

##### **a.1) Export Price**

225. The above producer-exporter combination exported \*\*\*\*\* MT of PVC to India during the POI. The producer company did not have any export license during this period and all the exports during this period were carried out through their related trading company i.e. M/s Tianjin Bohai Chemical Industries Import & Export Corp. The goods were first sold by the producer to trader as domestic sales against VAT invoices and the trading Company invoiced the goods to a reseller in Japan i.e., M/s Mitsui & Co., Ltd while the goods were shipped to the customers in India as per the sales contract with Mitsui after receipt of payment or confirmed letter of credit. The VAT refund on exports is claimed by the trading company. On the basis of the invoice raised by Bohai, Mitsui issues a separate invoice on the Indian customer generally retaining a margin of profit for itself as a reseller and the margin of profit or loss against a particular transaction depends upon the actual market condition at that time. M/s Mitsui has also filed the data related to resale of the goods exported by Bohai Chemicals separately which was also verified at Tokyo while making verification in Japan. However, the exporter has vide its letter dated 27<sup>th</sup> November requested for separate margin for itself without linking it with Mitsui as they do not wish to co-operate with Mitsui in future.

226. The exports are in C&F or CIF terms against LC at sight. Therefore, the exporter has claimed adjustments towards all direct selling expenses on those transactions i.e., Inland freight; customs declaration brokerage fee, overseas freight and Insurance. No packing cost has been deducted as the goods are packed only in 25 Kg paper bags for domestic as well as exports sales during the POI. No credit cost is involved as the goods have been sold against sight LCs. The company has not paid any commission or discount against these transactions.

227. Inland transportation expenses which, includes document charges, handling charge, customs declaration brokerage fee and port charges, were checked from the transporters invoices. Overseas freight and insurance amount against CIF shipments were also checked from the respective invoices. The exporter has not claimed the deduction towards the differential amount of VAT paid @17% and refund obtained @13%

228. Accordingly, the export price of the above exporter works out as follows:

Product code	Sum of Quantity	Sum of Gross Invoice Value USD	Sum of Net Invoice Value USD	Sum of Price adjustment in total USD	Sum of Price ex-factory USD	Sum of CIF Value USD	EP USD/MT
SE700	*****	*****	*****	*****	*****	*****	*****
SE-700	*****	*****	*****	*****	*****	*****	*****
SLK-1000	*****	*****	*****	*****	*****	*****	*****
SR800	*****	*****	*****	*****	*****	*****	*****

#### a.2) Dumping Margin

229. The Authority notes that this exporter exported PVC resin produced from Ethylene route. Therefore, weighted Average normal value determined for China PR at ex-works level has been compared with the net export price of this exporter at ex-works level to determine the dumping margin as follows:

type code	Sum of 8. Quantity	EP USD/MT	NV USD/MT	DM USD/MT
SE700	*****	*****	*****	*****
SE-700	*****	*****	*****	*****
SLK-1000	*****	*****	*****	*****
SR800	*****	*****	*****	*****
Weighted Average	*****	*****		*****
				13.54%

#### b) M/s Xinjiang Shihezi Zhongfa Chemical Co. Ltd. - Producer and M/s Xinjiang Tianye Foreign Trade Co. Ltd. - Trader & Exporter;

##### b.1) Export Price

230. The exporter has exported \*\*\*\*\*MT of only one grade of PVC to India during the POI through the related group company i.e. M/s Xinjiang Tianye Foreign Trade Co. Ltd. Some of the transactions are through traders in other countries and other transactions are to end users and distributors in India. As per the agreement between Zhongfa and Tianye, the goods are not by the producing company to the exporting company. The exporting company gives a declaration for claiming VAT refund by the producing company. VAT is paid and refund is obtained by the producer.

231. Most of the transactions are on C&F basis and few transactions are on CIF and FOB terms. Direct selling expenses such as inland freight from factory to Tianjin Port including handling, loading and unloading of the cargo and ocean freight has been adjusted as verified.

232. Packing in 25 Kg paper bags and there is no difference in domestic and export packing. Therefore, no difference in packing material has been claimed. VAT adjustment of 4% on the FOB price has been deducted from the invoice value to arrive at net export price at ex-works level. Accordingly, ex-works export price of this exporter works out as follows:

Product Code	Sum of Quantity MT	Sum of Gross Invoice Value (USD)	Sum of Total selling expenses USD	Sum of Ex-works Value USD	Price USD/MT
SG-5	*****	*****	*****	*****	*****

## b.2) Dumping Margin

233. Weighted Average normal value determined for China PR at ex-works level for the PVC resin has been compared with the net export price of this exporter at ex-works level to determine the dumping margin as follows:

Product Code	Sum of Quantity MT	Net export Price USD/MT	NV USD/MT	DM USD/MT
SG-5	*****	*****	*****	*****
Total				16.70%

## c. M/s Yichang Yihua Pacific Cogen Co. Ltd. - Producer and M/s Hubei Yihua Group Co. Ltd. - Trader & Exporter

### c.1 Export Price

234. During the POI, the producer-exporter combination exported \*\*\*\*\*MT of the subject goods to India against \*\*\*\*\* transactions. It was clarified that though all export price negotiations were carried out directly by the producing Company, the exports are through the Group Company who held the export license. The producer has obtained export license in 2007 and now free to export directly. The producer i.e. Pacific Cogen sales the goods to the Trader i.e. Yihua Group as domestic sales against VAT invoices. The traders pays 17% VAT on the invoice value of the goods and upon exportation of the goods, claims a refund of 13% on the invoice value of the producer as the VAT refund. Final Invoice on the Indian customers is by the Group Company. The Company produced VAT claim documents for verification.

235. Exports to India are to direct end users as well as Traders in India. No commission has actually been paid to any agent. Therefore, data entry error in the original submission has been rectified and a revised Appendix-2 was produced.

236. Direct selling expenses towards, inland and ocean freight and insurances, loading and unloading expenses Customs Brokerage fee, Container Handling Charge, THC, Booking Charge and expenses towards bank charges as verified from the relevant documents have been deducted from the invoice prices for determination of net ex-works export price.

237. The exported goods are also packed in 25Kg paper bags and there is no difference in domestic and export packing. Therefore, no adjustment towards packing cost is required.

238. On the basis of the above, the net export price and landed values of the above producer-exporter work out as follows:

Product code	Export Price Calculation			Exch Rate 8.132		Ex-works USD/MT	VAT Adjustm ent (USD)	Net ex-works USD/MT
	Sum of Quantity (MT)	Sum of Net Invoice Value (USD)	Sum of Total selling expenses RMB	Sum of Ex-works (USD)	CIF Price USD/MT			
SG5	*****	*****	*****	*****	*****	*****	*****	*****

## c.2 Dumping Margin

239. Weighted Average normal value determined for China PR at ex-works level has been compared with the net export price of this exporter at ex-works level to determine the dumping margin as follows:

Product code	Sum of Quantity	NV USD/MT	Net ex-works USD/MT	DM USD/MT
SG5	*****	*****	*****	*****
Grand Total	*****			18.14%

## d) Other non-sampled exporters

240. Dumping margin for the following non-sampled exporters from China PR has been determined in terms of Rule 17(3) of the Rules as the weighted average margin of dumping established with respect to the selected exporters or producers:

- i. Haohua Yuhang Chemical Co Ltd
- ii. Ningxia Yinglige Chemicals co Ltd
- iii. Shandong Haihua Chlor Alkali Resin Co Ltd (Producer) with Shandong Ocean Chemical Import and Export Co Ltd (exporter)
- iv. Qingdao Haijing Chemical Group Co Ltd
- v. Yibin Tianyuan Co Ltd
- vi. Shangahi Chlor Alkali Chemical Co Ltd
- vii. Tianjin LG DAGU Chemical Co Ltd

viii. Inner Mongolia Sanlian Chemical Corporation Ltd

241. Accordingly, dumping margin for the following non-sampled producers/exporters has been determined as follows:

Exporter	Export Qty MT	DM USD/MT	DM value USD	EP USD/MT
Tianjin Dagu	*****	*****	*****	*****
Yichang	*****	*****	*****	*****
Xinjiang	*****	*****	*****	*****
Total/Wt Average	*****	*****	*****	*****
DM %		16.34%		

**e) All non-cooperating exporters**

242. The dumping margin for other non-cooperating exporters from China PR has been determined as per best facts available taking into account the data examined for the co-operating exporters from that country as follows:

	NV USD/MT	EP USD/MT	DM USD/MT	DM %
All others	*****	*****	*****	18.14%

**G.8 USA**

**a) Normal Value**

243. The Authority notes that none of the producers and exporters from USA has responded to the initiation notice and submitted any information for determination of dumping margin for this country. In this connection, the Authority notes that Rule 6.8 of the Rules read with Article 6.8 and Annexure-II of the Anti-dumping Agreement provide that if information required from an interested party is not supplied in the form and manner prescribed within a reasonable time, the Authority will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry. In view of the above position, the Authority proposes to estimate the dumping margin of the subject goods in USA on the basis of best facts available with it.

245. In the absence of any verifiable information in respect of actual selling price of the subject goods in the USA, the Authority has examined the published price information available in Harriman Chemsult Ltd, London for the POI. The published price information of suspension grade PVC in the US market for the relevant period shows that the average price (pipe) during this period was USD 1254.58 per MT whereas the spot price of exports from USA was USD 932.88 per MT. However, these prices look quite distorted compared to the prices prevailing in other regions and import statistics available with the Authority.

Therefore, the Normal value in USA has been estimated on facts available basis using the cost and price of the said goods in Japan which represents similar economic conditions, development of the industry involved, etc. Accordingly, the normal value for all exporters in the USA has been determined based on the weighted average normal value of subject goods in Japan as USD \*\*\*\*\*per MT.

**b) Export Price and Dumping Margin**

246. Net export price of the subject goods from USA has been estimated on the basis of CIF export price from the import statistics available with the Authority, after adjusting the same for direct and indirect selling expenses on facts available basis. The export price so estimated has been compared with the normal value at ex-works level to determine the dumping margin for all exporters from this country. Accordingly, average net ex-works export price and dumping margin for all non-cooperating exporters from the USA has been estimated as follows:

	Exch Rate	44.19
CIF Price	RS/MT	USD/MT
	35744.21	808.88
Adjustments as per facts available		*****
Net EP		*****
NV		*****
DM		*****
		12.49%

**G.9 Malaysia**

**a) Normal Value**

247. The Authority notes that none of the producers and exporters from Malaysia has responded to the initiation notice and submitted any information for determination of dumping margin for this country. Only one exporter, viz. M/s Malaysian International Trading Corporation SDN. BHD. (MITCO) has also made only written submissions on various aspects of the case without filing any questionnaire response or providing any information on normal value or export price. Therefore, there is no meaningful co-operation from any producer/exporter from this country. Accordingly, the Authority proposes to make its determination on normal value, export price and dumping margin for all exporters from this country as per best facts available with it.

248. In the absence of any verifiable information in respect of actual selling price of the subject goods in Malaysia, the Authority has examined the published price information available in Harriman Chemsult Ltd, London for the POI. The published price information of suspension grade PVC in the Malaysia market for the relevant period shows that the average price during this period was USD 921.53 per MT. This information does not appear to be abnormally high

compared to the average price for Asia region during the same period as per the selling price of cooperating exporters of this region. Therefore, the above data has not been found to be reliable for determination of normal value in Malaysia. In view of the above, normal value for Malaysia has been estimated based on the cost and price of the said goods in Korea which represents similar economic conditions and development of the industry involved, etc. Accordingly, the normal value for all exporters in the Malaysia has been determined based on the weighted average normal value of subject goods in Korea as USD \*\*\*\*\*per MT.

249. Commenting upon the dumping margin determination in respect of Malaysian exporters the exporter has argued that the Authority should have notified the interested parties about the selection of third country before adopting the third country data. It has also been argued that while the published data has been adopted for China the same has not been adopted for Malaysia. In this connection it may noted that in the absence of no cooperation form the Malaysian exporters, including the above contending party, the Authority has determined the normal value in Malaysia on the basis of best facts available in terms of Rule 6.8 which does not require any prior notice or consultation with any interested party as has been argued. As far as adoption of published data is concerned, as recorded in the findings the published data was highly distorted and unreliable for determination of normal value in Malaysia. Therefore, a reasonable determination has been made based on facts available.

**b) Export Price and Dumping Margin**

250. Net export price of the subject goods from Malaysia has been estimated on the basis of CIF export price from the import statistics available with the Authority, after adjusting the same for direct and indirect selling expenses on facts available basis. After issuance of the disclosure certain error in the import price adopted for determination of export price has been noticed.

251. The export price so estimated has been compared with the normal value at ex-works level to determine the dumping margin for all exporters from this country. Accordingly, average net ex-works export price and dumping margin for all non-cooperating exporters from the Malaysia has been estimated as follows:

	RS/MT	USD/MT	
CIF Price	34304	776.29	Deleted: 5936
Total Adjustments as per facts available		*****	Deleted: 813.22
Net EP		*****	
NV		*****	
DM		*****	
		12.47%	Deleted: 6.91

## G.10 Dumping Margins: Summary

252. On the basis of the above examination, the dumping margins for the subject countries and exporters participating in the investigation have been determined as follows. The Authority notes that the dumping margins from the subject countries are significant and above de minimis except for two exporters where the dumping margins have been found to be below the de minimis level.

Country	Producers	Exporter	Dumping Margin US\$/MT	Dumping Margin (%)
Thailand	M/s Thai Plastics and Chemicals Public Company Limited	M/s Thai Plastics and Chemicals Public Company Limited	*****	9.20%
	All other Producers from Thailand	Any Exporter	*****	11.31%
Korea RP	LG Chem Ltd	LG Chem Ltd	*****	0.03%
	Hanwha Chemical Corporation	Hanwha Corporation	*****	1.36%
	All other Producer from Korea RP	Any Exporter	*****	8.37%
Indonesia	PT Asahimas Chemicals	PT Asahimas Chemicals	*****	7.99%
	All other Producers from Indonesia	Any Exporter	*****	16.10%
Chinese Taipei	Formosa Plastics Corporation	Formosa Plastics Corporation	*****	1.53%
	Ocean Plastics Corporation	Ocean Plastics Corporation	*****	8.88%
	All other producers from Chinese Taipei	Any Exporter	*****	9.28%
Japan	Taiyo Vinyl Corporation	Taiyo Vinyl Corporation	*****	9.25%
	Taiyo Vinyl Corporation	Mitsui & Co	*****	12.82%
	All other Producers from Japan	Any Exporter	*****	8.88%
China PR	M/s Tianjin Dagu Chemical Company Limited	M/s Tianjin Bohai Chemical Industries Imp. & Exp. Corp.	*****	13.54%
	M/s Xinjiang Shihezi Zhongfa Chemical Co. Ltd.	M/s Xinjiang Tianye Foreign Trade Co. Ltd.	*****	16.70%
	M/s Yichang Yihua Pacific Cogen Co. Ltd.	M/s Hubei Yihua Group Co. Ltd.	*****	18.14%
	Non-Sampled Producers/ exporters	Non-Sampled Producers/ exporters	*****	16.57%
	All other producers from China PR	Any exporter	*****	18.14%
USA	All Producers	Any Exporters	*****	12.49%
Malaysia	All Producers	Any Exporters	*****	12.47%

## **H. INJURY DETERMINATION**

253. The Authority notes that the subject goods have been exported to India at significantly dumped prices from the subject countries as determined in the foregoing sections, except for the producers where the dumping margins have been found to be de-minimis. Therefore, injury to the domestic industry has been examined with reference to those dumped imports. In the post disclosure submissions, the domestic industry has reiterated its stand on the scope of the domestic industry and obligation of other domestic producers to provide information. It has been argued that M/s RIL is a supporting company but not a participating company and therefore, seeking information from M/s RIL was unwarranted. It has been argued that the Authority is interpreting the words “domestic industry as a whole” used by the Hon’ble Supreme Court in its judgment to mean the “domestic producers as a whole, contrary to the observation of the Hon’ble Court in the said judgment as the Hon’ble Court has in no way changed the definition of the domestic industry as defined in Rule 2(b). However, in this connection it may be noted that the Authority has been consistently seeking information from all domestic producers in terms of the above judgment. Therefore, the arguments of the domestic industry cannot be accepted.

254. In view of the above for the purpose of the injury examination, the cost and injury information of the applicant domestic producers and M/s RIL have been considered for the determination of NIP and injury to the domestic industry as a whole, has been examined in pursuance of the Supreme Court Judgment in the matter of RIL Vs Designated Authority.

### **H.1 Views of the interested parties:**

255. As recorded in the previous section, the interested parties have inter-alia argued that analysis of injury parameters would show that the petitioning domestic industry does not suffer material injury as the capacity, production and sales have increased significantly.

256. It has been further argued that third countries’ average prices are in the same band of prices, or even lower as compared to the imports from the subject countries indicating thereby that there is no causal link between the imports from the subject countries and injury allegedly suffered by the petitioners. It has also been argued that there is a significant demand supply gap in the country and imports are inevitable to meet the growing demand as the domestic producers have not been able to increase their capacities to fulfill the demand. International price of PVC Resin has been fluctuating according to market conditions in the world. The custom duty arbitrage between inputs for manufacturer of PVC Resin such as EDC/VCM and PVC resin itself was very high which helped all the local manufacturers to make bumper profits by increasing the prices or reducing month on month basis without any substantial change in the input costs.

257. It has been further argued that the domestic industry was operating above 100% capacity utilization and the drop in capacity utilization during the POI is due to capacity addition during this period. It is generally not possible to achieve 100% capacity utilisation as there are plants shut down for maintenance and other operational reasons and capacity utilization at 80% in any industry at international level is in fact considered very good. It has been further argued that the contention of the petitioners that domestic industry has lost market share to the extent of 24% during POI as compared to the base year is quite misleading. It has already been stated that domestic industry has been working at near full capacity and even beyond the installed capacity. Further, the domestic industry made fresh investment in increasing the installed capacity since they had already reached 121% of installed capacity for production of PVC in the year 2003-04.

258. It has been argued that there was no way that this figure of 121% could move upwards in accordance with the rate of growth in market demand. Even after expansion, they have achieved 94% of capacity utilization very quickly. Therefore, there is no question of loss of market share as stated by the petitioners and there is also no direct threat to survival of the domestic industry.

#### **H.1.2 Views of the domestic industry**

259. The domestic industry submits that the financial condition of the domestic industry has become very precarious which is apparent from the fact that the imports made at extremely low values and at dumped prices and there has been a substantial rise in imports from the subject countries. Dumped imports from the subject countries have increased as a share of total imports and as a share of total demand. The landed value has declined by 14% over the preceding period despite increase in the raw material prices. The domestic prices have also declined by 10% over the preceding year due to dumped imports. The effect of these factors can be seen in the form of decline in market share while the domestic demand has grown during the injury period. Capacity utilization and profitability of the Domestic industry has declined significantly.

#### **H.2 Examination by the Authority:**

260. Article 3.1 of the Act and Annexure-II of the Rules provide for an objective examination of both, (a) the volume of dumped imports and the effect of the dumped imports on prices, in the domestic market, for the like products; and (b) the consequent impact of these imports on domestic producers of such products, with regard to the volume effect of the dumped imports. The authorities are required to examine whether there has been a significant increase in imports, either in absolute term or relative to production or consumption in the importing member. With regard to the price effect of the dumped imports, the authorities are required to examine whether there has been significant price undercutting by the dumped imports as compared to the price of the like product in the importing

country, 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.

261. The Authority has taken note of the arguments of the interested parties on injury examination aspect and addressed the issues raised at appropriate places in this Disclosure statement to the extent these arguments are valid. The Authority has examined the injury parameters objectively taking into account the facts before it and the arguments of the interested parties.

### **H.3 Cumulative assessment of injury**

262. As per para (iii) of Annexure-II of the Rules , In cases where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when it determines that (a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent of the import of like article or where the export of individual countries less than three per cent, the imports collectively accounts for more than seven per cent of the import of like article and (b) cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported article and the like domestic articles.

263. The interested parties have argued that the EU taken as a territory is above de-minimis level and prices from some of the member countries of the EU are at the same level or below the price level from the subject countries. Therefore, the EU too needs to be included in the countries for Investigation for the purpose of cumulative assessment of the effect of imports including those from EU, in terms of the provision of the Anti-Dumping Rules.

264. The Authority notes that the volume import from each of the member countries of the EU and their share in total imports is very small and below the de-minimis level. Their cumulative share is also less than 7%. The average price of the imports from the EU is significantly higher than the average price from the subject countries. Further, there is no allegation of dumping from these countries. Therefore, there is no ground to initiate the investigation of dumping from the EU or to examine the impact of such imports cumulatively with the dumped imports from the subject countries.

265. As far as conditions for cumulative assessment of injury on account of dumped imports from the subject countries are concerned, the Authority notes that-

- (i) The margin of dumping in respect of each of the subject country is more than 2% except for the exporters for whom the dumping margin has been determined as de-minimis;
- (ii) The subject goods have been imported from the subject countries under the same tariff classifications;
- (iii) The volume of imports from each of the subject countries is not negligible as defined in Article 5.8 of the Agreement;
- (iv) The imported subject goods are commercial and technical substitutes of the domestically produced PVC Resin;
- (v) The subject goods have been imported by the end users and other importers and the goods have entered the commerce of the country through similar channels;
- (vi) The dumped goods from the subject countries and domestically produced like articles are interchangeable and are being interchangeably used by the user industry. Transaction-wise information on imports from the subject countries shows that the imports are being made by actual users as well as traders who have purchased the material for reselling. Goods supplied by the countries involved are entering the Indian markets through the similar channels of distributions and directly competing in the Indian market.
- (vii) The products supplied from the subject countries are being marketed in India during the same period through comparable sales channels and under similar commercial conditions.

266. In view of the above, the Authority hold that it is appropriate to cumulatively assess the effect of dumped imports of the subject goods from the subject countries, and its impact on the domestically produced like article in the light of conditions of competition between the imported products and the like domestic product. Therefore, for the purpose of injury and causal link analysis, as discussed above, the dumped imports from the subject countries have been cumulated for examination of volume and price effects of dumped imports of the subject goods from the subject countries on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

### **H.3.1 Material Injury**

267. The Rules provide for examination of the impact of dumped imports on the domestic industry on the basis of evaluation of all the relevant economic factors and indices having bearing on the state of domestic industry. For the purpose of this examination, the applicants constitute the domestic industry within the meaning of the term as defined under Rule 2(b) of the Rules. However, the Authority also notes that the Hon'ble Supreme Court in the RIL Vs Designated Authority held that the Authority is required to carry out the determination of the injury and NIP for the 'domestic industry as whole' and not in respect of any

particular company or enterprise. Therefore, in compliance with the above orders, the Authority called for cost and injury information from M/s RIL and their data has been used alongwith the applicant domestic industry for the NIP and injury determination.

268. For the purpose of injury and causal link analysis, as discussed above, the dumped imports from the subject countries have been cumulated for examination of volume and price effects of dumped imports of the subject goods from the subject countries on the domestic industry and its effect on the prices and profitability to examine the existence of injury and causal links between the dumping and injury, if any.

269. In their post disclosure submissions the interested parties have further argued that the decision to pursue a cumulative assessment of investigated imports must be reviewed, particularly given the fact that cumulation increases the likelihood of affirmative findings as well as misleads the allocation of injury to the real causes thereto. It has been argued that the cumulation should be done only when there are simultaneous import of the same product under consideration and not technically or commercially substitutable product. At the same time it has also been argued that the Authority should have analysed the injury and causal links with respect to country-wise import prices. The Authority notes that the conditions for cumulative assessment of injury are satisfied and therefore, injury is required to be assessed cumulatively and cumulative impact of dumped imports from all sources being investigated is required to be examined. Therefore, while there could be country-wise variation in landed values of imports, what is required to be seen is the combined impact of all those dumped imports on the domestic industry. Accordingly, the weighted average landed values of imports from all sources have been correctly shown in the findings.

**(A) VOLUME EFFECT: Volume Effect of dumped imports and Impact on domestic Industry**

270. The effects of the volume of dumped imports from the subject countries as well as dumped imports from other countries have been examined as follows:

**I) Import volumes and share of subject countries:**

271. For the purpose of injury examination, the Authority has examined the DGCI&S import data, co-operating exporters' export data and data from other secondary sources (i.e. IBIS) provided by the domestic industry. The data from the above sources were compared and it was found that the DGCI&S data for certain countries reports much lesser volume of imports compared to the export volume reported by the co-operating exporters from those countries whereas the IBIS data is quite close to the exporter's data. Therefore, it appears that entire import transactions have not been captured in the DGCI&S data under the dedicated tariff head. Therefore, the Authority finds it more appropriate to adopt

the transaction-wise data provided by IBIS for the volume analysis. On the basis of this data, the import volumes from the subject countries are as follows:

Imports (in MT)	2002-03	2003-04	2004-05	POI (Jan. – Dec. 05)
China	683	15	309	22506
Indonesia	2435	575	3640	15051
Japan	1212	6430	2571	21599
Korea	3455	16558	27118	70143
Malaysia	472	112	6711	16680
Taiwan	3931	10735	3550	28601
Thailand	3361	2804	4576	10299
USA	1120	23195	10296	31068
Total Subject Countries	16668	60423	58771	215947
Trend	100	363	353	1296
Other Countries	7336	18857	10047	38028
Trend	100	257	137	518
Total imports	<b>24003</b>	<b>79280</b>	<b>68817</b>	<b>253975</b>
Trend	100	330	287	1058

272. The above data shows that dumped import from the subject countries has increased almost 13 fold over the base year and imports from all the countries have also increased by 11 fold. Imports from other countries also shows substantial growth but much less compared to the subject countries. However, there is a sudden surge in imports during the POI compared to the previous year. Import volumes from Individual countries under investigation also show significant increase. The share of the subject countries in the total imports to India has also increased from about 69% to 85% during the injury investigation period.

	2002-03	2003-04	2004-05	POI (Jan.-Dec. 05)
Share of Subject Countries	69.44%	76.21%	85.40%	85.03%
Trend	100	110	123	122
Other Countries	30.56%	23.79%	14.60%	14.97%
Trend	100	78	48	49

273. The increase in volume of imports has also been analyzed with respect to the growth in demand of the subject goods in the domestic market. Demand has been estimated based on the actual sales of the applicant domestic industry and M/s RIL and estimated sales of M/s Finolex on facts available basis.

Qty (in MT)	2002-03	2003-04	2004-05	POI (Jan-Dec 05)
Sales-Domestic Industry + RIL	617461	697380	721097	727156
Trend	100	113	117	118
Sales-Other Domestic Producer	99835	96411	102022	90551
Trend	100	97	102	91
Total Domestic Sales	717296	793791	823119	817707
Trend	100	111	115	114

Captive Consumption	28335	30515	15966	20436
Trend	100	108	56	72
Total Imports	24003	79280	68817	253975
Trend	100	330	287	1058
Total Demand	769635	903586	907902	1092119
Trend	100	117	118	142

274. The above data indicates a healthy growth in demand for the subject goods in the domestic market. Whereas total demand of the product shows a growth of 42% over the base year, total imports to India show a growth of over 900% and sale of the domestic industry shows only a moderate growth of 18% over the base year. Imports from the subject countries have increased by about 1200% over the base year.

275. The interested parties have argued that the increase in imports is due to significant increase in demand during this period without commensurate increase in capacity and production by the domestic producers in India. Therefore, demand, production and market share of the domestic industry and other domestic producers have also been analysed to examine the effects of the dumped imports.

## ii) Demand, Output and Market shares

### a) Production of the Domestic Industry

Qty (in MT)	2002-03	2003-04	2004-05	POI (Jan.- Dec. 05)
Installed Capacity-Domestic Industry + RIL	621320	621320	741320	746020
Trend	100	100	119	120
Production-Domestic Industry + RIL	652840	703706	706419	748056
Trend	100	108	108	115
Capacity utilization	105.07%	113.26%	95.29%	100.27%
Trend	100	108	91	95

276. The above data shows that the domestic demand increased by about 18% between 2002-03 and 2004-05 and the domestic industry added capacity in 2004-05 to increase the total capacity by about 19%. Therefore, the capacity increase and demand increase were more or less in tune. However, there is apparently a sudden increase in demand by about 20% during the POI compared to the previous year and imports have increased several folds during this period. The production of the domestic industry has also increased by about 15% and capacity utilization has dropped by about 5% compared to the base year. Compared to the previous year, the capacity utilization has improved and the domestic industry is producing up to its full capacity, though in the year 2003-04 it had achieved higher capacity utilization of 113%. It indicates that the domestic industry is capable of producing approximately another 1,00,000 MT against its

rated capacity which they are not been able to produced due to availability of dumped imports at cheaper price.

**b) Sales of Domestic Industry**

Qty (in MT)	2002-03	2003-04	2004-05	POI (Jan-Dec 05)
Sales-Domestic Industry + RIL	617461	697380	721097	727156
Trend	100	113	117	118
Sales-Other Domestic Producer	99835	96411	102022	90551
Trend	100	97	102	91
Total Domestic Sales	717296	793791	823119	817707
Trend	100	111	115	114
Total Imports	24003	79280	68817	253975
Trend	100	330	287	1058
Total Demand	769635	903586	907902	1092119
Trend	100	117	118	142

277. The data shows that the domestic sale of the domestic industry, has increased by about 18% compared to the base year and only by 1% compared to the previous year while the demand has increased by 42% compared to the base year and 20% compared to the previous year. During the same period, the imports have increased several folds.

**c) Demand and Market Share**

Share in Demand	2002-03	2003-04	2004-05	POI (Jan-Dec 05)
Domestic Industry + RIL	617461	697380	721097	727156
Trend	100	113	117	118
Other Producer	99835	96411	102022	90551
Trend	100	82	87	64
All domestic producers	93.20%	87.85%	90.66%	74.87%
Trend	100	94	97	80
Captive Consumption	3.7%	3.4%	1.8%	1.9%
Trend	100	92	48	51
Imports from Subject Countries	2.17%	6.69%	6.47%	19.77%
Trend	100	309	299	913
Imports from other Countries	0.95%	2.09%	1.11%	3.48%
Trend	100	219	116	365

278. The above data shows that the market share of the domestic industry and supporting producers has declined by about 17% in POI compared to the base year and market share of the subject countries has increased from about 2% in the base year to almost 20% in the POI. Share of other countries has increased only marginally from about 1% to 3.5% during the same period.

279. In their post disclosure submissions the interested parties have reiterated that the demand supply gap in the domestic market makes import inevitable and

the domestic manufacturers have not been able to keep pace with the demand. At the same time certain interested parties have argued that the capacity expansion made by the domestic industry during the previous years and planned expansion in the future is the sign of no injury. The Authority finds these two arguments as contradictory. In the situation of healthy growth of demand it is the reasonable expectation of the domestic industry to expand its capacity. The domestic industry also had a track record of maintaining capacity utilization above 100% except for the POI which indicates that when there is a good demand and price the industry can perform at higher capacity and reduce its fixed cost to remain competitive. Only in the POI in the presence of dumped imports the capacity utilization has fallen leaving a notional capacity of about 1,00,000 MT unutilized. Had the industry been able to maintain the capacity utilization at the historic level, this additional production could have been available for the domestic users reducing the demand supply gap to that extent.

#### **(B) Price Effect of the Dumped imports on the Domestic Industry**

280. The impact on the prices of the domestic industry on account of the dumped imports from the subject countries has been examined with reference to the price undercutting, price underselling, price suppression and price depression, if any. For the purpose of this analysis, the weighted average cost of production (COP), weighted average Net Sales Realization (NSR) and the Non-Injurious Price (NIP) of the Domestic industry have been compared with the landed cost of imports from the subject countries. For the above purpose, NIP has been determined for the domestic industry as a whole as per the Supreme Court Judgment in RIL matter, taking into account verified cost data of the applicant domestic industry and RIL. As noted earlier, M/s Finolex has been found to be a major importer of the subject goods and therefore, does not qualify for consideration as a part of the domestic industry. Therefore, cost data of M/s Finolex has not been considered for NIP and injury determination.

##### **(i) Price undercutting and underselling effects**

281 Price undercutting effect of dumped imports from the subject countries has been determined by comparing the weighted average Landed Value (LV) of dumped imports from the subject countries over the entire period of investigation with the weighted average NSR of the domestic industry for the same period. For this purpose, LV of imports has been calculated by adding 1% handling charge and applicable basic customs duty to the CIF value of imports from the subject countries as per the import statistics considered above.

282. In determining the NSR of the domestic industry, the rebates, discounts and commissions offered by the domestic industry and the central excise duty paid have been deducted.

283. For the purpose of price underselling determination, the weighted average landed prices of imports from subject countries/territories have been compared with the NIP of the domestic industry determined for the POI as noted above.

284. Price undercutting and underselling of the dumped imports from the subject countries work out as follows:

	Rs/MT				
<b>Price Undercutting/ Underselling</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI (Jan-Dec 05)</b>	
<b>Domestic Selling Price Rs./MT</b>	*****	*****	*****	*****	
Trend	100	99	119	107	
<b>Cost to Make and Sale-Rs./MT</b>	*****	*****	*****	*****	
Trend	100	101	123	116	
<b>Landed values-Rs./MT</b>					
All Countries	39371.8 7	37209.0 7	47719.9 8	40835.06	
Subject Countries	38049.2 0	36653.8 7	47751.6 9	40986.79	
<b>Price Undercutting</b>					Percentage
All Countries	(*****)	*****	(*****)	(*****)	-2 to 2%
Subject Countries	*****	*****	(*****)	(*****)	-2 to 2%
<b>NIP Rs/MT</b>				*****	
<b>Price underselling</b>					
All Countries				*****	0 to 5%
Subject Countries				*****	0 to 5%

285. The above data shows that cost of sales of the domestic industry increased upto 2004-05 and thereafter declined by about 7% whereas the selling price (NSR) of the domestic industry also increased upto 2004-05 and thereafter there is a significant decline of about 12% compared to the previous year. The landed value of the subject goods from the subject countries also increased upto 2004-05 and thereafter suddenly declined by about 15% compared the previous year. Therefore, the sales realization of the domestic industry seems to have been impacted partly by the decline in cost of production and partly by the steep decline in the landed value of imports.

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

287. The landed value of imports from all the subject countries, individually and cumulatively, have been found to be significantly below the NIP of the domestic

industry determined by the Authority indicating significant price underselling effect on the domestic industry.

**(ii) Price suppression and depression effects of the dumped imports:**

288. The price suppression/depression effects of the dumped imports have also been examined with reference to the COP, NSR and LV from the subject countries. The trend of cost of production and selling prices in the domestic market as in the table clearly shows that the decline in sales realization in the POI is much more than the decline in the cost of production. While the cost of sales went up by 23% up to 2004-05 compared to the base year and then declined by about 5% in the POI, the sales realization increased by 19% up to 2004-05 and declined by almost 10% in the POI. During the same period the landed value went up by 21% and then declined suddenly in the POI by almost 15%. The above clearly indicates that in the declining landed value of imports has forced the domestic industry to keep its prices depressed during the POI to retain the market share.. The above data indicates that the domestic industry has been forced to depress its prices to match with the import prices, in order to retain its market share.

**H.4 Examination of other Injury Parameters**

289. After having examined the effect of dumped imports on the volumes and prices of the domestic industry and major injury indicators like volume and value of imports, capacity, output, capacity utilization and sales of the domestic industry as well as demand pattern with market shares of various segments, other economic parameters which could indicate existence of injury to the domestic industry have been analysed by the Authority as follows:

**i) Actual and potential effect on productivity**

<b>Productivity per Employee</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI (Jan-Dec 05)</b>
Production-DI-MT	652840	703706	706419	748056
No. of Employees	1177	1158	1052	1076
Production/Employee-MT	555	608	671	695
Trend	100	110	121	125

290. There is a decline in employment though there is an increase in output of the domestic industry. Therefore, productivity of the domestic industry, measured in terms of its labour output, has improved substantially.

**ii) Profits and actual and potential effects on the cash flow**

<b>Profitability (Rs./MT)</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>POI (Jan-Dec 05)</b>
Weighted average NSR of DI-Rs./MT	*****	*****	*****	*****
Trend	100	99	119	107

Weighted average Cost of sales of DI-Rs./MT	*****	*****	*****	*****
Trend	100	101	123	116
Profit/Loss Per MT	*****	*****	*****	(*****)
Trend	100	56	35	(102)
<b>Cash Profit</b>				
Profit/Loss Rs. Lacs	*****	*****	*****	(*****)
Add: Depreciation-Rs. Lacs	*****	*****	*****	*****
Cash Profit-Rs.Lacs	*****	*****	*****	(*****)
Trend	100	71	54	(55)

291. Cost and sales data of the domestic industry shows that sales realization per unit, after improving till 2004-05, declined significantly in POI below the cost of sales, resulting in negative cash profit in the POI.

### iii) Employment and wages

	2002-03	2003-04	2004-05	POI (Jan-Dec 05)
<b>No. of Employees</b>	1177	1158	1052	1076
Trend	100	98	89	91
<b>Wages-Rs. Lacs</b>	*****	*****	*****	*****
Trend	100	98	105	104

292. The employment level of the domestic industry has declined but wage expense has increased compared to the base year. The interested parties have argued that the wage burden and VRS expenses are significant cause of injury to the domestic industry. However, the decline in employment and increase in wage burden was during the period 2003-04 and 2004-05 when the domestic industry was adding capacity and simultaneously reducing extra manpower to become more production and cost efficient. The impact of wage increase during the POI is marginal and does not appear to be the cause of injury.

### iv) Investment, Return on investment and ability to raise capital

	2002-03	2003-04	2004-05	POI (Jan-Dec 05)
Profit / Loss-Rs. Lacs	*****	*****	*****	(*****)
Trend	100	63	41	(121)
Interest-Rs. Lacs	*****	*****	*****	*****
Profit/Loss before Interest-Rs. Lacs	*****	*****	*****	(*****)
Capital Employed-Rs. Lacs	*****	*****	*****	*****
Trend	100	94	80	90
Return on investment	*****%	*****%	*****%	(*****)%
Trend	100	73	51	(49)

293. The financial performance of the domestic industry has also been analysed in terms of its cash profits and return on investment. The Authority notes that the domestic industry has added capacity during the injury

investigation and also some of the constituents of the domestic industry have revalued their assets during the POI. Therefore, capital employed by the domestic industry in domestic operation show significant increase during the injury investigation period. However, the profitability of the industry has been steadily declining and has become negative during the POI due to pressure of dumped imports on the prices. Return on investment on the capital employed has become negative during the POI after steadily declining from the base year.

294. The interested parties have argued that the domestic industry has significant expansion plans due to good growth in demand for the subject goods in India. The Authority noted that the demand for the subject goods is increasing by over 10% per year and there is a good potential for further investment and expansion. However, a negative return on investment would make further investment difficult.

**v) Magnitude of Dumping**

295. Magnitude of dumping, as an indicator of the extent to which the dumped imports can injure the domestic industry, shows that the dumping margins determined against the countries named, for the POI, are significant.

**vi) Factors affecting prices**

296. Change in cost structure, competition in the domestic industry and prices of competing substitutes have been examined for analyzing the factors other than dumped imports that might be affecting the prices in the domestic market. The Authority notes that PVC resin has a very high demand in the domestic market and the demand is growing at a fast pace due to significant increase in construction activities and use of PVC pipes in agricultural activities. In fact, PVC is fast substituting traditional material in several construction related activities and there is a significant demand supply gap in the country. There are several producers of this product in the country who have participated in the investigation except one (i.e. M/s Finolex). Since demand has outstripped the supply in the domestic market, competition between the domestic producers does not seem to affect the prices.

297. The interested parties have made contradictory arguments about the price of PVC and basic raw materials Ethylene/EDC/VCM. Some of the interested parties have argued that the domestic industry has been resorting to frequent price revisions and aligning its prices as per the international prices. While others have argued that the PVC price is linked to volatility in the raw materials prices which is in turn linked to crude price and not affected by the prices from the subject countries. It has been argued that since the domestic industry prices are driven by cost and prices in the international level and that should not be causing any injury to the domestic industry. However, the Authority notes that while the cost of production of the domestic industry has declined due to decline in prices

of critical raw materials during the POI, the selling price decline is more than the decline in cost of production. It is also noted that the prices of imports from the countries investigated are at significantly dumped prices and these dumped prices are driving the price in the domestic market.

**vii) Inventories**

Particulars	2002-03	2003-04	2004-05	POI (Jan-Dec 05)
Average Inventory-Domestic Industry (MT)	*****	*****	*****	*****
Trend	100	145	74	197
Inventory as a % of production	*****%	*****%	*****%	*****%
Trend	100	135	68	172

298. The inventory data of the domestic industry indicates significant increase in inventory holding compared to the base year and previous year. Inventory as a percentage of production has also increased by 73% compared to the base year and more than 100% over the previous year.

**viii) Growth**

299. The demand in the country has increased by 42% during the POI as compared to base year (i.e. 2002-03). However, growth in production and sales of the domestic industry remains moderate and the market share of the domestic industry has declined by about 15% over the same period. It indicates that the increase in the demand has directly been taken over by the dumped imports from the subject countries. The growth with respect to profitability is also significantly declined during the POI.

**H.5 Other Known factors and Causal Link**

**H.5.1 Views of the interested parties**

300. As noted earlier, the interested parties have argued that the dumped imports are not responsible for the injury, if any, caused to the domestic industry.

**H.5.2 Examination by the Authority**

301. The Authority has examined the issue of causal link between the dumped imports from the subject countries and injury suffered by the domestic industry in the light of the above arguments of the interested parties

302. The trend of domestic prices cost of production and landed value of imports from the subject countries clearly indicates that the domestic prices have been

significantly depressed to align itself with the import prices. Therefore, price undercutting, in itself, is not a definitive parameter to establish causal link between the imports from individual countries and injury suffered. The selling price of the domestic industry appears to have been bench marked against the lowest import prices. On the other hand, there is a significant price underselling by the dumped imports.

303. In addition to the above arguments, the Authority has also examined the issue of causal link and other non-attributive factors as laid down in the Rules to segregate injury, if any, caused by other factors. In this regard, the following indicative factors as laid down in the Rules have been examined:

**i) Volume and prices of imports from other sources**

304. Para (v) of the Annexure-II of the Rules mandates examination of volume and value of imports not sold at dumped prices as a factor for non-attribution analysis. The Authority notes that during the POI, import from the subject countries accounted for over 85% of the imports to India. Balance quantity has been imported from about 23 other countries with negligible import shares individually. The issue of cumulated imports from the member countries of European Communities have also been examined and it was noted that the cumulated imports from EU was about 6% of total imports and prices are higher than the imports from the subject countries. Therefore, the injury caused by the imports from sources other than the subject countries cannot be attributed to the dumped imports from the subject countries.

**ii) Contraction in demand and/or change in pattern of consumption**

305. Total domestic demand of the product under consideration, has shown a very significant increase by about 42% during the period of investigation as compared to the base year. Compared to the previous year, the growth in demand is about 20%. There is a significant change in consumption pattern in favour of the product in the domestic market and this product is significantly substituting other traditional products in the market. Therefore, unfavourable change in consumption pattern cannot be attributed to the injury to the domestic industry.

**iii) Trade restrictive practices of and competition between the foreign and domestic producers**

306. The Authority notes that the subject goods are freely importable and there are no trade restrictive practices in the domestic market. There is no restriction on fair trade in the country and imports of the subject goods take place from several countries and compete with the domestic producers. There are several producers of the subject goods in the domestic market and there is healthy growth in demand, which stripping the supply. Therefore, demand not being a

constraint, unhealthy competition in the domestic market or any unfair trade restrictive practices cannot be attributed to the Injury of the domestic industry.

**iv) Development of technology and export performance**

307. The Authority notes that there is no major difference between the technologies, being used by major producers of the subject goods in the world. The production facilities of the cooperating foreign producer in the subject countries were also verified and it was seen that the producers apply similar production technologies either from ethylene route or acetylene route. The domestic industry also uses the same technologies for production of PVC resin. Therefore, development of technology or inefficient method of production of the domestic industry cannot be treated as a cause of injury to the domestic industry.

308. The Authority notes that total exports of the domestic industry is less than 2% of its total production and the export volume has been constantly declining though export realization per MT improved during the injury period. The decline in export is due to increase in domestic demand and demand supply gap in India.

Particulars	2002-03	2003-04	2004-05	POI (Jan-Dec 05)
Export Sales of DI MT	0	16370	15217	11012
Trend		100	93	67
Export Price Rs/MT		*****	*****	*****
Trend		100	107	119

309. However, the injury analysis has been done on the domestic operation of the Company and therefore, injury if any due to export performance of the domestic industry has not been attributed to the injury suffered by the domestic industry.

**v) Productivity of the Domestic Industry**

310. Productivity of the domestic industry in terms of labour output has shown substantial improvement.

**H.6 Factors establishing causal link**

311. Analysis of the performance of the domestic industry over the injury period shows that the performance of the domestic industry has materially deteriorated due to dumped imports from subject countries. Therefore, the causal links between dumped imports and the injury to the domestic industry is established on the following grounds:

1. The dumped import prices and consequently the landed price of imports, cumulatively from the subject countries, have declined significantly during the POI compared to the previous year and sudden

decline in the prices have resulted in significant price depression for the domestic industry;

2. Reduction in the selling prices by the domestic industry has adversely affected the profits, cash flow and return on investments of the company;

3. Even though the domestic industry appears to have responded to decline in import prices, by reducing its selling prices, it has lost significant market share to the dumped imports from the subject countries;

4. The domestic industry also appears to have responded to the increase in demand by adding capacity during the injury investigation. But existence of significant price underselling and consequent price depression has resulted in decline in profitability and decline in market share of the domestic industry. Capacity utilization has also declined after operating at over 100% utilization during the previous years.

## **H.7 Overall assessment**

312. The above analysis of the factors that may indicate existence of material injury to the domestic industry shows that in spite of the improvement in several parameters during the intervening period the performance of the domestic industry has deteriorated and the industry suffers injury on account of decline in profitability and return on investment while there is a healthy demand for the product in the domestic markets, The injury suffered is material and significant.

313. In their post disclosure statement the interested parties have reiterated their comments on various injury parameters, analysis of causal link and public interest issues. It has been argued that several parameters shows improved performance of the domestic industry and therefore, material injury claim of the domestic industry is not justified. In this connection the Authority notes that injury determination is an overall assessment of the condition of the domestic industry and no one or several parameters may provide any conclusive guidance in this respect. On the basis of over all assessment of the parameters examined the Authority has concluded that the domestic industry suffers material injury on account of loss in market share and financial loss incurred during the POI due to the price effects of dumped imports. Therefore, the arguments of the interested parties are not valid

314. Therefore, the Authority concludes that the domestic industry has suffered material injury and such injury has been caused significantly by price and volume effects of dumped imports from the subject countries. Injury, if any, caused due to other factors brought to the notice of the Authority have not been attributed to the dumped imports.

## I. Magnitude of Injury and injury margin

315. The Authority has determined non-injurious for the domestic industry taking into cost of production of all participating domestic producers as noted earlier. Accordingly, the NIP for the domestic industry has been determined as Rs\*\*\*\*\* (USD\*\*\*\*\* at the exchange rate of Rs44.19). The domestic industry, in its post disclosure submissions has argued that the methodology adopted by the Authority for determination of NIP has resulted in extremely low returns on the cost of production. However, the Authority notes that the NIP for the domestic industry has been determined as per the consistent practice of the Authority taking into account the guidelines provided in the Supreme Court judgment referred earlier. Therefore, the arguments of the domestic industry for an upward revision of the NIP have not been accepted.

316. This non-injurious price of the domestic industry has been compared with the weighted average landed values of the exports from the exporters from the subject countries for determination of injury margin. The injury margins have been worked out as follows:

Country	Producers	Exporter	Injury Margin	IM
			USD/MT	%
Thailand	M/s Thai Plstics and Chemicals Public Company Limited	M/s Thai Plstics and Chemicals Public Company Limited	*****	0 to 10%
	All others	Any	*****	0 to 10%
Korea	LG Chem Ltd	LG Chem Ltd	*****	0 to 5%
	Hanwha Chemical Corporation	Hanwha Corporation	*****	0 to 5%
	All others	Any	*****	0 to 10%
Indonesia	PT Asahimas Chemicals	PT Asahimas Chemicals	*****	10 to 20%
	All others	Any	*****	15 to 25%
Chinese Taipei	Formosa Plastics	Formosa Plastics	*****	0 to 5%
	Ocean Plastics	Ocean Plastics	(*****)	5 to 10%
	All others	Any	*****	0 to 5%
Japan	Taiyo Vinyl Corporation	Taiyo Vinyl Corporation	*****	0 to 10%
	Taiyo Vinyl Corporation	Mitsui & Co	*****	0 to 5%
	All others	Any	*****	5 to 15%
China PR	M/s Tianjin Dagu Chemical Company Limited	M/s Tianjin Bohai Chemical Industries Imp. & Exp. Corporation	*****	0 to 5%
	M/s Xinjiang Shihezi Zhongfa Chemical Co. Ltd.	M/s Xinjiang Tianye Foreign Trade Co. Ltd.	*****	0 to 5%

	M/s Yichang Yihua Pacific Cogen Co. Ltd.	M/s Hubei Yihua Group Co. Ltd.	*****	0 to 10%
	Non-Sampled Producers/exporters as per list	Non-Sampled Producers/exporters as per list	*****	0 to 5%
	All others	Any	*****	0 to 10%
USA	All Producers/Exporters	Any	*****	0 to 10%
Malaysia	All Producers/Exporters	Any	*****	0 to 10%

## J. Threat of Material Injury

317. In addition to the above claims of material injury, the domestic industry has also made a claim of threat of material injury, on the grounds that significant price underselling coupled with very large disposable capacities with the producers in the subject countries, is a clear evidence of threat of injury to the domestic industry. In the light of the above claims the issue of threat of material injury has been examined in terms of para vii of Annex II of the Rules. The Authority notes that

- There is a significant increase in dumped imports from the subject countries to India. The imports in the POI are about 12 times higher than the imports in the base year and growth over the previous year is about 300%. The demand for the subject goods is healthy and the trend of growth in import is likely to continue because of the price factor;
- Data on capacities and demand-supply of PVC resin in these countries indicate that there was significantly higher capacities in these countries and export orientation of the producers of the subject goods in these countries is evident;
- The cost and price analysis in the previous section indicate that the dumped imports have significantly depressed the domestic prices in India;

318. The Authority notes that the domestic industry has suffered material injury due to the dumped imports. As far as threat of injury is concerned, the Authority notes that all the major producers of the subject goods in the subject countries have significant capacities and have been exporting significant quantities to India as well as other countries. In line with the demand situation in the country domestic industry has planned expansion of capacities and continuation of dumped imports from the subject countries therefore, pose a distinct threat of material injury to the domestic industry.

## K. Conclusions

319. After examining the issues raised and submissions made by the interested parties and facts made available before the Authority as recorded in this finding the authority concludes that:

- i) The subject goods have entered the Indian market from the subject countries at prices less than their normal values in the domestic markets of the exporting countries;
- ii) The domestic industry has suffered material injury and threat of injury exists; And
- iii) The injury has been caused to the domestic industry, both by volume and price effect of dumped imports of the subject goods originating in or exported from the subject countries.

#### **L. Indian industry's interest & other issues**

320. The Authority notes the arguments and the concerns of the interested parties imports of the subject goods to India is inevitable because of the demand supply gap and the downstream user industry would be adversely affected if antidumping duty is imposed on this product. It has also been argued that small scale sector and priority sectors like agriculture and infrastructure would be adversely affected. The Authority notes that the purpose of anti-dumping duties, in general, is to eliminate injury caused to the Domestic Industry due to the unfair trade practices of dumping so as to re-establish a situation of free 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. On the other hand, if distortion caused by the dumped imports are not corrected it may lead to closure of the domestic production base and subsequent price increase by the foreign producers, which will adversely affect the user industry.

#### **M. Recommendations**

321. The Authority initiated and conducted the investigation into dumping, injury and causal links between dumping from the subject countries and injury to the domestic industry in terms of the Rules laid down, and having established positive dumping margins against the subject countries, and having concluded that the domestic industry suffers material injury due to such dumped imports, the Authority is of the opinion that definitive measure is required to be imposed to offset dumping and injury being caused to the domestic industry. Accordingly, the Authority recommends imposition of definitive antidumping duty in the form and manner prescribed below.

322. 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, antidumping duty equal the amount indicated in Col 9 of the duty table annexed herewith is recommended to be imposed by

the Central Government, on all imports of subject goods originating in or exported from the subject countries from the date of such imposition for a period of five years.

### Duty Table

Sl. No	Sub Heading or Tariff Item	Description of Goods	Specification	Country of origin	Country of Export	Producer	Exporter	Duty Amount	Unit of Measure	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)		
1	3904.21	Homopolymer of vinyl chloride monomer (PVC) (suspension grade)	See Footnote ***	Thailand	Any	M/s Thai Plastics and Chemicals Public Co. Ltd.	M/s Thai Plastics and Chemicals Public Co. Ltd.	1821	MT	Rs
2	-Do-	-Do-	-Do-	Thailand	Any	Any other combination of producer-Exporter		2456	MT	Rs
4	-Do-	-Do-	-Do-	Any other than subject countries	Thailand	Any	Any	2456	MT	Rs
5	-Do-	-Do-	-Do-	Korea	Any	LG Chem Ltd	LG Chem Ltd	NIL	MT	Rs
6	-Do-	-Do-	-Do-	Korea	Any	Hanwah Chemical Corporation	Hanwah Chemical Corporation	NIL	MT	Rs
7	-Do-	-Do-	-Do-	Korea	Any	Any other combination of producer-Exporter		1984	MT	Rs
8	-Do-	-Do-	-Do-	Any other than subject countries	Korea	Any	Any	1984	MT	Rs
9	-Do-	-Do-	-Do-	Indonesia	Any	PT Asahimas Chemicals	PT Asahimas Chemicals	2351	MT	Rs
10	-Do-	-Do-	-Do-	Indonesia	Any	Any other combination of producer-Exporter		4738	MT	Rs
11	-Do-	-Do-	-Do-	Any other than subject countries	Indonesia	Any	Any	4738	MT	Rs
12	-Do-	-Do-	-Do-	Chinese Taipei	Any	Formosa Plastics Corporation	Formosa Plastics Corporation	NIL	MT	Rs
13	-Do-	-Do-	-Do-	Chinese Taipei	Any	Ocean Plastics Corporation	Ocean Plastics Corporation	NIL	MT	Rs
14	-Do-	-Do-	-Do-	Chinese Taipei	Any	Any other combination of producer-Exporter		1119	MT	Rs

15	-Do-	-Do-	-Do-	Any other than subject countries	Chinese Taipei	Any	Any	1119	MT	Rs
16	-Do-	-Do-	-Do-	Japan	Any	Taiyo Vinyl Corporation	Taiyo Vinyl Corporation	2813	MT	Rs
17	-Do-	-Do-	-Do-	Japan	Any	Taiyo Vinyl Corporation	Mitsui & Co	1620	MT	Rs
18	-Do-	-Do-	-Do-	Japan	Any	Any other combination of producer-Exporter		3834	MT	Rs
19	-Do-	-Do-	-Do-	Any other than subject countries	Japan	Any	Any	3834	MT	Rs
20	-Do-	-Do-	-Do-	China PR	Any	Tianjin Dagou Chemical Company Limited	Tianjin Bohai Chemical Industries Imp. & Exp. Corporation	1047	MT	Rs
21	-Do-	-Do-	-Do-	China PR	Any	Xinjiang Shihezi Zhongfa Chemical Co. Ltd.	Xinjiang Tianye Foreign Trade Co. Ltd.	459	MT	Rs
22	-Do-	-Do-	-Do-	China PR	Any	Yichang Yihua Pacific Cogen Co. Ltd.	Hubei Yihua Group Co. Ltd.	2702	MT	Rs
23	-Do-	-Do-	-Do-	China PR	Any	Non-Sampled Producer/exporters as per list *****		1467	MT	Rs
24	-Do-	-Do-	-Do-	China PR	Any	Any other combination of producer-Exporter		2702	MT	Rs
25	-Do-	-Do-	-Do-	Any other than subject countries	Any	Any	Any	2702	MT	Rs
26	-Do-	-Do-	-Do-	USA	Any	Any	Any	2170	MT	Rs
27	-Do-	-Do-	-Do-	Any other than subject countries	USA	Any	Any	2170	MT	Rs
28	-Do-	-Do-	-Do-	Malaysia	Any	Any	Any	3713	MT	Rs
29	-Do-	-Do-	-Do-	Any other than subject countries	Malaysia	Any	Any	3713	MT	Rs

\*\*\* The Product has been defined as "homopolymer of vinyl chloride monomer (suspension grade), where various polymer chains are not linked to each other, falling under customs classification no. 3904.21, excluding the specialty PVC suspension resins such as cross-linked PVC, chlorinated PVC (CPVC), vinyl chloride – vinyl acetate copolymer (VC-VAc), PVC paste resin and PVC blending resin".

\*\*\*\* List of Non-sampled exporters from China PR

- a) Haohua Yuhang Chemical Co Ltd
- b) Ningxia Yinglige Chemicals co Ltd
- c) Shandong Haihua Chlor Alkali Resin Co Ltd
- d) Shandong Ocean Chemical Import and Export Co Ltd.
- e) Qingdao Haijing Chemical Group Co Ltd
- f) Yibin Tianyuan Co Ltd
- g) Shangahi Chlor Alkali Chemical Co Ltd
- h) Tianjin LG DAGU Chemical Co Ltd
- i) Inner Mongolia Sanlian Chemical Corporation Ltd

#### **N. Further Procedures**

323. An appeal against the orders of the Central Government that may arise out of this recommendation shall lie before the Customs, Excise and Service tax Appellate Tribunal in accordance with the relevant provisions of the Act.

324. The Authority may review the need for continuation, modification or termination of the definitive measure as recommended herein from time to time as per the relevant provisions of the Act and public notices issued in this respect from time to time. No request for such a review shall be entertained by the Authority unless the same is filed by an interested party as per the time limit stipulated for this purpose.

**R. Gopalan**  
**Designated Authority**